

IN THE MATTER OF
CONSOLIDATED BOOK PUBLISHERS, INCORPORATED
SUPPLEMENTAL FINDINGS AS TO THE FACTS AND CONCLUSION

Docket 1538. October 2, 1931

Supplemental findings and conclusion based on additional testimony taken pursuant to leave of court¹ and establishing use of methods condemned by the Commission in the original findings and order,² by respondent in the sale of its encyclopedia, through the subscription method, to subscribers throughout the United States, in competition with those who did not and do not employ such methods in the sale of their publications, with the capacity and tendency to and the effect of injuring such competitors through diverting from them to respondent sales of encyclopedias to persons believing respondent's false representations to be true, and purchasing its publication in and because of such belief, prejudicing the public against the subscription book industry as a whole and making it difficult for competitors to obtain interviews for soliciting the sale of their publications, and causing loss of confidence on the part of the public in the representations of competing publishers who do not use such methods or make such representations.

Mr. G. Ed. Rowland for the Commission.

Mr. Ramond P. Fischer, of Campbell, Clithero & Fischer, of Chicago, Ill., and *Mr. Charles J. Calderini* and *Mr. Edward W. Everett*, of Winston, Strawn & Shaw, of Chicago, Ill., for respondent.

SUPPLEMENTAL FINDINGS AS TO THE FACTS AND CONCLUSION

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, after having issued its complaint against respondent, Consolidated Book Publishers, Inc., said respondent having made answer thereto, testimony having been taken on behalf of the Commission and respondent, brief having been filed on behalf of both parties, and oral argument heard by the Commission, on May 6, 1930, made its findings as to the facts and conclusion, and issued its order to cease and desist against the respondent herein.

Thereafter respondent filed a petition in the United States Circuit Court of Appeals for the Seventh Circuit to review said order of the Commission, and the record in the case was certified to said court, briefs on behalf of both parties filed with the court, and the case orally argued before said court on April 23, 1931.

¹ Following appeal of the Commission's order, 14 F. T. C. 13, and decision of the Supreme Court in the *Raladam case*, 283 U. S. 643.

² Sale by respondent of its set under two different names, and use of the so-called "give-away" method of sale.

Thereafter, the Commission filed with the court an application for leave to adduce additional evidence to show that the use by respondent of the methods of sale found by the Commission to be unfair has the tendency and capacity to, and probably does in fact, divert trade from such competitors to respondent, and otherwise injure respondent's competitors in the sale of the books and publications which respondent and such competitors are offering for sale and selling competitively in interstate commerce, to the prejudice of such competitors as well as of the public.

Thereafter, on July 8, 1931, said court granted the said application of the Commission, and entered its order directing that the additional testimony be taken within 90 days from the date of said order.

Pursuant to the order of the said Circuit Court of Appeals for the Seventh Circuit, said Commission directed the taking of said additional testimony, and designated and appointed an examiner of said Commission to receive said additional testimony, and further ordered that the taking of said additional testimony begin in the city of Chicago, State of Illinois, on August 21, 1931.

Thereafter due notice was given attorneys for respondent, and upon the date and place set for said taking of evidence, respondent appeared by Messrs. Campbell, Clithero & Fischer, by Ramond P. Fischer, Esq., 1 North LaSalle Street, Chicago, and by Messrs. Winston, Strawn & Shaw, by Charles J. Calderini, Esq., 38 South Dearborn Street, Chicago, Ill. The Commission was represented by G. Edwin Rowland, Esq., of Washington, D. C. On August 24 and 26, 1931, Edward W. Everett, Esq., of the firm of Winston, Strawn & Shaw, also appeared for respondent.

Hearings were held in Chicago, Ill., on August 21, 24, and 26, 1931, at which hearings evidence was introduced by the Commission and respondent, in accordance with the application of the Commission to the United States Circuit Court of Appeals for the Seventh Circuit. Said evidence has been certified by the secretary of the Federal Trade Commission and is forwarded herewith to said court, together with this report and findings as to the facts and conclusion of the Commission drawn from said additional testimony.

Thereupon this supplemental proceeding came on for final hearing, and the Commission having duly considered the record, and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The original proceedings in this case show that respondent, Consolidated Book Publishers, Inc., sells its encyclopedia at retail under the name New World Wide Cyclopedia, throughout

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the United States, and more especially in the States of Nebraska, Illinois, Wisconsin, Michigan, and New York. Respondent sells the same set of books at wholesale to the Times Sales Co. under the name Times Encyclopedia and Gazetteer, and said Times Sales Co. resells the set of books under that name to the public at retail. Respondent also supplies sales literature, supplements and research service to the Times Sales Co. The New World Wide Cyclopedia consists of eight volumes, and sold at retail at \$33.20 per set; a loose-leaf supplement service was also sold with the set which, if the subscriber wished to receive it, required an additional \$8 to be paid over a 10-year period for said service. The encyclopedia is sold by respondent to business and professional men by the subscription method of sale. The New World Wide Cyclopedia is not a technical nor recondite book, but is written in plain and elementary English, and is suitable for use by school children in seeking general information about subjects which come up in their school work.

PAR. 2. S. L. Weedon Co., with offices in Cleveland, Ohio, is engaged in selling encyclopedias intended primarily for school children. During the period covered by the record in this proceeding S. L. Weedon Co. published and sold an encyclopedia under the name New Students Reference Work, consisting of eight volumes, at prices ranging from \$39.75 to \$60.50 per set, depending upon the style of binding. Said New Students Reference Work was sold throughout the United States from August, 1923, to June, 1931, by the subscription method of sale. Said encyclopedia is designed especially for the use of students below college grade, but is a general reference work and was sold to the general public, as well as to teachers, libraries, and boards of education.

S. L. Weedon Co. has not at any time sold the New Students Reference Work under any other name, either to the public by the subscription method of sale, or to the jobbers or other companies at wholesale. Many years ago the name of the encyclopedia was changed from Students Reference Work to New Students Reference Work, when a new edition was published, and there were some sets under the name Students Reference Work in stock held by customers of the publishers, and these sets were sold under that name until disposed of. Since that time the encyclopedia has only been sold under the name New Students Reference Work.

In the distribution to the public of the New Students Reference Work, S. L. Weedon Co. sells the encyclopedia, and does not give it away, or offer to give it free to the subscriber. Neither does it send out letters soliciting prospects in which it offers to give the encyclopedia as an advertising feature; neither does the company itself, or through its salesmen, represent to prospective subscribers that a

certain number of people in a community have been chosen as a selected list to whom a set of its encyclopedia will be given free in exchange for a recommendation of the set.

PAR. 3. F. E. Compton Co., with offices in Chicago, Ill., is the publisher of Compton's Pictured Encyclopedia, now consisting of 16 volumes, but until recently consisting of 10 volumes. Said encyclopedia is a general school encyclopedia and is sold throughout the United States by the subscription method of sale. It is sold principally to parents for use in the home in connection with the education and instruction of their children, but it is a general reference work and is also sold to business men, teachers, and libraries.

F. E. Compton Co. has not at any time sold Compton's Pictured Encyclopedia under any other name, either to the public by the subscription method of sale, or to jobbers or other companies at wholesale. A volume of Cassell's Children's Book of Knowledge was introduced in evidence in an attempt to show that in content material it was identical with Compton's Pictured Encyclopedia. Under a contract with F. E. Compton Co. said Cassell's Children's Book of Knowledge is not permitted to be sold in the United States, and said set of books is not sold in this country in a commercial way or by the subscription method of sale.

F. E. Compton Co., in the distribution of Compton's Pictured Encyclopedia, sells the encyclopedia to subscribers and does not give it away, or offer to give it away; neither does the company itself, or through its salesmen, represent to prospective subscribers that the encyclopedia is being given away to any subscriber in return for a letter of indorsement; neither does the company send out letters to prospective subscribers in the name of the company with the words "advertising department" printed on them, said letters offering to give a set of the encyclopedia free to a selected few in the community as an advertising feature; neither does the company itself, or through its salesmen, represent to certain people in a community that a certain number of sets have been set aside for advertising purposes and will be given free if the subscribers buy some additional service of some sort.

F. E. Compton Co. has in the past given away with a subscription to Compton's Pictured Encyclopedia a course of study known as Compton's National Teachers Service, has given a weekly publication called Compton's Picture Newspaper with a subscription to said encyclopedia, and more recently has given to persons who answer its advertisement a booklet known as Book of Flags, which is a reprint of the article on flags which appears in the encyclopedia.

PAR. 4. W. F. Quarrie & Co., with offices in Chicago, Ill., is the publisher of The World Book, an encyclopedia in 12 volumes. Said encyclopedia is sold by the subscription method of sale throughout the United States, and is shipped from Chicago or branch offices of the company to subscribers. The World Book is sold principally to parents for use of children in school, but it is a general reference work and is also sold to business men, teachers, libraries, and professional men.

Up until about a year and a half ago, when a new edition was published under the name of The World Book Encyclopedia, W. F. Quarrie & Co. had never sold its encyclopedia under any name other than The World Book, either to the public by subscription method of sale, or to jobbers or other companies at wholesale.

In the distribution to the public of The World Book, W. F. Quarrie & Co. sells its encyclopedia to subscribers and does not give it away, or offer to give it away; neither does the company represent itself, or through its salesmen, that the encyclopedia will be given to subscribers free if the purchaser subscribes to a supplemental service or any other service; neither does the company itself, or through its salesmen, represent that as a special advertising feature a certain number of persons in a community had been selected to receive a set of The World Book free in return for a letter of indorsement; neither does the company itself, or through its salesmen, represent to prospective subscribers that a certain number of people of prominence and standing in a community have been chosen to receive a set of The World Book free in return for the use of their names.

In 1922 or 1923, during the course of a few months, The World Book was sold under the plan whereby it was represented to subscribers that if they subscribed to a supplemental service the set of books would be given free. This practice was abandoned after a few months use. From about September, 1925, to August, 1927, W. F. Quarrie & Co. gave a supplement known as The World Review, a weekly publication, free to subscribers to The World Book. At times, in order to stimulate sales, a book table is given free with a subscription to The World Book.

PAR. 5. It is admitted by respondent in the answer filed by it to the complaint in this proceeding that it is engaged in competition with other persons, partnerships, and corporations engaged in the sale and distribution in interstate commerce of encyclopedias.

PAR. 6. Many companies engaged in the sale of books by the subscription method of sale give with a subscription to said books a bookcase, book table, other book or books, or other articles as a premium to stimulate sales. Where such premiums are given the subscriber knows that he is paying for the set of books and that the other

article is a premium given as an inducement to subscribe. Some companies give the bookcase, book table, or other article without any additional charge, and other companies require that a subscriber pay an additional sum if he desires the other article. The offering of an additional article of some sort as an inducement to subscribers to the books differs from the method of sale practiced by this respondent and set forth in the original findings made by the Commission in this proceeding. In the method of sale found by the Commission to be used by this respondent the subscriber is told that he is being given the set of books free in exchange for a letter of recommendation, because he is a prominent citizen whose name respondent wishes to use, as a special advertising feature, or in consideration of his subscription to a loose-leaf service to keep the encyclopedia up to date. The fact is, as found by the Commission in the original proceeding, that the subscriber is not being given the set of books free and the only tangible article of value which the subscriber receives is the set of books, because the loose-leaf service and research bureau privilege are both contingent upon the subscriber sending in additional money or asking a question.

PAR. 7. Witnesses from several branches of the subscription book industry testified in this proceeding as to the effect the methods of sale used by respondent and found by the Commission to be unfair had upon the subscription book business. Included among these witnesses were the president of respondent, presidents, vice president, sales managers, resident manager and salesmen of other companies engaged in the sale of subscription books. Each of the witnesses was asked whether or not the method of sale used by respondent herein had an effect upon the business of competitors who do not use such a method, and certain of the witnesses testified that such a method of sale adversely affected the business of their particular companies and the subscription book industry as a whole, and certain other witnesses testified that such a method of sale did not adversely affect their sales or the subscription book industry as a whole, but, in fact, helped the sales of competing companies. Most of the witnesses testified that misrepresentation in the sale of books is detrimental to the best interests of the industry, and the president of respondent company testified that the method used by respondent, and found by the Commission to be unfair competition, was a misrepresentation. One of the witnesses who testified on behalf of respondent stated that any statement made by a salesman which enables him to secure an interview with a prospective purchaser is justified.

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PAR. 8. There are competitors of respondent engaged in the sale and distribution of encyclopedias in interstate commerce who do not use the same or similar methods of sale of said encyclopedias as used by this respondent and found by the Commission in the original proceedings in this case to be unfair. The Commission finds that the methods of sale used by respondent, as found in the original finding in this proceeding, do injuriously affect the business of competitors who do not use such methods. No specific injury to the business of any particular competitor was shown. It is impossible to show the exact extent to which the use of these methods by this respondent injured the business of competitors who do not use such methods.

CONCLUSION

The sales methods used by respondent herein, as found by the Commission in the original findings of fact in this proceeding, were used in the sale of its encyclopedia by the subscription method to subscribers throughout the United States in competition with other encyclopedias of a similar character sold in the same general territory. There are competitors of respondent who did not, at the time the testimony in this proceeding was taken, and who do not at this time, in the sale of their encyclopedias use the methods of sale which the Commission has found were used by the respondent. The use by respondent of the methods of sale found by the Commission in its findings of fact in the original proceeding in this case to have been used, has a capacity and tendency to, and does in fact, injure competitors who do not use such methods of sale, because:

(1) It diverts to respondent from its competitors sales of encyclopedias to persons who believe said false representations as made by respondent to be true, and who purchase respondent's encyclopedia in, and because of, such belief.

(2) It prejudices the public against the subscription book industry as a whole, and makes it difficult for respondent's competitors to obtain interviews for the purpose of soliciting the sale of their encyclopedias.

(3) It causes the public to lose confidence in representations of competing publishers who do not use such method or make such representations.

Complaint

IN THE MATTER OF
TEXTILEATHER CORPORATIONCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1585. Complaint, Mar. 22, 1929—Order, Oct. 5, 1931*

Consent order requiring respondent corporation to cease and desist from using the names or terms Regaleather, Marveleather, Royaleather, Modeleather, Drillhyde, Gimphyde, Krafthyde, or word or term "Textileather" in connection with the offer or sale of products not made of leather; subject to permitted, appropriately qualified use of said last named word or term, as in said order set forth.

Mr. E. J. Hornibrook for the Commission.

Marshall, Melhorn, Marlar & Martin, of Toledo, Ohio, and *Mr. Harry J. Gerrity*, of Washington, D. C., 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 the Textileather 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 is a corporation organized under the laws of the State of New Jersey with its principal office and place of business in the City and State of New York. It is engaged in the manufacture of imitation leathers hereinafter described, and the sale of said products to manufacturers of trunks, suitcases, satchels, upholstered articles, and other similar products, who manufacture many of said products in whole or in part of said imitation leathers. Said manufacturers are located at points in various States of the United States. Respondent causes its said imitation leathers when so sold to be transported from its said principal place of business and various branch places of business operated by it into and through States other than those in which are located its said places of business, to said purchasers at their respective points of location. In the course and conduct of its said business respondent is in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of leather and imitation leather in commerce between and among various States of the United States.