

IN THE MATTER OF
THE TIMES SALES COMPANY, INC., ET AL.

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

Docket 2801. Complaint, May 14, 1936.¹—Decision, July 9, 1937

Where a corporation and three individuals engaged, as the case might be, as executive officers thereof in carrying on or continuing the business of said corporation or in conducting the business successor thereto, engaged in selling, by direct solicitation of purchasers in various States and in the District of Columbia, through their agents thereunto authorized, a certain encyclopedia, supplement or revision service, certificate evidencing membership in the "Bureau of Research," and certain magazines, in combination, for specified sums and under specified terms, through the medium of printed contract forms, altered at times by certain agents through writing thereon different and other terms than those covered by printed form and different and other magazines than those provided for and authorized—

Represented and insisted to purchasers and signers of such altered contracts that the printed terms of the contracts put them on notice of selling agents' limitation of authority in such respect, and through letters, collection agents, and attorneys, disavowed and denied the authority of the selling agents to make such alterations, and represented and insisted that such contracts were legally enforceable against signers, according to printed terms thereof, as if unaltered in writing and regardless of written alterations in printed terms appearing on face thereof, and sued and threatened purchasers and signers with suit for legal enforcement of same and for collection of the unpaid portion of the consideration, and thereby, through force, duress, and undue influence, and under false pretenses that said contracts were legally enforceable against signers without reference to written alterations in printed terms thereof, converted acts and conduct of said selling agents to the benefit and profit of their business, and achieved sale and distribution of said "combination sale" encyclopedia deal, inclusive of books, services, and magazines; Facts being printed terms of notices set forth in contracts were not sufficient to put purchasers and prospective purchasers and signers on notice that selling agents were without authority to make alterations or changes in writing on face of contracts over printed terms thereof with respect to time or terms under which consideration was to be paid or payable, or to the effect that said agents' authority to substitute magazines was limited to certain periodicals only, but it was consistent with such printed terms and provisions that such alterations or changes should take precedence over the other, and said contracts, as thus altered, were not in fact subject to legal enforcement, except in accordance with said alterations and changes;

¹ Complaint published as amended as of July 9, 1937.

Complaint

With result that acts and practices of said selling agents in representing that they had authority to alter printed terms as above set forth, and in making such alternations, had tendency and capacity to mislead and deceive purchasers and prospective purchasers of encyclopedias, with and without revision and research services, and of magazine subscriptions, into false and erroneous belief that said representations were true, and into purchase of said encyclopedias, etc., and into signing of contracts therefor in reliance upon such erroneous belief and upon terms of said contracts as thus written in by said agents, and with further result that said various acts, threats, force, duress, undue influence, and false pretenses in performing, enforcing, and endeavoring to enforce such altered contracts, signed as above set forth, deceived purchasers and signers into false and erroneous belief that they were bound thereto according to printed terms thereof, and thus into performance of said contracts in accordance with such terms, and of inducing purchasers and signers into such performance, in accordance with such printed terms, and into completed purchase of said encyclopedia, services and magazines offered and sold by them, and with tendency and capacity to divert trade to them from their competitors who do not make false and misleading statements and representations in connection with the sale of their products, and do not promote and achieve such sales by means of false and misleading representations or by threats, force, duress, undue influence, or false pretenses:

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

Mr. Jay L. Jackson for the Commission.

Mr. Edward Davis, of Philadelphia, Pa., 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 The Times Sales Company, Inc., a corporation; The Times Sales Company; Edward B. Seegar, doing business and trading as The Times Sales Company; William Heim and George G. Heim, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the 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:

PARAGRAPH 1. Respondent, The Times Sales Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal place of business located at 1524 Chestnut Street, in the city of Philadelphia, in the State of Pennsylvania. All or approximately all of the controlling

Complaint

25 F. T. C.

and voting capital shares of stock of said corporate respondent are owned, held or controlled by one or more of the other respondents named herein. Since the 8th day of May 1934, the assets, business, and affairs of said corporate respondent have been, and now are, held by and under the control, direction, and management of one or more of the other named respondents herein.

Respondent, The Times Sales Company, is a proprietorship organized and existing under and by virtue of the laws of the State of Pennsylvania, registered under the "Fictitious Name Act" of said State, under the name of the respondent, Edward B. Seegar, with its principal place of business located at 1524 Chestnut Street, in the city of Philadelphia of said State.

Respondent, Edward B. Seegar, is an individual trading under the name and style of The Times Sales Company, with his principal office and place of business located at 1524 Chestnut Street, in the city of Philadelphia, in the State of Pennsylvania. On or about the 8th day of May 1934, the said Edward B. Seegar became the successor in interest to the assets, business, and affairs theretofore owned and operated by The Times Sales Company, Inc., corporate respondent named herein.

Respondents, William Heim and George G. Heim, are individuals and officers of The Times Sales Company, Inc., corporate respondent named herein, and members and officers of The Times Sales Company, copartnership respondent named herein, with their principal place of business located at 1524 Chestnut Street, in the city of Philadelphia, State of Pennsylvania, and at all times material to this complaint said respondents have been and are now engaged in and with the business of said corporate and copartnerships respondents named herein, and with the advertising, promotion, and management thereof.

The aforesaid respondents have been, and each of them has been, for more than two years last past, and now are, engaged in the business of selling, offering for sale, and distributing in commerce among and between the various States of the United States, and in the District of Columbia, an encyclopedia consisting of eight volumes, called and described as "The Times Encyclopedia" and sometimes as "The Times Encyclopedia and Gazetteer," in combination with a 10 years supplemental loose leaf extension or revision service issued periodically for said encyclopedia, and a membership in a bureau of research, together with magazine subscriptions and periodicals. Respondents have described and do describe such transactions as being a "combination sale" and as an "encyclopedia deal." In the course and conduct of the said business, respondents have

Complaint

caused, and each of them has caused, and now cause, said books, encyclopedia, services, magazines, and periodicals, composing said deal, when sold or ordered, to be shipped and transported from the State of origin thereof to various States of the United States other than the State of origin of said shipments, and to and in the District of Columbia.

PAR. 2. In the course and conduct of the business of respondents, as aforesaid, respondents, at all times material to this complaint, have been and are now in competition with other corporations, firms, partnerships, and individuals engaged in the same and similar business and in like commerce.

PAR. 3. It has been and now is the practice of respondents and of each of them to offer for sale, sell, and distribute the said combination sale and encyclopedia deal, including encyclopedia of eight volumes, 10 years revision service, 10 years research bureau membership, and magazine subscriptions, by use of the mails, interstate carriers, and other channels of commerce in and among the various States of the United States and in the District of Columbia; by means of sales agents, canvassers, and employees; by means of contracts, credit instruments, collection agents, employees, and attorneys, and by means of circulars, letters, pamphlets, literature, and by oral, printed, written, and pictorial displays, statements, and representations in the course and conduct of which respondents have made and now make false and misleading statements, representations, and promises, and otherwise have used and now use unfair methods in the solicitation of and sale to purchasers and prospective purchasers of respondents' said combination sale and encyclopedia deal, all to the injury of the public and to the injury of competitors of respondents.

PAR. 4. In the course and conduct of the business of respondents, as aforesaid, respondents and their agents and employees have used and use printed forms of contracts, to which the signatures of purchasers and subscribers have been and now are solicited and secured by agents, canvassers, and employees of respondents thereunto duly authorized. One form of such contract used by respondents during the year 1935 and theretofore, or as late as the month of December, 1934, purported on its face to be a "Special Advertising Contract" offered by The Times Sales Company, Inc., of Philadelphia, Pa., respondent herein, and among other things stated and represented that respondents' encyclopedia referred to therein was and is "Kept Constantly Up-To-Date." A later form of contract, used by respondents during and since the year 1934, purports on its face to be the contract offered by The Times Sales Company, Inc., of Philadelphia, Pa., and carries on

Complaint

25 F. T. C.

its face a pictorial display of the eight volumes constituting the encyclopedia and of the binder for the loose leaf revision service. Common to the printed terms of the contracts just described, and to the form of contract used by respondents during the years 1935 and 1936 to date, are the following terms and provisions, to wit:

Gentlemen: You may enter my order for the publications and services as listed hereunder to be sent parcel post or express charges collect.

COMBINATION SALE		Vols.	Price
THE TIMES ENCYCLOPEDIA-ARTCRAFT BINDING-----		8 Vols	-----
10 YEARS REVISION SERVICE-----		Total Cost \$15.00	
10 YEARS BUREAU OF RESEARCH MEMBERSHIP			
1 Yr. HARPERS	2 Yrs. ASIA	3 Yrs LIFE	

Which I promise to pay to your order as follows: \$5.00 with order, balance as follows: \$6.50 upon delivery of Encyclopedia, Plus Parcel Post or Express Charges and \$3.50 in 30 days. On receipt of final payment I am to receive Magazine Subscriptions and Coupon Bond for Loose Leaf Service and Membership Certificate, for Bureau of Research. *I am retaining a copy of this agreement, and have no verbal or written understanding with your representative other than the terms herein stated.* This contract is not subject to change or cancellation. The Times Sales Co. guarantees their Publications to be equal in every respect to samples shown; hence no solicitor is authorized to take orders subject to approval. No subscriptions accepted from newsdealers or libraries.

In the course and conduct of the business of respondents, as aforesaid, it has been and is the practice of respondents' sales agents and employees to solicit, induce and secure the names and signatures of purchasers and subscribers to the aforesaid contracts and to close sales for respondents' said combination sale and encyclopedia deal, including books, services, research bureau membership, and magazine subscriptions, by stating, representing, and implying that the printed terms of said contracts were and are open to alterations and changes, in the matters of time and terms of payment, and with reference to the magazines named in the printed terms thereof, that other magazines not so named and printed but desired by purchasers and subscribers might be substituted for those named in the printed contract form, whereupon said agents did and do make in writing upon the face of said contracts certain alterations and changes in the printed terms thereof by altering and changing either the time of payment or the terms of payment, or both time and terms of payment, and by substituting for one or more of the magazines named in print on the contract form the names of and subscriptions to magazines not so named in print, all in accordance with the particular agreements and understanding as made and had with said

purchasers and subscribers signing their names and signatures to said contracts.

PAR. 5. Upon receipt of said contracts above described, signed by persons solicited by respondents' sales agents, in which the printed terms have been and are altered and changed in writing on the face thereof, as aforesaid, it has been and is the practice of respondents, and of each of them, verbally to disavow and deny the authority of said agents in making any of the alterations and changes in the printed terms of respondents' contract form, as described in paragraph 4 above, but nevertheless to enforce, or seek to enforce, and otherwise to treat the said contracts as binding and enforceable against signers thereto according to the printed terms thereof and as being unaffected and uninduced by the alterations and changes made in writing on the face thereof, or by false, misleading, and unauthorized statements, representations, and promises made by respondents' sales agents, in the course and conduct of which, while refusing to honor said contracts according to the alterations and changes in the printed terms made in writing on the face thereof, both as to time and terms of payment and with reference to the substitution of magazine subscriptions, respondents have held and hold to, and have enforced and enforce, the printed terms of said contracts against signers thereto, and through and by means of letters, collection agents, and attorneys, did and do threaten suit for the legal enforcement of said contracts, and otherwise by force, duress, undue influence, and under the false pretense that said contracts are legally enforceable against signers thereto according to the printed terms thereof as against the aforesaid alterations and changes made in writing on the face thereof, have held and hold to the benefits of said contracts the same as if said contracts had been and were induced, secured, and closed in reliance upon the printed terms and offer therein; thereby converting the acts and conduct of respondents' sales agents to respondents' benefit and achieving the sale and distribution of respondents' combination sale and encyclopedia, inclusive of the books, services, membership, and magazines named in the print appearing on the face of said contracts.

PAR. 6. In the course and conduct of the business of respondents, as aforesaid, respondents and their agents and employees did and do falsely and misleadingly state, represent, and promise that the said combination sale and encyclopedia deal includes a 10 years revision service in the form of loose leaf supplements issued and distributed quarterly each year, by means of which the encyclopedia of eight volumes is kept "up-to-date" and "abreast of the times"; whereas in

truth and in fact it has not been and is not the practice of respondents to perform said promise or to cause said revision service to be rendered to purchasers of said combination sale and encyclopedia deal, and whereas in truth and in fact the said revision service did not and does not keep the said encyclopedia up-to-date or abreast of the times.

PAR. 7. Respondents' said false and misleading statements, representations, acts, and course of conduct, as set forth in paragraph 6 above, and respondents' threats, force, duress, undue influence, and false pretenses in the enforcement of contracts, as set forth in paragraphs 4 and 5 above, have had and have, and each of them has had and has, the tendency and capacity to mislead and to deceive purchasers and prospective purchasers of encyclopedias, with and without revision services, reference books, and magazine and periodical subscriptions, into the false and erroneous belief that respondents' statements and representations in connection with the sale of respondents' encyclopedias, revision and research services, and magazine subscriptions were and are true, and into the purchase of said encyclopedias, services, and subscriptions in reliance upon such erroneous belief.

The aforesaid acts and practices have had and have, and each of them has had and has, the tendency and capacity to divert trade to respondents from their competitors who do not falsely and misleadingly represent their products and who do not promote and achieve the sale of their said products by means of false and misleading statements and representations or by means of threats, force, duress, undue influence, or false pretenses.

PAR. 8. The above and foregoing course of conduct, acts, and practices of respondents have been and are all to the prejudice of the public and respondents' competitors, and have been and are unfair methods of competition within the meaning and intent 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 (38 Stat. 719), the Federal Trade Commission on the 14th day of May, 1936, issued, and on the 15th day of May 1936, served, its complaint in this proceeding upon respondents The Times Sales Company, Inc., a corporation; The Times Sales Company; Edward B. Seegar, doing business as The Times Sales Company, and William Heim and George G. Heim, charging them with the use of unfair methods of competition in commerce in violation of the provi-

sions of said act. On the 11th day of November 1936, respondents filed their substituted and amended answer in this proceeding. Thereafter, a stipulation as to the facts, dated May 20, 1937, was entered into, whereby it was stipulated and agreed that the statement of facts contained therein, executed by and on behalf of respondents through their counsel, Edward Davis, Esq., and by W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the Commission might proceed upon such statement of facts to make its report, stating its findings as to the facts (including inferences which it might draw from said facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, the said complaint, in accordance with the said stipulation as to the facts, was amended to accord with the facts as shown by respondents' said substituted and amended answer and said stipulation as to the facts. Thereafter, this proceeding regularly came on for hearing before the Commission on said complaint, as amended, and on said substituted and amended answer and stipulation, the said stipulation having been approved and accepted, 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 The Times Sales Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Pennsylvania, and since the date of its incorporation, October 3, 1929, was actively and continuously engaged in business until the 17th day of April 1934, with its principal place of business located at 1524 Chestnut Street, in the city of Philadelphia, State of Pennsylvania. On the said 17th day of April 1934, said corporate respondent was marked "out of existence," on the records of the Department of Revenue of the State of Pennsylvania, in accordance with the laws of the State of Pennsylvania, and since said date has been and remained inactive with respect to engaging in the business of selling and distributing its products in commerce among and between the several States of the United States. Said respondent has never been legally dissolved and is subject to revival for active business upon the payment of certain corporation taxes in accordance with the laws of the State of Pennsylvania. The last duly elected

and acting executive officers of said corporate respondent are respondents William Heim and George G. Heim, who were also the duly elected and acting executive officers of said corporation, engaged in the control, direction, and management of the business and affairs thereof, from the date of its said incorporation to and including the 17th day of April 1934. During the period between April 17, 1934, and May 10, 1934, the assets, business, and affairs of said corporate respondent were under the control, direction, and management of respondent William Heim. On or about the 9th day of May 1934, the business and affairs of said corporate respondent were acquired by respondent Edward B. Seegar, trading under the name of The Times Sales Company, respondent named herein, and the said business and affairs of said corporation are now held and controlled by the said respondent Edward B. Seegar.

Respondent The Times Sales Company is a proprietorship organized and existing under and by virtue of the laws of the State of Pennsylvania and as such is owned and controlled by respondent Edward B. Seegar, and registered under the name of respondent Edward B. Seegar, on the 10th day of May 1934, under the "Fictitious Name Act" of the State of Pennsylvania. Its principal place of business is located at 1524 Chestnut Street, in the city of Philadelphia, State of Pennsylvania.

Respondent Edward B. Seegar is an individual doing business and trading under the name and style of "The Times Sales Company", respondent named herein, and has his principal office and place of business located at 1524 Chestnut Street, in the city of Philadelphia, State of Pennsylvania.

Respondent William Heim is an individual and the last duly elected, acting, and managing executive officer of the corporate respondent. The Times Sales Company, Inc., and since the organization of respondent The Times Sales Company has been, and now is the manager of said company, and as such has been, and now is, engaged in and with the business and affairs of said respondent companies and in the business promotion and management thereof.

PAR. 2. Respondents, The Times Sales Company, Edward B. Seegar, trading as The Times Sales Company, and William Heim, for more than two years next preceding the issuance of the Commission's complaint in the instant proceeding have been, and now are, engaged in and with the business of selling, offering for sale, and distributing in commerce among and between the various States of the United States, and in the District of Columbia, an encyclopedia consisting of eight books or volumes, called and described as "The Times Encyclopedia," and sometimes as "The Times En-

yclopedia and Gazetteer," together and in combination with a ten years supplement or revision service issued periodically for said encyclopedia, a membership in a so-called "Bureau of Research," and subscriptions to various magazines and periodicals of interstate circulation. During the years 1932, 1933, and 1934, but not after April 17, 1934, corporate respondent The Times Sales Company, Inc., was engaged in the same and like line of commerce as aforesaid, although certain contract forms bearing the name of said The Times Sales Company, Inc., were used subsequent to April 17, 1934. Subsequent to said date, and more particularly from May 8, 1934, the business of selling and distributing the said encyclopedia, supplement or revision service, membership in the Bureau of Research, and magazines and periodicals, was conducted by respondents The Times Sales Company, Edward B. Seegar, trading as The Times Sales Company, and William Heim.

Respondents have described and do describe the aforesaid sales transactions as being a "combination sale" and as an "encyclopedia deal."

In the course and conduct of the business aforesaid, respondents have caused and each of them has caused, and respondents The Times Sales Company, Edward B. Seegar, trading as The Times Sales Company, and William Heim, now cause the said books, encyclopedia, supplement or revision service, and a certificate evidencing membership in the Bureau of Research, entitling the member to research services, and magazines and periodicals, composing the so-called "combination sale" and "encyclopedia deal," when sold or ordered, to be shipped and transported from the State of origin thereof, to various States of the United States other than the State of origin of said shipments, and to and in the District of Columbia.

PAR. 3. During the course and conduct of the business of respondents, as aforesaid, respondents, including corporate respondent The Times Sales Company, Inc., when active, have been and are in competition with other corporations, firms, partnerships, and individuals engaged in the business of selling, offering for sale, and distributing in commerce among and between the various States of the United States and in the District of Columbia, so-called reference books and encyclopedias, both with and without supplemental or revision service, and subscriptions to magazines and periodicals.

PAR. 4. In the course and conduct of the business of respondents, all as aforesaid, it has been and is their practice to offer for sale and sell said combination sale or encyclopedia deal, inclusive of "The Times Encyclopedia," supplement or revision and research services, together with subscriptions to magazines or periodicals, by means

Findings

25 F. T. C.

of direct solicitation of purchasers thereof, located in various States of the United States and in the District of Columbia, by agents thereunto authorized by said respondents, which agents receive and take orders therefor in the form of written contracts and forward the same to respondents' principal place of business in the city of Philadelphia, State of Pennsylvania. Upon receipt of such orders, it has been and is the practice of respondents to fill the same by causing the said encyclopedia, supplement or revision service, research services, and magazines, or subscriptions thereto, to be sent through the United States mails. Subscriptions to magazines are cleared through the agencies of their publishers. It has also been and is the practice of respondents to supply the said agents with a list of names of those magazines for which said respondents were and are authorized by publishers to take orders, including, among others, *Harpers*, *Asia*, *Modern Mechanics*, *Forbes*, and *Redbook*. Respondent The Times Sales Company and respondent Edward B. Seegar, trading under the name The Times Sales Company, now employ three agents or salesmen, but said respondents have variously employed between ten and fifteen of such agents or salesmen during the times hereinabove mentioned. Said agents or salesmen are paid no salaries, work on a commission basis, and are free to solicit orders and to sell in territories of their own choice.

PAR. 5. The contract forms supplied by respondents to the aforesaid agents and salesmen, and used by them and by the said agents and salesmen in soliciting and taking orders, bear on their face certain printed terms and provisions, together with certain representations with respect to the said combination sale or encyclopedia deal, together with spaces for the signatures of, and for certain collateral information concerning, purchasers and subscribers. One form of such contract, which was used by respondents and the aforesaid agents and salesmen during the years 1934 and 1935, bears on its face, among other things, a pictorial display and representation of the eight volumes constituting the encyclopedia and of a binder for the supplement or revision service and purports to be the offer and contract of respondent The Times Sales Company, Incorporated. Another form of such contract used by respondents and the aforesaid agents and salesmen during the years 1934 and 1935 purports to be the offer and contract of respondent The Times Sales Company and represents on its face to be a "Special Advertising Contract," and among other things further represents that "The Times Encyclopedia" and "Loose Leaf Extension Service," therein referred to, are "Kept Constantly Up-to-Date." A further form of contract which was used by respondent The Times Sales Company, Inc., and its

agents and salesmen during the year 1933 and until April 17, 1934, and by respondent The Times Sales Company, and by its owner, respondent Edward B. Seegar, and its manager, respondent William Heim, and their agents and salesmen, subsequent to May 10, 1934, until the year 1935, purports on its face to be the offer and contract of The Times Sales Company, Inc., and further represents that the same is a "Special Advertising Contract," and that "The Times Encyclopedia" and the "Loose Leaf Extension Service," therein referred to, are "Kept Constantly Up-to-Date."

Common to the printed terms of the contract forms above referred to and described, and to the form of contract used by respondents The Times Sales Company, Edward B. Seegar trading as The Times Sales Company, and William Heim, and their agents and salesmen, during the year 1936, are the following terms and provisions, to wit:

Gentlemen: You may enter my order for the publications and services as listed hereunder to be sent parcel post or express charges collect.

COMBINATION SALE		Vols.	Price
THE TIMES ENCYCLOPEDIA—ARTCRAFT BINDING		8 Vols.	-----
10 YEARS REVISION SERVICE-----		Total Cost	\$15.00
10 YEARS BUREAU OF RESEARCH MEMBERSHIP			
1 Yr. HARPERS	2 Yrs. ASIA	3 Yrs. LIFE	

Which I promise to pay to your order as follows: \$5.00 with order, balance as follows: \$6.50 upon delivery of Encyclopedia, Plus Parcel Post or Express Charges and \$3.50 in 30 days. On receipt of final payment I am to receive Magazine Subscriptions and Coupon Bond for Loose Leaf Service and Membership Certificate, for Bureau of Research. *I am retaining a copy of this agreement, and have no verbal or written understanding with your representative other than the terms herein stated.* This contract is not subject to change or cancellation. The Times Sales Co. guarantees their Publications to be equal in every respect to samples shown; hence no solicitor is authorized to take orders subject to approval. No subscriptions accepted from newsdealers or libraries.

PAR. 6. Respondents did not and do not affirmatively authorize the aforesaid selling agents to represent the terms and provisions of the offer made by respondents other than as set forth in the printed terms of the contracts used by said agents, or to make oral or written changes or alterations in the printed terms thereof, except with reference to the substitution of certain magazines, the names of which are supplied by respondents and known to said selling agents. Nevertheless, certain of said agents, in selling and soliciting purchasers and prospective purchasers of respondents' combination sale or ency-

clopedia deal, and in soliciting, inducing, and securing signatures of purchasers to said contracts, did and do in fact represent that they have authority to alter and change the printed terms thereof with respect to the time, terms, and conditions therein providing for the payment of the consideration of \$15.00, and with respect to magazines named in the printed terms thereof, to substitute therefor other magazines of the purchaser's choice not so named in print. Thereupon the said agents did and do make in writing upon the face of said contracts certain alterations and changes in the printed terms thereof, altering and changing the time of payment, or terms of payment, or both the time and terms of payment, and by substituting for one or more of the magazines, named in print therein, the names of, and subscriptions to, magazines not so named in print, but all in accordance with the particular agreements and understandings had and made with the purchasers or subscribers signing their names to said contracts.

In the foregoing connection, for example, the printed terms of the contract forms, hereinabove described, provide for \$5.00 payment with the order, \$6.50 upon delivery of encyclopedia, plus parcel post or express charges, and \$3.50 in thirty days. Nevertheless, certain of said agents did and do agree with purchasers to accept a down payment of less than \$5.00, and upon receipt of such amount, acknowledge the same in writing upon the face of the contracts signed by the purchasers and thereon further indicate in writing the balance of moneys due under such contracts. A further form of alteration, demonstrative of the conduct of said agents, is that by which said agents, in accordance with agreements had and made with purchasers and signers thereto, acknowledge in writing upon the face of said contracts the receipt of the down payment of \$5.00, and further to provide in writing that the balance of \$10.00 is payable in two subsequent payments and that the purchaser is to be billed for such balance or balances in lieu of C. O. D. With respect to the substitution of the names of magazines other than those named in the printed forms of said contracts, certain of said selling agents did and do write in the names of magazines for which they or respondents have no authority to sell or take subscriptions, such as *Atlantic Monthly* as a substitute for *Life*, or for *Asia*, *Christian Century* for *Asia*, and *Readers Digest* for *Life*. By the above means and methods purchasers and signers to said contracts are induced to purchase and sign their names to said contracts.

PAR. 7. Upon receipt of the contracts, altered and changed by the said agents in writing upon the face thereof, as aforesaid, it has been and is the practice of respondents to proceed to the performance of

such contracts in accordance with the printed terms thereof, the same as if no such alterations were made or so appeared and as being unaffected and uninduced by the representations and terms written in by the said agents on the face of the contract, by sending the encyclopedia C. O. D. for balances due, when the purchaser and person signing said contract, according to the written alterations thereon, is to be billed for the balance or balances in lieu of C. O. D., and by clearing subscriptions to the magazines named in print on said contracts, and otherwise insisting upon said purchasers accepting the magazines so named, instead of the magazines actually subscribed for by said purchasers and the names of which have been and are written in on the face of said contracts in substitution of one or more of the magazines named in print therein, more particularly when the magazines substituted are ones for which respondents have no authority to sell or take subscriptions, or otherwise cannot be supplied by respondents.

In dealing with purchasers and signers to contracts altered in writing as above described, it has been and is the further practice of respondents, through and by means of letters, collection agents, and attorneys, to disavow and deny the authority of the selling agents to make the alterations above described, to represent and insist that the printed terms of the contracts put such purchasers and signers on notice of the selling agent's limitation of authority in this respect, and to represent and insist that the said contracts are legally enforceable against signers thereto according to the printed terms thereof, the same as if unaltered in writing and regardless the written alterations in the printed terms appearing on the face thereof. In connection therewith respondents sue and threaten purchasers and signers to said contracts with suit for the legal enforcement of the same and for collection of the unpaid portion of the consideration \$15.00 and hold to the down payments made by purchasers in such contracts. By these means of force, duress, and undue influence, and under the false pretense that said contracts are legally enforceable against signers thereto, without reference to the written alterations in the printed terms thereof, respondents have converted and convert the acts and conduct of the said selling agents to the benefit and profit of the business conducted by respondents, and did and do achieve the sale and distribution of the said combination sale or encyclopedia deal, inclusive of the books, services, and magazines.

PAR. 8. The printed terms and notices set forth in the contracts hereinabove described are not sufficient to put purchasers and prospective purchasers and signers thereto on notice that the said selling agents are without authority to make alterations or changes in writ-

Findings

25 F. T. C.

ing on the face of the contracts over the printed terms thereof with respect to the time or terms under which payment of the consideration is paid or payable, or that the authority of said agents with respect to the substitution of magazines is limited to certain magazines only.

It is consistent with the printed terms and provisions of the contracts hereinabove described that alterations or changes made on the face thereof in writing, with respect to the time or terms of payment and substitution of magazines, shall take precedence over the printed terms thereof relating to time and terms of payment and substitution of magazines, and said contracts, as so altered, are not in fact subject to legal enforcement except in accordance with the said alterations and changes.

PAR. 9. The combination sale of encyclopedia deal hereinabove described does in fact include a 10-year revision service, in the form of supplements or booklets which are issued and distributed quarterly each year, by which certain items or portions of the encyclopedia are amended and supplemented from time to time. In connection with this service, purchasers are supplied with so-called "tear slips," which provide spaces for the name and address of purchaser and person entitled to such service. As a condition precedent to mailing and receipt of each issue of the supplement or revision service, purchasers are required to fill in the blanks and send the same to the office of respondents. The purpose of this practice is to provide respondents with the correct names and addresses of the persons entitled to such supplements prior to mailing thereof, this for the reason that the purchase price of the combination sale or encyclopedia deal does not allow or include the cost of periodical circularization of customers to ascertain correct address, and for the reason that constant changes of address among purchasers otherwise results in the loss of supplements in the course of delivery.

PAR. 10. The aforesaid acts and practices of respondents' selling agents in representing that they have authority to alter the printed terms of contracts with respect to time and terms of payment and substitution of magazines, and pursuant to such representations, in making such alterations in writing upon the face of said contracts, all as set forth in paragraph 6 above, have had and have, and each of them has had and has, the tendency and capacity to mislead and deceive purchasers and prospective purchasers of encyclopedias, with and without revision and research services, and of magazine subscriptions, into the false and erroneous belief that said representations are true, and into the purchase of encyclopedias, services, and magazine

464

Order

subscriptions of respondents, and into the signing of contracts therefor in reliance upon such erroneous belief and in reliance upon the terms of said contracts as written in and on the face thereof by said agents. The aforesaid acts, representations, threats, force, duress, undue influence, and false pretenses, of respondents in performing, enforcing, and endeavoring to enforce contracts signed by persons relying upon written alterations appearing on the face thereof over the printed terms thereof, all as set forth in paragraphs 7 and 8 above, have the tendency and capacity to, and did and do in fact, deceive purchasers and signers to said contracts into the false and erroneous belief that they were bound thereunto according to the printed terms thereof, and thus, into the performance of said contracts in accordance with said printed terms; and the said practices otherwise have the tendency and capacity to, and did and do, induce purchasers and signers to such contracts into the performance thereof in accordance with said printed terms and into the completed purchase of the encyclopedias, services, and magazines offered for sale and sold by respondents.

PAR. 11. The aforesaid acts and practices of respondents and of the said selling agents have had and have, and each of them has had and has, the tendency and capacity to divert trade to the business of respondents from their competitors who do not make false and misleading statements and representations in connection with the sale of their products and who do not promote and achieve the sale thereof by means of false and misleading representations or by means of threats, force, duress, undue influence, or false pretenses.

CONCLUSION

The aforesaid acts and practices of respondents, and of their agents, under the conditions and circumstances set forth in the foregoing findings, 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, as amended, and the substitute and amended answer filed herein by respondents on November 11, 1936, and upon the agreed stipulation as to the facts, dated

Order

25 F. T. C.

May 20, 1936, entered into between respondents herein, The Times Sales Company, Inc., a corporation; The Times Sales Company; Edward B. Seegar, trading as The Times Sales Company, and William Heim, and W. T. Kelley, Chief Counsel for the Commission, which stipulation provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon said respondents findings as to the facts (including inferences which it may draw from said stipulated facts) and its conclusion based thereon, and the Commission 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 hereby ordered, That the respondents, The Times Sales Company, Inc., a corporation; The Times Sales Company; Edward B. Seegar, individually, and trading as The Times Sales Company; and William Heim; their respective officers, agents, representatives, and employees, in connection with the sale of encyclopedias, revision and research services, magazines or other similar commodities in interstate commerce or in the District of Columbia, cease and desist from:

Representing in any manner that contracts for the purchase of the products or commodities sold by them, the terms and provisions of which have been altered, changed, or modified by their respective agents, employees, or representatives pursuant to agreement or understanding with the purchasers of such commodities, are subject to performance and are legally enforceable against said purchasers in accordance with the printed terms and provisions of said contracts irrespective of the alterations, changes, or modifications so made.

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.

Syllabus

IN THE MATTER OF

IMPERIAL CANDY COMPANY

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

Docket 2833. Complaint, June 4, 1936—Decision, July 9, 1937

Where a corporation engaged in manufacture and sale of so-called "draw" or "deal" assortments of candy, sale and distribution of which type candy by retailers by lot or chance has capacity and tendency to and does decrease sale of candy sold without any sales plan or device involving lottery or game of chance, i. e., "straight" goods, and sale of which type, providing, in connection with its sale to public, means or opportunity of obtaining a box of candy as a prize or becoming a winner by lot or chance, teaches and encourages gambling and is in violation of various municipal ordinances and regulations and State statutes and constitutions, and provides retail merchants with means of violating the laws of the several States, and sale of which candy, so packed and assembled as to enable retail dealers, without alteration, addition, or rearrangement, to resell same to consuming public by lot or chance, is contrary to public policy—

Sold, to wholesale and retail dealers, certain assortments of candy which were so packed and assembled as to involve, or were designed to involve, use of a lottery scheme when sold and distributed to consumers thereof, and one of which included, together with a punchboard, a number of boxes of assorted chocolate candies of a value of more than five cents each, for sale to consuming public under a plan, and in accordance with said board's explanatory legend, pursuant to which purchasers received, for five cents paid, and dependent upon number punched by chance or purchase of last punch on board, one of aforesaid boxes of candy, or nothing other than privilege of making a punch; so assembled and packed that such assortments might be and were used by retail dealers for distribution thereof to purchasing public by lot or chance, without alteration or rearrangement, and with knowledge and intent that such assortments would and could thus be resold to public by lot or chance by such retail dealers, in competition with many who do not make and sell "draw" or "deal" assortments, but sell their "straight" goods in interstate commerce in competition with the other;

With result that competitors who refused to and do not sell candy so packed and assembled that it can be resold to public by lot or chance were put to a disadvantage in competing with it and with others employing similar methods to those described, trade was diverted to it and others using similar methods by reason of customers' attraction to such "draw" or "deal" assortments from those who do not use such methods, trade was diverted to it from its said competitors, and there was a restraint upon and a detriment to the freedom of fair and legitimate competition in industry concerned; to the prejudice and injury of the public and competitors: