

FEDERAL TRADE COMMISSION

v.

SAMUEL SILVERMAN, JACOB SILVERMAN, AND HENRY GREENBLATT, PARTNERS, DOING BUSINESS UNDER THE NAME AND STYLE OF WAREWELL COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 877—December 9, 1922.

SYLLABUS.

Where a corporation engaged in the publication and sale of a set of books which contained a carefully selected group of stories, dramas, essays and other literary productions of the world's most famous authors, and represented the expenditure of much time and money by it in experiments in materials, size, subjects, etc., designated the same the "Little Leather Library," spent large sums of money in so advertising the same, and built up a large and valuable good will therefor; and thereafter a firm, not theretofore a competitor,

- (a) Secured from various sources (including persons connected with said Library's publication) without its consent, confidential information relating to its source of supply for materials and the mechanical processes whereby such Library could be produced at the lowest cost;
- (b) Published first as the Famous Authors' Library Association, and later as the Classics Publishing Co. sets which simulated exactly in size, contents, and arrangement, the books in its competitor's set, using some of the latter's books as "copy" for its publications; and
- (c) In advertising and offering the same so closely simulated in form, illustration and substance its advertisements that experienced advertising men as well as the purchasing public were deceived and misled into the belief that the advertisements were those of the publishers of the Little Leather Library;

With the result that the public was misled and deceived into believing said sets to be those of the corporation and into buying them as such:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Sam Silverman, Jacob Silverman, and Henry Greenblatt, partners doing business under the name and style of Warewell Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define

its powers and duties, and for other purposes," and it appearing to the Commission that a proceeding by it in respect thereof would be of interest to the public, issues this complaint stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That respondents are partners who since February 1921 continuously have been and now are engaged among other things in the publishing and selling of books in interstate commerce, at some of the times hereinafter mentioned under the trade name and style of Famous Authors Association and at other such times under the trade name and style of Classics Publishing Company, with their principal office and place of business in the City of Philadelphia, State of Pennsylvania. Respondents' method of business was and is to insert advertisements in the magazines, periodicals and other publications of general circulation throughout the United States, in which advertisements respondents solicit mail orders direct from the ultimate purchaser for the books published by them. Upon receiving orders for said books from persons residing at various points in various States of the United States, respondents cause the books so ordered to be shipped from their said place of business in Philadelphia into and through various States of the United States to the purchasers thereof at their said several places of residence. In the course and conduct of their said business respondents are in competition with other persons, partnerships, and corporations engaged in publishing and thereafter selling books in interstate commerce and with the trade generally.

PAR. 2. Amongst said competitors of respondents is the Little Leather Library Corporation, hereinafter called the corporation, a corporation organized about the year 1915 under the laws of the State of New York with its office and principal place of business in the City of New York in said State. The organizers of this corporation were at that time engaged in conducting an advertising agency, hereinafter called the agency, in the City of New York, the business of said agency being to compose appropriate advertisements for merchants, business and professional men, and other persons and to cause the same to be inserted in appropriate magazines and other publications throughout the United States. In connection with said business said agency at times gave business advice to its clients. Before respondents commenced their publishing business, set out in Paragraph One hereof, they had been engaged in other forms of mail-order business and in connection therewith had become clients of the agency and remained such until embarking in aforesaid publishing business. In the course of their relation as clients to the agency, respondents received from the agency both advertising and

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business advice. While the aforesaid relation of clients to the agency was in existence, the Little Leather Library Corporation produced and marketed throughout the United States a selection of stories, dramas, essays and other literary productions of famous and well-known authors, which collection it named the Little Leather Library. This collection, after sundry experiments in materials, size and selection of subjects adapted to the project, was finally issued as a set of thirty volumes, each of a size small enough to slip into the pocket and bound in an imitation of leather, which were offered as a set at the price of \$2.98, and singly at ten cents the volume. Said collection is hereinafter called "the library." The corporation's method of selling the library was by causing to be inserted in magazines and other periodicals of general circulation throughout the United States advertisements of the library in which advertisements orders were solicited for the library direct from the ultimate purchaser by mail. Upon receiving orders therefor the corporation shipped the library from its said place of business in the City of New York to said purchasers at their several places of residence in the various States of the United States. The library thus advertised and sold acquired a great popularity and demand throughout the United States and the corporation built up a large and valuable good will in the sale thereof.

PAR. 3. Respondents well knowing the facts set forth in Paragraph Two hereof, and with the purpose of acquiring for themselves, and to trade upon, the popularity and demand for the library and the good will in the sale thereof enjoyed by the corporation, did, about the year 1921, the following acts and things:

(a) Under the pretense of securing advice from the agency and from other sources in confidential relationship with said agency, in and about the desirability of embarking in the publishing business and the sale of publications generally as a part of their original mail order business, secured from the agency and other said sources, confidential information, data and figures concerning sources of supply of materials entering into the library, the names, character and price of such materials, the name of the printing concern which printed and produced the library for the corporation, particulars of the mechanical processes whereby the library was produced at the lowest cost, and other valuable private information regarding the printing, production, advertising and sale of said library, and;

(b) Having thus secured the information set out under subheading (a), caused to be published, printed, and produced a set of books of thirty volumes, of the same size as and closely simulating in

materials and form, the volumes of the library, and containing selections from the same authors and from no others. The selections printed were in each instance the same as chosen by the Corporation and appearing in the library and no others, although there were many hundreds of selections among the writings of said authors which respondents might have made, and each volume of respondents' said books under the names of their respective authors contained the same selections in the same order in which they appeared in the volumes of the library and no others.

(c) Inserted advertisements in magazines and other periodicals of general circulation throughout the United States, in many of which appeared the aforesaid advertisements of the corporation, in which advertisements respondents solicited mail orders from the ultimate purchaser of said books, and upon receipt of orders therefor shipped its books from its place of business in Philadelphia to the purchasers at their various points of residence in the several States of the United States. Respondents' said advertisements closely simulated the advertisements of the corporation in form, subject matter, and the method in which books advertised were pictured.

Respondents have continuously since engaged and still engage in the foregoing practices.

PAR. 4. The above alleged acts and things done by respondent had and have the capacity and tendency to mislead and deceive the customers, and prospective customers, of the corporation and the public generally into the belief that the set of books published by respondents was and is the library published by the corporation, and therefore to cause said customers, prospective customers, and the public generally to purchase respondents' said set of books in the belief that it was and is the library.

PAR. 5. The above alleged acts and things done by respondents constitute an unfair method of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served its complaint upon the respondents, Samuel Silverman, Jacob Silverman, and Henry

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Greenblatt, partners, doing business under the name and style of Warewell Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act. The respondents, Samuel Silverman, Jacob Silverman, and Henry Greenblatt, having failed to make their appearance, and having failed to file their answer herein, hearings were had and evidence was thereupon introduced in support of the complaint, before an examiner of the Federal Trade Commission duly appointed, and thereupon this proceeding came on for final hearing, and the Commission, having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents Samuel Silverman, Jacob Silverman, and Henry Greenblatt, were, at all times hereinafter mentioned, a partnership doing business under the name and style of the Warewell Company, with their principal offices and places of business at 940 Market St. and 1210 Arch St. in the city of Philadelphia, State of Pennsylvania, where they were engaged since February, 1921, among other things, in the publication and sale of books, by mail, in interstate commerce, at some of the times hereinafter mentioned, under the trade name of Classics Publishing Company, and at other such times, as Famous Authors Library Association. Respondents' method of doing business was to insert advertisements of their books in magazines, periodicals, and other publications of general circulation throughout the United States, in which advertisements respondents solicited orders direct from the ultimate purchasers, for the books published by them, causing the books so ordered to be shipped from their place of business in the city of Philadelphia, State of Pennsylvania, into and through the various States of the United States to the purchasers thereof, at their various places of residence, in direct competition with various other persons, corporations and partnerships similarly engaged.

PAR. 2. Amongst respondents' competitors was the Little Leather Library Corporation, hereinafter called the Corporation, a corporation organized in the year 1915 under the laws of the State of New York, with its principal office and place of business at 354 Fourth Ave., New York City. The president of the said Corporation, Harry Scherman, and the vice president, Max Sackheim, have been continuously since the latter part of July, 1920, conducting an advertising agency, hereinafter called the Agency, in the city of New York, State of New York, at the above address. The business of said Agency is

to secure advertising accounts, to prepare plans and advertisements which they feel will build business and good will for their clients, and to place advertisements so prepared in such periodicals as their judgment and the judgment of their clients dictate.

The said Corporation is engaged in the publishing and selling of books, by mail, in interstate commerce, which books contain a carefully selected number of stories, dramas, essays, and other literary productions of the world's most famous authors, which collection it has designated as the Little Leather Library, hereinafter referred to as the Library. Much time and money was spent by the Corporation in experiments in materials, size, and selection of the subjects to be used and incorporated in said Library. Only works of uncopyrighted authors could be used, and after said selections were determined upon, the exact number of words to go into books of pocket size editions had to be accurately determined, the original type set up, and plates made. The collection, when finally issued, contained fifteen volumes, which number was subsequently increased, on account of the Library's popularity with the purchasing public, to thirty volumes, and finally to one hundred volumes each of a size small enough to fit into the pocket and to be conveniently carried and handled. The said library was at first bound in leather, but is now bound in a flexible imitation of leather, known as Redcroft Imitation Leather, and is offered to the public in a set of thirty volumes for \$2.98 the set, and singly, at ten cents the volume. The Library is mainly sold by means of advertisements inserted in magazines and other periodicals by said Agency, in which advertisements orders are solicited, and upon receipt of such orders the said library is shipped or mailed from the place of business of the said Corporation in the city of New York, to the purchasers thereof at their several places of residence in the United States and the District of Columbia. From the latter part of May, 1920, to the present time, the said Corporation has spent, according to the record herein, approximately \$250,000.00 in advertising its Library and has built up a large and valuable good will for its product by such extensive advertising.

PAR. 3. Respondents, before beginning the publication and sale of books as set out in Paragraph One above, were engaged in the general mail order business at the addresses hereinbefore mentioned, and were clients for advertising purposes, of the said Agency. The said respondents, at this point of time, were engaged in advertising and selling by mail, in interstate commerce, poplin skirts, chambray skirts and dresses. Early in the year 1921 respondent, Samuel Silverman, made a trip to the office of the said Agency and

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consulted with the said Agency as to the feasibility of respondents' embarking in the publishing business. Respondents at this time suggested to the officers of the Corporation that respondents sell the Library on a deferred payment plan, which offer was declined. Subsequently, respondent Silverman secured, through various other sources, without the consent of the Corporation, confidential information concerning the source of supply of materials used by the corporation in publishing its library, and by conversations with various persons, other than the officers of the said Corporation, who were connected with the production of the said Library, became well informed of the mechanical process whereby the Library could be produced at the lowest cost.

PAR. 4. Respondents, about March, 1921, caused to be published a set of books, fifteen in number, simulating in size, contents, and arrangement of contents certain of the books published and sold as aforesaid by the said Corporation. This set of books respondents advertised and sold in the manner hereinbefore set out for the sum of \$1.98 the set under the trade name of the Famous Authors Library Association. Subsequently, respondents added fifteen additional books to the said set mentioned above, which said fifteen additional books simulated in size, contents, and arrangement of contents, certain other of the books published and sold by the said Corporation. The above set of thirty volumes were advertised and sold by respondents as set out in Paragraph One, for the sum of \$2.49 the set, under the trade name of Classics Publishing Company. The size, the subject matter printed, the authors used, and the arrangement of the subject matter were in each of the books published and sold as set out above by the respondents the exact reproduction verbatim of certain of the books produced by the aforesaid Corporation. Certain of the books of the said Corporation were used as "copy" from which the actual typesetting incident to the publication of the books of the said respondents, was done, the only difference being the substituting of the trade names Famous Authors Library Association and Classics Publishing Company for the corporate name Little Leather Library Association and the changing of the place of publication from New York City to Philadelphia, Pa. The only additional features differentiating the books published and sold by respondents from the books published and sold by the said Corporation were the difference in color of binding and the fact that the bindings of the books of respondents were cut flush with the pages of said books while the bindings of the books published and sold by the Corporation extended slightly beyond the pages of said books.

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PAR. 5. Respondents in advertising and in offering for sale their said books mentioned in Paragraph Four hereof so closely simulated in form, illustration and substance the advertisements of the Corporation, that experienced advertising men as well as the purchasing public were deceived and misled into the belief that the advertisements of respondents were the advertisements of the Corporation.

PAR. 6. That as a result of the similarity of the advertisements and books of respondents to those of the Corporation, as heretofore found, the public was misled and deceived into the belief that the books of respondents were the books of the Corporation, and did purchase and buy books of the respondents as and for the books of the Corporation.

CONCLUSION.

The practices of respondents, as set forth in the foregoing findings as to the facts are unfair methods of competition in commerce, and constitute a violation of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the testimony and evidence submitted, the trial examiner's report upon the facts, and the exceptions thereto, and the Commission having made its findings as to the facts with its conclusion that the respondents have violated the provisions of the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes":

It is now ordered, That the respondents, Samuel Silverman, Jacob Silverman, and Henry Greenblatt, partners, doing business under the firm name and style of Warewell Company, its officers, agents, and solicitors, representatives, servants and employees, cease and desist from directly or indirectly:

1. Obtaining by spying, espionage or in any manner other than from the Little Leather Library Corporation, information relative to the cost of manufacture, source of supply of materials or the marketing of the products of the Little Leather Library Corporation of New York.

2. Selling or offering for sale in interstate commerce, any books or sets of books containing stories, dramas, essays, or other literary productions, simulating in binding, size, materials, form, appearance

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and arrangement of text, the books sold or offered for sale by the Little Leather Library Corporation, of New York City, New York.

3. Publishing or causing to be published or circulated in any newspaper, periodical or magazine, any advertisement simulating in form, substance and appearance the advertisements of the Little Leather Library Corporation of New York.

It is further ordered, That the said respondents, Samuel Silverman, Jacob Silverman and Henry Greenblatt, partners, doing business under the firm name and style of Warewell Company, shall, within thirty (30) days from date of service of this order, file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

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