

Complaint.

IN THE MATTER OF
THE JOHN C. WINSTON COMPANY.

COMPLAINT, FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1060—August 13, 1924.

SYLLABUS.

Where a corporation engaged in the publication of a "Cumulative Loose Leaf Encyclopedia" and in connection therewith of a "Revision or Annual Service" to supplement said encyclopedia and keep the same up to date, and a "Research Service" calculated to give the purchaser fullest possible information as desired upon any special encyclopedia subject, and in the sale of said encyclopedia and services together for the sum of \$49, which afforded it a profit and represented the usual and customary price at which it had sold many thousands of said encyclopedias and services and the price therefor available to anyone desiring to purchase the same; in soliciting the business of purchasers and prospective purchasers at its aforesaid usual and customary price for such combination.

- (a) Represented by means of order blanks containing on the margin in red ink the words "Advertising Dept.—Special Contract," together with cancelled pretended prices for the several items and a cancelled total thereof which was greatly in excess of said usual and customary price of \$49 printed thereon in red ink, and by means of an advertisement by it in a well-known magazine of nation wide circulation setting forth the price of the encyclopedia and the annual revision service together to be the fictitious sum of \$104, used in conjunction with said order blanks, that the price of said encyclopedia and services was much greater than the actual, usual and customary price, which by means of a pretended special contract was ostensibly made available to the particular person so solicited;
- (b) Falsely represented that said actual, usual and customary price constituted a fair value for the two services alone and that by obtaining such services and the encyclopedia for the usual and customary price the purchaser would in effect obtain the latter free of charge;

With the effect of misleading purchasers and prospective purchasers into believing that they were being offered said encyclopedia and services at a figure lower than the real and customary selling price therefor or were being offered the encyclopedia free of charge, either by reason of special contract or otherwise, and of inducing thereby the purchase of said publications:

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

Mr. Edward E. Reardon for the Commission.

Mr. Henry P. Brown and *Mr. Joseph J. Brown* of Philadelphia, Pa., for respondent.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to

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create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that John C. Winston Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent John C. Winston Company is a corporation organized and existing under the laws of the State of Pennsylvania with its principal office and place of business in the city of Philadelphia, in said State but with branch sales offices in the cities of Chicago, Ill., and San Francisco, Calif. It is now and for more than two years last past was engaged in the production and sale of school text books, Bibles, atlases, encyclopedias and other books, to retail bookstores and consumers located in the several States, and causes said products when so sold by it to be transported from its places of business in Philadelphia, Pa., Chicago, Ill., and San Francisco, Calif., as the case may be, to, into and through other States of the United States and the District of Columbia to the purchasers thereof. In the course and conduct of its said business said respondent is in competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 2. Said respondent in the course and conduct of its said business employs numerous agents and salesmen upon a commission basis in the various States of the United States and the cities thereof, to take orders for sets of "Winstons Cumulative Loose Leaf Encyclopedia" in ten volumes, which are transmitted by it to the offices of the said respondent located in Philadelphia, Chicago, and San Francisco, and said encyclopedias are thereafter shipped from its offices to the purchasers thereof. In the course and conduct of its said business said respondent by and through its agents, represents to its prospective customers that respondent will present free of charge its said set of encyclopedias upon the condition that such prospective customers will furnish letters of recommendation concerning the merits of said encyclopedias. As a condition precedent to availing themselves of this offer such prospective customers are required to subscribe to a so-called "Cumulative Loose Leaf Annual Service" accompanying the said encyclopedias, which said service respondent, by and through its agent, represents it will thereafter furnish to the owners of the said encyclopedia so that information concerning current events may be obtained each year as supplementary to said encyclopedias. The price at which said service is to be furnished is represented by respondent through and by its agents to be the sum of \$49, which said sum pays for the said service for the period of ten

years, all of which \$49 is to be paid within one year after the date of the transaction in monthly installments. The said representation by said respondent, by and through its agent that the sum of \$49 is in payment for the so-called Cumulative Loose Leaf Annual Service is false and misleading, as such sum is greatly in excess of the price at which said respondent can furnish said service to bona fide purchasers and is sufficient to compensate the said respondent for the set of encyclopedias sold to its customers, together with the accompanying service. In truth and in fact said customers of respondent, in subscribing to the extension service in the manner set out above is purchasing the said set of books and the extension service for the sum of \$49 under the mistaken belief that he is receiving the said set of books free of charge and is paying only for the said service.

PAR. 3. Said respondent, through and by its agents, represents to various persons located in various communities that in each respective community a limited number of persons will be sold the said sets of encyclopedias of respondent at a special reduced price, and said respondent, through and by its said agents represents that the true price of said encyclopedia at which they are customarily sold by said respondent, together with the said Cumulative Loose Leaf Annual Service, and also International Bureau of Research Service, for the period of ten years, is \$154, but that a limited number of persons can obtain the same at the specially reduced price of \$49; and said respondent further represents that the said price of \$49 is not available to the general public but is a special price made for advertising purposes, it being represented that a special advertising campaign is being put forth, whereas in truth and in fact said respondent has never sold the above described set of encyclopedias, together with the said services, for the sum of \$154, nor has it ever sold or offered for sale such set of encyclopedias and such services for a greater sum than \$49 east of the Rocky Mountains, or \$52 west of the Rocky Mountains, which is the usual and customary price at which said respondent has sold and now sells the said sets of encyclopedias and accompanying services to all persons who can be induced to purchase the same.

PAR. 4. The above alleged acts and things done by respondent are all to the prejudice of the public and to the prejudice of the competitors of the said respondent, John C. Winston Company, and constitute unfair methods of competition in 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, the Federal Trade Commission issued and served a complaint upon the respondent, The John C. Winston Company, charging it with the use of unfair methods of competition in commerce, in violation of the provision of said act.

The respondent having filed its answer herein and having appeared by its attorney Henry P. Brown, Esq., and the respondent having stipulated and agreed that a statement of facts signed and executed by the respondent and W. H. Fuller, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, are the facts in this proceeding and shall be taken by the Federal Trade Commission as such and in lieu of testimony, before the Commission in support of the charges stated in the complaint or in opposition thereto, and that the said Commission may proceed further upon said statement of facts, to make its report in said proceeding, stating its findings as to the facts and conclusion, and entering its order disposing of the proceeding.

And, thereupon, this proceeding came on for final hearing and argument of counsel for the Commission in support of the complaint and of counsel for the respondent in opposition thereto being heard, 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 conclusions:

FINDINGS AS TO THE FACTS.

Respondent, The John C. Winston Company, is a corporation organized under the laws of the Commonwealth of Pennsylvania, and having its office and principal place of business in the city of Philadelphia, in said Commonwealth, and branch offices and places of business in the cities of Chicago, Ill., and San Francisco, Calif.

The respondent is now and for more than three years prior hereto has been engaged in the manufacture and sale of textbooks, bibles, encyclopedias and other publications.

During all the aforesaid time the respondent has sold and still is engaged in the sale of said books, bibles, encyclopedias, and other publications to various persons located in the District of Columbia and in various States of the United States of America, other than the said States of Pennsylvania, Illinois, and California, and has caused, and still causes, the said books, bibles, encyclopedias and other publications when so sold by it to be transported in interstate commerce from its said places of business in Pennsylvania, Illinois, and California, as the case may be, to, into and through said other

States and the District of Columbia, to the said persons therein to whom the same were sold by respondent.

In the course and conduct of the aforesaid sale of the said books, bibles, encyclopedias, and other publications, transported as aforesaid, the respondent, The John C. Winston Company, has been and is in competition with other individuals, partnerships, or corporations engaged in the sale of books, bibles, encyclopedias, and other publications, which they cause to be sold and transported in interstate commerce from their respective places of business to and into the District of Columbia and States other than the State of origin of their shipment, including the said States to and into which respondent causes its said books, bibles, encyclopedias, and other publications to be transported from its said places of business.

The respondent, during the aforesaid times, has employed and still employs certain special agents and salesmen upon a commission basis in the various States of the said United States to take orders for the sale of "Winston's Cumulative Loose Leaf Encyclopedia" in ten volumes bound in imitation leather which are shipped in interstate commerce by respondent from its said places of business to the purchasers thereof, some of whom are located in the District of Columbia and in States of the United States other than the State of origin of the shipment of said volumes.

In addition to and in connection with the sale of its said encyclopedias the respondent has sold and still sells a Revision or Annual Service and a Research Service, which are mentioned and referred to in respondent's order blanks, copies of which are annexed to the "Stipulation As To Facts"¹ filed herein and marked Exhibits "B,"¹ "C,"¹ and "D,"¹ respectively.

The binding of the ten volumes of the encyclopedia referred to in Exhibits "B," "C," and "D" is specially treated by the respondent in its own plant to improve its appearance. The volumes are all loose-leaf. The binding device is patented under patents owned and controlled by the respondent, and is manufactured by respondent. A sample binding is attached to respondent's answer filed herein and marked Exhibit "E."¹

The "Annual Service" referred to in the aforesaid order forms is as follows: Through the same editorial organization maintained by the respondent in connection with its general and textbook line of publications, it annually compiles, prints and distributes to subscribers information which keeps the encyclopedia strictly up to date. This matter is printed on loose leaves similar to those contained in the original volumes and may be inserted at their appro-

¹ Not published.

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priate places in said volumes. The "Research Service" referred to in the aforesaid contract forms is as follows: Through its same organization respondent furnishes to any subscriber the fullest possible information upon any special encyclopedia subject concerning which inquiry may be made. A partial list of inquiries received by respondent during the month of June, 1923, as well as an example of the information furnished in connection with the Research Service, are attached to respondent's answer filed herein as Exhibits "J"¹ and "K."¹

Due to the special plant, material and organization facilities owned and employed by respondent, and the absence of any advertising expense, the charge of \$49 has, up to the present time, been satisfactory to respondent in connection with furnishing each imitation leather edition of said encyclopedia and the annual or revision and research services furnished to the respective subscribers. Respondent, up to the present time, has been able to furnish the annual or revision and research services contracted for at a comparatively low cost, because such services have been rendered by the organization maintained by respondent in connection with its general and textbook publications. This organization is employed at an expense of upward of \$20,000 per year for salaries alone.

Duplicates of the revisions furnished to subscribers for the year 1922 are attached to respondent's answer filed herein as Exhibit "M."¹ The proportionate cost of such revisions per subscriber depends upon the number of subscribers which respondent may obtain.

The value of the research work which the Winston Company undertakes to perform under the contracts referred to as Exhibits "B,"¹ "C,"¹ and "D,"¹ depends entirely upon the use which is made of this work by the subscriber. Respondent avers that it costs on an average of \$2 per inquiry to supply the information called for by subscribers and that respondent has paid varying amounts up to \$15 to experts on subjects on single inquiries, for which subscribers have asked for information.

In June, 1921, the respondent furnished its said special agents and salesmen, for their use in taking orders for the sale of its said encyclopedia, with a certain order blank, a duplicate of which is Exhibit "B," above referred to.

Before the respondent furnished its said agents and salesmen with the order blanks of which Exhibit "B" is a copy, the words "Advertising Dept.—Special Contract" appearing on the margin were placed thereon by respondent, which caused the said words to be printed thereon in script letters and in red ink, and the respondent also before furnishing its said agents and salesmen with the said

¹ Not published.

order blanks, caused to be printed thereon the lines in red ink which cross the amounts "\$55.00," "\$49.00," and "\$104.00," and caused to be printed in red ink immediately following the total amounts "\$104.00," so crossed out, the amount "\$49.00."

The aforesaid order blank, said Exhibit "B," was used by respondent's said agents and salesmen in taking orders for the sale of said encyclopedias and services during the period between June, 1921, and May, 1923, with the exception of the period between August, 1922, and December, 1922, and, during the time when said order blank was so used by respondent's said agents and salesmen, it was exhibited by them to purchasers and prospective purchasers of the said encyclopedia and services to assist in obtaining orders therefor.

During the period between August, 1922, and December, 1922, respondent furnished its said agents and salesmen for their use in taking orders for the sale of the said encyclopedia and services, with certain order blanks, a duplicate of which is Exhibit "C," above referred to.

Before the respondent furnished its said agents and salesmen with the order blanks of which Exhibit "C" is a copy, the words "Advertising Dept.—Special Contract," appearing on the margin, were placed thereon by respondent, which caused the said words to be printed thereon in script letters and in red ink, and the respondent also before furnishing its said agents and salesmen with the said order blanks, caused to be printed thereon the lines in red ink which cross the amounts "\$55.00," "\$50.00," "\$49.00," and "\$154.00" and caused to be printed in red ink immediately following the said total amount "\$154.00," so crossed out, the amount "\$49.00."

The aforesaid order blank, said Exhibit "C," was used by respondent's said agents and salesmen in taking orders for the sale of said encyclopedia and services from August, 1922, to December, 1922, and during said time it was exhibited by them to purchasers and prospective purchasers for the purpose of assisting said agents and salesmen in obtaining orders for the said encyclopedia and services.

In August, 1922, the respondent caused an advertisement to be published in the August issue of the publication known as the "Review of Reviews," a copy of which is annexed to the "Stipulation As To Facts" filed herein and marked Exhibit "O," offering for sale the said ten volumes with the said Annual Service alone without the Research Service, for the sum of \$104; and respondent furnished copies of this advertisement to its said agents and salesmen and the copies of the advertisement were used by its said agents

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and salesmen, together with the order blank, Exhibit "C,"¹ during the period between August, 1922, and December, 1922, and from December, 1922, until May, 1923, copies of said advertisement were used by said agents and salesmen with the order blank, Exhibit "B," and the said copies of said advertisement were exhibited to purchasers and prospective purchasers by the said agents and salesmen in connection with the aforesaid order blanks during the above-named periods. During the entire period in question the respondent gave to its said salesmen and agents the instructions which are incorporated in the printed form attached to the "Stipulation As To Facts" filed herein, as Exhibit "L."¹

During the period that the aforesaid order blank, Exhibit "B,"¹ was furnished by respondent to its said salesmen and agents and used by them in taking orders for the said encyclopedia and services, the said agents and salesmen represented to purchasers and prospective purchasers, that they could obtain the same for the sum of \$49 by reason of a special contract to them, respectively, referring to order blank, Exhibit "B." During the period between August, 1922, and December, 1922, the said agents and salesmen of respondent represented to purchasers and prospective purchasers, respectively, that they could obtain the three items, the said ten volumes of encyclopedia, the Annual Service and the Research Service for the sum of \$49, by reason of a special contract to them, respectively.

Since May 1, 1923, and up to the date hereof, the respondent through its said agents and salesmen represented and still represents to the aforesaid purchasers and prospective purchasers that the said price of \$49 represents the fair value of the said Annual and Research Services, and that by obtaining not only the said Services but also the ten volumes of the encyclopedia for that price the purchaser in effect would obtain the said ten volumes free of charge.

The sum of \$49 was during the aforesaid times and still is sufficient to repay respondent the cost of production of the said encyclopedia in imitation leather binding and for said Annual and Research Services, together with a reasonable profit thereon in addition, when sold by respondent through its agents and salesmen.

During the entire period from June, 1921, to May 1, 1923, and up to the date hereof, the actual, real and customary selling price of the said encyclopedia in imitation leather binding together with said Annual and Research Services has been and is now \$49 to all persons who desired or desire to purchase the same and from whom orders were or are taken by said agents and salesmen.

Since June, 1921, and during the years of 1921 and 1922, while the respondent's said agents and salesmen were furnished with said

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order blanks, Exhibits "B" and "C," and were using same, the respondent has through its said agents and salesmen sold more than 30,000 sets of the said encyclopedia with the said services for the sum of \$49.

By causing the advertisement above mentioned to be published in the "Review of Reviews," setting forth the price of the said ten volumes and the Annual Revision Service together to be the fictitious sum of \$104, and by printing or causing the above-mentioned order blanks to be originally printed and furnished to its agents and salesmen in the form in which they appear, showing fictitious prices for the several items and their total sums; the fictitious item amounts and the fictitious total sums crossed out by red ink lines; and the real and customary total selling price of \$49 printed in red ink, with the words "Advertising Dept.—Special Contract" printed in red ink on the margins, instead of having the order blanks originally printed and furnished to its agents and salesmen showing only the real and customary selling prices, the respondent misrepresented and caused and induced its said agents and salesmen to and they did misrepresent to purchasers and prospective purchasers, the real and customary selling prices of the encyclopedia and said services to be greater than they actually were and said purchasers and prospective purchasers were deceived and misled thereby.

By means of the aforesaid acts and misrepresentations of respondent and its agents and salesmen, purchasers and prospective purchasers were deceived and misled into believing that the said ten volumes of encyclopedia and the said services were being offered and sold to them at a price less than the real and customary selling price and by reason of a pretended special contract.

The representations of respondent through its agents and salesmen to purchasers and prospective purchasers that the sum of \$49 represented or represents the value of the said Research and Annual or Revision services and that by obtaining not only the said services but also the ten volumes of said encyclopedia for that price, they in effect would obtain the said ten volumes free of charge has deceived and misled, and is deceiving and misleading to said purchasers and prospective purchasers, as tending to cause and causing the belief that said volumes are delivered free of charge, either by reason of a special contract or otherwise, when in fact the sum of \$49 was at all times the real and customary selling price of the said three items, the ten volumes and the said Research and Annual or Revision services, and was sufficient to repay respondent the cost of production of the said three items together with a reasonable profit thereon.

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The representations of respondent, its agents and employees set forth above, were and are misleading, and have the tendency and capacity to and do deceive and induce the public to purchase respondent's said publications, in reliance upon the truth of such representations.

CONCLUSION.

That the practices of the said respondent, under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and constitute a violation 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the agreed statement of facts filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated 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,"

It is now ordered, That the respondent, The John C. Winston Company, its agents, representatives, servants and employees, do cease and desist from directly or indirectly—

(1) Representing to the purchasers and prospective purchasers any consideration or price to be the real consideration or price for the purchase and sale of any of its publications or services in connection therewith other than what is in truth the real and customary consideration or price for the same.

(2) Representing to purchasers and prospective purchasers that any part of a combination offer is in fact or in effect given free of charge when the recipient must pay a consideration for the whole or some element of the combination to be entitled to receive the alleged gift.

It is further ordered, That the respondent, The John C. Winston Company, shall, within sixty days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

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IN THE MATTER OF

M. F. SKIDMORE AND ELMER L. SKIDMORE, DOING BUSINESS INDIVIDUALLY UNDER THE NAMES AND STYLES OF "WM. BOLLES DOLLAR PEN COMPANY," "SKIDMORE PEN COMPANY," AND "TOLEDO GOLD FILLER FOUNTAIN PEN COMPANY."

COMPLAINT, FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 961—August 20, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of a fountain pen, the barrel of which was characterized by a design of waved annular lines and a distinctive gold crescent with locking band, protruding therefrom and used as a filling agency, designated said crescent filler as "The Crescent Filler," "Crescent Filler," "Crescent Gold Filler," and "Gold Filler," in its pamphlets, and other publicity matter; featured in the designs or pictures illustrating its pens the aforesaid distinctive features; and at large expense extensively advertised said pens, so that it built up a large and valuable good will therefor; and thereafter two competitors designated, branded and advertised pens embodying the aforesaid annular design, gold crescent, and locking band, and closely resembling in appearance said competitor's pens, "Gold Filler," "Gold Filler, Toledo, Ohio," and "Gold Filler Pen, Toledo, Ohio, U. S. A." without any trade names or other markings showing clearly the source of manufacture of said pens, with the effect of misleading and deceiving a substantial portion of the purchasing public into believing their pens to be those of said competitor and of inducing their purchase in that belief:

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

Mr. Malcolm A. Coles for the Commission.

Mr. Mark Winchester of Fritsche, Kruse & Winchester of Toledo, Ohio, for respondents.

COMPLAINT.

Acting in the public interest 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 charges that M. F. Skidmore and Elmer L. Skidmore, partners, doing business under the names and styles of the "Skidmore Pen Company," "William Bolles Dollar Pen Company," and "Toledo Gold Filler Fountain Pen Company," have been and are now using unfair methods of competition in commerce in violation of the pro-