

Syllabus

IN THE MATTER OF

IRVING ROY JACOBSON AND PROGRESSIVE EDUCATION
SOCIETY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2132. Complaint, June 30, 1936¹—Decision, Aug. 10, 1938*

Where an individual and a corporation, of which he was president and which he organized and of which he was the dominant stockholder, and operation and sales activities and policies of which he directed and controlled, engaged in sale and distribution of a set of books titled "Source Books," together with a loose-leaf supplement or extension service, for general reference use and represented as especially useful to school teachers and students, and sold through their agents, representatives, and salesmen who personally interviewed prospective purchasers in the various States and in the District of Columbia, and required and forwarded down payment from ordering customer, and required latter's signature to order blank and contract under which he agreed to pay balance in monthly installments until paid in full; in competition with those who truthfully described the nature, conditions and terms of sale of their books and publications to their prospective customers and do not, through use of false, deceptive, and misleading statements and representations, induce purchase thereof—

- (a) Represented or caused their said agents, etc., to represent, to prospective customers, that a set of said "Source Book" would be presented free of charge upon condition that such prospective purchasers give other prospects in their community their opinions concerning the merits of said set of books, but subject to condition that particular prospective purchaser subscribe to so-called extension or supplemental service, purporting to keep books up-to-date, at a price of \$69.50, payable at rate of \$6.95 a year for 10 years, facts being said amount was excessive and unreasonable for said service and was sufficient and intended to and did compensate them both for books and service, and prospects were not permitted to pay amount in question in 10 years, but were required to pay total sum in monthly installments in 1 year from date of signing order blank;
- (b) Represented or caused their said agents, etc., to represent to prospective purchasers that a limited number of people would be sold said "Source Book" at a special reduced price as introductory offer for advertising, and falsely and grossly exaggerated, in such connection, the usual and customary retail price of said book and service by naming a fictitious price therefor far exceeding the usual and customary price of \$69.50 for both book and service; and
- (c) Represented or caused their said agents, etc., to represent that said book and service had been recommended and endorsed by various State and county superintendents of schools, and by principals of various State teachers colleges, notwithstanding fact said persons had not thus endorsed and recommended such book and service;

¹ Date is that of second amended and supplemental complaint. Original findings and order in this matter on September 24, 1934 (19 F. T. C. 242), were vacated and case reopened on June 30, 1936. See 22 F. T. C. 916.

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With effect of confusing, misleading, and deceiving a substantial number of members of the purchasing public into the erroneous and mistaken belief that said book was given away free of charge, was given to customer in exchange for his recommendation to others, and that customers were only paying for said extension service and would have 10 years in which to do so, and that they were receiving the benefit of a special reduced price as an introductory offer, and that the book and service were usually quoted at a much higher price than \$69.50, and that such book and service had been recommended and endorsed by leading school authorities, and into the purchase thereof because of such erroneous and mistaken beliefs thus engendered, and of thereby diverting a substantial amount of trade unfairly to them from their competitors who do not use false, deceptive, and misleading statements and representations to entice prospective purchasers to buy their books and publications; to the injury of competition in commerce:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. John N. Wheelock for the Commission.

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

SECOND AMENDED AND SUPPLEMENTAL 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 Irving Roy Jacobson and Progressive Education Society have been and are using unfair methods of competition in interstate 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 this its second amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Irving Roy Jacobson, is an individual with principal office and place of business at 1116 Waban Hill, in the city of Madison, State of Wisconsin. He is now and for more than 2 years last past has been engaged in the sale and distribution of a certain set of books under the title "Source Book," together with a loose-leaf supplement or extension service. These are books of reference for general use and are represented to be of special usefulness to school teachers and students.

Respondent, Progressive Education Society, Inc., is a corporation, organized on January 5, 1932, and existing under the laws of the State of Wisconsin, with principal office and place of business at 1116 Waban Hill in the city of Madison, in said State. The individual respondent, Irving Roy Jacobson, caused the said corporate respondent-

ent to be organized as an aid, agency, and instrumentality to facilitate and promote the sale of the aforesaid "Source Book" and extension service, and as president thereof and as its dominant stockholder directs, operates, and controls the said corporate respondent to the accomplishment of such purpose under and through its name and agency.

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

PAR. 2. Respondents' method of sale is as follows, to wit: The purchaser is required to sign an order blank for said "Source Book," and the so-called supplemental or extension service, and to make a down payment to the agent, and promise to pay the balance in monthly installments until the complete amount has been paid. The contract and down payment are then sent by respondents' agents, representatives, and salesmen to the respondent Progressive Education Society, Inc., aforesaid, in Madison, Wis., and the set of books is thereupon shipped to the purchasers thereof either from Madison, Wis., or by the publisher from Chicago, Ill., on respondents' order. In some instances delivery of the set of books is made by the salesman.

PAR. 3. In the course and conduct of said business, respondents have represented, and they do now so represent, to prospective purchasers, that a set of said "Source Book" will be presented free of charge to said prospective purchasers, upon condition that said prospective purchasers will give other prospective purchasers in the community their opinions concerning the merits of said set of books. As a condition precedent to availing themselves of the alleged free offer, respondents require such prospective purchasers to subscribe to a so-called loose-leaf extension service of supplemental service, purporting to keep the set of books up to date. Respondents promise to furnish said loose-leaf extension service twice a year for 10 years. Re-

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spondents likewise represent that the purchaser will be required to pay \$69.50 for the extension service only, and at the rate of \$6.95 per year for 10 years, thereby leading the prospective purchaser to the false belief that he will have a period of 10 years in which to pay. The aforesaid representations are false and misleading in that the said set of books are not given to the purchaser free; in that the price of \$69.50 for the loose-leaf extension service is an excessive and unreasonable price to pay for such service and is sufficient to, and is intended to and does in fact, compensate the seller or sellers for the set of books so delivered to the purchasers thereof, together with the accompanying extension service, and in that purchasers are not permitted to pay for the said extension service at the rate of \$6.95 per year for 10 years, but are required to pay the total sum of \$69.50 in monthly installments within 1 year from the date of the signing of the order blank. In subscribing to the extension service in the manner set forth above, the purchaser is in truth and in fact induced to buy the said set of books and the extension service for the sum of \$69.50, under the mistaken beliefs that he is receiving the said set of books free of charge, is paying only for the extension service, and that he will have 10 years in which to pay for it.

PAR. 4. Respondents have represented, and do represent to prospective purchasers in various communities, that in said communities a limited number of persons will be sold the set of books at a special reduced price as an introductory offer for purposes of advertising, and to that end respondents falsely and grossly exaggerate the usual and customary price of said books and extension service by naming a fictitious price far exceeding the usual and customary prices at which respondents ever actually offered to sell or sold the same. In truth and in fact \$69.50 is the regular and customary price at which respondents sell and offer to sell said books and extension service.

PAR. 5. In order to deceive prospective purchasers, many of whom are school teachers, respondents, through themselves, their agents, representatives, and salesmen, have falsely represented, and do now falsely represent, that the "Source Book," and the extension service, have been recommended and indorsed by various State and county superintendents of schools, and by principals of various States' teachers colleges, thereby causing such prospective purchasers to buy the said publication in the mistaken belief that it was a publication approved by their school authorities and by others who have not in fact approved, indorsed, or recommended the same.

PAR. 6. There are among the competitors of respondents engaged in the sale of and distribution of books of reference and other similar books and publications as mentioned in paragraph 1 hereof, corpora-

tions, firms, partnerships, and individuals who truthfully describe the nature, conditions, and terms of sale of such books and publications to their prospective customers and do not by the use of false, deceptive, and misleading statements and representations or in any other manner induce prospective customers to buy such books and publications.

PAR. 7. The representations by respondent as set forth in the preceding paragraphs hereof are calculated to, have the capacity to, and do, mislead and deceive customers and prospective customers of respondents into the erroneous beliefs that the said set of books is free; that it is given to the customer in exchange for his recommendation to others concerning the said books; that said customers are only buying the loose-leaf extension service and that they will have 10 years to pay therefor; that said customers are receiving the benefit of a special reduced price as an introductory offer; that said books and service are customarily sold at a much higher price than \$69.50; and said representations are calculated to, have the capacity to and do, induce prospective customers acting in such beliefs to purchase the "Source Book" and extension service of respondents, thereby diverting trade to respondents from its competitors who do not by such false, deceptive, and misleading statements and representations or in any other manner, misrepresent the nature, condition, or terms of sale of their books and publications to their prospective customers; and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 8. The above alleged acts, things, and practices of respondents have been and are, as aforesaid, each and all of them, to the prejudice of the public and of respondents' said competitors, and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 30th day of June A. D. 1936, issued, and on the 3rd day of July A. D. 1936, served its second amended and supplemental complaint in this proceeding upon respondents, Irving Roy Jacobson and Progressive Education Society, Inc., 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, the Commission, by order entered herein, granted respondents' motion

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for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the said complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, 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. The respondent, Irving Roy Jacobson, is an individual having his principal office and place of business in the city of Madison, State of Wisconsin. He is now, and for more than 4 years last past has been, engaged in the sale and distribution of a certain set of books under the title "Source Book" together with a loose-leaf supplement or extension service. These are books of reference for general use and are represented to be of special usefulness to school teachers and students.

PAR. 2. Respondent, Progressive Education Society, Inc., is a corporation organized on January 5, 1932, and existing under the laws of the State of Wisconsin, with principal office and place of business in the city of Madison, State of Wisconsin. The respondent, Irving Roy Jacobson, caused the Progressive Education Society, Inc., to be organized as an aid, agency, and instrumentality to facilitate and promote the sale of the aforesaid "Source Book" and extension service and as president of said corporation and as its dominant stockholder directs the operations and controls the sales, activities and policies of said corporation with respect to the acts and practices herein set forth.

PAR. 3. The respondents purchase the said Source Book and loose-leaf extension service from the publisher thereof, Perpetual Encyclopedia Corporation, having offices in the city of Chicago, State of Illinois, and respondents sell said books through their agents, salesmen, and representatives to the purchasers thereof located in various States of the United States and in the District of Columbia, and cause said books or publications when sold by them to be transported from the city of Chicago, State of Illinois, or from the city of Madison, State of Wisconsin, or from the State of origin of shipment thereof to the purchasers thereof situated in various States of the United States, other than the State of the origin of the shipment

thereof, or in the District of Columbia. In the course and conduct of their business as aforesaid, the respondents maintain a course of trade in said books or publications in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. During all the times mentioned herein other individuals and corporations and partnerships and firms have been and are engaged in the business of the sale and distribution of books of reference and other books similar to the said Source Book in commerce among and between the various States of the United States and the District of Columbia. In the course and conduct of their business as herein described, the respondents, during all the times mentioned herein, are, and have been, in competition in said commerce with such other individuals and corporations and firms and partnerships.

PAR. 5. The method of sales used by the respondents to sell the Source Book and loose-leaf extension service is as follows, to wit: The agents, representatives, and salesmen of the respondents personally interview prospective purchasers situated in various States of the United States and in the District of Columbia. In the event a sale is made, the purchaser is required to sign an order blank for said Source Book and the so-called supplemental or extension service and to make a down payment to the agent, representative, or salesman and promise to pay the balance in monthly installments until the complete amount has been paid. The contract and down payment are then sent by the agent, representative, or salesman to the respondent, Progressive Education Society, Inc., in Madison, Wis., and the Source Book is thereupon shipped to the purchaser thereof either from Madison, Wis., or by the publisher from Chicago, Ill., on respondents' order. In some instances, delivery of the set of Source Books is made to the purchaser by the salesman, representative, or agent.

PAR. 6. In the course and conduct of their said business, respondents represent or cause their agents, salesmen, and representatives to represent to prospective purchasers that a set of the said Source Book will be presented free of charge to said prospective purchasers upon condition that said prospective purchasers will give other prospective purchasers in their community their opinions concerning the merits of the said set of books. As a condition precedent to availing themselves of the alleged free offer, respondents require such prospective purchasers to subscribe to the so-called loose-leaf extension service or supplemental service purporting to keep the set of books up to date. Respondents promise to furnish said loose-leaf extension service twice a year for 10 years. Respondents further represent or

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cause their agents, salesmen, and representatives to represent that the purchaser will be required to pay \$69.50 for the extension service only and at the rate of \$6.95 per year for 10 years, thereby leading the prospective purchaser to the false belief that he will have a period of 10 years in which to pay the same. The aforesaid representations are false and misleading in that the set of books is not given to purchasers free as the price of \$69.50 for the loose-leaf extension service is an excessive and unreasonable price to pay for such service and is sufficient to, and is intended to, and does, in fact, compensate respondents for the set of books so delivered to the purchasers thereof together with the accompanying extension service, and in that the purchasers are not permitted to pay for the said extension service at the rate of \$6.95 per year for 10 years, but are required to pay the total sum of \$69.50 in monthly installments within 1 year from the date of the signing of the order blank. In subscribing to the extension service in the manner set forth above, the purchaser is in fact induced to buy the said Source Book and the extension service for the sum of \$69.50 under the mistaken beliefs that he is receiving the Source Book free of charge, is paying only for the extension service and that he will have 10 years in which to pay for such service.

PAR. 7. Respondents represent or cause their agents, representatives, and salesmen to represent to prospective purchasers that a limited number of persons will be sold the Source Book at a special reduced price as an introductory offer for purposes of advertising, and to that end respondents falsely and grossly exaggerate to prospective purchasers the usual and customary retail price of the Source Book and extension service by naming a fictitious price for the same far exceeding the usual and customary prices at which respondents actually offer to sell and sell the Source Book and extension service. In truth and in fact \$69.50 is the regular customary price at which respondents sell and offer to sell the Source Book and extension service.

PAR. 8. The respondents represent to prospective purchasers or cause their agents, representatives, and salesmen to represent that the Source Book and the extension service have been recommended and endorsed by various State and county superintendents of schools and by principals of various State teachers colleges, when in truth and in fact such persons have not endorsed and recommended the Source Book and extension service. Such false representation causes prospective purchasers to buy the said publication in the mistaken belief that it is a publication approved by school authorities or

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other persons prominent in the educational world, when in truth and in fact such publication has not been so endorsed and recommended.

PAR. 9. There are among the competitors of respondents engaged in the sale of and distribution of books of reference and other books similar to the Source Book, other corporations and individuals and firms and partnerships who truthfully describe the nature, conditions, and terms of sale of such books and publications to their prospective customers and who do not, by the use of false, deceptive, and misleading statements and representations, induce prospective customers to buy such books and publications.

PAR. 10. The use by the respondents of the aforesaid statements and representations has a tendency and capacity to, and does, confuse, mislead, and deceive a substantial number of members of the purchasing public into the erroneous and mistaken beliefs that the Source Book is given away free of charge; that the Source Book is given to the customer in exchange for his recommendation to others concerning said books; that the said customers are only paying for the loose-leaf extension service and that they will have 10 years to pay for same; that the said customers are receiving the benefit of a special reduced price as an introductory offer; that the Source Book and service are customarily sold at a much higher price than \$69.50; and that the said Source Book and loose-leaf extension service have been recommended and endorsed by leading school authorities; and into the purchase of said publications because of said erroneous and mistaken beliefs so engendered. A substantial amount of trade in said commerce is thereby diverted unfairly to the respondents from their said competitors who do not use false, deceptive, and misleading statements and representations to entice prospective purchasers to purchase their books and publications. In consequence thereof injury has been done, and is being done, by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the second amended and supplemental complaint of the Commission and the answer filed herein on the 29th day of June

A. D., 1938, admitting all the material allegations of the said complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Irving Roy Jacobson and Progressive Education Society, Inc., and its officers and their respective representatives, agents, and employees, in connection with the offering for sale, sale and distribution of any books, set of books or publications in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Advertising or representing in any manner to purchasers or prospective purchasers that any books or set of books offered for sale and sold by them will be given free of cost to said purchasers or prospective purchasers, when such is not the fact.

2. Advertising or representing in any manner that a certain number of sets or any set of books offered for sale and sold by them has been reserved to be given away free of cost to selected persons as a means of advertising, or for any other purpose, when such is not the fact.

3. Advertising or representing in any manner that purchasers or prospective purchasers of respondents' books or publications are only buying or paying for a loose-leaf extension service intended to keep the set of books up to date for a period of 10 years, or any other period, when such is not the fact.

4. Advertising or representing in any manner that the usual retail price at which respondents' publications are sold is higher than the price at which they are offered in such advertisements or by such representations, when such is not the fact.

5. Advertising or representing that any person has given testimonials or recommendations for and concerning respondents' books or publications, when such is not the fact.

6. Publishing or causing to be published and circulated testimonials or recommendations of and concerning the respondents' books or publications alleged to have been made by any person, when such testimonials and recommendations have not been made by such person.

7. Advertising or representing in any manner to purchasers or prospective purchasers of any book or set of books that they have 10 years, or any other period of time, to pay for the same, when such is not the fact.

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.

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IN THE MATTER OF

LOUIS A. BURD AND ABRAM BURD, DOING BUSINESS AS
BURD KNITTING MILLS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3015. Complaint, Dec. 15, 1936—Decision, Aug. 10, 1938*

Where two partners engaged in the sale and distribution of hosiery—

Included words "Knitting Mills" in their firm name, under which they carried on their business, and also used word "Manufacturers" in phrase Hosiery Manufacturers," in conjunction with or separate from their aforesaid trade name, and in describing their said business, and made use of said trade name and phrase in soliciting their said products, and displayed said name and phrase in letterheads, billheads, business cards, circulars, advertising matter, and in telephone and trade directories and otherwise, notwithstanding fact they did not manufacture such hosiery, and neither operated nor directly nor absolutely controlled any mill or factory wherein the products sold by them were made, but filled orders with products made in factories or mills which they did not own, operate, or control;

With tendency and capacity to mislead and deceive purchasers by causing them to believe that they actually owned and operated, or directly and absolutely controlled, factory or mill in which the products sold by them were made, or that they themselves made the same, and to purchase their said products on account of such beliefs and in the belief that in buying direct from the mill a saving of the middleman's profit might be obtained and a more uniform line of goods be purchased, and that, in the matter of contract, more reliance could be placed on the manufacturer or operator than on one who was not, and that dealing with former was preferable and of greater advantage to the purchaser than dealing with someone who was not, and unfairly to divert trade to them thereby from those who truthfully advertise and represent their products and who in fact manufacture products similar to theirs, and from those who do not manufacture similar or like products:

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

Mr. Wm. T. Chantland for the Commission.

Fox, Rothschild, O'Brien & Frankel, of Philadelphia, Pa., 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 Louis A. Burd and Abram Burd, copartners, hereinafter referred to as respondents, have been and are using unfair methods of competition in com-