

IN THE MATTER OF
MUTUAL PUBLISHING COMPANY ET AL.

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

Docket 1571. Complaint, Feb. 25, 1929—Decision, Dec. 18, 1931

Where two corporations under common ownership and management, and three individuals, owners, officers, and operators thereof; in carrying on, directly and through agents acting under said individuals' instructions, sale of a four volume cyclopedia, and ten-year loose leaf extension service, and in soliciting teacher prospects, whom they or their agents approached on some such false basis as having been sent by teacher's superintendent or as occupying some official position or as in a position to render or secure some official service or benefit, or as offering books necessary for teacher prospect's continuance of her position,

- (a) Falsely represented that a four volume cyclopedia was being given away as part of an advertising plan, or in consideration of recommendation to be given, or by reason of selection of particular prospect as recipient of such a gift, and that only charge was for the recommended, ten-year loose leaf extension supplement, payable at special rate or price of \$3.95 a year, and contract for which was revocable at will by subscriber, facts being contract was not revocable, and regular payment of \$39.50 thereunder for set and supplement in ten monthly installments was insisted on, and there were additional charges, frequently concealed, for postage, expressage, and binders, and through use of aforesaid, so-called "give away" method misled many purchasers;
- (b) Falsely represented that certain well known and eminent educators, authors, public officials, surgeons, and explorers were editors, associate editors, contributors to or otherwise connected with aforesaid publications, and that said cyclopedia was the latest reference work, kept always up to date by said extension service;
- (c) Represented through order forms employed that the bindings were "full seal Levant fabricoid" and through agents' representations and use of flexible leather prospectuses lead purchasers to believe that bindings of the books would be flexible leather, facts being said bindings were not that large grained, highly prized variety of Morocco leather implied by word "Levant," but were a nonflexible fabric covered paste board substance, and sets frequently were noticeably inferior in contents and illustrations to those represented by prospectus;
- (d) Falsely represented through such words upon their contract and note forms as "special introductory contract to teachers," "special introductory offer," and directly, that regular price of \$39.50 constituted a special price extended to particular teacher solicited, in consideration of her anticipated recommendation, and that price would later be much higher;
- (e) Represented that a member of the particular city school board, whose teachers were being solicited, or their principal, superintendent, super-

visor, member of the school board or state superintendent had recommended the publications, facts being that city school board concerned had warned principals and superintendents not to give such recommendations, state superintendent thus referred to had particularly instructed and warned all county superintendents against alleged fraudulent conduct on part of agents of said corporations in posing as representatives of his department, and claimed recommendations were false;

- (f) Falsely represented to prospective teacher customers or subscribers that the contract and promissory note forms presented for their signature constituted a mere memorandum, receipt or other informal paper, and thereby and through distracting their attention, preventing a reading thereof, or concealing contents or other trickery and chicanery secured their signatures thereto, and declined to respect subsequent protests and notices of misrepresentation and fraud, together with return of the books, on the ground that the notes in question had passed out of their hands into those of a corporate innocent purchaser for value, facts being corporation thus referred to was formed, controlled, owned and operated by them for express purpose of holding and collecting such notes; and
- (g) Represented that sets sold by them under a different name, but with same content constituted a different publication, with effect of misleading and deceiving purchasing public into erroneous belief that in buying said sets under a different title they were purchasing an entirely different publication or reference work; and

Where corporation last referred to, thus owned, controlled, and operated, the president thereof, an active participant in aforesaid various transactions, and the secretary-treasurer, who knew or should have known thereof, impugned the honesty of protesting teacher purchasers, whom it threatened with injurious publicity, credit injury, and embarrassment, and sought to and did collect in the guise of an innocent purchaser for value accounts obtained by fraud and come into its possession as aforesaid;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers of the publications in question, and with tendency to injure competitors substantially by unfairly diverting trade from such competitors to themselves;

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

Mr. PGad B. Morehouse for the Commission.

Mr. J. B. McGilvray, of Kansas City, Mo., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Mutual Publishing Co., respondent Publishers Acceptance Corporation, and respondent Educators Service Association, Missouri corporations with their office and principal place of business in Kansas City, and respondent individuals, officers of the aforesaid

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corporations,¹ engaged in the case of respondents Mutual Publishing Co. and Educators Service Association in the sale of certain cyclopedias or reference books, and/or so-called loose-leaf extension service, and, in the case of said Publishers Acceptance Corp., in the collection of notes and accounts from individuals and concerns in various States, with misrepresenting business affiliations, and nature and prices of product or service, and terms and conditions of sale thereof and identity of product, claiming indorsements wrongfully, simulating trade name of competitive product, offering product falsely as free, securing customers' signatures fraudulently to contract or note, and enforcing or coercing payment claimed, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents Mutual Publishing Co. and Educators Service Association, and respondent officers thereof, Shelton, Bufton, and Thomas, made false, deceptive, and fraudulent sales talks or representations in connection with the sale of the foregoing, falsely representing the same as the latest reference works and as kept up to date by the loose-leaf services, edited or contributed to by well-known educators, authors, executives and public officials, bound in leather, with print and paper of the highest quality, and offered at special introductory prices lower than the regular prices.

Said respondents further falsely represented, as charged, that the cyclopedias were being given away, that the only charge was for the loose-leaf service, that there was no further charge for postage or expressage on either, that the work or services could be paid for in ten annual installments of \$3.95 each, and/or that the contract was contingent upon the subscriber's teaching school, or could be canceled at will, that certain persons had given recommendations and/or that recommendations secured by trickery or fraud, were bona fide, that the subscriber was signing a memorandum or informal paper and not a contract or note, that copies of the cyclopedia were being given to those who refused to pay for the loose-leaf service, that the

¹ The complaint sets forth the respondents as follows:

Mutual Publishing Co., a Missouri corporation with office and principal place of business at No. 1113 McGee Street, Kansas City, Mo.

C. J. Shelton and H. A. Bufton, respectively for several years last past president and secretary and treasurer of Mutual Publishing Co.

Publishers Acceptance Corporation, a Missouri corporation with office and principal place of business at No. 1113 McGee Street, Kansas City,

P. I. Neergaard, T. E. Thompson, and Carl Critzinger, respectively for more than one year last past president, secretary, and treasurer of Publishers Acceptance Corporation.

Educators Service Association, a Missouri corporation with office and principal place of business at No. 1113 McGee Street, Kansas City.

A. C. Thomas and H. A. Bufton, respectively, for several years last past president and secretary and treasurer of Educators Service Association.

contracts or notes were obtained without misrepresentation or fraud and would be sued on unless the subscriber made the payments demanded, that respondent Publishers Acceptance Corporation was an innocent purchaser for value, that date of publication or printing appearing in said Bufton's Universal Cyclopedia was the date of first printing, that an agency or agent used to coerce payments from subscribers was a bona fide collection agency, and/or that suits would be instituted or action taken should the subscribers fail to pay the amounts in their contracts or promissory notes.

Respondents Publishers Acceptance Corporation and respondents Neergaard, Thompson, and Critzinger, officers thereof, as charged, in collecting notes or obligations arising from contracts or purchase for or on behalf of respondent Mutual Publishing Co., made false, misleading, and deceptive statements to the makers of such notes or contracts, namely, that respondents Publishers Acceptance Corporation was an innocent purchaser for value of said notes or contracts, that unless subscribers paid it the amounts called for at the specified time, suits would be brought to enforce payment, that said corporation had paid cash for said notes, was an innocent purchaser thereof, that the notes were not subject to cancellation, and that the corporation was a note broker, purchaser of notes, and a collector.

Respondent Mutual Publishing Co. and respondents Shelton, Bufton, and Thomas and their employees, as charged, falsely and fraudulently represented the usual selling prices of the books and publications as certain fictitious and exaggerated amounts far exceeding their usual and customary prices at which they sold or which they expected to sell the same, and greatly in excess of the value of the same, and obtained signatures of persons to orders or contracts of purchase "by subterfuge, tricks or artifices, such as inducing such persons, under pretense of obtaining their names and addresses for other purposes, to write their names and addresses on said order blanks or contracts, knowing that said persons had no knowledge that they were at the time signing any obligation or entering into a contractual relation."

Respondents Mutual Publishing Co. and Educator Service Association, and respondents Shelton, Thomas, and Bufton, as charged, sold the public as " 'Home Library of Knowledge' the same set of books that they sell to the public as 'Bufton's Universal Cyclopedia,' thereby misleading and deceiving the purchasing public into the erroneous belief that they are purchasing entirely different publications or reference works," and also sold a set of reference works "under the name of 'International Reference Works,' published by the

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Holt's Publishing Co., and the purchasing public has been misled and deceived into purchasing said 'International Reference Works' from said respondents under the erroneous impression and in the belief that they were purchasing the well-known and reputable 'International Encyclopedia.' "

"The acts and things above alleged to have been done by respondents are to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition."

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 above respondents charging them and each of them with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondents having appeared and answered, evidence was introduced in support of the complaint and on behalf of the respondents before a trial examiner of the Commission duly appointed for that purpose. Whereupon this proceeding came on for final hearing before the Federal Trade Commission upon the record and briefs, oral argument being waived. The Commission having duly considered the same 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, Mutual Publishing Co., is a corporation organized under the laws of the State of Missouri in the year 1922, having its office and principal place of business in Kansas City, Mo. Prior to 1922 the respondents H. A. Bufton and C. J. Shelton operated as a partnership under the name and style of the Mutual Publishing Co., and while so operating sold a set of books known as Bufton's Universal Cyclopedias, which work they purchased from the Bufton Publishing Co. Upon incorporation the stock of the Mutual Publishing Co. was owned by H. A. Bufton, Charles J. Shelton, and James D. Bufton, each owning approximately one-third of the stock. On the first day of May, 1928, pursuant to a contract theretofore entered into between the Bufton and the Mutual Publishing companies, the copyrighted plates, from which the encyclopedias were printed, became the property of the Mutual Publishing Co., Inc., and were thereafter sold to H. A. Bufton and

C. J. Shelton, the present owners. Until January, 1928, C. J. Shelton was president and H. A. Bufton, secretary and treasurer of the Mutual Publishing Co., after which they exchanged these offices. The capital stock of the company is owned or controlled in its entirety by H. A. Bufton and C. J. Shelton.

The respondent Publishers Acceptance Corp. was organized by respondents P. I. Neergaard, T. E. Thompson, and Carl Kretzinger under the laws of Missouri in 1926 or 1927, and until about August, 1930, had its offices and principal place of business in the same suite of offices as the Mutual Publishing Co., and thereafter in the same building with the latter company at a new address in Kansas City. Its capital stock was \$5,000, represented by 100 shares. Paul I. Neergaard was president; respondent T. E. Thompson, secretary-treasurer. It was a creature of and controlled by H. A. Bufton and C. J. Shelton, who became owners of all of the stock and so continued until about January 9, 1929, when they transferred it all to the Mutual Publishing Co., Inc. The only purpose and function of the Publishers Acceptance Corp. was to purchase at a discount from the Mutual Publishing Co. and collect the notes and obligations alleged to be due that company from the purchasers of books.

The respondent Educators Service Association is a corporation organized under the laws of Missouri in 1925, and J. D. Bufton, H. A. Bufton, C. J. Shelton, and a man named Butterworth. Butterworth disposed of his interest to the other three, and about 1926 respondent A. C. Thomas purchased a third of the entire issue and became president with C. J. Shelton as vice president and H. A. Bufton as secretary-treasurer. About September, 1930, H. A. Bufton and C. J. Shelton purchased Thomas's interest and now own all of the stock in said association. Until August, 1930, its principal place of business was in the same suite of offices as the Mutual Publishing Co. and the Publishers Acceptance Corp. and thereafter in the same building with those companies at a new address. This association originally was incorporated to handle separate publications, but discontinued that about 1928 and started to sell a set of books called Library of Knowledge of the same contents as Bufton's Universal Cyclopedia. Such set was still being sold by it as late as September, 1930.

All three of the respondent corporations hereinabove described were and are actively conducted, managed, and controlled as a unit by respondents H. A. Bufton and C. J. Shelton personally from one suite of offices with one set of employees, and for one ultimate purpose, to wit, the sale of books. Prior to 1928 the Educators Service

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Association sold the International Reference Work; the respondent Mutual Publishing Co., formerly sold the books called Home Library of Knowledge, which was a two-volume set of books. At the time of the hearings herein held respondents H. A. Bufton and C. J. Shelton were operating through the medium of a company known as The Teachers Supply Co., selling both Library of Knowledge and Bufton's Universal Cyclopedia.

PAR. 2. The respondents H. A. Bufton, C. J. Shelton, Mutual Publishing Co., Educators Service Association, and Publishers Acceptance Corp. are now and for many years past have been cooperatively engaged in the sale and distribution of books styled Bufton's Universal Cyclopedia, together with Bufton's Loose-Leaf Extension Service, a Home and School Personal Service Bureau privilege and Library of Knowledge to persons, firms, or corporations located in various States of the United States and cause said books and service to be transported from the State of Missouri through and into States of the United States other than the State of Missouri and when there sold are delivered to the purchasers thereof. The respondent A. C. Thomas, from 1926 to September, 1930, was likewise in the same manner engaged.

In the course and conduct of their business as aforesaid all of the respondents are now and have been for many years past in competition with other individuals, partnerships, firms, or corporations also engaged in the sale and distribution of encyclopedias and other books of reference and loose-leaf extension services. The testimony of one competitor, a Mr. Nichols, who publishes and sells in interstate commerce Teachers Extension, a set of books for school teachers sold by agents traveling in all parts of the United States shows that respondents' sales methods hereinafter described injuriously affected his business. Such methods resulted in his being unable to make sales in one instance for a period of three days, and in another instance he was unable to sell any of his books, particularly by reason of the method used by the Mutual Publishing Co.'s agents known and hereinafter described as the "Give-away" method. His testimony shows that the same condition existed in Texas and in Missouri as well as Kansas.

Mr. Harold M. Stanford, president of the Stanford Education Society of Chicago, Ill., is another competitor of respondents who testified as to the fact of his competition.

PAR. 3. The evidence as to false and misleading representations of these respondents relates solely to the sale of Bufton's Universal Cyclopedia bound in four volumes and Bufton's Loose-Leaf Extension Service alleged to keep the encyclopedias up to date. Such service extends over a period of ten years from the year of purchase.

To make these sales respondents employ agents upon a commission basis who travel from State to State, and by personal solicitation of prospective purchasers endeavor to and do obtain orders for the encyclopedia and the cumulative loose-leaf supplement.

The testimony of about 36 witnesses who were teachers, superintendents, and principals of public schools in the States of Indiana, North Dakota, Nebraska, Kansas, Minnesota, and Missouri, proves the sales methods hereinafter described to have been used by seven different agents and by two of the officers and stockholders of the corporate respondents, namely, C. J. Shelton, acting as both instructor and salesman and A. C. Thomas.

The sales methods used were similar, according to the evidence in the case of most of the teachers. The agent was instructed to, and did go to the county superintendent or some official in charge of the schools in the particular area of solicitation and obtained the names and addresses of teacher prospects. Upon interview, the agent represented that he had been sent to her by her superintendent, principal, supervisor, or county superintendent; that the prospect had been selected to receive a free set of up-to-date encyclopedias because her opinion of them would carry weight in the community; that later a sales campaign would be put on; that numerous agents would then canvass that city intensively, using her recommendation and the testimonials of other teachers so selected; that he, the agent, only wished the teacher to inspect the set of books and write such a letter of recommendation. A prospectus was then exhibited which is in evidence herein as Commission's Exhibit 22.¹ The binding was flexible leather material and it contained many beautiful full-page illustrations, together with a vast amount of teaching material. Often the agent told the prospect that she could not teach school any longer without this set of books. In many cases the agents so conducted themselves as to give the teacher the impression that they were school inspectors or had some official connection with her school. In one instance, an agent named Smith falsely represented to a teacher that he was the author of Wentworth-Smith's Arithmetic, that he had been a teacher of "Charlie" who was Charles A. Lee, State superintendent of schools, and that he would use his influence with "Charlie" to see that the teacher, who was in a flood-stricken area of southeastern Missouri, would receive an appropriation promptly for the erection of a new schoolhouse. This and similar conversations were carried on by agents, usually while the teacher was endeavoring to occupy the attention of and preserve order among from 12 to 36 children.

¹ Exhibits not published.

By means of these false and misleading statements the agents persuaded teacher prospects to accept the four volumes of Bufton's Universal Cyclopedia as a gift. Thereupon, the agents suggested the advisability of keeping the said books up to date by means of the annual loose-leaf supplement. The prospects were told that it was not necessary for them to take it, but that it was a special introductory price to them, and later would be much higher, whereas if they took it now it would only cost them \$3.95 per year for ten years. Then the agents presented the form of contract or note furnished them by the corporate respondents and obtained the teacher prospect's signature upon whatever misrepresentations the case seemed to require, such as, that it was merely a memorandum to show the company that he had delivered the gift; or that if after the teacher had examined the books she should change her mind, lose her position, or for any other reason should not want to continue the subscription to the supplements, she could tear up her copy or write the company a letter and the matter would be at an end. In no case presented by the record did the teacher understand that the cyclopedias were anything but a gift. In almost all of the cases the teachers had not been informed that there were extra charges in addition to the \$39.50 to cover transportation of the loose-leaf cumulative supplements and an extra charge for binders. Usually the salesman made a forthwith and unexpected delivery of the four volumes and departed.

The contracts were not cancelable at will, were payable in full within one year from the date signed and provided for payment for the books which had been represented to the teachers as gifts. Such contracts also contained a provision that "my county superintendent did not send your representative to call on me" in black small type under the superimposed large red type "(10) year's service," and in all cases after 1926 the paper signed was a promissory note. Upon further examination of the contract or note the customers in a great many cases returned the books to Kansas City with written notices to the effect that the contract or note had been procured by fraud and misrepresentation of the soliciting agent. Also, in many cases, a comparison of the books themselves with the salesmen's oral representations and the flexible leather-bound prospectus led the purchasers to the same action. In many instances the contents and illustrations in the books were noticeably inferior to those represented by the prospectus.

PAR. 4. Respondents, within a short period of time, usually about a week, transferred the contracts or notes so obtained over to the respondent Publishers Acceptance Corp., which paid for them with

funds under the joint control of respondents Bufton, Shelton, and Thompson, by checks signed by any two of those individuals. This corporation was the medium through which respondents endeavored to and did collect from the purchasers under the guise of an innocent holder in due course, accounts which had been fraudulently obtained. This association, after being informed of the misrepresentation that the various agents of the Mutual Publishing Co. had made, continued to dun the purchasers. In one case it expressed itself to the complaining purchaser as follows:

Note you state the books were sold to you under false pretenses. Of course, that is the usual cry whenever a teacher wants to repudiate her debt, but we never believe anything of that kind.

and in many cases by repeated letters impugned the honesty of teacher purchasers and threatened them with injurious publicity, injury to their credit, and embarrassment among their friends and neighbors.

PAR. 5. The Commission finds from the evidence that the respondents C. J. Shelton, H. A. Bufton, A. C. Thomas, P. I. Neergaard, and T. E. Thompson, actively participated in, approved, and benefited by the sales methods complained of herein.

H. A. Bufton owns practically half of the stock, is an officer in, and controls and personally manages the Mutual Publishing Co. This company owns all of the stock in Publishers Acceptance Corp. Together with his co-officer C. J. Shelton, Mr. Bufton has been receiving and handling the notes obtained by the fraudulent sales methods through the medium of the Publishers Acceptance Corp., incorporated for that purpose, and operating with the same employees in the same office. Mr. A. C. Thomas, salesman of the Mutual Publishing Co. and the Educators Service Association, one-time vice president of the Mutual Publishing Co. and a pupil of C. J. Shelton, testified that it was impossible to differentiate between those two companies. The identity and mutuality of interests is typified by one instance of record where, on receiving complaints of misrepresentations and fraud in connection with the sale of books to one Miss Allison, Mr. Bufton advised her as follows on the stationery of the Educators Service Association:

Your note given in payment of Bufton's Universal Cyclopedia has been sold to the Publishers Acceptance Association of this city and therefore we have no further interest or authority concerning same.

Respondent C. J. Shelton instructed other officers and salesmen in some of the methods complained of and was identified by one witness as the man who had sold books to her upon misrepresentation,

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and partially identified by another witness. He was president of the Mutual Publishing Co. between May 18, 1927, and June 18, 1928, his counter signature was required, he was in joint control of the funds in bank with which the Publishers Acceptance Corp. purchased the Mutual Publishing Co.'s notes, he personally dictated collection letters, was one of the incorporators of the Mutual Publishing Co. and received and handled the notes, was co-author with H. A. Bufton of instructions to salesmen and together with respondent Bufton personally owns the plates and copyrights from which the encyclopedia is printed. Further, he personally acted as salesman for the Mutual Publishing Co. in Kansas and Missouri.

Until respondent Thomas's relinquishment of his interest in the Educators Service Association in September, 1930, as aforesaid, this respondent was actively in charge of that association and also acted as salesman for the Mutual Publishing Co., and otherwise directly and personally participated in the cooperative efforts of all these respondents other than as a stockholder. Respondent P. I. Neergaard is the editor of the loose-leaf extension service, is now an employee of the Teachers Supply Co., editing the same publication as Bufton's Universal Cyclopedia, was president of the Publishers Acceptance Corp., personally dictated and wrote collection letters, and otherwise actively participated in the cooperative affairs of these respondents.

Respondent T. E. Thompson is no longer connected with these companies, but he was secretary-treasurer of the Publishers Acceptance Corp. and with the aid of the Mutual Publishing Co.'s stenographer dictated and caused to be written various letters to purchasers who had informed the Mutual Publishing Co. that the books were sold them under false representations, representing that the Publishers Acceptance Corp. was an innocent purchaser for value, when he knew, or should have known, that such was not the case. There is nothing to indicate that this respondent may not again associate himself with the other respondents in the same activities.

Mr. Carl Kretsinger, one of the respondents charged in the complaint, is an attorney engaged in private practice in Kansas City who was one of the incorporators of the Publishers Acceptance Corp. and originally held ten shares of stock in that company. The Commission finds that there is no evidence of record sufficient to justify issuing an order against Mr. Kretsinger, who does not appear to have rendered any services since the incorporation.

PAR. 6. Respondents Mutual Publishing Co., Educators Service Association, C. J. Shelton, H. A. Bufton, and A. C. Thomas and their authorized agents, representatives, employees, and salesmen in connection with the interstate sale of Bufton's Universal Cyclopedia and the loose-leaf cumulative supplement thereto have falsely

represented that certain well-known and prominent educators, authors and public officials were editors or assistant editors of, contributors to, or otherwise connected with the said publication. Some of the representations were that certain eminent educators, surgeons, and explorers, were contributing authors. Respondent A. C. Thomas told one teacher that the editor of the Encyclopedia Britannica was a contributor and that one famous explorer, now deceased, had received \$80,000 from respondents for material to be contributed by him, none of which had any basis of fact.

The respondents aforesaid also falsely represented to purchasers and prospective purchasers that Bufton's Universal Cyclopedia was the latest reference work and that the loose-leaf extension service always kept it up-to-date. A comparison of the 1924 and 1927 articles on aviation and aeroplanes in these books, which are in evidence, shows the falsity of that representation. Volume 4 of the 1927 edition (Commission's Exhibit 93-c) contains an article entitled "United States," showing comparative tables of metal production sales up to 1923, of principal crops as late as 1924, and concludes said article with the election of Mr. Coolidge in 1924, and the statement that in 1925 the United States became a member of the World Court. The Commission finds from all the evidence that at the time these representations were made the aforesaid publication was not the latest reference work. Examination of the pages containing the articles on Austria and Austria-Hungary shows that the identical plates were used to print it in 1927 as were used to print the 1924 edition.

PAR. 7. The form illustrated by Commission's Exhibit 9 upon which the orders were taken represented the bindings as Full Seal Levant Fabricoid. Levant is defined by Webster as being Levant Morocco, a large grained variety of morocco leather highly prized for bookbinding. These forms were the forms authorized and distributed to the agents by the corporate and individual respondents aforesaid. The evidence shows that these agents represented and the prospects believed that these books would be bound in leather and that such representation was false. From the use of the flexible leather prospectus and express oral representations by the agents, many prospects were led to believe that the leather bindings of the books would be flexible, whereas as a matter of fact, the bindings were of a fabric-covered pasteboard substance and not flexible.

PAR. 8. The contracts by the aforesaid respondents used prior to 1926 such as Commission's Exhibit 8, had printed conspicuously in red ink across the top margin thereof the words "special introductory contract to teachers." After 1926 a note form was used which had attached a duplicate to be torn off by the agent, to be left

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with the purchaser. On the back of the said duplicates were printed in large black type the words "special introductory offer." The evidence shows that this, as well as the representations of the agents to the same effect, were false and that the same terms were made to everyone, namely, \$39.50 complete, except for the de luxe binding, which was \$49.50. Sometimes the agents represented that the price would later be as high as \$65 and that the teachers were being given this special price because of their expected recommendation, which was also untrue.

PAR. 9. The aforesaid respondents and their agents aforesaid represented that the four volumes of Bufton's Universal Cyclopedia were being given away as part of an advertising plan or for recommendations by the purchasers, or by reason of the purchaser having been specially selected to receive such a gift. These statements were false. The books and the extension service were sold and there were further charges for postage, expressage and binders, which further charges in many instances were concealed from the prospective purchaser by the sales agent. This method was known by the companies and respondents as the "give-away" method and was the ordinary and usual sales method adopted. This method resulted in the deception of the great majority of the purchasers who testified.

PAR. 10. The Commission finds that the respondents last aforesaid represented, in order to obtain the subscriber's signature, that the cumulative loose-leaf extension supplement could be paid for at the rate of \$3.95 per year, when as a matter of fact the contract to which the signature was obtained required payment of the entire amount in about ten months. They also represented that the subscriber would be free to cancel the contract at will, when in truth and in fact such was not the case, and after having obtained the contracts and placed them in the hands of the respondent Publishers Acceptance Corp., respondents would insist upon prompt payment in accordance with the specific provisions and terms of the contract and contrary to their representations made by their agents as aforesaid.

PAR. 11. The Commission finds no evidence in the record in support of the charge contained in subparagraph (g) of paragraph 3 of the complaint, namely, that certain recommendations of the encyclopedia secured by trickery or fraud were bona fide recommendations. The evidence does show that in many cases the agents represented to prospects that recommendations had been given, when in truth and in fact such recommendations had not been given. The Minneapolis school teachers were told that a member of the Minneapolis school board had specially recommended the books, when such was not the fact, and the school board of that city had warned all the principals and superintendents not to give recommendations

of that sort, but nevertheless A. C. Thomas acting on behalf of the aforesaid respondents represented to many of those purchasers that their principal or superintendent or the member of the school board aforesaid had recommended that the books should be purchased. It was represented in one instance, that the State superintendent of Missouri had recommended the books, when not only had he not recommended them, but had particularly instructed all county superintendents, warning them particularly against alleged fraudulent conduct on the part of the respondents' agents, posing as representatives from his department.

PAR. 12. The respondents last aforesaid and their agents falsely represented to purchasers and prospective purchasers that the paper being signed was a memorandum of the receipt of a gift or some other informal paper. A Miss Loretta Fordyce testified that she didn't look it over because the agent was "quick and fast and when I started to look at it he called my attention to something else that he would show me." Miss Esther Arne testified respondents' agent said that "In signing this it is only an acceptance of the gift and the service which does not concern you at all" (pointing to something in the printing). Miss Violet Heffelfinger testified:

A. I didn't know it was a note at that time.

Q. What did you think it was, a receipt?

A. It was a receipt for the books he was leaving in my school.

Miss Kathleen Craft was told by one of respondents' agents to please sign that to show that the books were left in her presence, and she also testified that while that was her signature on her note, it must have been covered with another piece of paper when she signed it, as there was nothing written on the piece of paper she signed except something she had had read to her before and that was not it. Florence Kathleen Most testified:

He gave me a slip of paper and stated that that was a memorandum showing that he had presented me with a set of books * * * I don't remember what a memorandum looked like, but I read it over and couldn't see that it was any form of note. He said it was a memorandum showing that he had presented me with a set of books and to sign my name, so I did.

These respondents also represented in this connection that copies of the encyclopedia were being given away by respondents to teachers who refused to take and pay for the supplement, when as a matter of fact such statement was untrue.

PAR. 13. Respondents aforesaid and their agents knowingly and falsely represented that the Publishers Acceptance Corp. was an innocent purchaser for value of the subscribers' negotiable paper after being informed of the fraud of their agents. Through the medium of the Publishers Acceptance Corp. as well, they claimed lack

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of all knowledge of their own agents' acts and sought and obtained the benefits therefrom, posing as holders in due course. The notes were purchased at a discount of from 15 per cent to 33 per cent within a short space of time and paid for by checks which had to be countersigned either by Mr. Bufton or Mr. Shelton, officers of Mutual Publishing Co. The Commission finds that these corporate and individual respondents collaborated actively to ratify and to derive the benefits accruing from the misrepresentations made by the Mutual Publishing Co.'s agents, and that the Publishers Acceptance Corp. was not in any case an innocent purchaser for value of the customers' contracts of purchase or promissory notes.

PAR. 14. The Commission finds that the respondents last aforesaid, by means of adopting and using a different title, such as Library of Knowledge, covering a set of books of substantially the same content as Bufton's Universal Cyclopedia, are misleading and deceiving the purchasing public into the erroneous belief that in purchasing said set of books of a different title they are purchasing entirely different publications or reference works, when in truth and in fact such is not the case.

PAR. 15. The evidence shows that the respondents Publishers Acceptance Corp., a corporation, P. I. Neergaard and T. E. Thompson and the agents, representatives, servants, and employees of them and each of them in connection with the collection of notes or other obligations arising from sales covering interstate shipments of books for and on behalf of the other respondents, falsely represented to the purchasers of said books that the said notes or obligations were held by the Publishers Acceptance Corp. as a bona fide holder in due course, when in truth and in fact the said notes and obligations were held by the Publishers Acceptance Corp. as the agent of the Mutual Publishing Co. for collection and as transferee, its interests therein were identical with the interests of the other respondents.

PAR. 16. The foregoing acts, practices, representations, and each of them made and done by the respondents and each of them have had and do have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondents' books, and have a tendency to injure, to a substantial extent, competitors of respondents by unfairly diverting trade from such competitors to the respondents.

CONCLUSION

The acts and practices of the said respondents under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and of respondents' competitors; are unfair methods of competition in 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, the answer of respondents, the testimony taken, and briefs of counsel for the Commission and counsel for the respondent, and both sides having waived oral argument, and the Commission having made its findings as to the facts and conclusion that respondents have 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 respondents Mutual Publishing Co., a corporation, Educators Service Association, a corporation, C. J. Shelton, H. A. Bufton, and A. C. Thomas, individual respondent, and the agents, representatives, servants, and employees of each of them, in connection with the sale and distribution in interstate commerce of Bufton's Universal Cyclopedia, loose-leaf cumulative supplements thereto, or other books or publications under whatsoever title, do cease and desist from directly or indirectly representing to customers or prospective customers:

(a) That any educators, authors, or public officials are editors, contributors, or otherwise connected with said books or publications unless and until such persons actually shall have contributed articles thereto, or shall actually become associated with the respondents in connection with such books or publications.

(b) That the publication Bufton's Universal Cyclopedia, under whatsoever name distributed and sold, is the latest reference work, unless and until the same shall have been revised and brought up to date.

(c) That the bindings of said books are flexible or seal Levant or in any other way representing that said bindings are composed of leather when such is not the fact.

(d) That the usual and customary selling price of the books and the extension service or cumulative supplement is a special or introductory price, when such is not the fact.

(e) That the books are being given away and that the only charge is for the loose-leaf extension service, when such is not the case, and that there is no further charge for postage or expressage on said books unless and until such transportation charges are paid by the respondents.

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(f) That the cumulative loose-leaf extension supplement can be paid for at a certain rate per year, the subscriber being free to cancel the subscription at will, when those are not the terms of the obligation to which the subscriber's signature is procured.

(g) That said books have any endorsements or recommendations of superintendents of education or others, unless and until such endorsements and recommendations have actually been obtained.

(h) That the prospective customer or subscriber is signing a memorandum, receipt, or other informal paper when in fact the paper being signed is a promissory note or a contract of purchase.

(i) That the Publishers Acceptance Corp. is an innocent purchaser for value of subscribers' contracts of purchase or promissory notes or that any other company or individual is a bona fide holder in due course of customers' negotiable instruments when such is not the case.

(j) That any books or publications with the same or substantially the same contents as Bufton's Universal Encyclopedia are other books or publications than Bufton's Universal Encyclopedia.

And it is further ordered, That the respondents, Publishers Acceptance Corp., a corporation, P. I. Neergaard and T. E. Thompson, and the agents, representatives, servants, and employees of them and each of them, in connection with the collection of notes or obligations arising from contracts of purchase covering interstate shipments of books for and on behalf of the respondents Mutual Publishing Co. or Educators Service Association, do cease and desist from directly or indirectly representing that the Publishers Acceptance Corp. is a bona fide holder in due course of the subscribers' negotiable paper, when such is not the case.

It is further ordered, That the said complaint be, and the same is hereby dismissed as to the charges contained in subparagraphs (j), (l) and (m) of said paragraph 3; as to subparagraphs (b) and (d) of paragraph 4, and as to the second paragraph of paragraph 6.

It is further ordered, That the complaint be, and hereby is dismissed as to the respondent Carl Kretsinger, erroneously spelled Critzinger in the complaint.

And it is further ordered, That the respondents and each of them, except Carl Kretsinger, within 60 days after service upon them of a copy of this order shall file with the Commission a report in writing setting forth in detail the manner and form of their compliance therewith.

Complaint

IN THE MATTER OF

BAILEY RADIUM LABORATORIES, INC., ET AL.

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

Docket 1756. Complaint, Feb. 5, 1930—Decision, Dec. 19, 1931

Order requiring respondent corporation, and respondent individual, its president, treasurer, and principal stockholder, to cease and desist, in connection with sale in interstate commerce of their radioactive water, "Radithor," as in said order in detail set forth, from—

- (1) Falsely representing development of said product as the outstanding achievement in application of radioactive rays, the circumstances leading to the production thereof, the safety, healing, and beneficial qualities thereof, and conditions or symptoms ameliorated thereby;
- (2) Publishing or causing to be published and distributed statements of physicians as to (a) therapeutic value of radioactive therapy, not specifically applicable to radithor, unless specifically and plainly so stated and published, or (b) therapeutic value of radithor, unless and until said statements based on physician's clinical experience in connection with the use thereof;
- (3) Publishing or causing to be published or distributed books, leaflets, booklets, or other publications advertising their said products in question, but written or prepared by a person or persons other than those held out therein as the authors thereof; and
- (4) Using corporate name Bailey Radium Laboratories, Inc., or otherwise representing that their aforesaid product is made by them in a laboratory.

Mr. Robert H. Winn for the Commission.

Hulbert & Heermance, of New York City, 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 Bailey Radium Laboratories, Inc., and William J. A. Bailey, individually and as president and as treasurer and as principal owner of the stock of respondent Bailey Radium Laboratories, Inc., 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 said act and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Bailey Radium Laboratories, Inc., is a