

Syllabus

IN THE MATTER OF

MIDWEST PUBLISHING COMPANY, AND WALTER H. GORHAM, INDIVIDUALLY, AND AS PRESIDENT OF MIDWEST PUBLISHING COMPANY

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

Docket 2893. Complaint, Aug. 10, 1936—Decision, Mar. 18, 1938

Where a corporation and an individual, substantially sole owner thereof and responsible for its policies and activities, engaged in sale of its so-called "Modern American Encyclopedia," together with extension service therefor, through agents and representatives supplied with advertising folders, prospectuses, sample volumes, order blanks or contracts, sales talks, and other literature and paraphernalia for exhibition, distribution, and use in connection with sale or solicitation thereof; pursuant to a scheme to foist upon purchasing public at a profit said old and obsolete set of reference books, of little or no value as such, and consisting of reprints, poorly made on inferior paper from plates cast in 1891, and ownership of which plates changed hands from time to time, and then currently issued and sold under aforesaid deceptive and misleading title—

- (a) Represented verbally through said authorized agents, etc., and through advertisements, letters, etc., to prospective and actual purchasing public throughout United States, that their said "Modern American Encyclopedia" was in fact a new, modern, and up-to-date encyclopedia and reference work, and had been kept perpetually up-to-date and up to the minute, facts being, printed as aforesaid, with only few page or minor revisions between 1912 and 1922, and none in following decade, and only minor ones between 1932 and 1934, and none of substance since, it had not been for many years, and was not then, a modern or up-to-date reference work which in any reasonable degree met needs and requirements of purchasing and using public for reliable work of reference;
- (b) Set forth in broadside, issued as part of their advertising and in which was included expression "keep abreast of the times," list of 33 persons prominent in particular fields of learning or industry, and represented that each had contributed substantially to said alleged new and modern work, facts being none had made any contribution thereto or done anything in connection therewith to make it new and modern so as to enable purchaser to keep abreast of the times, and only contribution was a very slight one on the part of a few to the original work in 1891 and earlier revisions thereof, and some of persons so listed had been dead for a number of years;
- (c) Represented that in order to keep said "Modern American Encyclopedia" from becoming obsolete and getting out of date, they would furnish a 10-year, quarterly, loose-leaf, extension service to purchasers which made and kept information in set current, facts being that they discontinued such loose-leaf service within first 2 years of said 10-year period and issued and used in lieu thereof so-called Year Book, for which they usually demanded and received \$1 a year, and which they offered to purchasers, after expiration of said period, for \$7.50 a year, but which was of little or no authorita-

Complaint

26 F. T. C.

tive value as reference work, and did not make and keep information in set current, etc., and \$7.50 price of which was not regular or intended retail price, but fictitious, and used and offered solely to induce purchasers to believe that book was of a much greater value than \$1, or regular price at which offered;

- (d) Represented in many instances to prospective purchasers that set's regular price, at which offered, ranging from \$15.75 to \$19.80, was a special and reduced one and much less than its usual price, represented as several times the true one, and variously stated former as being from \$59 to \$80, with extra charge for 10-year, quarterly, loose-leaf, extension service, ranging from \$1 to \$7.50 a year, facts being no sets were ever sold for more than offered price and higher figures were either for original issue when new or for sets in special deluxe bindings;
- (e) Represented that certain other books, value of which was stated as being equal to or in excess of total purchase price of set, would be delivered to prospective purchasers free and as a gratuity and as a result of purchase of encyclopedia, facts being so-called "free" books were not thus given, but price thereof, including profit to themselves, was included in and made part of purchase price of set, and value of said pretended, free books was not equal to or in excess of purchase price of set;
- (f) Falsely represented that price quoted at any time for said offer was "just what" purchaser is "to pay" for everything, facts being extra annual, or total, price was later demanded for 10-year service of current replacement pages or Year Book;
- (g) Represented that other purchasers or persons had recommended prospect for special list of those to receive set at alleged pretended special price, or to receive complimentary set free in return for card to be filed, facts being no such recommendation had been made and no free sets were given out, but cards obtained were used by them in procuring entree to other prospects, and books promised free were not sent;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that said representations were true and into purchase of said books in and on account of said erroneous and mistaken beliefs induced by said acts and practices, and with result that trade was diverted unfairly to them from their competitors who do not resort to false and deceptive practices in sale of their respective reference books, and with tendency and capacity so to mislead and deceive:

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

Before *Mr. John W. Norwood*, trial examiner.

Mr. Wm. T. Chantland for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Walter H. Gorham and Midwest Publishing Company, hereinafter re-

ferred to as respondents, have been and are now using unfair methods of competition in commerce, as defined by 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, Midwest Publishing Company, is a corporation duly organized and existing under the laws of the State of Illinois. Respondent, Walter H. Gorham, is the sole owner of respondent, Midwest Publishing Company (except qualifying shares in the name of the secretary), and fixes its policies and directs its activities. Respondents' plant, office, and principal place of business is located at 540 North Michigan Avenue, Chicago, Ill. Respondents are now and for some time have been engaged in the business of selling books, chief among which is a set of reference books now called "Modern American Encyclopedia," together with extension service therefor.

PAR. 2. Said respondents being engaged in business as aforesaid, cause said books, when sold, to be transported from respondents' place of business in the State of Illinois to the purchasers thereof located at various points in States of the United States other than the State from which shipments are made. Respondents now maintain a constant current of trade in commerce in said books, distributed and sold by them, between and among the various States of the United States.

PAR. 3. In the course and conduct of their said business, respondents are now and have been in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling reference books, in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their said business in selling and seeking to sell said encyclopedia, and the extension services, respondents employ various agents, solicitors, salesmen, and representatives, who are authorized and directed to solicit orders for, and to sell said commodities to prospective purchasers in the several States, said salesmen and representatives ordinarily traveling from place to place and canvassing prospective purchasers at such places. Respondents furnish such salesmen and representatives with advertising folders, prospectuses, sample volumes, order blanks or contracts, sales talks, and other literature and paraphernalia, which are exhibited, distributed, and used in connection with the sale or solicitations for the sale of said books, and extension services. Upon a sale being made by such salesmen or representatives, the purchaser is asked to sign a printed order or contract which is then transmitted

Complaint

26 F. T. C.

to the respondent. Respondent thereupon causes a shipment of said books and extension services to be made to such purchaser from Chicago, Ill. At the time the order is signed the salesman or representative usually collects a down payment from the purchaser, and the order or contract so signed ordinarily requires additional payments in installments until the total purchase price is paid in full.

PAR. 5. During the time above mentioned, in the course and conduct of their said business, respondents, through verbal statements made by their agents, salesmen, representatives, and employees, and by means of their advertisements, letters, order blanks, sales talks, and other literature used and distributed and exhibited to prospective purchasers and to purchasers, have represented and now represent to the prospective and actual purchasing public throughout the United States the matters and things hereinafter set forth:

1. That said so-called "Modern American Encyclopedia" is a new, modern, and up-to-date encyclopedia and reference work.

The truth and facts are that Walter H. Gorham, and two associates organized an Illinois corporation known as "Modern American Company," and also organized respondent corporation, Midwest Publishing Company. Acting through the former, respondent and said two associates purchased a set of old plates made in 1891 from which, at various times from 1891 to 1933, four prior owners had printed and sold five separate issues or editions of reference books, under four different titles, to-wit: the original issue or edition was called "New Practical Reference Library"; the second and third issues or editions were called "New Students' Reference Works"; the fourth issue or edition was called "Students' Reference Works"; and the fifth issue or edition was called "Students' Encyclopedia." From these old plates, very slightly revised, Modern American Company has been and now is printing, as called for by respondent Gorham and his associates above named, a sixth issue or edition under the name "Modern American Encyclopedia," "1934 Edition," and "1935 Edition." Respondents, having bought said sets, sell and distribute same in commerce as above described.

Respondents also failed and neglected in any proper way to disclose to or inform its prospective purchasers of the fact that its said so-called Modern American Encyclopedia is an old work, as above described, and is substantially the same as prior sets of reference works put out at various times from 1891 to 1933 under the various other names and titles above stated.

The chief value of any reference book or set is that it is in fact "Modern" and contains the latest facts and data available on each subject treated. The purchasing public generally buys such reference

books or sets or encyclopedias chiefly for the purpose of procuring such up-to-date facts, data and information, and generally rely implicitly upon them as furnishing exactly that, up to the date of actual issue. Reference books which purport to be, but are not of that character, are not only in themselves misleading, deceptive, and of little or no value for the purposes for which purchased, but are in fact injurious to the purchasing public who consult and read them, by reason of the misguided reliance placed on the antiquated data, erroneous facts, and superseded theories and processes therein set forth or treated. The many and rapid scientific, historical, and other changes and discoveries that have occurred since 1891, the date of the plates from which respondents' issues of the so-called "Modern American Encyclopedia" are printed, render it practically valueless as a reference work.

For these reasons, all claims, representations, and implications, as above described, made by respondents, have been and are false, fraudulent, misleading, deceptive, and injurious to the purchasing public in that they tend to and do confuse and mislead the public into the belief that they are buying and obtaining for use a new and useful up-to-date reference work.

2. As a part of their advertising of said work and to induce its purchase, respondents issued a broadside containing the expression "Keep abreast of the times." This broadside contains a list of 33 persons, each prominent in some particular field of learning or industry, and respondents represented that each of these had contributed substantially to such alleged new and modern encyclopedia.

In truth and in fact, not one of the persons named in said lists has made any contribution to the "Modern American Encyclopedia" or done anything in connection therewith to make it a new and modern encyclopedia so as to enable a purchaser to "keep abreast of the times," save that some few of the persons named did contribute very slightly to the said original work in 1891, and the earlier revisions thereof. Some of the persons listed have been dead for a number of years.

The use and circulation of said broadside and list is false, deceptive, and misleading, and tends to and does further the deception of the members of the purchasing public into the belief that they are receiving a work which is new and "modern," and is being kept "abreast of the times," by substantial contributions from the several persons on said list.

3. Part of the sales talk which sales people of respondents were and are instructed to make, is as follows:

Mrs. Miller, one valid complaint against encyclopedias is that they get out of date very quickly. At the rate the world moves today it is not too much to say that an encyclopedia depreciates in value at least ten per cent a year. That

Complaint

26 F. T. C.

rate of depreciation means that in ten years an encyclopedia is obsolete and of no value like an old city directory. But the publishers of this encyclopedia do not permit it to get out of date.

The purpose and effect of such sales talk was and is to further impress upon prospective purchasers the quick obsolescence of such reference work, the modern and up-to-date character of respondents' said encyclopedias, by thus coupling with a correct statement as to the rapid obsolescence of all authoritative reference works, the direct assertion that the encyclopedias which respondents are selling are not permitted to get out of date.

The truth and fact is that such assertion is grossly false, contrary to the facts as above set forth.

4. Respondents represented that, in order to keep the "Modern American Encyclopedia" from becoming obsolete and from getting "out of date," they would furnish a 10-year quarterly loose-leaf service to purchasers which makes and keeps the information in the set current. When less than 2 years of the 10-year period had expired, as to the first of such loose-leaf services promised, the quarterly loose-leaf service was discontinued and in lieu thereof the respondents issued and now use a so-called year book, for which they usually demand and receive a price of \$1 per year and which they offer to furnish to purchasers after the expiration of the 10-year period for the sum of \$7.50 per year.

In truth and in fact, said year book is of little or no authoritative value as a reference work and does not make and keep the information in the set current and thereby prevent it from becoming obsolete and from getting "out of date." The price of \$7.50 at which the year book is offered after the expiration of the 10-year period, is a fictitious price and not the regular or intended retail price at which said year book is to be sold, and is used and offered solely to induce purchasers to believe that the year book is of a much greater value than the price at which it is now offered, \$1 per year. In truth and in fact, the price of \$1 per year for said year book is the regular price for it, and such price will yield respondent a profit on any reasonable volume of sales.

5. Respondents offer the "Modern American Encyclopedia" at prices ranging from \$15.75 to \$19.80 a set and, in many instances, represent to prospective purchasers that this is a special and reduced price, much less than the usual or regular price at which the set is sold. In such instances, the representation is made that the usual or regular price at which the set is sold is several times that at which it is being offered, and the usual or regular price is variously stated to be from \$59 to \$80 per set, with an extra charge for the 10-year quarterly loose-leaf service, variously quoted to be from \$1 to \$4 per year.

The truth and fact is that no sets of respondents' encyclopedia were ever sold for more than the offered price, the higher prices named were either for the original issue when it was new, or for sets in special De Luxe bindings, and the usual or regular price for the set was from \$15.75 to \$19.80.

6. To induce prospective purchasers to purchase said encyclopedia the respondents, in many instances, represent that certain other books, the value of which is represented as being equal to or in excess of the total purchase price of the set, will be delivered to said prospective purchaser free and as a gratuity, if the encyclopedia is purchased.

In truth and in fact, said "free" books are not given as a gratuity but the price therefor, including a profit to the respondents, is included in and made a part of the purchase price of the set, and the value of said "free" books is not equal to or in excess of the purchase price for the set.

7. Respondents represented that the price quoted at any time for the set offered is "just what" the purchaser is "to pay" * . * * "for everything."

This representation was false and deceptive in that an extra annual or total price was later demanded for the 10-year service of current replacement pages or Year Book.

8. Respondents represented that other purchasers or persons had recommended the prospect for a special list to receive the set at the alleged special price aforementioned or to receive a complimentary set free in return for a card to be filed.

The truth is that no one had so recommended any prospect, and that no free sets were given out, but when cards were obtained they were used by respondents in procuring entree to other prospects, and the books promised to be sent free were not sent.

9. Respondents at all times have recklessly hired applicants for sales positions indiscriminately and with no effort to learn of their character and capacity, and have permitted and acquiesced in the representations made by such sales people touching said set which were made to the prospective purchasers among other ways in form and substance in all the manners hereinbefore described.

The whole plan and methods employed by respondents constitute merely a scheme to foist upon the purchasing public, at a profit, an old and obsolete set of reference books of little or no value as reference books, by reprints poorly made on inferior quality of paper, from plates cast in 1891, and now issued and sold under the deceptive and misleading title "Modern American Encyclopedia."

PAR. 6. The aforesaid acts and practices of the respondents have the tendency and capacity to and do mislead and deceive a sub-

stantial portion of the purchasing public and cause it erroneously to believe that said representations are true, and, because of such erroneous belief, to purchase these reference books of the respondents, with the result that trade in said commerce is unfairly diverted to the respondents from said competitors who do not misrepresent their reference books, to the substantial injury of said competitors and to the injury of the public.

PAR. 7. The above and foregoing acts, practices, and representations of the respondents have been, and are, all to the prejudice of the public and respondents' competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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."

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 August 10, 1936 issued and on August 12, 1936 duly served its complaint in this proceeding upon respondents, Midwest Publishing Company, a corporation, and Walter H. Gorham, individually and as president of Midwest Publishing Company, a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. No answer was filed by either respondent but after the issuance of the complaint, testimony and other evidence in support of the allegations of said complaint were introduced by Wm. T. Chantland and Henry Junge, Jr., attorneys for the Commission, and in opposition to the allegations of the complaint by respondent Walter H. Gorham appearing in his own behalf and on behalf of respondent Midwest Publishing Company, a corporation, before John W. Norwood, an examiner of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and other evidence and brief in support of the complaint, no brief having been filed by respondent (no oral argument having been requested), and the Commission having duly considered the same and being now fully advised in the premises, finds 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, Midwest Publishing Company, is a corporation duly organized and existing under the laws of the State of Illinois. Respondent, Walter H. Gorham, is the sole owner of respondent, Midwest Publishing Company (except qualifying shares in the name of the secretary), and fixes its policies and directs its activities. Respondents' plant, office, and principal place of business is located at 540 North Michigan Avenue, Chicago, Ill. Respondents are now and for some years have been engaged in the business of selling books, chief among which is a set of reference books now called "Modern American Encyclopedia," together with extension service therefor.

PAR. 2. Respondents, being engaged in business as aforesaid, cause said books, when sold, to be transported from their place of business in the State of Illinois to the purchasers thereof located at various points in States of the United States other than the State from which said shipments are made, and respondents have maintained a course of trade in commerce in said books and extension services sold and distributed by them, between and among the various States of the United States.

PAR. 3. In the course and conduct of their said business, respondents are now and have been in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling reference books and services in connection therewith, in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their said business in selling and seeking to sell said encyclopedia, and the extension services, respondents employ various agents, solicitors, salesmen, and representatives, who are authorized and directed to solicit orders for, and to sell said reference books and the extension services in connection therewith to prospective purchasers in the several States, and said salesmen and representatives travel from place to place and canvass prospective purchasers. Respondents furnish such salesmen and representatives with advertising folders, prospectuses, sample volumes, order blanks or contracts, sales talks, and other literature and paraphernalia, which are exhibited, distributed and used in connection with the sale or solicitations for the sale of said books, and extension services. When a sale is made by any such salesman or representative, the purchaser is asked to sign and does sign a printed order or contract which is then transmitted to the respondents. Respondents thereupon cause a shipment of said books and extension services to be made to such purchaser from Chicago, Ill.

At the time the order is signed the salesman or representative usually collects a down payment from the purchaser, and the order or contract so signed ordinarily requires additional payments in installments until the total purchase price is paid in full.

PAR. 5. During the time above mentioned, in the course and conduct of their said business, and as inducement to the purchase of said books and services, respondents, through verbal statements made by their agents, salesmen, representatives, and employees, and by means of their advertisements, letters, order blanks, sales talks, and other literature used and distributed and exhibited to prospective purchasers and to purchasers, have represented to the prospective and actual purchasing public throughout the United States, that respondents' so-called "Modern American Encyclopedia" has been and is in fact a new, modern, up-to-date encyclopedia and reference work, and that it has been kept perpetually up-to-date and up to the minute.

Reference books are valuable only in proportion to their accuracy and up-to-dateness. Failing in either, they are to that extent in and of themselves misleading and deceptive to those who buy and use them in reliance upon their up-to-date accuracy. Obsolescence of such works approximates 10 percent per annum, so that if unrevised such a work in 10 years becomes practically valueless for its intended purposes.

Respondents' said so-called "Modern Encyclopedia" is printed from plates originally made long prior to 1912 when they changed hands. The plates had been reset in 1908, after which and until 1922 there had been made only some few page revisions, or revisions of less amount. In about 1922 the plates again twice changed hands, the latter vendee at that time holding and owning them without revision until about 1932 when they were purchased by the Modern American Corporation, a holding company, in part owned by respondent Gorham. Since 1932 only minor revision work has been done on said plates and none of substance since 1934, so that respondents' said "Modern American Encyclopedia" has not been for many years and is not now a modern or up-to-date reference work which in any reasonable degree meets the needs and requirements of the purchasing and using public for a reliable reference work.

PAR. 6. As a part of the plan or scheme to sell and distribute said "Modern American Encyclopedia" and the extension service in connection therewith in interstate commerce, and as inducements to procuring purchasers therefor—

(a) Respondents, as a part of their advertising of said work and to induce its purchase, issued a broadside containing the expression "Keep abreast of the times." This broadside contains a list of 33

persons, each prominent in some particular field of learning or industry, and respondents represented that each of these had contributed substantially to such alleged new and modern encyclopedia. In truth and in fact, not one of the persons named in said lists has made any contribution to the "Modern American Encyclopedia" or done anything in connection therewith to make it a new and modern encyclopedia so as to enable a purchaser to "keep abreast of the times," save that some few of the persons named did contribute very slightly to the said original work in 1891, and the earlier revisions thereof. Some of the persons listed have been dead for a number of years.

(b) Respondents represented that, in order to keep the "Modern American Encyclopedia" from becoming obsolete and from getting "out of date," they would furnish a 10-year quarterly loose-leaf service to purchasers which makes and keeps the information in the set current. When less than 2 years of the 10-year period had expired, as to the first of such loose-leaf services promised, the quarterly loose-leaf service was discontinued and in lieu thereof the respondents issued and now use a so-called year book, for which they usually demand and receive a price of \$1 per year and which they offer to furnish to purchasers after the expiration of the 10-year period for the sum of \$7.50 per year. In truth and in fact, said year book is of little or no authoritative value as a reference work and does not make and keep the information in the set current and thereby prevent it from becoming obsolete and from getting "out of date." The price of \$7.50 at which the year book is offered after the expiration of the 10-year period, is a fictitious price and not the regular or intended retail price at which said year book is to be sold, and is used and offered solely to induce purchasers to believe that the year book is of a much greater value than the price at which it is now offered, \$1 per year. In truth and in fact, the price of \$1 per year for said year book is the regular price for it, and such price will yield respondent a profit on any reasonable volume of sales.

(c) Respondents offer the "Modern American Encyclopedia" at prices ranging from \$15.75 a set to \$19.80 a set and, in many instances, represent to prospective purchasers that this is a special and reduced price, much less than the usual or regular price at which the set is sold. In such instances, the representation is made that the usual or regular price at which the set is sold is several times that at which it is being offered, and the usual or regular price is variously stated to be from \$59 to \$80 per set, with an extra charge for the 10-year quarterly loose-leaf service, variously quoted to be from \$1 to \$7.50 per year. The truth and fact is that no sets of respondents' encyclopedia were ever sold for more than the offered price, the higher

prices named were either for the original issue when it was new, or for sets in special De Luxe bindings, and the usual or regular price for the set was from \$15.75 to \$19.80.

(d) Respondents, to induce prospective purchasers to purchase said encyclopedia, in many instances, represent that certain other books, the value of which is represented as being equal to or in excess of the total purchase price of the set, will be delivered to said prospective purchaser free and as a gratuity, if the encyclopedia is purchased. In truth and in fact, said "free" books are not given as a gratuity but the price therefor, including a profit to the respondents, is included in and made a part of the purchase price of the set, and the value of said "free" books is not equal to or in excess of the purchase price for the set.

(e) Respondents represented that the price quoted at any time for the set offered is "just what" the purchaser is "to pay" * * * "for everything." This representation was false and deceptive in that an extra annual or total price was later demanded for the 10-year service of current replacement pages or Year Book.

(f) Respondents represented that other purchasers or persons had recommended the prospect for a special list to receive the set at the alleged special price aforementioned or to receive a complimentary set free in return for a card to be filed. The truth is that no one had so recommended any prospect, and that no free sets were given out, but when cards were obtained they were used by respondents in procuring entree to other prospects, and the books promised to be sent free were not sent.

(g) Respondents have permitted, authorized, and benefited from, the representations made to prospective purchasers by their agents concerning said set, which representations were made as hereinbefore set out, and in various other forms.

PAR. 7. The whole plan and methods employed by respondents constitute merely a scheme to foist upon the purchasing public, at a profit, an old and obsolete set of reference books of little or no value as reference books, by reprints poorly made on inferior quality of paper, from plates cast in 1891, and now issued and sold under the deceptive and misleading title "Modern American Encyclopedia."

PAR. 8. There are among the competitors of respondents engaged in the sale of books of reference, as mentioned in paragraph 3 hereof, corporations, firms, partnerships, and individuals, who do not in connection with such sale, resort to the false and deceptive practices hereinabove set forth.

PAR. 9. The aforesaid acts and practices of the respondents have the tendency and capacity to, and do, mislead and deceive a substantial

Order

portion of the purchasing public into the mistaken and erroneous belief that said representations are true and into the purchase of respondents' reference books in and on account of the aforesaid erroneous and mistaken beliefs so induced by the acts and practices of the respondents. As a result trade has been diverted unfairly to the respondents from their aforesaid competitors who do not resort to false, misleading, and deceptive acts and practices in the sale of their respective competitive reference books.

CONCLUSION

The above and foregoing acts, practices and representations of the respondents have been, and are, all to the prejudice and injury of the public and of respondents' competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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 (no answer having been filed by respondent), testimony and other evidence taken before John W. Norwood, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief by counsel for the Commission, 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 ordered, That the respondents, Midwest Publishing Company, a corporation, and its officers, and Walter H. Gorham, individually, and their respective representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of encyclopedia now entitled "Modern American Encyclopedia" and extension services in connection therewith and of other books, in interstate commerce or in the District of Columbia, do cease and desist from, directly or indirectly, or through any corporate or other device, advertising or in any other manner representing:

1. That respondents' so-called "Modern American Encyclopedia" is a new, modern, up-to-date encyclopedia or reference work, or that it has been kept up-to-date.

Order

26 F. T. C.

2. That any person or persons, especially those prominent in particular fields of learning, have contributed substantially or at all to any revision of said so-called "Modern American Encyclopedia," when such is not the fact.

3. That respondents furnish any extension service of a kind or character that will keep said "Modern American Encyclopedia" up-to-date, unless and until they furnish such service.

4. That the regular price for which respondents will furnish to the purchaser of said "Modern American Encyclopedia" an annual extension service is greater than the price at which said extension service is actually and usually sold.

5. That respondents furnish any specified character of extension service for any specified term of years, when such is not the fact.

6. That the regular prices at which the sets of encyclopedias and services are habitually and generally offered are special prices or reduced prices offered only to a selected list of persons, for special reasons.

7. That other allegedly valuable books offered in connection with said "Modern American Encyclopedia" are given free or as a gratuity when in fact the price named includes payment at a profit for all of the books so offered and delivered.

8. That any price that a purchaser will be required to pay for the books and services offered and sold, is different from the total price which respondents actually collect or attempt to collect.

9. That any prospect has been recommended to receive a set of said reference or other books and services in connection therewith at a special price, or as a free gift, or in return for a testimonial letter, when any of said representations are untrue.

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

ALBERT L. HILKEMEYER AND LEONARD HILKEMEYER,
INDIVIDUALLY, AND TRADING AS DIXIE HATCH-
ERIES, AND AS JEFFERSON FARMSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3285. Complaint, Dec. 21, 1937—Decision, Mar. 19, 1938*

Where two individuals, engaged as part owners and under profit-sharing arrangements in business of hatching, selling, and distributing poultry and baby chicks under name "Dixie Hatcheries"—

Advertised, over such name, their said business in various issues of poultry journals and papers of interstate circulation, in which issues, in substantially identical advertisements, they offered, at a much lower scale of prices, same grade and type of baby chicks over trade name of Jefferson Farms, then inoperative hatchery of one of said individuals, and turned over for filling to former hatcheries and filled at same prices, with one exception, orders coming to latter, in competition with those who do not falsely advertise or otherwise represent that affiliated or branch businesses are separate and distinct competing businesses;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that such representations were true and that said Dixie Hatcheries and Jefferson Farms were separate and distinct competing business, and into purchase of said chicks because of erroneous and mistaken beliefs thus induced, and with result that trade was unfairly diverted to them from competitors who do not misrepresent their business connection or status, and with tendency and capacity so to mislead and deceive; to the injury of such competitors;

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

Mr. Wm. T. Chantland for the Commission.

Stokes & Stokes and *Mr. John W. Hildrop* for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Albert L. Hilkemeyer and Leonard Hilkemeyer, individually, and trading as Dixie Hatcheries and as Jefferson Farms, 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 said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint and states its charges in that respect as follows: