

Syllabus

IN THE MATTER OF

L. A. BELLINE, TRADING AS THE COOPERATIVE
BOOK 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 1551. Complaint, Dec. 20, 1928—Decision, June 15, 1931

Where an individual engaged in the purchase, and sale throughout the United States, of a set of reference books known up to 1927 as "The American Reference Library", and, later, as "The Source Book", together with semi-annual cumulative supplements; in selling said books and supplements, to school teachers, principally, through agents operating in Indiana, Illinois, Iowa, Kansas, Nebraska, Missouri, and other States,

- (a) Represented said American Reference Library as of recent publication and that certain designated persons well known as educators, public officials, writers, scientists and statesmen were contributors, revisers, or reviewers thereof, facts being books were originally published as early as 1912 and at time concerned there had been no substantial revision for a number of years, and the well known educators, etc., were not contributors, revisers or reviewers as represented, and had given no permission for the use of their names;
- (b) Falsely represented that said Library and Source Book had the indorsement of and testimonials from certain county superintendents and other educators and writers and that its agents had some connection with educational or school systems, whereby prospective customers might be materially assisted in securing desirable positions as school teachers;
- (c) Represented that \$59.50 was a special introductory price far below the usual and customary selling price of the set and cumulative extension service, and also that the books were given away to a limited and selected number of prospective school teachers as a means of introducing the publication into the schools, facts being \$59.50 constituted said individual's usual and customary price and prospective customers were not limited or selected in any way; and
- (d) Represented that loose-leaf supplements could be paid for at the rate of \$5.95 a year, with right of cancellation at will by the subscriber, facts being said cumulative loose-leaf supplement was never sold separately, price for set and books was \$59.50, payable in monthly installments extending over periods of from eight months to one year, failure to make any payment when due rendered entire account due and payable, at no time was anyone allowed to extend payments over a period of ten years, and contract entered into was a promissory note, prima facie binding purchaser when signed by him, and not cancelable at will;

With effect of deceiving customers and prospective customers throughout the various States and inducing their purchase of or subscription to said books and supplements in preference to other competitive publications, and with tendency so to do and thereby divert trade from competitors not using such false and misleading sales methods, statements, and representations:

Held, That such practices, under the conditions and circumstances above set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

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Mr. PGad B. Morehouse 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 individual, engaged in the purchase of an encyclopedia or book of reference called by him The New American Reference Library and/or certain additions thereto known as an extension or revision service, from the Perpetual Encyclopedia Corporation of Chicago, and in the distribution and sale thereof throughout the United States, and with offices at Lamar, Mo., with misrepresenting product and services, and misrepresenting prices, marketing, business connections and testimonials, in violation of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, in the sale of the aforesaid reference library and so-called extension or revision service through himself and his agents has employed false, deceptive and fraudulent sales talks or representations in that he—

Represented the same as of recent publication and as sold ordinarily at certain prices which greatly exceeded those at which said library and revision service were actually and were expected to be offered;

Represented many well-known educators, public officials, writers, scientists, and statesmen as having been instrumental in compiling said library and/or extension or revision service or as having revised or reviewed the same, and certain testimonials or recommendations of the aforesaid publication as having been or being currently given by various State or county superintendents of education or prominent educators or writers;

Represented himself and/or his agents as connected with schools or other educational institutions and desirous of employing prospective graduates as instructors or teachers, thereby obtaining interviews with them for the purpose of selling to them the aforesaid publications;

Represented said library as being given away to a limited and selected number of school teachers as a means of introducing the same into the schools and that the extension or revision service could be paid for at the rate of \$5.95 a year and that the subscriber was free to cancel his subscription thereto at will;

Represented the date of publication appearing in said library as the date when it was first compiled and printed; and

Employed for more than two years last past the practice of making an additional charge against subscribers to the aforesaid service beyond that they were informed they would have to pay at the time of subscription, notifying the subscriber after his subscription and before delivery of said service of such additional charge which must first be paid; and

Sold as said "The American Reference Library" the same books contemporaneously widely sold direct to the public by the Perpetual Encyclopedia Corporation as "The Source Book", thereby misleading and deceiving the purchasing public into purchasing said library as and for an entirely different publication or reference work from that sold direct as above set forth; all to the prejudice of the public and of respondent's competitors.

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 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent, L. A. Belline, trading as The Cooperative Book Co., charging him with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondent having entered his appearance and filed his answer to the complaint herein, hearings were had and evidence was introduced upon behalf of both the Commission and respondent before a trial examiner of the Commission duly appointed thereto.

Thereupon this proceeding came on for final hearing on the 13th day of May, 1931; counsel for respondent having failed to file a brief on his behalf, and not appearing, oral argument was waived and the case was submitted to the Commission upon the record, respondent's exceptions and brief of counsel for the Commission. The Commission having duly considered the whole record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, L. A. Belline, is an individual trading as The Cooperative Book Co., with principal office at Lamar, Mo. He is now and for several years last past has been engaged in the purchase, distribution, and sale throughout the United States of a set of books of reference which up to 1927 were known as The American Reference Library, and thereafter, as The Source Book,

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together with semiannual cumulative supplements. Such books and extension service are purchased from The Perpetual Encyclopedia Corporation of Chicago, Ill., and when resold by respondent are caused by respondent to be transported either from the city of Chicago, State of Illinois, or from Lamar, Mo., into and through the various States of the United States for delivery to the purchasers thereof. In the course and conduct of its said business respondent has been and still is in competition with other individuals, partnerships, and corporations likewise engaged in the sale and distribution of books of reference throughout the various States of the United States.

PAR. 2. In the course and conduct of its business respondent through its agents operating in the States of Indiana, Illinois, Iowa, Kansas, Nebraska, Missouri, and other States has represented and represents to its prospective customers, principally school teachers, that—

(a) Its books of reference The American Reference Library, now known as The Source Book, are of recent publication, when as a matter of fact the respondent admits that such books were originally published in six volumes as early as 1912. In 1922 a substantial revision of the plates from which the encyclopedia is printed was made and a further substantial revision was made in the 1929 edition. Comparison of 1,415 out of 3,197 pages in the 1913 edition and the 1929 edition showed a revision of less than 4 per cent of the number of articles in addition to the 1920 Census figures and some maps and other material which had been inserted. There was very little revision between the 1924 edition and the 1929 edition, so that during 1926–1927, the time when most of the sales referred to in the evidence were made, respondent was selling a set purporting to be compiled in 1924 and 1926 but which had had no substantial revision made therein since 1922.

(b) That \$59.50 was a special introductory price far below the usual and customary selling price of the set of books and cumulative extension service, when as a matter of fact it was the usual and customary price at which the reference books were sold to all persons who could be induced to buy them;

(c) That certain designated persons well known as educators, public officials, writers, scientists, and statesmen were contributors, revisers or reviewers of the books, when the persons so named were not contributors, revisers, or reviewers thereof; and had given no permission for respondent to use their name;

(d) That The American Reference Library and The Source Book had the indorsement of and testimonials from certain county super-

intendents and other educators or writers when as a matter of fact such endorsements and testimonials had not been obtained;

(e) That respondent's agents had some connection with educational or school systems whereby the prospective customers of respondent might be materially assisted in securing desirable positions as school teachers, when as a matter of fact there was no such connection;

(f) That the books were being given away to a limited and selected number of prospective school teachers as a means of introducing said publication into the schools, when as a matter of fact respondent was giving nothing away and the prospective customers were not limited or selected in any way;

(g) That the semiannual cumulative loose-leaf supplements could be paid for at the rate of \$5.95 a year, the subscriber being free to cancel the subscription at will when as a matter of fact the said cumulative loose-leaf supplement was never sold separately but was always sold with the books, the price for both being \$59.50, payable in monthly installments extending over periods of from eight months to one year. A failure to make any payment when due rendered the entire account due and payable. At no time was anyone allowed to extend the payments over a period of ten years. The contract entered into was a promissory note, prima facie binding on the purchaser when signed by him and not cancelable at will.

PAR. 3. The respondent is charged in paragraph 3 of the complaint with having followed the practice of making an additional charge against subscribers for the so-called extension or revision service after the subscription has been procured upon a different and lower price basis, and with not notifying the subscriber of this additional charge until after the subscription is obtained.

The Commission finds that the proof shows that in a great many cases the respondent's agents did advise the prospect that there would be a small charge of 24 cents twice a year to be made in addition to the \$59.50. The Commission finds that allegation is not supported by the testimony.

PAR. 4. The fourth paragraph of the complaint charges respondent with misleading and deceiving the purchasing public by selling under the name American Reference Library the same set of books as was being sold by a competitor under the name The Source Book. The evidence in this case fails to show that respondent has sold these books under any other name than The Source Book since 1927, and fails to show that any member of the public was misled or deceived by the respondent's use of the former title prior to 1927.

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Wherefore, the Commission finds that this particular charge is not supported by the evidence.

PAR. 5. The foregoing statements, sales methods, and representations used and made by respondent in the course and conduct of his business have the capacity and tendency to deceive and have deceived customers and prospective customers throughout the various States of the United States, and have the tendency to cause and have caused prospective customers to purchase or subscribe to respondent's set of books and cumulative supplement in preference to other competitive publications, all of which is calculated to and has the tendency to create diversion of trade from competitors not using such false and misleading sales methods, statements, and representations.

CONCLUSION

The practices of the said respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors and are unfair methods of competition in interstate 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 answer of respondent, the testimony taken, the brief of counsel for the Commission, counsel for respondent having waived both the filing of brief and oral argument, and the Commission having made its findings as to the facts and conclusion that 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, L. A. Belline, trading as The Cooperative Book Co., his agents, representatives, servants, and employees, in connection with the sale and distribution in interstate commerce of The American Reference Library or The Source Book or other books or sets of books, do cease and desist from directly or indirectly representing to customers or prospective customers:

(a) That The American Reference Library or The Source Book are of new or recent publication unless and until they shall have been revised and brought up to date;

(b) That the usual and customary selling price of his set of books and extension service or semiannual cumulative supplement is a special or introductory price;

(c) That any persons well known as educators, public officials, writers, scientists, and statesmen are contributors, revisers or reviewers of the books sold by respondents unless and until such persons actually shall have contributed articles or actually shall have reviewed or revised an article submitted to them and shall have given permission to respondents to use their names;

(d) That his books have indorsements of and testimonials from county superintendents of education or others unless and until such indorsements and testimonials have actually been obtained;

(e) That respondent's agents are connected with school or educational systems in such a way that respondent's prospective customers might be materially aided in securing desirable positions as teachers;

(f) That his books are being given away to a limited and selected number of prospective school teachers or other customers as a means of introducing said publication into the schools, unless and until respondent is actually making such gifts in such a manner for such a purpose;

(g) That the semiannual cumulative loose-leaf supplements can be paid for at the rate of \$5.95 a year, the subscriber being free to cancel the subscription at will when such is not the case.

It is further ordered, That the said complaint be and the same hereby is dismissed as to the charges contained in paragraphs 3 and 4 thereof.

And it is further ordered, That respondent, within 60 days after service upon him of a copy of this order, shall file with the Commission a report in writing setting forth in detail the manner and form of his compliance with this order.

Complaint

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IN THE MATTER OF
DIEL WATCH CASE COMPANY, INCORPORATED ¹

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

Docket 1944. Complaint, Apr. 28, 1931—Order, June 15, 1931

Consent order requiring respondent to cease and desist from using the phrase "Rolled Gold Plate" or other words of like import in connection with the marking or advertising of watch cases dealt in by it, not containing as much as 3/1000 of an inch in thickness of gold on the outside, nor as much as 1/1000 of an inch in thickness, on the inside; as in said order set forth.

Mr. E. J. Hornibrook for the Commission.

Mr. Jacob M. Zinaman, of New York City, 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 create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Diel Watch Co., Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Diel Watch Case Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office, factory, and place of business in the city of New York, in said State. It is now, and for more than one year last past has been engaged in the manufacture of watch cases and the assembling of watches, and in the sale and distribution of said products to jewelry jobbers located in various cities throughout the several States of the United States; causing said products, when so sold, to be shipped or transported in interstate commerce, from its said factory in the State of New York to the purchasers thereof located in States other than the State of New York. Such jobbers sell said watch cases and watches to retailers who, in turn, sell the same to ultimate purchasers thereof. In the

¹ By order made as of January 7, 1932, the cease and desist order herein reported, was rescinded and the complaint dismissed. See 16 F. T. C.