

IN THE MATTER OF
EDUCATORS ASSOCIATION, 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 3139. Complaint, May 29, 1937—Decision, Mar. 9, 1939

Where a corporation engaged in publication of reference book designated as "The Volume Library," and in sale of entire output thereof to its president, and owner of 95 percent of its stock; said president, vice president, and second vice president; and various individuals engaged also, under trade name similar to that of said corporation, in sale of said reference book to ultimate consumers through agents or canvassers under contracts entered into with aforesaid corporate president, and required, in conduct of their said business, to make use of such name, registered with proper department of State in which representative was conducting such business, in course of which, in aggregate, millions of parents of school children had been solicited to buy said books at prices ranging from \$10 to \$17 a copy, and from one to two million copies had been thus sold; in variously soliciting sale of and selling said book as above indicated, in competition with others likewise engaged in selling and marketing reference books in commerce among the several States—

- (a) Represented, through use of term "Educators Association" in the respective corporate and trade names employed in conduct of such business and displayed on corporate seal set forth on so-called certificate of membership furnished each purchaser and giving him privilege of consulting its so-called Bureau of Research and Service, and on the guarantee thus furnished, that they constituted a group of educators or teachers formed into an association;

Facts being neither said corporation nor similarly named purported association constituted an official organization or association of altruistic educators, but solely a business enterprise organized and existing for profits derived from the sale of said "Volume Library";

With result of misleading substantial portion of prospective purchasers into erroneous and false belief that such corporate and trade names meant that said corporation and association were organizations operated by a group of teachers or educators properly so-called, united for a common purpose other than financial gain, and with capacity and tendency to induce members of public, under such false and erroneous belief, to make purchases of said volume which they would not make except for such false and erroneous belief;

- (b) Represented or implied to prospective purchasers, in some instances, that they came directly from the school which was attended by the child of the particular prospect, through their canvassers, who thus gained admission to such homes and who also, in accordance with their instruction, made sales talks so worded as to mislead prospective purchaser into erroneous and false belief that the canvasser was in some manner connected with school work, and that book itself was a necessary requirement of the school attended by the particular child;

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Facts being said "Volume Library" was not used as textbook by schools, and no school authorities required its purchase, and there was no connection whatever between sales persons and any school or other educational organization, but such book, on the contrary, was offered for sale by private business organization for profit;

With capacity and tendency to induce parents of school children to purchase book who would not make such purchase if they were truthfully informed of facts as aforesaid; and

(c) Falsely and misleadingly offered specific salary in advertisements for college students or teachers in "Help Wanted" columns of newspapers and periodicals circulating among the several States, and through which canvassers were secured; and

(d) Refused, on many occasions, and for a period of time, to return to canvassers amount deposited for equipment in accordance with requirements of contract required of canvasser, and which called for deposit of \$5.50 or other sum for sales equipment, returnable after 15 days or 120 hours of work, for the reason, as believed, that canvassers had failed to comply with such contracts by not making required number of calls or of required length, or for some other reason;

Notwithstanding fact canvassers thus secured were actually employed to sell such book to public on 30 percent commission basis, and payment of difference, if any, between commissions earned and salary thus offered, was conditioned upon canvassers fulfillment of certain requirements set forth in contract above referred to, which canvasser was required to sign before entering upon sale of book, and which included, among other things, making of deposit as aforesaid, memorizing of sales talk of 6,000 to 7,000 words, and the making of minimum of 10 calls a day lasting a minimum of 20 minutes, as shown by daily and weekly reports, and they failed and refused to pay difference aforesaid to many canvassers who failed to earn commissions aggregating amounts offered as salary, or to fulfill such requirements, including, in some instances, memorizing verbatim of said sales talk; and

Notwithstanding failure fully to advise canvasser at time of signing contract that such memorizing was necessary condition precedent to such payment; and in some instances, and for a time, representations to applicants that such contracts were mere matters of form, might be signed without full understanding of all terms thereof, and, in rare instances and contrary to instructions, managers' verbal representations to applicants differing from those in contracts, copies of which, for a time, were not given applicants at time of signing, and which, in certain instances, applicants were told they must hurry and sign if they wished to join study class being formed:

Held, That such acts, representations, and practices were to the prejudice and injury of the public, of competitors, and of applicants for places as canvassers for respondents, and constituted unfair methods of competition.

Before *Mr. John W. Addison* and *Mr. William C. Reeves*, trial examiners.

Mr. William L. Pencke for the Commission.

Townsend, Kindleberger & Campbell, of New York City, for respondents.

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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 Educators Association, Inc., a corporation, and Leo L. Tully, Oron E. Richards, Donald W. Henry, individually and as president, vice president, and second vice president of said corporation, respectively; and Miss Louise Sims, Miss Marian A. Miller, Miss C. L. MacDonald, Mrs. B. M. Gambert, Mrs. Marie C. Hostler, Mrs. V. B. Decker, Mr. J. E. Stronks, Mr. H. Lyle Goldsberry, Mr. J. R. Hostler, Mr. J. P. Tully, Mrs. M. W. Lees, Miss Sarah E. Atkinson, Mrs. Bessie Morrell, each individually trading and doing business under the trade name of Educators Association, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Educators Association, Inc., is a corporation, organized, existing, and doing business under the laws of the State of New York, with its principal offices at 307 Fifth Avenue, in the city and State of New York.

PAR. 2. Respondent, Leo L. Tully, is president of said Educators Association, Inc., and also trades and does business individually under the trade name of Educators Association. He maintains offices in both capacities at 307 Fifth Avenue, New York, N. Y.

Respondent, Oron E. Richards, is an individual, trading and doing business under the name of Educators Association, at 59 East Van Buren Street, Chicago, Ill. He also occupies the office of vice president of the aforesaid corporation.

Respondent, Donald W. Henry, is an individual, trading and doing business under the trade name of Educators Association, with offices at 517 Garland Building, Los Angeles, Calif. He also occupies the office of second vice president of said corporation.

The respondents, Louise Sims, 901 Wm. Oliver Building, Atlanta, Ga.; Marian A. Miller, 11 East Lexington Street, Baltimore, Md.; C. L. MacDonald, 41 Winter Street, Boston, Mass.; B. M. Gambert, 511 Burt Building, Dallas, Tex.; Marie C. Hostler, 451-452 Book Building, Detroit, Mich.; V. B. Decker, 503 Inland Building, Indianapolis, Ind.; J. E. Stronks, Johnson County Savings Bank Building,

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Iowa City, Iowa; H. Lyle Goldsberry, 506 Andrus Building, Minneapolis, Minn.; J. R. Hostler, 726 Canal Bank Building, New Orleans, La.; J. P. Tully, 1030 Real Estate Trust Building, Philadelphia, Pa.; Mrs. M. W. Lees, 335 Fifth Avenue, Pittsburgh, Pa.; Sarah E. Atkinson, 916 Title Guaranty Building, St. Louis, Mo.; and Bessie Morrell, 603 Nissen Building, Winston-Salem, N. C., all are individuals, each trading and doing business under the trade name of Educators Association, and each maintaining offices in the city and State hereinabove set forth in connection with each of said respondents named.

PAR. 3. In the course and conduct of its business, the respondent, Educators Association, Inc., for a number of years immediately last past has been and is now publishing a reference book which is designated by it as "The Volume Library," said respondent corporation causes said book to be printed and bound by a publishing firm in Chicago, Ill. Besides its main office in New York, N. Y., said corporation maintains shipping offices in the following cities: New York, N. Y.; Steubenville, Ohio; Chicago, Ill.; Minneapolis, Minn.; Los Angeles, Calif.; Dallas, Tex.; and Miami, Fla.

In the course and conduct of respondents' business, as hereinafter more fully shown, said books are shipped from the said respective shipping offices to purchasers thereof located in States other than those in which said shipping offices are located, and in the District of Columbia; and there now is and has been at all times hereinafter mentioned a constant current of trade in said books, flowing through and into the several States of the United States and the District of Columbia.

In the course and conduct of their business, the said respondents are, and were at all times herein referred to, in competition with other individuals, firms, partnerships, and corporations likewise engaged in the sale and distribution of similar commodities in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of his business, the respondent, Leo L. Tully, in his individual capacity, purchases the total output of the said Volume Library from said Educators Association, Inc. Leo L. Tully individually enters into contracts with persons who undertake to sell said Volume Library to the ultimate consumers in their respective territories through the means of agents or canvassers. At the present time, such contractual relations exist between said Leo L. Tully and the individuals named in the last subparagraph of paragraph 2. The number and personnel of said representatives vary

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with the exigencies of respondent, Leo L. Tully's business. Likewise, the terms of the agreements between Leo L. Tully and his representatives vary. In some cases the books are sold outright to such representatives. In other cases, they are sold on a percentage basis. Each of said representatives is required to do business under the name of Educators Association, said name being registered with the proper department in the State in which such representative is doing business.

In connection with the selling, marketing, and distributing the said Volume Library, the respondent, Leo L. Tully, and all of the other individual respondents hereinbefore named, entered into, and thereafter carried out, and are still carrying out, an understanding, agreement, and conspiracy to employ the methods and means hereinafter more fully described. Said individual representatives, under the direction of the respondent, Leo L. Tully, secure agents or sales persons through the medium of newspaper and magazine advertisements. The copies of the Volume Library which are sold by the sales persons engaged as aforesaid are shipped to the purchasers thereof from the nearest respective shipping point heretofore named, and are paid for by such purchasers in cash on delivery.

The respondent, Educators Association, Inc., is likewise connected with and engaged in the common enterprise of selling, marketing, and distributing the said Volume Library, in that each purchaser of said book is furnished with a certificate of membership in Educators Association, Inc., which bears on its face a facsimile of the corporate seal of the respondent corporation. The receipt which is furnished by the sales person to the purchaser for the down payment contains a guarantee to the purchaser which is subscribed "Educators Association, Inc., capital stock \$250,000" and listing the names and addresses of all the officers of the corporation.

PAR. 5. The advertisements which are inserted in newspapers and in teachers' magazines by the respondents' representatives are composed and phrased by them, but in many instances such representatives will consult respondent, Leo L. Tully, with respect to such advertisements and receive his help and suggestions; and the said Leo L. Tully supervises and directs the policies under which the several branch offices are conducted by the respective managers.

PAR. 6. In the course and conduct of their respective businesses the several representatives insert advertisements in various newspapers as aforesaid, usually under the "Help Wanted" column.

The following are examples of such advertisements published as aforesaid:

College student or teacher, travel for summer for healthful work, \$270 for ninety days.

• Lady with ability and refinement, ex-teacher preferred, permanent advancement, four months trial \$300, Box —.

Vacation position for college student or teacher, splendid experience, pleasant work.

Persons who answer such advertisements receive a notification that their application has been favorably considered and they are invited to come to the office of the respective respondent for an interview. At that time such applicant is advised that a contract must be executed setting forth the terms of employment; also that a deposit of stipulated amount which varies but which usually is \$5.50, is required to cover the expense of the sales equipment, such as a sample book, order blanks, and similar material and the cost of training. A receipt is furnished for such deposit which recites that the deposit will be refunded after 15 days' of work. The contract provides, among other things, that the applicant must memorize a sales talk, consisting of several closely printed pages, must make a minimum of 10 calls per day on prospective purchasers, each call lasting a minimum of 20 minutes; that the applicant must work in the territory assigned by such respondent; that the applicant is entitled to a commission of 30 percent of the retail price of all orders taken by such agent; and that if such commissions do not amount to a certain specified minimum sum, said respondent will pay the difference between the commissions earned and such specified amount.

PAR. 7. By inserting said advertisement in the "Help Wanted" columns of newspapers, by stressing the fact that students or teachers are desired for the work, and by specifying a definite amount as salary, applicants are led into the erroneous belief that the work offered consists of a salaried position; that it is connected with teaching work and that substantial compensation will be paid therefor.

In truth and in fact, the work consists of canvassing and selling "The Volume Library" from house to house and cannot be entered upon without first making the required deposit as described in paragraph 6; and the terms of the contract as hereinabove described, are of such a difficult nature that persons engaging in the sale of said book find it a physical impossibility to comply therewith.

By reasons of such inability to comply with the terms of said contract, sales persons find that they have forfeited the said deposit for the reason that they have not worked 15 days as a working day is defined by said contract; for the same reason, payment of the difference between the commissions earned and the minimum amount contracted for is refused by respondents.

PAR. 8. The Volume Library contains a list of prominent scientists and educators who are alleged to have contributed to compiling articles and other editorial work in compiling the said book. In truth and in fact, a number of persons named as such contributors are either dead or have long since ceased to contribute to any revision of the book or never did contribute in any manner whatsoever.

The name, Educators Association, Inc., used by the corporation, and Educators Association used by the individual respondents, misleads the general public and purchasers into the belief that said Educators Association, Inc. or Educators Association, is an official organization or an association of teachers or educators. In truth and in fact, it is not an official organization nor an association of educators but solely a business enterprise organized and existing for the sale of the book "Volume Library." The sales talk which the sales persons are required to make to prospective purchasers is worded in such a fashion as to create the erroneous belief in the mind of the prospective purchaser of the book that the sales person is in some manner connected with school work and that the book itself is a necessary requirement of the school attended by children of prospective purchasers. Such representations are calculated to induce parents of school children, to purchase the book who would not make such purchases if they were truthfully informed of the fact that said Volume Library is not a book required in the school work of such child, and that there is no connection whatever between the sales person and any school or other educational organization, but that, on the contrary, it is offered for sale by a private business organization for profit.

PAR. 9. The practice of respondents to place advertisements in the "Help Wanted" columns of newspapers and teachers' magazines, the inferences contained in the advertisements that the remuneration is based on a definite salary rather than commissions, the failure to state in said advertisements that the payment of a deposit for supplies as a condition precedent to employment, the requirement, among others, of having to memorize many pages of sales material, the requirement to make a minimum of 10 calls per day, each lasting 20 minutes, the refusal to return deposits and to pay deficiency amounts under the pretext that the sales person has breached the contract, the use of the phrase "Educators Association," and the representations implying that said organization is connected with school or educational work, all have a tendency to, and do in fact, induce persons seeking work and salaried positions to apply therefor by answering respondents' said advertisements under the erroneous belief that the work offered is a position with a definite salary and is connected with teaching or similar work. Such representations further have a tendency to and

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do in fact induce prospective purchasers to buy said Volume Library under the erroneous belief that the said book is required in the school work of children or constitutes a necessary equipment in connection with schools; further, that the said book is edited by all of the individuals named in the book when such is not a fact.

All of said representations have a further tendency and capacity to and do in fact divert trade unfairly from competitors of respondents who are engaged in like business and otherwise to injure said competitors who do not engage in the unfair practices and methods of competition hereinabove described.

PAR. 10. The above acts and things done by respondents are all to the injury and prejudice of the public and accomplish substantial injury to substantial competitors of respondents in commerce within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 29, 1937, issued and on June 1, 1937, served its complaint in this proceeding upon the respondents herein except Bessie Morrell, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter hearings were held and evidence was introduced before John W. Addison and William C. Reeves, trial examiners theretofore duly appointed by the Commission, by William L. Pencke, attorney for the Commission, and Townsend, Kindelberger & Campbell by E. Crosby Kindelberger, attorneys for respondents. Thereupon this proceeding regularly came on for final hearing before the Commission on said complaint, testimony, and evidence, briefs in support of the complaint and in opposition thereto and oral arguments of counsel on behalf of Commission and respondents, and the Commission having duly considered said complaint, testimony, and evidence, briefs and oral arguments 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Educators Association, Inc., is a New York Corporation having its office and principal place of business at 307 Fifth Avenue, New York City. Respondents, Leo L. Tully, 307 Fifth Avenue, New York City; Oron E. Richards, 59 East Van Buren

Street, Chicago, Ill., and Donald W. Henry, 517 Garland Building, Los Angeles, Calif., are individuals who are respectively president, vice president, and second vice president of the Educators Association, Inc. Each of these officers, as such, maintains an office at the address given after his name and at the same address each also trades and does business under the trade name Educators Association. All other respondents named in the complaint except Louise Sims, C. L. MacDonald, V. B. Decker, and Sarah E. Atkinson are individuals also severally trading and doing business at their respective addresses given in paragraph 2 of the complaint under the name Educators Association.

PAR. 2. Respondent, Educators Association, Inc., in the course and conduct of its business, is and for a number of years last past has been publishing a reference book designated by it as "The Volume Library." It causes said book to be printed and bound by a publishing firm in Chicago and sells the total output to respondent, Leo L. Tully who owns over 95 percent of its share capital.

PAR. 3. Respondent, Leo L. Tully, keeps a stock of said books in New York City and maintains shipping offices in Steubenville, Chicago, Minneapolis, Los Angeles, Dallas, and Miami. He individually enters into contracts with the other individual respondents and other persons who undertake to sell and sell said books to ultimate consumers in their respective territories through means of agents or canvassers. The number and personnel of these representatives vary with the needs of his business. About 1,500 are employed in summer and about 700 the rest of the year. In some cases they buy the books outright from said Tully and in others sell them for said Tully on a percentage basis. Each representative is required to do business under the name Educators Association registered with the proper department in the State in which the representative is doing business. They have solicited twelve to fifteen million parents of school children throughout the several States to buy said books at prices ranging from \$10 to \$17 a copy and have sold copies of the volume to from one to two million of such parents. The purchasers pay for the books in cash on or before delivery.

PAR. 4. As orders are taken by said representatives the books are distributed from the nearest shipping office in the territory where the respective orders are taken and are shipped to the buyers thereof located in States other than those in which said shipping offices are located and in the District of Columbia. There is and at all times herein mentioned has been a constant current in trade in said books among the several States.

PAR. 5. Respondents are and have been, in the course and conduct of their said business, in competition with other individuals, partnerships, and corporations likewise engaged in selling and marketing reference books in commerce among the several States.

PAR. 6. Respondents furnish each purchaser of said book a certificate of membership with the corporate seal of Educators Association, Inc., which gives him the privilege of consulting what it designated as its Bureau of Research and Service, and a guarantee subscribed "Educators Association, Inc." The corporate and trade names Educators Association, Inc., and Educators Association, as used by respondents, mislead a substantial portion of prospective purchasers into the erroneous and false belief that said corporate and trade names mean that Educators Association, Inc., and Educators Association are organizations operated by a group of teachers or educators properly so-called, united and for a common purpose other than financial gain and have the capacity and tendency to induce members of the public under such false and erroneous belief to make purchases of said volume which they would not make except for such erroneous and false belief. In truth and in fact neither Educators Association, Inc., nor Educators Association is an official organization nor an Association of altruistic educators but solely a business enterprise organized and existing for profits derived from the sale of said The Volume Library.

PAR. 7. The canvassers of respondents in some instances have gained admission to the homes of prospective purchasers by implying or stating directly that they came from the school which was attended by the child of such prospective purchasers and respondents require these canvassers to make to prospective purchasers a sales talk so worded as to mislead prospective purchasers into the erroneous and false belief that the canvassers are in some manner connected with school work and that the book itself is a necessary requirement of the school attended by children of prospective purchasers. The sales talk and the other representations made by canvassers have the capacity and tendency to induce parents of school children to purchase the book who would not make such purchases if they were truthfully informed of the fact that said Volume Library is not used as a textbook by schools and no school authorities require it to be purchased by pupils and that there is no connection whatever between the sales person and any school or other educational organization but that on the contrary it is offered for sale by a private business organization for profit.

PAR. 8. Respondents have secured canvassers through advertisements for college students or teachers in "help wanted" columns of

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newspapers and magazines circulating among the several States offering them a specific salary. The advertisements showed neither the name nor the business of respondents. The canvassers so secured were actually employed to sell said book to the public on a commission of 30 percent of the sales price of books sold by them. If the commissions for the period named in the advertisement did not aggregate the amount of money offered therein as salary, the difference between the commissions earned and the amount offered as salary was paid by respondents to the canvasser only if he had fulfilled certain requirements set forth in a contract which he or she had been required to sign before entering upon the sale of said books, as follows: Deposit \$5.50 or other sum of money for sales equipment, returnable after 15 days or 120 hours of work, memorize a sales talk of 6,000 to 7,000 words and show by daily and weekly reports that she or he had made a minimum of 10 calls a day on prospective purchasers each call lasting a minimum of 20 minutes. Many canvassers failed to fulfill these requirements or to earn commissions aggregating the amounts offered as salary and respondents failed and refused to pay them the amounts of money necessary to cover the difference between salary offered and commissions earned. In some instances the payment was refused because the canvasser had not memorized verbatim the 6,000 to 7,000 word sales talk, although he had not at the time of signing the contract been fully advised that the memorizing of the sales talk verbatim was a necessary condition precedent to the payment. Respondents now always inform applicants before signing the contract that they must take a difficult course of training of at least 1 week of from 6 to 8 hours a day. Memorizing the sales talk is a part of the course.

PAR. 9. Respondents, on many occasions, refused to return to the canvassers the amount deposited for equipment, as aforesaid, when respondents believed the canvassers had failed to comply with the contract by not making the required number of calls, by not making the calls of the required length of time or for some other reason. This practice has been changed. Respondents now agree to and do refund this deposit to the canvasser after 120 hours of work without further condition.

PAR. 10. The terms of the contract of employment submitted by respondents to applicants for places as canvassers to sign, are of importance to both respondents and applicant and were customarily so represented to applicants by respondents. Respondents, in some instances, however, represented to the applicants that the contracts were mere matters of form and might be signed without a full understanding of all of its terms; and in rare instances, contrary to instructions of leading respondents, managers of respondents made

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verbal representations to applicants which differed from the statements contained in the contracts. Before 1933 applicants were not given copies of the contracts at the time of signing and in certain instances the managers told them they must hurry and sign the contracts if they wished to join the study class that was being formed. After 1933, copies of the contracts were given applicants at the time of signing.

CONCLUSION

The aforesaid acts, representations, and practices of respondents have been and are to the prejudice and injury of the public, of competitors of respondents, and of applicants for places as canvassers for respondents, 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 complaint of the Commission, testimony and other evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by William L. Pencke, counsel for the Commission, and by E. Crosby Kindelberger, counsel for the respondents, 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 respondent, Educators Association, Inc., its officers, representatives, agents, and employees, and the respondents, Leo L. Tully, Oron E. Richards, and Donald W. Henry, individually and as officers of Educators Association, Inc., Miss Marion A. Miller, Mrs. B. M. Gambert, Mrs. Marie C. Hostler, Mr. J. E. Stronks, Mr. H. Lyle Goldsberry, Mr. J. R. Hostler, Mr. J. P. Tully, Mrs. M. W. Lees, each individually, and trading under the trade name and style of Educators Association, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a students' reference book entitled, The Volume Library, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist:

1. From representing through the use of the term "Educators Association" in any corporate or trade name or through any other means or device, that they, or any of them, constitute a group of

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educators or teachers formed into an association or that the business operated by them, or any of them, is anything other than a private business enterprise for profit.

2. Representing to prospective representatives that they will refund deposits or pay any specific sums of money or salaries to such representatives until and unless they fully and adequately disclose all of the terms and conditions upon which refunds or payments are actually made.

3. From representing or implying that they or their representatives, agents, or canvassers are connected in any manner with public schools or other educational institutions, or that said Volume Library, or any other and similar publication is prescribed as a textbook or required to be used in connection with school work.

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

CONSOLIDATED PORTRAIT & FRAME COMPANY, AND
BEN DIAL TRADING AS DE LUXE ART STUDIO, AND
DANIEL F. ORANGE AND CHARLES C. ORANGE

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

Docket 2548. Complaint, Sept. 11, 1935—Decision, Mar. 11, 1939

Where corporation and certain officers and certain agent or employee thereof, as variously engaged in sale and distribution of pictures and frames, namely—

I. Corporation engaged in sale of such products through groups or crews of salesmen who (1) canvassed from house to house throughout the various States to procure orders therefor, and whom it (2) supplied with standard selling and operating supplies for their use as aforesaid, and including sample selling kits, order blanks, and envelopes, and selling paraphernalia such as "lucky envelopes," used to create impression in prospect's mind that, by reason of pretended lucky "draw" or other lure, he was to be recipient of special price advantage or free picture, and (3) with catalogs containing descriptions and prices of its merchandise and also instructions and method of approach to be employed by them in contacting prospective purchasers, and representations to be made by them in offering pictures and frames, and who (4) obtained and forwarded, with said orders, snapshot or other picture of customer or member of customer's family, as a rule, together with instructions pertaining to manner in which customer desired picture made;

II. The president and vice president of said corporation, who operated, controlled, and directed its corporate affairs and activities and managed, from the corporate address, the transaction of all the office business incident to offer and sale of their pictures as herein set forth, including keeping of files, correspondence with customers and others, and collection of delinquent accounts, including action in said respect under names of fictitious finance companies made use of by them in such connection; and

III. An individual who was engaged in sale of pictures made by said corporation and of frames purchased by it from manufacturers thereof, and who, in carrying on, under trade name "De Luxe Art Studio," such business, along with others similarly engaged and employed by it, through supervision of one of said groups or crews;

In soliciting and selling such pictures and frames, in substantial competition with others engaged in manufacture, sale, and distribution of such products and who do not sell the same through using "lucky envelopes" or misrepresenting terms and conditions of sale thereof, but truthfully represent value and quality of their products and terms and conditions of sale thereof—

(a) Represented to customers and prospective customers that the pictures which were made by said corporation were "paintings" or "finely finished paintings," through making use of latter characterization thereof in the