

IN THE MATTER OF
BERNHART P. HOLST, DOING BUSINESS AS HOLST
PUBLISHING COMPANY, ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 2652. Complaint, Dec. 10, 1935.—Decision Jan. 12, 1937

Where an individual engaged in the publication of an encyclopedia or reference work designated as "The Progressive Reference Library," and theretofore sold under different names, since its original publication about 1895 as "Teachers' and Pupils' Cyclopedia," and in the sale thereof to purchasers in various states; an individual engaged as agent and manager for said publisher in the transaction and operation of the latter's business; and two individuals engaged, in California, as agents for and under arrangements with said publisher, in the sale of said "Reference Library" and extension service from their places of business in the two California cities involved, and through their own personal solicitation and that of the agents, subagents, or salesmen employed by them, and selling said reference work and service on an installment contract basis; in substantial competition with others who do not represent that they are giving their respective sets free to purchasers of an extension service, or to purchasers of any other service or books, and do not represent that their respective books have been revised, enlarged, and brought up to date, or make other untrue representations similar to those hereinbelow set forth, but accurately and truthfully represent the nature and character of their respective books and the various services rendered by them in connection with the sale thereof—

- (a) Represented, in soliciting and selling such books and service as hereinbefore described, that the purchaser or prospective purchaser was on a preferred list and would be given a ten volume set of said "Library" free, for the reason, ostensibly, that such purchaser or prospective purchaser had exceptional ability in his or her chosen trade, profession, or avocation, and that, in order to take advantage of such pretended free offer, it was only necessary that the particular person approached write the publisher a letter of commendation, after opportunity to study the books, and subscribe to a ten year loose leaf extension service to keep said "Library" current and up-to-date as represented, and at a cost of \$49.50, for the payment of which sum, in monthly or other payments, purchaser obligated himself by signed contract; facts being there was no such selection, purchase price of said "Reference Library" was included in the amount purportedly charged for the ten-year extension service, same offer was made to all prospective purchasers alike, without regard to any ability exhibited by them in any particular trade or profession, and aforesaid representations were made solely to induce purchase of said "Progressive Reference Library";
- (b) Represented, as aforesaid, that said "Library," as thus published and sold by them, had been revised, enlarged, and brought down to date, facts being that, while it might contain some slight enlargements and revisions, to all intents and purposes it had not been materially revised and enlarged since its original publication in or about 1895; and

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- (c) Made use of the name of the individual hereinbefore referred to, who constituted said publisher's business manager and agent, to advise dissatisfied purchasers complaining of aforesaid and other defects in said encyclopedia to the particular individual making sale, that contract of particular dissatisfied purchaser was in hands of said first-named individual, and that he constituted an innocent purchaser for value without notice and insisted on payment and threatened such purchaser with legal action and forced payment therefor;

With effect of misleading and deceiving members of the purchasing public into the erroneous and mistaken belief that aforesaid misrepresentations were true and into the purchase of said "Progressive Reference Library" and extension service on account of such belief and their reliance on the truthfulness thereof, and with the result that many sales were made by them to purchasers thereof who, induced by aforesaid representations, believed that in purchasing said service for its regular price of \$49.50, they were, as members of a limited or selected class, receiving free of charge said set, represented as above set forth, as an enlarged, revised and up-to-date reference work, and trade thereby was unfairly diverted to all and each of them from those competitors who do not make use of same or similar misrepresentations in offer for sale or sale of their respective encyclopedias and reference works:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. John W. Hildrop for the Commission.

Mr. C. O. Switzer and *Mr. Fred P. Risser* of *Chatterton & Switzer*, of Des Moines, Iowa, for *Bernhart P. Holst*, doing business as *Holst Publishing Co.*, and for *Bertram P. Holst*; *Mr. L. W. Jaycox*, of Los Angeles, Calif., for *Charles U. Branch*, doing business as *National Press Service*.

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 *Bernhart P. Holst*, an individual trading under the name and style of *Holst Publishing Company*; *Bertram P. Holst*, manager for and agent of *Bernhart P. Holst*; *C. M. Sellards*, an individual trading under the name and style of *Progressive Research Service* and agent for respondent *Bernhart P. Holst*; *Charles U. Branch*, an individual trading under the name and style of *National Press Service* and as agent of respondent *Bernhart P. Holst*; and *S. R. Melching*, an individual trading under the name and style of *International Press Service* and as agent for respondent, *Bernhart P. Holst*, hereinafter designated as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commis-

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sion that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Bernhart P. Holst is an individual trading under the name and style of Holst Publishing Company, with his office and principal place of business in Boone, Iowa, and is engaged in the business of publishing and selling a certain encyclopedia known and designated as "The Progressive Reference Library" to purchasers thereof in various States of the United States of America other than Iowa, and when said encyclopedias are sold by respondent, Bernhart P. Holst, he ships and causes them to be shipped from his place of business at Boone, Iowa, into and through the various States of the United States other than Iowa to the purchasers thereof located in said other States and in the District of Columbia. Respondent Bernhart P. Holst is likewise an individual residing and doing business in Boone, Iowa, and is an agent of and manager for respondent Bernhart P. Holst in the transaction of the business of said Bernhart P. Holst as hereinafter set out. Respondent C. M. Sellards is an individual with his place of business at 365 Twenty-fifth Avenue, San Francisco, Calif., and trades and does business under the name and style of Progressive Research Service, and in the conduct of the business as hereinafter set out, said respondent C. M. Sellards is an agent of respondent Bernhart P. Holst. Respondent Charles U. Branch is an individual trading and doing business under the name and style of National Press Service, with his place of business at Room 516, Douglas Building, 257 South Spring Street, Los Angeles, Calif., and said respondent Charles U. Branch is also, in the conduct of the business hereinafter set out, an agent for respondent, Bernhart P. Holst. Respondent S. R. Melching is an individual trading under the name and style of International Press Service, with his place of business at Boone, Iowa, and in the conduct of the business hereinafter set out, said respondent S. R. Melching is likewise the agent for respondent Bernhart P. Holst.

PAR. 2. Respondent Bernhart P. Holst is the publisher of a certain ten-volume encyclopedia which is sold and distributed to the public from the place of business of respondent, Bernhart P. Holst of Boone, Iowa, in and through the various States of the United States of America other than Iowa, under the name of "The Progressive Reference Library." This encyclopedia was originally published in or about the year 1895 as "Teachers' and Pupils' Cyclopedia," and thereafter it was published and sold respectively as "New Teachers' and Pupils' Cyclopedia" and as "International Reference Work," but is now being sold, as aforesaid, as "The Progressive Reference Library." The Com-

mission is advised, believes to be true, and consequently charges that although there have been *some revisions and enlargements of the said encyclopedia*, yet it is substantially the same as when first issued in or about the year 1895.

PAR. 3. Respondent Bertram P. Holst resides in Boone, Iowa, and in the sale and distribution of the said Progressive Reference Library in interstate commerce, acts in the capacity of business manager and agent for respondent Bernhart P. Holst, publisher of said encyclopedia as aforesaid. Respondent C. M. Sellards, trading under the name and style of Progressive Research Service, has his office and place of business in the City of San Francisco, Calif., and is engaged in the sale and distribution of the encyclopedia known and designated, as aforesaid, as "The Progressive Reference Library," in the State of California and in various States of the United States other than California, and when said encyclopedias are by said respondent C. M. Sellards sold, he ships and causes them to be shipped from his place of business in San Francisco, Calif., into and through other States of the United States than California, to the purchasers thereof located in States other than the State of California.

Respondent Charles U. Branch is an individual with his office and place of business in the city of Los Angeles, Calif., and is engaged in the selling and delivering in commerce of the said "Progressive Reference Library" under the name and style of National Press Service, in the State of California and in divers other States of the United States other than California, causing said encyclopedia when sold to be transported into and through said other States of the United States than California, to the purchasers thereof located in States other than the State of California. Respondent S. R. Melching is an individual trading and doing business in Boone, Iowa, under the name and style of International Press Service, and he likewise is engaged in the sale and distribution of said "Progressive Reference Library" in the State of Iowa, and causes said "Progressive Reference Library" when sold to be transported and delivered into and through various States of the United States other than Iowa to the purchasers thereof located in States other than the State of California.

In the conduct of the said business of selling and distributing the said encyclopedia known and designated, as aforesaid, as "The Progressive Reference Library," the said respondent Bernhart P. Holst, being as aforesaid the publisher thereof at Boone, Iowa, furnishes to co-respondents C. M. Sellards, Charles U. Branch, and S. R. Melching the said encyclopedia, which said respondents Sellards, Branch, and

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Melching, by personal solicitation and through salesmen and sub-agents, sell to the public. For this encyclopedia respondent Bernhart P. Holst receives from his co-respondents Sellards, Branch, and Melching, \$12.50 per set, and respondents Sellards, Branch, and Melching in turn sell said encyclopedia to the buying public at \$49.50 per set, in manner and form as hereinafter set out.

The respondents Sellards, Branch, and Melching sell said encyclopedia to the public on monthly payments, and the purchaser executes a contract promising to pay the full sum of \$49.50 to the different respondents herein making the sale on monthly payments, and such contracts when signed and executed by the purchaser are sent and transmitted by respondents Sellards, Branch, and Melching to respondent Bernhart P. Holst at Boone, Iowa, and the Commission is advised, believes to be true, and consequently charges that these contracts are by respondents Sellards, Branch, and Melching assigned to respondent Bernhart P. Holst. Respondent Bernhart P. Holst, on receipt of such contracts, advances to respondents Sellards, Branch, and Melching 60 percent of the face value thereof, taking from said Sellards, Branch, and Melching their promissory notes. Therefore and in this behalf, the Commission is advised, believes to be true, and charges that the contracts of purchase by the various purchasers are assigned as collateral security for the loan of 60 percent of the face value of such contracts. If default is made by the purchaser in the payments due under said contracts, the said respondent Bernhart P. Holst personally and through respondent Bertram P. Holst, manager and agent of the aforesaid Bernhart P. Holst, and through his attorneys undertakes to collect the amount due from such defaulted purchases under the claim and pretext that he, respondent Bernhart Holst, is an innocent purchaser for value in due course thereof, and that the purchaser cannot interpose any defenses to the said contract in his hands as such innocent purchaser for value without notice and in due course.

The Commission, acting on information and belief, is advised, believes to be true, and consequently charges that this elaborate and ostensible arrangement existing between and among respondents Bernhart P. Holst, Bertram P. Holst, C. M. Sellards, Charles U. Branch, and S. R. Melching, is a sham and a subterfuge, and that in truth and in fact respondents, Bertram P. Holst, C. M. Sellards, Charles U. Branch, and S. R. Melching are agents for the principal respondent, Bernhart P. Holst, in the sale and distribution in commerce of the said encyclopedia known and designated as "The Progressive Reference Library," and that respondent Bertram P. Holst is resident agent and manager at Boone, Iowa, for his principal, re-

spondent Bernhart P. Holst, and that as principal and agent they are engaged in the acts of unfair competition in commerce hereinafter set out; but in the alternative, should they not occupy to each other the relation of principal and agent, charges and alleges that these respondents are by agreement and conspiracy engaged in a joint enterprise and in acts of unfair competition in commerce, and are properly joined herein as co-respondents.

The method by which respondents sell and offer for sale the said encyclopedia is as follows: The respondents, either in person or by duly constituted and appointed agents, subagents, or salesmen, represent to the purchaser or prospective purchaser that he or she is on a preferred list, and that he or she will be given a ten-volume set of the said encyclopedia free, and this free offer is made to the purchaser or prospective purchaser on the ostensible ground that the purchaser or prospective purchaser has exceptional ability in his or her chosen trade, profession or avocation, such as teacher, preacher, lawyer, etc. The purchasers or prospective purchasers are then told that in order to avail themselves of this alleged free offer it is only necessary that they, (1) write the publisher a letter of commendation after they have had an opportunity to study the books, and (2) subscribed to a ten-year loose leaf extension service, which it is represented will keep the reference library current, at a cost to the purchaser of \$49.50, for the payment of which sum the purchaser signs a contract in writing agreeing to pay by monthly or other payments, and said contracts in writing are then sent and delivered to respondent Bernhart P. Holst, as hereinbefore set out in paragraph 3 hereof. These representations and inducements are false and misleading, as the purchaser does not receive a ten-volume set of the said encyclopedia free, but the sum of \$49.50 above mentioned is a full, fair and sufficient price for the said encyclopedia and for the ten-year loose leaf extension service, and these statements and representations are made by respondents, their agents and salesmen for the purpose of effectuating the sale of the said encyclopedia.

The respondents in person and through their agents, subagents, and salesmen, represent to purchasers and prospective purchasers that the said encyclopedia, published and sold as aforesaid by respondents, has been revised, enlarged, and brought down to date, when in truth and in fact, while said encyclopedia may contain some slight enlargements and revisions, yet to all intents and purposes it has not been materially revised and enlarged since it was originally published in or about the year 1895. When dissatisfied purchasers complain of this and other defects in said encyclopedia to the respondent making the sale, such dissatisfied purchaser is advised that his or her con-

tract is in the hands of respondent Bernhart P. Holst, an innocent purchaser for value without notice, and payment is insisted on and the dissatisfied purchaser is threatened with legal action and is forced to pay therefor.

In the publication and sale of the said encyclopedia, the respondents, all and each of them, are in competition with other individuals, firms, and corporations and associations engaged in a similar and like business, who do not represent themselves as giving an encyclopedia free and who properly and truthfully represent their commodity, and whose encyclopedia is actually revised, enlarged, and brought down to date.

PAR. 4. By reason of the foregoing acts, exaggerations, misrepresentations, statements, and inducements as above set forth, the said respondents have sold and are now selling their said encyclopedia, including the extension service, to various members of the public throughout the United States who have a right to and do rely on these said statements, representations, and inducements of the respondents and who are induced to purchase said encyclopedia from respondents under the belief that they are actually being presented free with an encyclopedia which is revised, enlarged, and brought down to date, and are only paying for the ten-year extension service, when in truth and in fact they are buying and paying a full price for an encyclopedia and extension service and are not receiving one free, nor one revised, enlarged, and brought down to date.

PAR. 5. All the aforesaid false, deceptive, and misleading statements and representations used by respondents, their agents, subagents, and salesmen 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 representations in the sale of their publications and to induce the public to purchase said encyclopedias under and because of a mistaken belief that said representations are true.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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 on the 10th day of December, A. D., 1935, issued and served its complaint in this proceeding upon respondents, Bernhart P. Holst, an individual trading under the name and style of Holst Publishing Company; Bertram P. Holst, manager for and agent of Bernhart P. Holst; C. M. Sellards, an individual trading under the name and style of Progressive Research Service, and as agent for respondent, Bernhart P. Holst; Charles U. Branch, an individual trading under the name and style of National Press Service and as agent of respondent, Bernhart P. Holst; S. R. Melching, an individual trading under the name and style of International Press Service and as agent of respondent, Bernhart P. Holst; charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by John W. Hildrop, attorney for the Commission, before W. W. Sheppard, an examiner for the Commission theretofore duly designated by it, and in opposition to the allegations of the Complaint by C. O. Switzer, attorney for respondents, Bernhart P. Holst, an individual trading under the name and style of Holst Publishing Company, and Bertram P. Holst; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the said Commission on the complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and briefs in opposition thereto by respondents, Bernhart P. Holst and Bertram P. Holst, and the oral arguments of John W. Hildrop, counsel for the Commission and Fred P. Risser, appearing and arguing the case for respondents Bernhart P. Holst, and Bertram P. Holst; and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Bernhart P. Holst is an individual trading under the name and style of Holst Publishing Company, with his office and principal place of business located in Boone, Iowa. He is engaged in the business of publishing and selling a certain encyclopedia or reference work known and designated as "The Progressive Reference Library," including a loose-leaf extension service, to purchasers thereof located in various States of the United States other than Iowa. When said encyclopedias are sold by respondent, Bern-

hart P. Holst, he ships and causes them to be shipped from his place of business at Boone, Iowa, into and through the various States of the United States other than Iowa to the purchasers thereof located in said other States and in the District of Columbia.

Respondent Bertram P. Holst is likewise an individual residing and doing business in Boone, Iowa. He is an agent of, and manager for, respondent Bernhart P. Holst in the transaction and operation of the business of said Bernhardt P. Holst as hereinafter set out.

Respondent C. M. Sellards is an individual having his place of business at 365 Twenty-fifth Avenue, San Francisco, Calif. He trades and does business under the name and style of Progressive Research Service, and the conduct of the business as hereinafter set out, said respondent C. M. Sellards is an agent of respondent Bernhart P. Holst.

Respondent Charles U. Branch is an individual trading and doing business under the name and style of National Press Service, with his place of business at Room 516, Douglas Building, 257 South Spring Street, Los Angeles, Calif., and is also, in the conduct of the business hereinafter set out, an agent for respondent, Bernhart P. Holst.

Respondent S. R. Melching is an individual trading under the name and style of International Press Service, with his place of business located at Boone, Iowa, and in the conduct of the business hereinafter set out, he is likewise the agent for respondent Bernhart P. Holst.

PAR. 2. Respondent Barnhart P. Holst is the publisher of a certain ten-volume encyclopedia which is sold and distributed to the public from the place of business of respondent Bernhardt P. Holst at Boone, Iowa, into and through the various States of the United States of America other than Iowa, under the name of "The Progressive Reference Library." This encyclopedia was originally published in or about the year 1895 under the name "Teachers' and Pupils' Cyclopedia," and thereafter it was published and sold respectively under the name "New Teachers' and Pupils' Cyclopedia" and under the name "International Reference Work," but is now being sold, as aforesaid, as "The Progressive Reference Library." Although there have been some revisions and enlargement of the said reference work from time to time, it is substantially the same as when first issued, in or about the year 1895.

PAR. 3. Respondent Bertram P. Holst resides in Boone, Iowa, and in the sale and distribution of the said Progressive Reference Library in commerce among and between the various States of the United States acts in the capacity of business manager and agent for respondent Bernhart P. Holst, publisher of said Progressive Reference

Library. Respondent C. M. Sellards, trading under the name and style of Progressive Research Service, has his office and place of business in the city of San Francisco, Calif., and is engaged in the sale and distribution of the encyclopedia known and designated as "The Progressive Reference Library," in the State of California and in various States of the United States other than California. When said Progressive Reference Libraries are sold by said respondent C. M. Sellards, he ships and causes them to be shipped from his place of business in San Francisco, Calif., into and through States of the United States other than California, to the purchasers thereof located in such other States.

Respondent Charles U. Branch trading under the name and style of National Press Service has his office and place of business in the city of Los Angeles, Calif., and is engaged in the sale and distribution of the said "Progressive Reference Library" in the State of California and in divers States of the United States other than California. When said "Progressive Reference Libraries" are sold by said respondent Charles U. Branch, he ships and causes them to be shipped from his place of business in Los Angeles, Calif., into and through States of the United States other than California to the purchasers thereof located in such other States.

In the conduct of the said business of selling and distributing the said encyclopedia and reference work known and designated as "Progressive Reference Library," including the aforesaid extension service, the said respondent Bernhart P. Holst, being the publisher thereof at Boone, Iowa, furnished to the respondents C. M. Sellards and Charles U. Branch, the said "Progressive Reference Library," which they sell to the public by personal solicitation and through salesmen and sub-agents. For this "Progressive Reference Library" respondent Bernhart P. Holst receives from his co-respondents Sellards and Branch, \$12.50 per set, and respondents Sellards and Branch in turn sell said encyclopedia to the buying public at \$49.50 per set, in manner and form as hereinafter set out.

The respondents Sellards and Branch sell said "Progressive Reference Library" to the public through installment contracts and the purchaser executes a contract promising to pay the full sum of \$49.50 in monthly payments to the respective respondent making the sale. Such contracts, when signed and executed by the purchasers, are sent and transmitted by respondents Sellards and Branch to respondent Bernhart P. Holst at Boone, Iowa, and are by respondents Sellards and Branch assigned to respondent Bernhart P. Holst. Respondent Bernhart P. Holst, on receipt of such contracts, advances to respondents Sellards and Branch 60% of the face value of said

contracts and promissory notes. The contracts of purchase executed by the various purchasers are assigned as collateral security for the loan of 60% of the face value of such contracts. Whenever default is made by purchasers in the payments due under said contracts, the said respondent Bernhart P. Holst, personally and through respondent Bertram P. Holst, his manager and agent and through his attorneys, undertakes to collect the amount due from such defaulted purchasers under the claim and pretext that he, Bernhart P. Holst, is an innocent purchaser of said contracts for value in due course and without notice of any possible defenses to the said contracts.

This elaborate arrangement existing between and among respondents Bernhart P. Holst, Bertram P. Holst, C. M. Sellards, and Charles U. Branch, is a sham and a subterfuge, and in truth and in fact, respondents Bertram P. Holst, C. M. Sellards, and Charles U. Branch are agents for the principal respondent Bernhart P. Holst, in the sale and distribution in commerce, as herein set out, of the said "Progressive Reference Library"; respondent Bertram P. Holst is resident agent and manager at Boone, Iowa, for his principal, respondent Bernhart P. Holst; and they are all engaged as principal and agent in the hereinafter described acts of unfair competition in commerce as herein set out.

The method by which the respondents sell and offer for sale the said "Progressive Reference Library" is as follows: The respondents, either in person or by duly constituted and appointed agents, sub-agents, or salesmen, represent to the purchaser or prospective purchaser that he or she is on a preferred list, and that he or she will be given a ten-volume set of the said "Progressive Reference Library" free, and that this free offer is made to the purchaser or prospective purchaser on the ostensible ground that the purchaser or prospective purchaser has exceptional ability in his or her chosen trade, profession or avocation. It is then represented to said purchasers or prospective purchasers that in order to avail themselves of this alleged free offer, it is only necessary that they (1) write the publisher a letter of commendation after they have had an opportunity to study the books, and (2) subscribe to a ten-year loose-leaf extension service at a cost to the purchaser of \$49.50, which it is represented will keep the reference library current and up to date, for the payment of which sum the purchaser signs a contract in writing agreeing to pay by monthly or other payments.

The aforesaid representations and inducements are false and misleading as the respective purchasers do not receive the ten-volume set of "Progressive Reference Library" free and at no cost when they purchase the ten-year extension service and execute the contract in con-

nection therewith, and the respective purchasers were not selected for the offer of said "Progressive Reference Library" for the reason that they had exhibited exceptional ability in their chosen trade or profession or for any other similar reason. The aforesaid representations are made solely for the purpose of inducing the purchase of the said "Progressive Reference Library." In truth and in fact, the purchase price of said "Progressive Reference Library" is included in the amount purportedly charged for the ten-year extension service and the same offer is made to all prospective purchasers alike without regard to their having exhibited any particular ability in any particular trade or profession.

The respondents, in person and through their agents, subagents and salesmen, represent to purchasers and prospective purchasers that the said "Progressive Reference Library," published and sold as aforesaid by respondents, has been revised, enlarged, and brought down to date. In truth and in fact, while said "Progressive Reference Library" may contain some slight enlargements and revisions, yet to all intents and purposes it has not been materially revised and enlarged since it was originally published in or about the year 1895. When dissatisfied purchasers complain of this and other defects in said encyclopedia to the respondent making the sale, such dissatisfied purchaser is advised that his or her contract is in the hands of respondent Bernhart P. Holst, an innocent purchaser for value without notice, and payment is insisted on and the dissatisfied purchaser is threatened with legal action and is forced to pay therefor.

In the publication and sale of said "Progressive Reference Library" in commerce as herein described, the respondents, and each of them, are engaged in substantial competition with other individuals and with corporations, firms, partnerships, and associations who sell and distribute other encyclopedia and reference books in commerce as herein described and who do not represent that they are giving their respective sets of books free to the purchasers of an extension service or to the purchasers of any other service or books and who do not represent that their respective books have been revised, enlarged and brought up to date and who do not make other representations similar to those described herein when said representations are not true in fact but who accurately and truthfully represent the nature and character of their respective books and of the various services rendered by them in connection with the sale of said books.

PAR. 4. The acts and practices including the aforesaid misrepresentations and inducements of the respondents, and each of them, as detailed herein, have the tendency and capacity to, and do, mislead and deceive members of the purchasing public into the erroneous and

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mistaken belief that the misrepresentations above described and referred to were true and into the purchase of "Progressive Reference Library" and the extension service on account of such belief and on account of their reliance in the truthfulness of said representations. Many sales have been made by the respondents to purchasers who, induced by the representations herein described believed that in purchasing said extension service for the price of \$49.50 they were, as members of a limited or selected class, receiving free of charge the set of books "Progressive Reference Library" which was represented to be an enlarged, revised and up-to-date reference work. As a result thereof, trade has been unfairly diverted to all and each of the respondents from those competitors who do not make use of the same or similar misrepresentations in the offering for sale or sale of their respective encyclopedias and reference works.

There is no testimony or other evidence in this proceeding connecting respondent S. R. Melching with the acts of unfair competition in commerce alleged in the complaint.

CONCLUSION

The aforesaid acts and practices of the respondents, Bernhart P. Holst, an individual trading under the name and style of Holst Publishing Company; Bertram P. Holst, manager for and agent of Bernhart P. Holst; C. M. Sellards, an individual trading under the name and style of Progressive Research Service, and as agent for respondent, Bernhart P. Holst; and Charles U. Branch, an individual trading under the name and style of National Press Service and as agent of respondent, Bernhart P. Holst are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in 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 having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence taken before W. W. Shepard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the said complaint and in opposition thereto, briefs filed herein, and oral arguments by John W. Hill-drop, counsel for the Commission, and by Fred Risser, counsel for respondents Bernhart P. Holst and Bertram P. Holst, and the Com-

mission having made its findings as to the facts and its conclusion that said 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 ordered, That the respondents, Bernhart P. Holst, as an individual, and trading under the name and style of Holst Publishing Company; Bertram P. Holst, manager for and agent of Bernhart P. Holst; C. M. Sellards, an individual, and trading under the name and style of Progressive Research Service, and as agent for respondent Bernhart P. Holst; Charles U. Branch, an individual trading under the name and style of National Press Service and as agent of respondent Bernhart P. Holst; and said individuals trading under any other name or through any other means or any corporate device; their joint or respective representatives, agents and employees, in connection with the offering for sale, sale, and distribution of certain books or reference work now designated and sold under the name "Progressive Reference Library," together with a loose-leaf extension service, or substantially the same books or reference work designated and sold under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

(a) That the purchaser or prospective purchaser is being given or will be given a set of the said reference work now designated as "Progressive Reference Library" free by reason of the exceptional ability of the purchaser or prospective purchaser in his or her chosen trade, profession or avocation and standing in his or her community, or for any other reason;

(b) That any purchaser or prospective purchaser is on a preferred list to receive a ten-volume set of the said reference work now designated as "Progressive Reference Library" free;

(c) That the purchaser or prospective purchaser is being given or will be given a set of the reference work now designated as "Progressive Reference Library" free, on condition that such purchaser or prospective purchaser writes respondent a letter of commendation concerning the said reference work now designated as "Progressive Reference Library," after such purchaser or prospective purchaser has had an opportunity to study the same;

(d) That any purchaser or prospective purchaser is being given or will be given a set of the reference work now designated as "Progressive Reference Library" free, on condition that such purchaser or prospective purchaser subscribes to a ten-year loose-leaf extension service or any extension service covering any period of time;

Order

24 F. T. C.

(e) That any purchaser or prospective purchaser is receiving, or will receive, any benefit, discount or concession, in any manner or form, or by any pretense; and that any purchaser or prospective purchaser, in paying the sum of \$49.50, is paying other than the usual selling price of said reference work now designated as "Progressive Reference Library";

(f) That the reference work now designated as "Progressive Reference Library" has been revised, enlarged and brought down to date, until and unless said reference work has in truth and in fact been substantially revised, enlarged and brought down to date;

(g) That Bernhart P. Holst, or any other of said respondents, or any other person, firm or corporation, is a bona-fide purchaser for value without notice of the contracts executed by purchasers in connection with the purchase of said reference work now designated as "Progressive Reference Library" and the accompanying extension service, when such is not the fact;•

(h) That the purchaser or prospective purchaser of said reference work now designated as "Progressive Reference Library" is only buying or paying for an extension service intended to keep the set of books up to date.

It is ordered, That the case growing out of the complaint hereinbefore issued on the 10th day of December, A. D., 1935, as to said respondent S. R. Melching be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same should the facts so warrant.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Complaint

IN THE MATTER OF
IMPERIAL DISTILLERS COMPANY

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF
AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF TITLE I
OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2395.—Complaint, May 17, 1935—Order, Jan. 14, 1937

Consent order requiring respondent corporation, its agents, etc., in connection with sale or offer in interstate commerce of whiskies, gins, and all other alcoholic beverages, but excepting gins produced by it through process of rectification of alcohol purchased, but not produced, by it, as specified, to cease and desist from representing, through use of word "Distillers" in its corporate name and on its stationery, advertising, etc., or in any other way, that it is a distiller of whiskies, gins, or other alcoholic beverages, or that said whiskies, etc., were by it made through process of distillation, or that it owns, operates, or controls a place where such products are thus made, unless and until it shall own, operate, or control a place or places where such products are by it manufactured through a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until manufacture thereof is completed; and, Ordered further, That Count II of complaint as to violation of National Industrial Recovery Act be dismissed.

Mr. PGad B. Morehouse for the Commission.

Mr. Fred A. Caskey and *Mr. Briggs C. Simpich*, of Washington, D. C. and *Schmalzriedt, Frye, Granse & Frye*, of Detroit, Mich., for respondent.

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 Imperial Distillers Company, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and in violation of the Act of Congress approved June 16, 1933, known as the "National Industrial Recovery Act," and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Count 1

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under the laws of the State of Michigan, with its office

¹ Count Two of the complaint, under the National Industrial Recovery Act, dismissed.