

Complaint

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IN THE MATTER OF
IRVING ROY JACOBSON AND PROGRESSIVE EDUCATION
SOCIETY, INC.

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

Docket 2132. Complaint, Aug. 23, 1934¹—Order, Sept. 24, 1934

Consent order requiring respondents, their officers, etc., in connection with the sale of books or sets of books in interstate commerce and the District of Columbia, to cease and desist from—

- (a) Representing to the public or to prospective purchasers that a set of books, "Source Book" or any other book or set will be presented to the prospective purchasers without compensation on condition that they give their opinions concerning the merits thereof, until and unless said representations are true, and not in any instance when a prospective purchaser as a condition precedent to availing himself of such free offer is required to purchase a so-called loose-leaf extension service, or supplemental service, purporting to keep said set up to date, or is required to purchase for a consideration any other article or thing;
- (b) Representing to the public or to prospective purchasers in various communities that in each community a limited number of persons will be sold a book or set at a specially reduced price as an introductory offer for advertising, unless or until such representation is true, and not in any instance in which the price represented as the regular selling price is an exaggerated sum and in excess of the usual price, nor when the specially reduced price is equal to, or approximately equal to the usual customary selling price of the books; and
- (c) Representing to the public or prospective purchasers that a book or set of books being offered has been recommended or endorsed by various State or county superintendents of schools, or by principals of various State teachers' colleges, or by any of them, when such is not the fact.

Mr. Martin A. Morrison for the Commission.

Lowry, Beggs & Dawson, of Madison, Wis., for respondents.

COMPLAINT ¹

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 Irving Roy Jacobson and Progressive Education Society, Inc., 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 Irving Roy Jacobson, with his principal office and place of business at 407 Hillington Way, in the city of

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Madison, State of Wisconsin, has been engaged for more than two years last past in the sale and distribution in interstate commerce of a certain set of books under the title "Source Book", together with a loose-leaf extension service thereto.

On the 5th day of January 1932 said respondent, Irving Roy Jacobson, as an aid to his said business and as an instrumentality to be used in the transaction of said business, caused to be incorporated under the laws of the State of Wisconsin respondent Progressive Education Society, Inc. Respondent Irving Roy Jacobson became president of said corporation at the date of its organization and has remained such president continuously since that date. At said date of the organization of said respondent corporation, said business began to be and has continuously been transacted by said corporation. During all said time respondent Irving Roy Jacobson has controlled and directed said business, and said business has in such manner been, and is carried on by the respondents herein at the office and place of business above described.

Repondents have during all said time carried on, and do carry on, said business as next hereinafter described. Respondents purchase the said "Source Book" and loose-leaf extension service from the publisher thereof, Perpetual Encyclopedia Corporation, with offices in the city of Chicago, State of Illinois, and sell said set of books through agents, salesmen, and employees to purchasers located at points in the various States of the United States, and the District of Columbia, and have caused and do cause said books, or publications, when so sold, to be transported from the city of Chicago, State of Illinois, or from the city of Madison, State of Wisconsin, through and into other States of the United States, and the District of Columbia, to the purchasers thereof at their respective locations. In the course and conduct of their said business, said respondents have been and are now in competition with various other persons, partnerships, and corporations engaged in the sale and distribution of books of reference, and other competitive books and publications in interstate commerce.

PAR. 2. Respondents have sold and do now sell said "Source Book" by agents, representatives, and salesmen, who travel from place to place throughout the United States, calling upon members of the public and soliciting the purchase of the set of books and the extension service. Said agents, representatives, and salesmen have been and are paid a commission for each sale they make. During the summer vacation period college students are employed as salesmen, who are instructed in the methods of selling said publications. The

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method of sale is to require the purchaser to sign an order blank for said "Source Book" and the supplemental service, making a down payment to the agent, with the balance to be paid in monthly installments until the complete amount has been paid. The contract and down payment are sent by the agents, representatives, and salesmen to the office of respondent Progressive Education Society, Inc., aforesaid, in Madison, Wis., and the set of books is thereupon shipped to the purchasers thereof either from Madison, Wis., or by the publisher from Chicago, Ill. In some instances delivery of the set of books is made by the salesman sometime subsequent to the time of taking the order.

PAR. 3. In the course and conduct of said business, respondents, through themselves, their agents, representatives, and salesmen, have represented, and they do now so represent, to prospective purchasers, that a set of the said "Source Book" will be presented free of charge to said prospective purchasers, upon condition that said prospective purchasers will give other prospective purchasers in the community their opinions concerning the merits of said set of books. As a condition precedent to availing themselves of the free offer such prospective purchasers are required to subscribe to a so-called loose-leaf extension service or supplemental service, purporting to keep the set of books up to date. Said loose-leaf extension service is to be furnished twice a year for ten years.

Respondents, through themselves, their agents, representatives, and salesmen, have represented, and do now represent, that the purchaser pays only for the extension service at the rate of \$6.95 per year for ten years, or a total of \$69.50, which sum pays for the said service for a period of ten years. The aforesaid representations made by respondents, their agents, representatives, and salesmen, are false and misleading in that the said set of books are not presented to the purchaser free, because the price of \$69.50 for the loose-leaf extension service is greatly in excess of the price at which such service can be furnished to bona fide purchasers, and is sufficient to, and is intended to and does in fact, compensate the seller or sellers for the set of books so delivered to the purchasers thereof, together with the accompanying extension service.

Purchasers are not permitted to pay for the said extension service at the rate of \$6.95 per year for ten years, but are required to pay the total sum of \$69.50 in monthly installments within one year from the date of the signing of the order blank. In subscribing to the extension service in the manner set forth above, the purchaser is in truth and in fact purchasing the said set of books and the extension service for the sum of \$69.50, under the mistaken belief that

he is receiving the said set of books free of charge, and is paying only for the extension service.

PAR. 4. Respondents, through themselves, their agents, representatives, and salesmen, have represented, and do now represent, to prospective purchasers in various communities that in said communities a limited number of persons will be sold the set of books at a special reduced price as an introductory offer for purposes of advertising, and that the usual and customary price of said set of books, and extension service, are certain fictitious and grossly exaggerated prices, far exceeding the usual and customary prices at which respondents actually offered or expected to sell the same, and greatly in excess of the real value of the same. The fact is that said representations are false and misleading because \$69.50 is the regular and customary selling price of said set of books, and extension service, and respondents have never sold such set of books and extension service for a greater price than \$69.50, to any person who can be induced to purchase same.

PAR. 5. Respondents, through themselves, their agents, representatives, and salesmen, have represented, and do now represent, to prospective purchasers that the "Source Book" and the extension service have been recommended and endorsed by various State and county superintendents of schools, and by principals of various State teachers' colleges. Said representations are false, deceptive, and misleading because said set of books and extension service have not been recommended and endorsed by said superintendents of schools and principals of State teachers' colleges, and such false representations were and are made in order to deceive prospective purchasers of said set of books, and extension service, many of whom were school teachers, and cause them to purchase said publication in the mistaken belief that it was a publication approved by their school authorities.

PAR. 6. Respondents, their agents, representatives, and salesmen, by means of the false, deceptive, and misleading statements and representations set forth above, have sold and now sell said set of books, "Source Book" including the extension service, to members of the public throughout the United States, who are thereby induced to purchase said publication because of aforesaid false, deceptive, and misleading statements and representations.

All of the aforesaid false, deceptive, and misleading statements and representations used by said respondents are calculated to and do have the tendency and capacity to unfairly divert trade to respondents from competitors who do not use such false, deceptive, and misleading statements and representations in the sale of their publi-

cations, and to induce the public to purchase said books and publications under and because of the mistaken belief that said representations are true.

PAR. 7. The above alleged acts, things, and practices of respondents have been and are, as aforesaid, each and all of them, to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in interstate commerce within the intent and meaning 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 came on to be heard upon the amended complaint issued herein against, and duly served upon, the above-named respondents, to wit: Irving Roy Jacobson and Progressive Education Society, a corporation, and upon the answer filed by said respondents to said amended complaint, said answer (omitting the formal parts thereof and signatures thereto) being in the following words, to wit:

CONSENT ANSWER

An amended complaint having been issued by the Federal Trade Commission against, and having been served upon, the undersigned as respondents thereto;

And we, Irving Roy Jacobson and Progressive Education Society, a corporation, respondents thereto, having duly considered the same and being desirous of saving the labor and expense of forming issues upon said complaint, taking evidence thereon and conducting adversary proceedings thereon to a final determination of such proceeding;

And we, said respondents, having decided to file a consent answer to said complaint under the rules of said Commission, for our answer to said amended complaint, do say:

We, Irving Roy Jacobson and Progressive Education Society, a corporation, respondents herein, hereby consent that the Federal Trade Commission may make, enter and serve upon us as such respondents an order to cease and desist from the violations of the law alleged in said amended complaint, without issues formed, trial had, or any other intervening proceedings herein.

And now the Commission having considered said amended complaint and said answer thereto, and being fully advised in the premises:

It is ordered, That in connection with or in aid of offering for sale or selling the certain articles of merchandise hereinafter mentioned in commerce between and among the several States of the United States and the District of Columbia, or within the District of Columbia, respondent Irving Roy Jacobson and respondent Progressive Education Society, Inc., a corporation, their officers, agents, employees, and representatives do cease and desist—

(1) From representing to the public or to prospective purchasers that a certain set of books known and designated as "Source Book", or any other book or set of books, will be presented to such prospective purchasers or any of them, without other compensation, on condition that said prospective purchasers will give other prospective purchasers in the community their opinions concerning the merits of said book or set of books, until and unless said representation is true; and not in any instance in which such prospective purchaser as a condition precedent to availing himself of such free offer is required to purchase a so-called loose-leaf extension service, or supplemental service, purporting to keep said set of books up to date, or is required to purchase for a consideration any other article or thing.

(2) From representing to the public or to prospective purchasers in various communities that in each said community a limited number of persons will be sold a book or set of books at a special reduced price as an introductory offer for the purpose of advertising, unless and until said representation is true; and not in any instance in which the price represented to such prospective purchaser to be the regular or usual selling price of said book or set of books is an exaggerated sum and in excess of the usual and customary selling price of said book or books; nor in any instance in which such so-called special reduced price is equal to, or approximately equal to, the usual and customary selling price of said book or books.

(3) From representing to the public or to prospective purchasers that a book or set of books being offered for sale to the public or to prospective purchasers, has been recommended or endorsed by various State and county superintendents of schools, or by principals of various State teachers' colleges, or by any of them, unless and until said representations are true.

It is further ordered, That respondents file with the Federal Trade Commission at its office in Washington, D. C., within 60 days from and after the service of this order upon them, a report in writing setting forth in detail the manner and form of their several compliances with the provisions of this order.

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IN THE MATTER OF

FRANK BRILLIANT, MORRIS R. BRILLIANT AND HARRY
K. BRILLIANT, TRADING AS BRILLIANT BROTHERS
COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2222. Complaint, Aug. 16, 1934—Order, Sept. 24, 1934*

Consent order requiring respondents, in connection with the sale of their products in interstate commerce, and solicitation thereof, to cease and desist from directly or indirectly using or causing to be used the word "Doctor" or the abbreviation "Dr.", in connection or in conjunction with the name of, or with any word or words, or in any way as a trade name, brand, or designation for, their products, or for the products of others, or in advertising said products, or in any way which may have the capacity and tendency to confuse, mislead or deceive purchasers into the belief that said products are made in accordance with the design and/or under the supervision of a doctor and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

Mr. Morton Nesmith for the Commission.

Mr. Maurice Tobey, of Boston, Mass., for respondents.

COMPLAINT

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, having reason to believe that Frank Brilliant, Morris R. Brilliant, and Harry K. Brilliant, trading as Brilliant Brothers Company, hereinafter referred to as respondents, have been or are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Frank Brilliant, Morris R. Brilliant, and Harry K. Brilliant are trading and doing business as Brilliant Brothers Company, respondents herein, and their principal place of business is located at 182 Lincoln Street, Boston, Mass. Said respondents, Frank Brilliant, Morris R. Brilliant, and Harry K. Brilliant, trading as Brilliant Brothers Company, are now and for many years last past have been engaged in the business of selling shoes at wholesale between and among the different States of the United States.

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PAR. 2. The respondents, Frank Brilliant, Morris R. Brilliant, and Harry K. Brilliant, trading as Brilliant Brothers Company, in the course and conduct of their business as aforesaid, in soliciting the sale of and selling their products in interstate commerce, caused and still cause the words—

Combination Last (Trade Mark) Steel Support

Dr. Thomas

Reg. U. S. Pat. Off.

Arch

Comfort Health

to be stamped on or across the sole of a certain brand of the shoe sold by them in interstate commerce.

Said respondents also caused and still causes said shoes to be packed and shipped in cartons or boxes on which these same identical words appear.

Said respondents caused and still cause a label to be affixed to another brand of its shoes on which appear the words

DR. DAVIS

RESTFORM HEALTH SHOE

STEEL ARCH

Said respondents have caused and still cause still another of their brand of shoes to be packed and shipped in cartons or boxes on which the following words are conspicuously displayed:

DR. WEBSTER

WALK WITH EASE

GENUINE GOODYEAR WELT

SOLES THAT WEAR

PAR. 3. In truth and in fact the shoes so marked, stamped, branded, labeled, advertised and sold, as described in paragraph 2, were not made in accordance with the design and/or under the supervision of a doctor and did not contain special, scientific, or orthopedic features which were the result of medical advice or services, nor is such footwear intended to be designed or constructed for the purpose of correcting or alleviating any form of foot trouble or weakness of the feet; all of which has the capacity and tendency to mislead many among the aforesaid trade and among the consuming public into the belief that said shoes had been fashioned or designed by doctors or others with a knowledge of orthopedics or at least had some feature or features not common to the ordinary run of footwear, which fea-

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ture or features were designed or intended to correct some foot ailment or weakness, or at least afford some relief therefrom.

PAR. 4. The respondents, Frank Brilliant, Morris R. Brilliant, and Harry K. Brilliant, trading as Brilliant Brothers Company, in the sale of their said products as aforesaid, ships and delivers to their jobber and retail customers their products so labeled and branded and said jobbers and retailers resell said products so labeled and branded to the consuming public.

PAR. 5. There are among the competitors of the respondents, referred to in paragraph 1 hereof, many persons, firms, and corporations who sell at wholesale shoes which contain special features designed and intended to correct and alleviate certain foot ailments and weaknesses. There are also among the competitors of the respondent persons, firms and corporations who sell at wholesale shoes and footwear manufactured along standard lines and according to standard methods but for which no special feature claims or representations are made, and the use by the respondent of the word "Doctor" or the abbreviation "Dr." in connection or in conjunction with a name or with any other word or words or in any way as a trade name, brand, or designation for its products or in its advertisements of said products, together with other special feature representations, has unfairly diverted trade from and otherwise injured and prejudiced respondents' competitors in interstate commerce.

PAR. 6. The above alleged acts and things done by the respondent are all to the injury and prejudice of the public and of the competitors of respondent in interstate commerce, and constitute unfair methods of competition in interstate commerce within the intent and the meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding coming on for final hearing by the Federal Trade Commission upon the record including the complaint of the Commission and respondents' answer thereto, that they waive hearing on the charges set forth in the complaint, refrain from contesting the proceeding and pursuant to Rule III of the Commission's Rules of Practice, as amended and revised to August 20, 1934, consent that the Commission may make, enter, and serve upon respondents, without evidence and without findings as to the facts or other intervening procedure, an order to cease and desist from the method or methods

of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises—

It is now ordered, That respondents, Frank Brilliant, Morris R. Brilliant, and Harry K. Brilliant, trading as Brilliant Brothers Company, in connection with soliciting the sale of, and selling their products in interstate commerce, cease and desist from:

Directly or indirectly using or causing to be used the word "Doctor" or the abbreviation "Dr.", in connection or in conjunction with the name, or with any word or words, or in any way as a trade name, brand, or designation for their products, or for the products of others, or in advertising said products, or in any way which may have the capacity and tendency to confuse, mislead or deceive purchasers into the belief that said products are made in accordance with the design and/or under the supervision of a doctor and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

It is further ordered, That respondents Frank Brilliant, Morris R. Brilliant, and Harry K. Brilliant, trading as Brilliant Brothers Company, shall, within 60 days after the service upon them of a copy of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist, hereinabove set forth.

IN THE MATTER OF
GRAYBAN, INCORPORATED

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

Docket 2200. Complaint, June 20, 1934—Order, Sept. 26, 1934

Consent order requiring respondent, its officers, etc., in connection with the sale or distribution in interstate commerce or in the District of Columbia or in any territory, of the hair dye or hair-coloring product sold by it under the designation "Grayban", or any such preparation of substantially the same composition, to cease and desist from the use of any such representations, statements or assertions, through advertisements or otherwise, to the effect that—

- (a) Any such product or preparation can or will bring back the natural color of growing hair and the hair's own original or natural color, or can or will renew its color or bring back the healthful beauty of the hair, "except in phraseology which clearly does not imply that such product can or will restore health to the hair or user";
- (b) The color imparted thereby is permanent, unless qualified to show clearly that it acts only on the exposed portions of the hair to which applied and that further and successive applications are necessary to color new growth as it emerges, and to intensify or increase the color of those portions of the hair to which it has previously been applied;
- (c) Its action, when applied, constitutes a natural process, or it is a miracle or is miraculous in its action, and is not a dye;
- (d) It will banish gray hair, except in words which clearly do not imply that it can or will cure or prevent the graying of hair or further growth of gray hair, but show that successive reapplications are necessary from time to time, as hereinbefore set forth;
- (e) Successful or satisfactory coloring of the hair by the application thereof is certain, except in words which show clearly that results from the use thereof vary and that all users do not achieve uniformly satisfactory results in the use thereof; and
- (f) It is sold or distributed under or with a so-called money-back or other guarantee, unless and until in conjunction therewith there is set forth clearly and unequivocally the full terms and conditions of any such guarantee and such terms and conditions are adhered to and complied with by respondent.

Mr. Henry Miller for the Commission.

COMPLAINT

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, having reason to believe that Grayban, Inc., has been or is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would