

Syllabus

IN THE MATTER OF
DAVID B. CLARKSON COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1540. Complaint, Oct. 15, 1928—Decision, Dec. 7, 1929

Where a corporation engaged in the sale and distribution of books to purchasers in various States under a plan allowing the purchaser five days in which to examine the books, with return privilege; in its advertising circulars, circular letters, and other advertising literature offering books and publications dealt in by it as above set forth,

- (a) Represented the regular price of the "New Pictorial Atlas of the World" as \$8.50 and said atlas as offered at its "Special price of \$2.98 (not \$8.50)", the fact being that said publication had no regular price, was sold through canvassers and agents at prices ranging from \$5 to \$10 or \$12, had been sold by it at prices ranging from \$2.98 to \$3.98, but for the two years last past had not been sold by it at prices other than those set forth in its pretended special offer, namely, \$1.98 for cloth, and \$2.98 for art kraft binding;
- (b) Represented "the regular \$5 flexible law binding edition of Clarkson's Law and Business Cyclopedia" as offered at its "special introductory price of \$1.98 (not \$5)", the fact being that the publication in question had never been sold by it or anyone else at \$5, said price was fictitious, and said pretended special introductory price was its regular and only price; and
- (c) Represented "Appleton's New Practical Cyclopedia", "publisher's price \$42—our price \$11.75", as offering a lifetime opportunity to save \$30.25, offering many homes that had desired the work but did not feel they could spare the \$42 for which it was sold, the opportunity to purchase said encyclopedia, "so highly spoken of by the highest educators at less than the actual cost of manufacture", and making such statements as "it is just like finding \$30.25", "this card is worth \$30.25 to you", the fact being that \$42 was not and never had been the regular price or publisher's price of said encyclopedia, but that the same was sold by the publishers and through book stores at \$30, and said price of \$11.75 was not a special price or a limited offer, but the figure at which it had sold said encyclopedia for more than five years last past and did not save customers \$30.25 as represented in its circular and order form;

With the effect of misleading and deceiving many of the purchasing public into buying said books in the erroneous belief that they were offered at a special and introductory price, that the regular prices thereof were greatly in excess of those at which it was selling them, and that the publisher's price of certain of said books was greatly in excess of its price, and with the capacity and tendency so to mislead and deceive;

Complaint.

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

Mr. G. Ed. Rowland for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation engaged in the sale and distribution in interstate commerce of books of all kinds, at retail, and with principal office and place of business in Chicago, with advertising falsely or misleadingly as to prices and nature of product offered, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, and doing business on a plan involving the mailing of the book ordered to the purchaser, with five days in which to examine the book or books, to be then returned or paid for, in its advertising circulars, circular letters, and other advertising literature falsely represents certain of the books dealt in by it as offered at a special and introductory price, considerably lower than that at which the same are ordinarily and customarily sold, and sets forth fictitious prices represented as the regular and customary prices thereof, the fact being that it has never sold at any other than its so-called reduced price and that said price is not a special or introductory offer, and further in its said advertising circulars, etc., offers and represents "Appleton's New Practical Cyclopedia" as "fully revised and brought down to date," a new work, "not an old or obsolete work, but the very latest revision of a great modern educator," at present sold throughout the United States at the regular price of \$42 for the six volumes but now being sold by it, under a special limited offer, of \$11.75 and never before offered at such a price, the facts being that said work is obsolete, out of date, and out of print, is not at present sold at \$42, and that the price of \$11.75 represents the price at which it has sold said encyclopedia for more than five years last past, with the result that through the use of such false, deceptive, and misleading statements and representations many of the public were misled and induced into purchasing the books first referred to, in the belief that such books were being bought at prices considerably lower than those regularly charged therefor, and into purchasing said encyclopedia in reliance upon the aforesaid statements and representations.

Said alleged acts and things, as charged, are each and all of them to the prejudice of the public and respondent's competitors and con-

stitute unfair methods of competition in interstate commerce within the intent and meaning of section 5.

Upon the foregoing complaint the Commission made the following

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, David B. Clarkson Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having entered its appearance herein and filed its answer to said complaint, a stipulation as to the facts (filed of record) was agreed upon by and between respondent and counsel for the Commission, wherein it was stipulated and agreed that the facts therein stated may be taken as the facts in the proceeding before the Federal Trade Commission, and in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed further upon said statement to make its report in said proceeding, stating its findings as to the facts and conclusion, and entering its order disposing of the proceeding.

Thereupon, this proceeding came on for decision, and the Commission, having received said stipulation and duly considered the record, and now being fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, David B. Clarkson Co., is a corporation, organized and existing under the laws of the State of Illinois, with its principal office and place of business at 2535 South State Street, in the city of Chicago, State of Illinois, where it has been engaged for more than one year last past in the sale and distribution in interstate commerce of books of all kinds, at retail. The officers of respondent are T. F. Clarkson, president and treasurer, and A. B. Dolan, secretary. Respondent sells and distributes its books to purchasers located at points in various States of the United States, and District of Columbia, through the United States mails. Upon receipt of orders for a book or books respondent causes said book or books to be transported by mail from the said city of Chicago, in the State of Illinois, through and into other States of the United States, and District of Columbia, to the purchasers thereof at their respective locations. In the course and conduct of its said business re-

Findings.

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spondent is in competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. In the course and conduct of its business as aforesaid, respondent sends to its customers and prospective customers catalogues, advertising circulars, circular letters, and other advertising literature offering the books which it has to sell. Upon receipt of an order from a purchaser respondent mails the book or books ordered to the purchaser, and allows said purchaser five days in which to examine said book or books. At the end of five days the purchaser must either return the book or books to respondent or remit the purchase price. In the advertising circulars, circular letters, and other advertising literature distributed by respondent in offering for sale and selling its books, appear various statements, and representations regarding its said books, as set forth in the following paragraphs.

PAR. 3. Respondent, in its said advertising circulars, circular letters, and other advertising literature, represents that certain of the books which it sells are being offered at a special and introductory price, which price is considerably less than the regular price at which the books are ordinarily and customarily sold, and also sets forth therein prices which it claims are the regular prices at which said books are customarily sold. In connection with the "New Pictorial Atlas of the World", respondent represents that the regular price of the Atlas is \$8.50, and that the price of \$2.98 for the art kraft binding, and \$1.98 for the cloth binding, is a "special offer" which it is making to its customers. On the advertising circular sent out by respondent appears the following statement:

If I feel the Atlas would be a bargain at the regular price of \$8.50 I will send you your special price of \$2.98 (not \$8.50) in full payment, otherwise I will return it at your expense.

The fact is there is no regular price on the Atlas and that the principal sale other than through the respondent is through canvassers and agents who sell the Atlas at various prices, ranging from \$5 to \$10 or \$12, each salesman setting his own price. The respondent has sold the Atlas at various prices ranging from \$2.98 to \$3.98, but has not for the last two years past sold it at prices other than \$1.98 for the cloth binding and \$2.98 for the art kraft binding.

In connection with "Clarkson's Law and Business Cyclopeda", respondent sends out advertising cards and circulars, containing the following statements and representations:

Less than ½ price.

*	*	*	*	*	*	*
Clarkson's Law and Business Cyclopeda.						
*	*	*	*	*	*	*

Sign and mail the enclosed card to-day. We will send you the regular \$5 flexible law binding edition of "Clarkson's Law and Business Cyclopedea." If at the end of five days you feel that this will be worth tens of dollars or hundreds of dollars yearly to you, send us our introductory price of only \$1.98 in full payment. If for any reason you think you can afford to be without the Cyclopedea return it and owe us nothing. Send the card to-day before the introductory price is withdrawn.

Gentlemen: You may send me, all charges prepaid, for five days' examination, the "Clarkson's Law and Business Cyclopedea," containing 512 pages, 10,000 subjects, and covering nearly all there is to know about business, business law, finance, banking, civil service, mechanics, farming, etc., etc. If I find the Cyclopedea contains facts that will be of inestimable value to me in the daily transaction of my business, and I feel that it would be a bargain at \$5, I will send you your special introductory price of \$1.98 (not \$5) in full payment, otherwise I will return it at your expense.

In fact, "Clarkson's Law and Business Cyclopedea" has never been sold at a price of \$5 by this respondent or by anyone else, and said price of \$5 is a fictitious price. Said price of \$1.98 is not a special introductory price, but is the regular and only price at which respondent at present is selling said "Clarkson's Law and Business Cyclopedea."

PAR. 4. Respondent, in its advertising, circulars, circular letters, and other advertising literature, offers for sale "Appleton's New Practical Cyclopedea," and makes various representations and statements regarding said encyclopedia, among them being the following:

Publisher's price \$42—Our price \$11.75. Buy this for your own sake.

APPLETON'S NEW PRACTICAL CYCLOPEDIA

A new work, revised since the European War at great expense, fully revised and greatly enlarged.

* * * * *

This great work has been fully revised and brought to date. * * * They are being sold to-day throughout the country at the regular price.

Why you must act now.

This is a special offer—and it is limited. No such offer has ever before been given to encyclopedia buyers. * * *

Just once in a lifetime you get such an opportunity—\$30.25 saved is \$30.25 earned—and you will never earn it easier than by mailing the postcard *right now*.

Now the invaluable "Appleton's" will be in many homes that have wished for it, that have needed it, but that did not feel that they could spare the \$42 for which it has been sold. Never again will these homes have the opportunity to purchase such a standard encyclopedia so highly spoken of by the highest educators, at less than the actual cost of manufacture. It is just like finding \$30.25—just like giving the set away.

This card is worth \$30.25 to you.

* * * * *

Special—It is understood that if I wish to send payment in full in 5 days, I may send you only \$11.75, which you will accept as full settlement for the \$42 set, thus saving me \$30.25.

IN THE MATTER OF
CHERRY BLOSSOMS MANUFACTURING COMPANY

COMPLAINT (SYNOPSIS), FINDINGS AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1542. Complaint, Dec. 3, 1928—Decision, Dec. 16, 1929

Where a corporation engaged in the manufacture of an artificially colored and flavored concentrate and in the sale thereof to bottlers, by whom the beverage made therefrom, containing neither product of the cherry nor cherry blossom, though with the taste and appearance of such a beverage, was sold to retailers.

- (a) Sold said concentrate and beverage under the name "Cherry Blossoms";
- (b) Advertised said beverage as "Cherry Blossoms" in trade journals and supplied to purchasers advertising matter for distribution by them throughout the United States, and, for display at soda fountains and soft drink stands particularly, blotters, placards, fans, and metallic signs featuring said name, together with representations of cherry blossoms, and such statements as "When you call for CHERRY BLOSSOMS you are asking to be served the Cherry that 1,200 bottlers * * * have passed upon as being the best cherry the market affords"; and
- (c) Featured said name in the labels supplied to bottler purchasers, and depicted cherry blossoms thereon, together with the words, in relatively inconspicuous fashion, "Artificial Color and Flavor," and furnished to bottle crown manufacturers names of customers, for sale thereto of bottle crowns bearing the words "Cherry Blossoms," in large type, together with the words, in smaller type, "Artificial Color and Flavor";

With the capacity and tendency to deceive and mislead the purchasing public into believing said beverage to be made from the product of the cherry or the blossom thereof and with the effect of stifling and suppressing competition in the sale of truthfully marked concentrates and beverages, whether in fact so made, either in whole or in part, or from other fruits, or not so made, but artificially colored and flavored, and of diverting trade from the aforesaid classes of concentrates and beverages:

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

Mr. Edward L. Smith for the Commission.

Mr. Frank Y. Gladney, of St. Louis, Mo., for respondent.

SYNOPSIS OF COMPLAINT¹

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Iowa corporation engaged in the manufacture of an artificially colored and flavored concentrate containing no product

¹ Amended.