

IN THE MATTER OF

CHARLES E. KNAPP TRADING AS MODERN AMERICAN CO.; MODERN AMERICAN CORPORATION; BLANCHE WYNNE TRADING AS MODERN AMERICAN CO.; AND A. J. RIVENBARK, JR., CLEO SAMDAHL AND A. B. LANDRUM

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

Docket 3503. Complaint, July 20, 1938—Decision, Mar. 21, 1939

Where five individuals engaged, personally and through various agents, salesmen, solicitors, and employees, in offering, selling and distributing, under name "Modern American Encyclopedia," eight-volume reference set, together with "Quarterly Loose-Leaf Extension Service" for use in connection therewith, to purchasers in the various States and in the District of Columbia, in substantial competition with others engaged in offer, sale, and distribution of reference books, encyclopedias, and extension services of same general character in commerce among the States and in said District, and including many who truthfully represent the nature of their business and do not make to the general public such false and misleading representations as made use of by them in conduct of their said business as below set forth, and do not use deceptive and misleading sales methods as made use of by individuals aforesaid;

In soliciting, as above set forth, and in selling said books and services, under trade name "Modern American Company" or otherwise, and through various agents, solicitors and representatives whom they employed, and who (1) were authorized and directed to solicit and sell such books and services and traveled from place to place throughout the United States in so doing, and whom (2) they furnished with prospectuses, order blanks, contracts, and other literature, and who (3) on making sale, required purchaser's signature to printed order blank or contract which was transmitted to individuals aforesaid, and through whom (4) they collected, at said time, part of agreed purchase price as down payment, with balance payable on delivery or in monthly installments—

- (a) Represented, in course of their business as aforesaid, directly and through such agents, etc., and by means of said order blanks, prospectuses and other literature used and distributed as aforesaid, that said so-called "Modern American Encyclopedia" was a new, modern and up-to-date encyclopedia and reference work, facts being it was an old work and substantially the same as prior sets put out at various times from 1893 to 1933 under various other names and titles, and, while revised in certain respects in 1936, it had not been for many years and was not then 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 such character, and the many and rapid scientific, historical and other changes and discoveries which had occurred since 1893 and the making of the original plates, from which said so-called "Modern American Encyclopedia" was printed, rendered it practically valueless for its supposed purpose as

such work; with tendency to and with effect of confusing and misleading public, which generally rely implicitly upon such works as furnishing up-to-date facts, revised to date of actual issue, into believing, through aforesaid false, fraudulent, misleading, deceptive, and injurious claims, representations and implications, that they were buying and obtaining for use new and useful up-to-date reference work;

- (b) Represented, as aforesaid, that the material in said "Modern American Encyclopedia" was "prepared by a large number of experts and specialists in the various fields of human knowledge", and that "further assistance was given by eminent scholars, scientists, and men of affairs, who reviewed and revised various articles," and in preface, for ostensible purpose of attesting to the "authenticity" of such encyclopedia, listed names of 37 persons prominent in particular fields of learning, and represented the same as substantial contributors to preparation of said work, facts being not one of the persons listed as above set forth had made any contribution to such work or done anything in connection therewith to make it new and modern, excepting only some very slight contributions by a few to original 1893 work, and the earlier revisions thereof, and some of those listed had been dead for a number of years; with tendency to and effect of furthering deception of members of purchasing public into belief they were receiving a work which was new and modern and product of eminent specialists and experts named as aforesaid;
- (c) Represented, as aforesaid, to prospective and actual purchasing public, that said "Modern American Encyclopedia" had been sold at prices far in excess of those at which it was then being offered, and that latter prices were special or introductory, and that after such introductory campaign had ceased publication would sell for considerably, or much, higher prices, as variously named, and also that said work was being specially offered free to certain selected purchasers without cost, except for nominal binding charge, and that it had been decided, instead of purchasing advertising space in newspapers and radio time, to place few sets in selected homes, under plan by which those selected would pay only actual cost of binding and cost of 10-year supplemental or revision service, and in consideration of the use of the names of such "privileged" customers in the later regular sales campaign, facts being prices, as variously charged under various forms of contracts at different times and in different localities, were the regular and usual prices of said books, which were available to any one of public generally who could be induced to purchase same, were not simply introductory or special, but regular, as was campaign being conducted in usual course of business, prospective purchasers were not selected to receive books at special price, which was greatly in excess of actual cost of binding volumes and of actual cost of 10-year revision service, and names of such customers were not used or intended to be used as references in later regular sales campaign, which was not ever planned or carried out;
- (d) Represented, as aforesaid, that extension or supplemental revision service was free or without extra cost, facts being guarantee certificate furnished in connection with sale of books, and to which were attached set of ten coupons covering such 10-year extension service, provided that \$1.85 must be remitted with each coupon before service would be furnished, which was never given free or without extra cost, but always charged for, as aforesaid, and

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- (e) Represented further that said work was sponsored by the Carnegie Foundation, and that such Modern American Co. was the selling agent of such foundation or institute, and that members of latter were largely responsible for preparation thereof, facts being work in question was not sponsored as above set forth, there was no such connection or responsibility, and said statements relating to Carnegie Foundation or Institute were wholly false; and

Where a corporation which, under name "The Modern American Corporation," functioned chiefly as the owner and holder of the plates from which said reference work was printed, and officers of which, including particularly one of individuals here involved and above set forth, had knowledge of sales methods above enumerated and engaged in by said individuals—

- (f) Loaned its name to said old reference work, and through thus furnishing and supplying said name, cooperated with and served said individuals in furthering their scheme of selling said encyclopedias as new and modern; With tendency and capacity to mislead and deceive, through such acts, practices and scheme to foist upon purchasing public at a profit old and obsolete set of reference books of little or no value as such, through reprints poorly made on inferior paper from plates cast originally in 1893 and issued and sold under its deceptive and misleading title aforesaid, substantial portion of purchasing public into erroneous belief that said representations were true, and with result that, as direct consequence of such mistaken and erroneous beliefs thus induced, number of purchasing public bought substantial quantity of their merchandise and trade was unfairly diverted to them from others likewise engaged in sale of reference books and who truthfully advertise and represent their said products; to the substantial injury of competition in commerce:

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. William C. Reeves*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Hickey, Hall & Junge, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Charles E. Knapp, an individual, trading as and in the name of Modern American Co., Charles E. Knapp, Inc., a corporation, Modern American Corporation, a corporation, Blanche Wynne, an individual, trading as and in the name of Modern American Co., and A. J. Rivenbark, Jr., Cleo Samdahl, and A. B. Landrum, hereinafter referred to as the respondents, have violated the provisions of the 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 Charles E. Knapp is an individual trading as and in the name of Modern American Co., with his principal office and place of business located at 201 North Wells Street, Chicago, Ill. Respondent Charles E. Knapp, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 201 North Wells Street, Chicago, Ill. Respondent Modern American Corporation is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 201 North Wells Street, Chicago, Ill. Respondent Blanch Wynne is an individual trading as and in the name of Modern American Co., with her principal office and place of business located at 1508 Main Street, Dallas, Tex. Respondents A. J. Rivenbark, Jr., Cleo Samdahl, and A. B. Landrum, are salesmen, agents, and representatives of respondent Charles E. Knapp, with their principal office and place of business at 201 North Wells Street, Chicago, Ill. Respondents are now, and have been for more than one year last past, engaged in the business of offering for sale, selling and distributing to the general public a certain set of reference books or encyclopedias entitled and known as "Modern American Encyclopedia," in eight volumes, together with a "Quarterly Loose-Leaf Extension Service" to be used in connection therewith. All of said respondents have acted together and in cooperation with each other during all the times herein mentioned in doing the acts and things hereinafter alleged in connection with the sale and distribution of said books and extension services.

PAR. 2. In the course and conduct of their said business, respondents, through various agents, salesmen, solicitors, and employees, and personally, offer to sell, sell, and distribute the said reference books or encyclopedias and extension services to persons located at points in the various States of the United States and in the District of Columbia. They cause said reference books or encyclopedias and extension services, when so sold, to be transported from the city of Chicago, Ill., to, into, and through other States of the United States and the District of Columbia, to the purchasers thereof at their respective locations. Respondents maintain and, during the times mentioned herein, have maintained, a course of trade in said products so sold and distributed by them in commerce among and between the various States of the United States.

PAR. 3. Respondents, in the course and conduct of their said business, are in substantial competition with other corporations, firms, partnerships and individuals likewise engaged in offering for sale, selling, and distributing reference books and encyclopedias and ex-

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tension services of the same general character as those distributed by the respondents to the general public in commerce among and between the various States of the United States and in the District of Columbia. Among said competitors there are many who truthfully represent the nature of their business and who do not make to the general public the false and misleading representations hereinafter alleged to have been made and used by the respondents in the conduct of their said business, and who do not make any other false representations in the conduct of their business and who do not use the deceptive and misleading sales methods hereinafter alleged as having been used by the respondents.

PAR. 4. In the course and conduct of their business in said commerce, respondents employ various agents, solicitors, and representatives, who are authorized and directed to solicit orders for and to sell said reference books or encyclopedias and loose-leaf extension services to prospective purchasers throughout the United States. These agents, solicitors and representatives ordinarily travel from place to place throughout the United States, canvassing prospective purchasers at the various places visited. Respondents furnish such agents, solicitors, and representatives with prospecti, order blanks, contracts, and other literature and¹ paraphernalia, which are exhibited, distributed and used in connection with the sale and in the solicitation of the sale of said books and extension services. When a sale is made, the purchaser is required to sign a printed order blank or contract, which is then transmitted to one of the respondents in Chicago, Ill. Respondents thereupon cause the shipment of said books to be made to such purchaser from Chicago, Ill., and transmit from Chicago, Ill., to such purchaser from time to time the loose-leaf extension service. At the time the order or contract is signed, respondents, through their agents, solicitors, and representatives, collect a part of the agreed purchase price as a down payment and the order or contract ordinarily requires the balance to be paid upon delivery of the books or that payment be made in monthly installments until the total purchase price is paid in full.

PAR. 5. In the course and conduct of their business as aforesaid, respondents, directly and through said agents, solicitors, and representatives, and by means of the order blanks, prospecti and other literature used and distributed and exhibited to prospective purchasers, have made to purchasers and prospective purchasers, many false, misleading, and deceptive statements and representations, as hereinafter set forth.

1. They have represented, and now represent, to the prospective and actual purchasing public throughout the United States 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 said encyclopedia is a descendant of a two-volume set first published in 1893 under the name of "The Student's Cyclopedia." In 1901, after several revisions and additions had been made, the name of the encyclopedia was changed to "The Student's Reference Work" and it was increased to four volumes. No revisions or additions were made until 1909, when the number of volumes was increased to six, and the name was again changed to that of "The New Student's Reference Work." Subsequently the encyclopedia was increased to eight volumes, although the name was not changed. In 1933 the respondent Charles E. Knapp and two associates, Walter H. Gorham and Edwin P. Rucker, purchased the plates of said "The New Student's Reference Work" from the trustee or receiver in bankruptcy of the owner of same, and subsequently on November 14, 1933, organized the respondent Modern American Corporation under the laws of the State of Illinois, to which corporation title to said plates was transferred by said respondent Charles E. Knapp and said associates. Said parties owned and controlled and now own and control all the stock in said respondent Modern American Corporation, and an agreement was entered into between said stockholders that either of them would have the privilege of selling the encyclopedia free of any royalty payments upon payment of the printing and binding cost. The name of the encyclopedia was then changed from "The New Student's Reference Work" to "Modern American Encyclopedia," and an eight volume set was published under the latter name, and has been and now is sold by the various respondents herein in commerce as above set out. Said encyclopedia was revised in certain respects in 1936, but it 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. Respondents have failed and neglected in any proper way to disclose to or inform prospective purchasers of the fact that the so-called Modern American Encyclopedia is an old work, and is substantially the same as prior sets of reference works put out at various times from 1893 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 buy such reference books or encyclopedias for the purpose of procuring such up-to-date facts, data and information, and generally rely implicitly upon them

as furnishing such facts revised 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 purpose 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 1893, the date of the original plates from which the so-called "Modern American Encyclopedia" is 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. Respondents have represented, and now represent, to the prospective and actual purchasing public that the material in said "Modern American Encyclopedia" was "prepared by a large number of experts and specialists in the various fields of human knowledge," and that "further assistance was given by eminent scholars, scientists and men of affairs, who reviewed and revised various articles." In the preface to said encyclopedia, for the ostensible purpose of attesting to the "Authenticity of the Modern American Encyclopedia," there are listed the names of 37 persons, each prominent in some particular field of learning or industry, and said persons are represented as having contributed substantially to the preparation of the "Modern American Encyclopedia."

In truth and in fact, not one of the persons named in said list has made any contribution to the "Modern American Encyclopedia" or does anything in connection therewith to make it a new and modern encyclopedia, save that some few of the persons named did contribute very slightly to the said original work in 1893 and the earlier revisions thereof. Some of the persons listed have been dead for a number of years. The use and circulation of such a list of alleged contributors 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 the work of the eminent specialists and experts named in said list.

3. Respondents further have represented, and now represent, to the prospective and actual purchasing public that said "Modern

American Encyclopedia" has been sold at prices far in excess of those at which it is being offered by the respondents, that the prices at which it is being offered are "special" or "introductory" prices, and that the publication had sold, and, after the "introductory" campaign had ceased, would sell, for considerably higher prices.

Several different forms of contract have been used by respondents at various times in the sale of said reference books. Under one form of contract, the publication is sold for \$19.50, \$9.50 of which is collected as a cash deposit, and \$10 plus transportation charges upon delivery of the books. Another contract requires an initial payment of \$10, the balance of \$13.50, plus delivery charges being due upon delivery of the books. Another contract calls for the payment of \$5 as a deposit, \$6.60 on delivery of the books, and \$4 per month thereafter until a total of \$27.60 has been paid. Under a fourth form of contract, the cost to the purchaser is \$29.60 under terms optional with him. Under a fifth form of contract, the reference books together with a choice of certain premiums are sold for \$39.60.

In their efforts to sell said Modern American Encyclopedia, respondents and their agents and salesmen have made and do make representations that the aforesaid prices were and are simply introductory and that the publication ordinarily and usually sells, has sold, and would sell for much higher prices. Some of the figures used in this connection ranged anywhere from \$79 to \$100 for the set. Some agents made the representation that the price of the books was \$59 and if a revision service was desired separately, the cost would be something like \$50 additional.

4. Respondents further have represented, and now represent, to the prospective and actual purchasing public that said Modern American Encyclopedia is being specially offered free to certain selected purchasers without cost except for a nominal binding charge. They represented and do represent that, instead of the purchase of advertising space in newspapers and time on radio stations, it has been decided to place a few sets of the encyclopedias in selected homes, and that the individuals selected to receive the books were being asked to pay only the actual cost of binding and the cost of a ten-year supplemental or revision service. These "privileged" customers were and are advised that their names would be used later in the regular sales campaign in return for their obtaining such a low price on the special introductory offer. In some cases the books were and are offered for \$19.50, in others, \$23.50, and in others, \$29.60. Furthermore, the respondents represented and do represent that the extension or supplemental revision service was free or without extra cost,

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whereas the guaranty certificate furnished in connection with the sale of the books and to which were attached a set of coupons, one for each year extending over a ten-year period, provided and provide that \$1.85 must be remitted with each coupon before the service would be furnished.

5. Respondents further have represented, and now represent, to the prospective and actual purchasing public that the Modern American Encyclopedia was and is sponsored by the Carnegie Foundation, and that the Modern American Co. was and is the selling agent of the Carnegie Foundation or Institute, and that members of said institute were largely responsible for the preparation of the Modern American Encyclopedia.

PAR. 6. In truth and in fact, all of said statements and representations set forth in paragraph 5 herein were and are false, misleading, and untrue. Said Modern American Encyclopedia has never been sold at prices far in excess of those at which it has been and is now being sold by respondents. The prices set under the various forms of contracts used by the respondents at different times and in different localities were and are the regular and usual prices of said books, and the books are available to anyone of the public generally who can be induced to purchase same. The prices asked were not simply "introductory" or "special" prices, and the campaign being conducted was not in fact an introductory campaign, but was and is a sales campaign in the usual course of business and the prices asked were regular prices, and the said books never sold for or were priced at prices ranging from \$79 to \$100.

The prospective purchasers were not and are not in fact "selected" from the general public to receive the books at a "special" price, and the price asked for the books was greatly in excess of the actual cost of binding the volumes and in excess of the actual cost of the 10-year revision service. The names of such customers were not used, or intended to be used, as references in a later "regular" sales campaign, and in fact there never was such a later campaign ever planned or carried out. The extension service was never given free or without extra cost but there always was a charge of \$1.85 for each year's service.

Furthermore, the Modern American Encyclopedia was not and is not in fact sponsored by the Carnegie Foundation or Institute, and the Modern American Co. was not and is not the selling agent of the Carnegie Foundation or Institute, and members of said institute were not and are not largely or in any way responsible for the preparation of the Modern American Encyclopedia.

The whole plan and methods employed by the 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 an inferior quality of paper, from plates originally cast in 1893, and now issued and sold under the deceptive and misleading title "Modern American Encyclopedia."

PAR. 7. The aforesaid acts and practices of the respondents were and are calculated to, and had and now have, a tendency and capacity to mislead and deceive, a substantial portion of the purchasing public into the erroneous belief that said representations are true. Furthermore, as a direct consequence of such mistaken and erroneous beliefs, induced by the misrepresentations of the respondents as aforesaid, a number of the purchasing public has purchased a substantial quantity of said merchandise, with the result that trade has been unfairly diverted from other individuals, corporations, firms, and partnerships likewise engaged in the sale of reference books who truthfully advertise and represent their merchandise. As a result thereof, substantial injury has been, and is now being done by the respondents herein to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts, practices, and representations of the respondents as herein alleged have been, and are, all to the prejudice of the public and of respondents' competitors as aforesaid, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 20th day of July 1938, issued and served its complaint in this proceeding upon said respondents, Charles E. Knapp, an individual, trading as and in the name of Modern American Co.; Charles E. Knapp, Inc., a corporation, Modern American Corporation, a corporation, Blanche Wynne, an individual, trading as and in the name of Modern American Co.; and A. J. Rivenbark, Jr., Cleo Samdahl, and A. B. Landrum, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On August 12, 1938, answers were filed by the respondents Charles E. Knapp, an individual, trading as and in the name of Modern American Co.; Charles E. Knapp, Inc., a corporation; Modern American Corporation, a corporation; A. J. Rivenbark, Jr.; and Cleo Samdahl. Thereafter, a stipulation

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was entered into by all of the respondents whereby it was stipulated and agreed that a statement of facts signed and executed by the said respondents by their counsel, Hickey and Hall, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answers and stipulation, said stipulation having been approved, accepted, and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Charles E. Knapp is an individual trading as and in the name of Modern American Co., with his principal office and place of business located at 201 North Wells Street, Chicago, Ill. Respondent Charles E. Knapp, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 201 North Wells Street, Chicago, Ill. Respondent Modern American Corporation is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 201 North Wells Street, Chicago, Ill. Respondent Blanche Wynne is an individual, formerly trading as and in the name of Modern American Co., with her principal office and place of business located at 1508 Main Street, Dallas, Tex.

Respondents A. J. Rivenbark, Jr., and Cleo Samdahl have never been salesmen, agents, nor representatives of the respondent Charles E. Knapp. At the present time, and for some time past, said respondents purchased certain books from Charles E. Knapp which they sold as independent dealers to members of the public. The contracts of sale of such books were delivered by said respondents to Charles E. Knapp, and he handled the collections and retained the contracts of sale, notes, and collections as security and as payment for the books sold to said respondents. The principal books involved in the above-mentioned transactions were a set of reference books known as Mod-

ern American Encyclopedia, published and bound in eight volumes together with a quarterly loose-leaf extension service to be used as a supplement to the books.

Respondents, with the exception of the respondents Charles E. Knapp, Inc., a corporation, and Modern American Corporation, a corporation, are now, or have been engaged in the business of offering for sale, selling, and distributing to the general public a certain set of reference books or encyclopedias entitled and known as "Modern American Encyclopedia" in eight volumes, together with a "Quarterly Loose-Leaf Extension Service" to be used in connection therewith. The respondent Charles E. Knapp, Inc., a corporation, has not been engaged in offering for sale, selling, or distributing to the general public the set of books known as Modern American Encyclopedia, but is a publisher and vendor of an entirely different set of books. The respondent A. B. Landrum about a year and a half ago, and for a short period previous to that time, was an agent and salesman of the respondent Charles E. Knapp in the sale of the Modern Encyclopedia on a commission basis, with his principal office and place of business at 201 North Wells Street, Chicago, Ill.

PAR. 2. In the course and conduct of their said business, all of the respondents except Charles E. Knapp, Inc., a corporation, and Modern American Corporation, a corporation, personally and through various agents, salesmen, solicitors and employees, offer to sell, sell and distribute the said reference books or encyclopedias and extension services to persons located at points in the various States of the United States and in the District of Columbia. They cause said reference books or encyclopedias and extension services, when so sold, to be transported from the city of Chicago, Ill., to, into, and through other States of the United States and the District of Columbia, to the purchasers thereof at their respective locations. Said respondents maintain, and during the times mentioned herein, have maintained, a course of trade in said products so sold and distributed by them in commerce among and between the various States of the United States. The word "respondents" as hereinafter set forth in Paragraphs Three to Seven, inclusive, shall be understood to include all of the respondents except Charles E. Knapp, Inc., a corporation, and Modern American Corporation, a corporation.

PAR. 3. Said respondents, in the course and conduct of their said business, are in substantial competition with other corporations, firms, partnerships, and individuals likewise engaged in offering for sale, selling, and distributing reference books and encyclopedias and extension services of the same general character as those distributed by the respondents to the general public in commerce among and

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between the various States of the United States and in the District of Columbia. Among said competitors there are many who truthfully represent the nature of their business and who do not make to the general public the false and misleading representations made and used by the respondents in the conduct of their said business, and who do not use the deceptive and misleading sales methods used by said respondents.

PAR. 4. In the course and conduct of their business in said commerce, said respondents employ various agents, solicitors, and representatives, who are authorized and directed to solicit orders for and to sell said reference books or encyclopedias and loose-leaf extension services to prospective purchasers throughout the United States. These agents, solicitors, and representatives ordinarily travel from place to place throughout the United States, canvassing prospective purchasers at the various places visited. Respondents furnish such agents, solicitors, and representatives with prospecti, order blanks, contracts, and other literature and paraphernalia, which are exhibited, distributed, and used in connection with the sale and in the solicitation of the sale of said books and extension services. When a sale is made, the purchaser is required to sign a printed order blank or contract, which is then transmitted to one of the said respondents in Chicago, Ill. Said respondents thereupon cause the shipment of said books to be made to such purchaser from Chicago, Ill., and transmit from Chicago, Ill., to such purchaser from time to time the loose-leaf extension service. At the time the order or contract is signed, said respondents, through their agents, solicitors, and representatives, collect a part of the agreed purchase price as a down payment and the order or contract ordinarily requires the balance to be paid upon delivery of the books or that payment be made in monthly installments until the total purchase price is paid in full.

PAR. 5. In the course and conduct of their business as aforesaid, said respondents, directly and through said agents, solicitors, and representatives, and by means of the order blanks, prospecti, and other literature used and distributed and exhibited to prospective purchasers, have made to purchasers and prospective purchasers many false, misleading, and deceptive statements and representations, as hereinafter set forth.

1. They have represented, and now represent, to the prospective and actual purchasing public throughout the United States 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 said encyclopedia is a descendant of a two-volume set first published in 1893 under the name of "The

Student's Cyclopedia." In 1901, after several revisions and additions had been made, the name of the encyclopedia was changed to "The Student's Reference Work" and it was increased to four volumes. No revisions or additions were made until 1909, when the number of volumes was increased to six, and the name was again changed to that of "The New Student's Reference Work." Subsequently the encyclopedia was increased to eight volumes, although the name was not changed. In 1933 the respondent Charles E. Knapp and two associates, Walter H. Gorham and Edwin P. Rucker, purchased the plates of said "The New Student's Reference Work" from the trustee or receiver in bankruptcy of the owner of same, and subsequently on November 14, 1933, organized the respondent Modern American Corporation under the laws of the State of Illinois, to which corporation title to said plates was transferred by said respondent Charles E. Knapp and said associates. Said parties owned and controlled and now own and control all the stock in said respondent Modern American Corporation, and an agreement was entered into between said stockholders that either of them would have the privilege of selling the encyclopedia free of any royalty payments upon payment of the printing and binding cost. The name of the encyclopedia was then changed from "The New Student's Reference Work" to "Modern American Encyclopedia," and an eight volume set was published under the latter name, and has been and now is sold by the various respondents herein in commerce as above set out. Said encyclopedia was revised in certain respects in 1936, but it 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. Respondents have failed and neglected in any proper way to disclose to or inform prospective purchasers of the fact that the so-called Modern American Encyclopedia is an old work, and is substantially the same as prior sets of reference works put out at various times from 1893 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 buy such reference books or encyclopedias for the purpose of procuring such up-to-date facts, data and information, and generally rely implicitly upon them as furnishing such facts revised 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 purpose for which purchased, but are in fact injurious to the

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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 1893, the date of the original plates from which the so-called "Modern American Encyclopedia" is printed, render it practically valueless as a reference work.

For these reasons, all claims, representations, and implications, as above described, made by said 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. Said respondents have represented, and now represent, to the prospective and actual purchasing public that the material in said "Modern American Encyclopedia" was "prepared by a large number of experts and specialists in the various fields of human knowledge," and that "further assistance was given by eminent scholars, scientists and men of affairs, who reviewed and revised various articles." In the preface to said encyclopedia, for the ostensible purpose of attesting to the "Authenticity of the Modern American Encyclopedia," there are listed the names of 37 persons, each prominent in some particular field of learning or industry, and said persons are represented as having contributed substantially to the preparation of the "Modern American Encyclopedia."

In truth and in fact, not one of the persons named in said list has made any contribution to the "Modern American Encyclopedia" or does anything in connection therewith to make it a new and modern encyclopedia, save that some few of the persons named did contribute very slightly to the said original work in 1893 and the earlier revisions thereof. Some of the persons listed have been dead for a number of years. The use and circulation of such a list of alleged contributors 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 the work of the eminent specialists and experts named in said list.

3. Said respondents further have represented, and now represent, to the prospective and actual purchasing public that said "Modern American Encyclopedia" has been sold at prices far in excess of those at which it is being offered by the said respondents, that the prices at which it is being offered are "special" or "introductory" prices,

and that the publication had sold, and, after the "introductory" campaign had ceased, would sell, for considerably higher prices.

Several different forms of contract have been used by said respondents at various times in the sale of said reference books. Under one form of contract, the publication is sold for \$19.50, \$9.50 of which is collected as a cash deposit, and \$10 plus transportation charges upon delivery of the books. Another contract requires an initial payment of \$10, the balance of \$13.50, plus delivery charges being due upon delivery of the books. Another contract calls for the payment of \$5 as a deposit, \$6.60 on delivery of the books, and \$4 per month thereafter until a total of \$27.60 has been paid. Under a fourth form of contract, the cost to the purchaser is \$29.60 under terms optional with him. Under a fifth form of contract, the reference books together with a choice of certain premiums are sold for \$39.60.

In their efforts to sell said Modern American Encyclopedia, said respondents and their agents and salesmen have made and do make representations that the aforesaid prices were and are simply introductory and that the publication ordinarily and usually sells, has sold, and would sell for much higher prices. Some of the figures used in this connection ranged any where from \$79 to \$100 for the set. Some agents made the representation that the price of the books was \$59 and if a revision service was desired separately, the cost would be something like \$50 additional.

4. Said respondents further have represented, and now represent, to the prospective and actual purchasing public that said Modern American Encyclopedia is being specially offered free to certain selected purchasers without cost except for a nominal binding charge. They represented and do represent that, instead of the purchase of advertising space in newspapers and time on radio stations, it had been decided to place a few sets of the encyclopedias in selected homes, and that the individuals selected to receive the books were being asked to pay only the actual cost of binding and the cost of a 10-year supplemental or revision service. These "privileged" customers were and are advised that their names would be used later in the regular sales campaign in return for their obtaining such a low price on the special introductory offer. In some cases the books were and are offered for \$19.50, in others, \$23.50, and in others, \$29.60. Furthermore, the said respondents represented and do represent that the extension or supplemental revision service was free or without extra cost, whereas the guaranty certificate furnished in connection with the sale of the books and to which were attached a set of coupons, one for each year extending over a 10-year period,

provided and provide that \$1.85 must be remitted with each coupon before the service would be furnished.

5. Said respondents further have represented, and now represent, to the prospective and actual purchasing public that the Modern American Encyclopedia was and is sponsored by the Carnegie Foundation, and that the Modern American Co. was and is the selling agent of the Carnegie Foundation or Institute, and that members of said Institute were largely responsible for the preparation of the Modern American Encyclopedia.

PAR. 6. In truth and in fact, all of said statements and representations set forth in paragraph 5 herein were and are false, misleading and untrue. Said Modern American Encyclopedia has never been sold at prices far in excess of those at which it has been and is now being sold by said respondents. The prices set under the various forms of contracts used by the said respondents at different times and in different localities were and are the regular and usual prices of said books, and the books are available to anyone of the public generally who can be induced to purchase same. The prices asked were not simply "introductory" or "special" prices, and the campaign being conducted was not in fact an introductory campaign, but was and is a sales campaign in the usual course of business and the prices asked were regular prices, and the said books never sold for or were priced at prices ranging from \$79 to \$100.

The prospective purchasers were not and are not in fact "selected" from the general public to receive the books at a "special" price, and the price asked for the books was greatly in excess of the actual cost of binding the volumes and in excess of the actual cost of the 10-year revision service. The names of such customers were not used, or intended to be used, as references in a later "regular" sales campaign, and in fact there never was such a later campaign ever planned or carried out. The extension service was never given free or without extra cost but there always was a charge of \$1.85 for each year's service.

Furthermore, the Modern American Encyclopedia was not and is not in fact sponsored by the Carnegie Foundation or Institute, and the Modern American Co. was not and is not the selling agent of the Carnegie Foundation or Institute, and members of said Institute were not and are not largely or in any way responsible for the preparation of the Modern American Encyclopedia.

The whole plan and methods employed by the said 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 an inferior

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quality of paper, from plates originally cast in 1893, and now issued and sold under the deceptive and misleading title "Modern American Encyclopedia."

PAR. 7. The Modern American Corporation, a corporation, was organized, and has functioned chiefly as the owner and holder of the plates from which the Modern American Encyclopedia is printed. It, however, has loaned its name to the printed encyclopedia and by furnishing and supplying the said name, has cooperated with and served the other respondents in furthering their scheme of selling the encyclopedias as a new and modern encyclopedia. Its officers, particularly Charles E. Knapp, have had knowledge of the sales methods hereinbefore enumerated engaged in by the respondents.

PAR. 8. The aforesaid acts and practices of the said respondents with the exception of Charles E. Knapp, Inc., a corporation, were and are calculated to, and had and now have, a tendency and capacity to mislead and deceive, a substantial portion of the purchasing public into the erroneous belief that said representations are true. Furthermore, as a direct consequence of such mistaken and erroneous beliefs, induced by the misrepresentations of the said respondents as aforesaid, a number of the purchasing public has purchased a substantial quantity of said merchandise, with the result that trade has been unfairly diverted from other individuals, corporations, firms and partnerships likewise engaged in the sale of reference books who truthfully advertise and represent their merchandise. As a result thereof, substantial injury has been, and is now being done by the said respondents herein to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts, practices and representations of the said respondents with the exception of Charles E. Knapp, Inc., a corporation, have been, and are, all to the prejudice and injury of the public and said 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 complaint of the Commission, the answers of the respondents, and a stipulation as to the facts entered into between the respondents herein and W. T. Kelley, chief counsel for the Com-

mission, which provides, among other things, that the statement of facts contained therein may be made a part of the record herein, and may be taken as the facts in this proceeding, and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based therein, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs; and the Commission having made its findings as to the facts and conclusion that said respondents, with the exception of Charles E. Knapp, Inc., a corporation, have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Charles E. Knapp, an individual, trading as and in the name of Modern American Co.; Modern American Corporation, a corporation, and its officers; Blanche Wynne, an individual, trading as and in the name of Modern American Co.; and A. J. Rivenbark, Jr., Cleo Samdahl, and A. B. Landrum; individually, or in combination or conspiracy with each other, their respective agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a set of books, now known as, and sold under the name, "Modern American Encyclopedia," whether sold under that name or under any other name, and the extension services sold in connection therewith, in commerce as commerce is defined in the Federal Trade Commission Act; do forthwith cease and desist from:

1. Representing, through the use of the word "Modern" or any other word or words of similar import and meaning in the title of said books, or in the corporate or trade name used in connection with the sale thereof, or in any other manner, that said books are a new, modern, up-to-date encyclopedia or reference work.

2. Representing any person as being a contributor to or editor of any set of books or publications who has not performed services in making or preparing contributions to or who has not performed services in the editing of such books or publications and consented that he may be held out to the public as a contributor or as an editor or assistant editor.

3. Representing that any price is a special reduced or introductory price for respondents' set of books or publications when such price is the usual and customary price charged by the respondents for said set of books or publications.

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4. Representing that the usual price at which respondents' set of books or publications is sold is higher than the price at which they are offered, when such is not the fact.

5. Using the term "free" or any other term of similar import or meaning to designate or describe articles of merchandise regularly included in a combination offer with identical, similar or other articles of merchandise.

6. Representing that purchasers or prospective purchasers of respondents publications are only paying the cost of binding and buying or paying for loose-leaf supplements intended to keep the set of books up-to-date and revised for a period of 10 years or any other period of time, when such is not the fact.

7. Representing that the set of books or publications sold and distributed by the respondents is sponsored by the Carnegie Foundation or Institute, or any other organization, unless the set of books or publications sold by the respondents is so sponsored by such organization.

8. Representing that the respondents are agents for or have any connection with the Carnegie Foundation or Institute, or any other organization, unless they are in fact agents for or have a connection with such organization.

9. Representing that the members of the Carnegie Foundation or Institute are in any way responsible for the preparation of the "Modern American Encyclopedia."

It is further ordered, That said 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.

It is further ordered, That the complaint herein be, and the same is, hereby dismissed as to the respondent Charles E. Knapp, Inc., a corporation.

IN THE MATTER OF

H. S. McCracken Box & Label Company

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

Docket 3606. Complaint, Sept. 23, 1938—Decision, Mar. 21, 1939

Where a corporation engaged in manufacture of boxes, cartons, and labels, and in sale thereof to manufacturing, wholesale, and retail drug trade for the packaging of drugs, proprietary remedies and prescription preparations, and in selling as aforesaid such products to purchasers in other States and in the District of Columbia, and principally retail druggists, in substantial competition with others engaged in sale and distribution of articles which were similar and designed to be used for like purposes in commerce as aforesaid, and with various manufacturers and distributors of boxes, containers, and circulars descriptive of medicinal preparations which were not designed, when used by retailer of drugs and medicinal preparations, to permit the deceiving and defrauding of purchasing public thereby—

- (a) Sold certain boxes, upon which were set forth design and label "ENGLISH CROWN Female (representation of a crown) Pills—A Boon to Suffering Womanhood, Price \$2.00. Will positively remove the most obstinate obstructions and irregularities of menstruation. Guaranteed, the most powerful and effective emmenagogue on earth. PREPARED ONLY BY CROWN CHEMICAL Co., LONDON, ENG.," or with said price shown as \$3 or \$5, at election of buyer; and
- (b) Furnished to purchasers of such boxes, circulars printed in English and German, for use in connection therewith and containing at top thereof words "Female Pills" and, at bottom, "Prepared by Crown Chemical Co., London, Eng.," and such statements and representations as "Caution—Women in a state of pregnancy should avoid the use of these pills as they are liable to induce a miscarriage," "Commence taking these pills—until the desired effect is produced," and "When arrest of menses is feared—using the pills—will in most cases produce the natural function of the organ," and others to effect that pills therein contained had been used with decided success in " * * * cases of impotency, sterility, seminal weakness and other diseases and conditions of the genital organs * * *" and that " * * * by exercising a reasonable amount of perseverance the valuable curative properties of these pills will soon be felt, and a perfect restoration to health, strength and vigor will be sure to follow," and that they were also effective on liver and bowels, affording speedy relief in cases of biliousness, constipation, headache, etc;

Facts being boxes were empty at time of sale, it did not at any time supply purchasers with "Female Pills" prepared by Crown Chemical Co., London, Eng., nor with any other pills, but such boxes and aforesaid circulars were sold to purchasers who desired to package therein and sell to purchasing public pills either of their own compounding or purchased from some other source, within such purchasers' sole discretion and in no way subject to its control, and pills offered and sold therein were not made, prepared, compounded or supplied by such English company, or in England;

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With effect of misleading public into false belief that said boxes, when filled and offered, contained pills prepared or compounded in London, England, and by an English company, known as Crown Chemical Co., and was one of English drug and medicinal preparations for which there is preference among many purchasers and prospective purchasers, as of superior quality, and of inducing purchasing public to believe that pills placed therein were boon to suffering womanhood, and would accomplish results, and had qualities and properties indicated, and had undergone severe tests and given universal satisfaction when properly employed, and with consequence that many purchased drugs and preparations packaged in said boxes and referred to in said advertising matter, in preference to those not misbranded and misrepresented; and

With result that it thus supplied to and placed in the hands of purchasers of said boxes and circulars means and instrumentalities designed to, and capable of permitting them to mislead and deceive purchasing and consuming public as to price, source, place of origin, and therapeutic value of, and results to be obtained from use of, drug or medical preparation placed therein for sale to purchasing and consuming public, and whereby said public could be and was defrauded, and many retail druggists were induced, by reason of designed possibilities of deception and fraud inherent in such boxes and circulars, to purchase substantial volume thereof in preference to those of competitors, and trade was thereby unfairly diverted to it from competitors aforesaid; to the substantial 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.

Mr. W. L. Taggart for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that H. S. McCracken Box & Label Co., a corporation, hereinafter referred to as respondent, has violated the provisions of 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, H. S. McCracken Box & Label Co., is a corporation organized and operating under the laws of the State of Illinois, with its principal office and place of business located at 2640 South Shields Avenue in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and has been for more than 2 years last past, engaged in the business of manufacturing and selling boxes, cartons and labels to the manufacturing, wholesale, and retail drug trade for the packaging of drugs, proprietary remedies and prescription preparations. Respondent causes, and has caused, the said

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boxes, cartons and labels, when sold, to be transported from its principal place of business in the State of Illinois to purchasers thereof located in a State or States of the United States other than the State of Illinois, and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been for more than 2 years last past, in substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution of articles similar to those sold and distributed by the respondent, and designed to be used for like purposes, in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 4. In the course and conduct of its said business, respondent manufactures and sells, and has sold, certain boxes designed and lettered as follows:

ENGLISH CROWN

Female (representation of a crown) Pills

A Boon to Suffering Womanhood—Price \$2.00.

Will positively remove the most obstinate obstructions and irregularities of menstruation. Guaranteed, the most powerful and effective emmenagogue on earth.

PREPARED ONLY BY CROWN CHEMICAL CO., LONDON, ENG.

On the said boxes the price, shown above as \$2, may appear as \$2, \$3 or \$5 at the election of the purchaser.

Respondent also, in the course and conduct of its said business, furnishes to the purchasers of the said boxes, circulars printed in the English and German languages for use in connection with the said boxes. The said circulars, which bear at the top the words "Female Pills" and at the bottom the words "Prepared by Crown Chemical Co., London, Eng.," contain directions, given both directly and by implication, for the use of the said "Female Pills" as an emmenagogue, as an abortifacient, and in connection with the treatment of other ailments, and also contains certain claims, made both directly and by implication, with respect to the therapeutic value of the said "Female Pills." Included among, and typical of, said directions and claims are the following:

Caution—Women in a state of pregnancy should avoid the use of these pills as they are liable to induce a miscarriage.

Commence taking these pills—until the desired effect is produced.

To aid these pills in effecting a cure—

When arrest of menses is feared—using the pills—will in most cases produce the natural function of the organ.

These pills have also been used with decided success in cases of impotency, sterility, seminal weakness and other diseases and conditions of the genital

organs—by exercising a reasonable amount of perseverance the valuable curative properties of these pills will soon be felt, and a perfect restoration to health, strength and vigor will be sure to follow.

These pills have undergone some of the most severe tests and have given universal satisfaction in all cases when properly employed.

In addition—these pills act with remarkable effect on the liver and bowels, promoting the natural functions of these organs and thereby affording speedy relief in cases of biliousness, constipation, headache, etc.

PAR. 5. Said boxes and circulars have been, and are, sold by respondent principally to retail druggists. At the time of sale the said boxes are empty, and at no time does the respondent supply the purchasers with "Female Pills" prepared by "Crown Chemical Co., London, Eng.," nor with any other pill, the said boxes together with the circulars being sold to purchasers who desire to package therein and sell to the purchasing public pills either of their own compounding or purchased from some other source, the composition and the source of the said pills being solely in the discretion of the purchasers of the said boxes and in no way subject to control by respondent.

PAR. 6. The use of the statements "Prepared only by Crown Chemical Co., London, Eng.," "Prepared by Crown Chemical Co., London, Eng.," and the name "English Crown Female Pills" independently or in connection with a simulation of a crown, on the box and circular as herein set forth, has a tendency to, and does, mislead the public into the belief that the box, when filled and offered for sale, contains pills prepared or compounded in London, England, by an English company known as "Crown Chemical Co." There has been, and is, a widespread belief among purchasers and prospective purchasers of drugs and medicinal preparations that certain drugs and medicinal preparations compounded or prepared in England are superior to those compounded or prepared in the United States of America, and many such persons have had, and have, a preference for English drug and medicinal preparations because of said belief in their superiority. Such preference includes preparations of the type described by the respondent on said boxes and in said printed matter sold in connection therewith.

PAR. 7. The belief engendered in the minds of purchasers and prospective purchasers of the pills contained in the box hereinbefore described by the statements set forth in paragraph 6 hereof, is false, misleading, and untrue, since in truth and in fact the pills so offered and sold are not made, prepared, compounded, or supplied by Crown Chemical Co., London, England, nor made, prepared or compounded in England.

PAR. 8. The use of the statements, directions, and claims as set forth in paragraph 4 hereof, made directly and by implication, as to

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the character and the therapeutic effect of, and results to be obtained from, the use of the pills placed in the said boxes by the purchasers of the said boxes, has a tendency to, and does, induce the purchasing public to believe that the said pills: are a boon to suffering womanhood; will remove the most obstinate obstructions and irregularities of menstruation; are the most powerful and effective of emmenagogues; are effective as a treatment for impotency, sterility, seminal weakness and other diseases and conditions of the genital organs, and will restore them to health, strength and vigor; have undergone severe tests and have given universal satisfaction when properly employed; are effective in promoting the natural functions of the liver and bowels, affording speedy relief in cases of biliousness, constipation, and headache; will induce a miscarriage if taken by a pregnant woman; and that the price as stated on the said boxes is one established by Crown Chemical Co. As a result of this mistaken and erroneous belief many persons purchase the drugs and preparations packaged in said boxes and referred to in said advertising matter in preference to drugs and preparations not so misbranded and misrepresented.

PAR. 9. Respondent thus supplies to and places in the hands of purchasers of said boxes and circulars, means and instrumentalities designed to permit, and capable of permitting said purchasers to mislead and deceive the purchasing and consuming public as to the price, source, place of origin and the therapeutic value of, and the results to be obtained from the use of, the drug or medical preparation placed in said boxes for sale to the purchasing and consuming public, thereby placing in the hands of said purchasers of said boxes and circulars, the means and instrumentalities whereby the purchasing public can be, and is, defrauded.

PAR. 10. There are in competition with respondent various manufacturers and distributors of boxes and containers and circulars descriptive of medicinal preparations which are not designed, when used by retailers of drugs and medicinal preparations, to permit such retailer to deceive and defraud the purchasing public. Because of the designed possibilities of deception and fraud inherent in the boxes and circulars sold by respondent, many retail druggists are induced to purchase respondent's boxes and circulars in preference to those of respondent's competitors, and trade is thus diverted unfairly to respondent from its said competitors. As a consequence thereof, injury has been done and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 11. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 23, 1938, issued, and on September 26, 1938, served its complaint in this proceeding upon respondent, H. S. McCracken Box & Label Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On November 1, 1938, respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said fact. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter, 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, H. S. McCracken Box & Label Co., is a corporation organized and operating under the laws of the State of Illinois, with its principal office and place of business located at 2640 South Shields Avenue in the city of Chicago, State of Illinois.

PAR. 2. The respondent is now, and has been for more than 2 years last past, engaged in the business of manufacturing and selling boxes, cartons, and labels to the manufacturing wholesale and retail drug trade for the packaging of drugs, proprietary remedies, and prescription preparations.

In the conduct of its business respondent causes, and has caused, the said boxes, cartons, and labels, when sold, to be transported from its principal place of business in the State of Illinois to purchasers thereof located in a State or States of the United States other than the State of Illinois, and in the District of Columbia.

PAR. 3. In the operation of its said business, respondent is now, and has been for more than 2 years last past, in substantial competition with other corporations and with individuals and partnerships en-

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gaged in the sale and distribution of articles similar to those sold and distributed by the respondent, and designed to be used for like purposes, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its said business, respondent manufactures and sells, and has sold, certain boxes designed and lettered as follows:

ENGLISH CROWN

Female (representation of a crown) Pills

A boon to suffering womanhood—Price \$2.00.

Will positively remove the most obstinate obstructions and irregularities of menstruation. Guaranteed, the most powerful and effective emmenagogue on earth.

PREPARED ONLY BY CROWN CHEMICAL CO., LONDON, ENG.

On the said boxes the price, shown above as \$2 may appear as \$2, \$3 or \$5 at the election of the purchaser.

Further, in the conduct of its business respondent furnishes to the purchasers of the said boxes, circulars printed in the English and German languages for use in connection with the said boxes. The said circulars, which bear at the top the words "Female Pills" and at the bottom the words "Prepared by Crown Chemical Co., London, Eng.," contain directions, given both directly and by implication, for the use of the said "Female Pills" as an emmenagogue, as an abortifacient, and in connection with the treatment of other ailments, and also contains certain claims, made both directly and by implication, with respect to the therapeutic value of the said "Female Pills."

Included among, and typical of, said directions and claims are the following:

Caution—Women in a state of pregnancy should avoid the use of these pills as they are liable to induce a miscarriage.

Commence taking these pills—until the desired effect is produced.

To aid these pills in effecting a cure—

When arrest of menses is feared—using the pills—will in most cases produce the natural function of the organ.

These pills have also been used with decided success in cases of impotency, sterility, seminal weakness and other diseases and conditions of the genital organs—by exercising a reasonable amount of perseverance the valuable curative properties of these pills will soon be felt, and a perfect restoration to health, strength and vigor will be sure to follow.

These pills have undergone some of the most severe tests and have given universal satisfaction in all cases when properly employed.

In addition—these pills act with remarkable effect on the liver and bowels, promoting the natural functions of these organs and thereby affording speedy relief in cases of biliousness, constipation, headache, etc.

PAR. 5. The Commission finds that said boxes and circulars have been, and are, sold by respondent principally to retail druggists.

The Commission further finds that at the time of sale the said boxes are empty, and at no time does the respondent supply the purchasers with "Female Pills" prepared by "Crown Chemical Co., London, Eng.," nor with any other pill, the said boxes together with the circulars being sold to purchasers who desire to package therein and sell to the purchasing public pills either of their own compounding or purchased from some other source, the composition and the source of the said pills being solely in the discretion of the purchasers of the said boxes and in no way subject to control by respondent.

PAR. 6. The Commission finds that the use of the statements "Prepared only by Crown Chemical Co., London, Eng.," "Prepared by Crown Chemical Co., London, Eng.," and the name "English Crown Female Pills" independently or in connection with a simulation of a crown, on the box and circular as herein set forth, has a tendency to, and does, mislead the public into the belief that the box, when filled and offered for sale, contains pills prepared or compounded in London, England, by an English company known as "Crown Chemical Co."

There has been, and is, a widespread belief among purchasers and prospective purchasers of drugs and medicinal preparations that certain drugs and medicinal preparations compounded or prepared in England are superior to those compounded or prepared in the United States of America, and many such persons have had, and have, a preference for English drug and medicinal preparations because of said belief in their superiority. Such preference includes preparations of the type described by the respondent on said boxes and in said printed matter sold in connection therewith.

PAR. 7. The Commission finds that the belief engendered in the minds of purchasers and prospective purchasers of the pills contained in the box hereinbefore described by the statements set forth in paragraph 6 hereof, is false and untrue.

In truth and in fact the pills so offered and sold are not made, prepared, compounded or supplied by Crown Chemical Company, London, England, nor made, prepared or compounded in England.

PAR. 8. The use of the statements, directions, and claims as found in paragraph 4 hereof, made directly and by implication, as to the character and the therapeutic effect of, and results to be obtained from, the use of the pills placed in the said boxes by the purchasers of the said boxes, has a tendency to, and does, induce the purchasing public to believe that the said pills: are a boon to suffering womanhood; will remove the most obstinate obstructions and irregularities

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of menstruation; are the most powerful and effective of emmenagogues; are effective as a treatment for impotency, sterility, seminal weakness and other diseases and conditions of the genital organs, and will restore them to health, strength, and vigor; have undergone severe tests and have given universal satisfaction when properly employed; are effective in promoting the natural functions of the liver and bowels, affording speedy relief in cases of biliousness, constipation, and headache; will induce a miscarriage if taken by a pregnant woman; and that the price as stated on the said boxes is one established by Crown Chemical Co. As a result of this mistaken and erroneous belief many persons purchased the drugs and preparations packaged in said boxes and referred to in said advertising matter in preference to drugs and preparations not so misbranded and misrepresented.

PAR. 9. Respondent thus supplies to and places in the hands of purchasers of said boxes and circulars, means and instrumentalities designed to permit, and capable of permitting said purchasers to mislead and deceive the purchasing and consuming public as to the price, source, place of origin and the therapeutic value of, and the results to be obtained from the use of, the drug or medical preparation placed in said boxes for sale to the purchasing and consuming public, thereby placing in the hands of said purchasers of said boxes and circulars, the means and instrumentalities whereby the purchasing public can be, and is, defrauded.

PAR. 10. In the course of the operation of its business respondent is in competition with various manufacturers and distributors of boxes and containers and circulars descriptive of medicinal preparations which are not designed, when used by retailers of drugs and medicinal preparations, to permit such retailer to deceive and defraud the purchasing public.

Because of the designed possibilities of deception and fraud inherent in the boxes and circulars sold by respondent, many retail druggists were and are induced to purchase a substantial volume of respondent's boxes and circulars in preference to those of respondent's competitors, with the result that trade has been unfairly diverted to respondent from its said competitors. As a consequence thereof, substantial injury has been done and is now being done by respondent 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 respondent as herein found are all to the prejudice of the public and of respondent's competitors and

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Order

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 and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to the said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, H. S. McCracken Box & Label Co., a corporation, its officers, representatives, agents, servants, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of boxes, cartons, labels, circulars or other printed matter in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Furnishing to dealers or distributors boxes, cartons, containers, circulars or other printed matter which enable said dealers or distributors to mislead and deceive the purchasing public with reference to the place of origin of the products sold and distributed by them, or the name of the manufacturer or compounder thereof, or the remedial or therapeutic value of such products.

2. Representing, by any name or address designating the manufacturer, or by seals, emblems, or any other device, or in any other manner, that said products, or the contents of said boxes, cartons, or containers are manufactured at any place other than the place of manufacture or that they are manufactured by or for any person, corporation, or partnership, other than the person, corporation, or partnership by whom or for whom said boxes, cartons or containers or the contents thereof are actually manufactured.

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

IN THE MATTER OF
SAMUEL COHEN, INDIVIDUALLY, AND TRADING AS
S. & C. SALES

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

Docket 3698. Complaint, Feb. 3, 1939—Decision, Mar. 21, 1939

Where an individual engaged in sale and distribution of cameras, sports jackets, pencils, and other articles of merchandise; in soliciting sale of and in selling and distributing his said merchandise—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes for sale and distribution of said products to ultimate consumers, wholly by lot or chance, and which involved distribution to purchasing public of certain literature and instructions, including push cards, order blanks, illustrations of said merchandise and circulars explaining his plan of selling same and allotting it as premiums or prizes to operators of said push cards, by which and in accordance with said card's explanatory legends amount, if any, paid for chance by customer was dependent upon number selected by chance, certain numbers secured selectors Eversharp pencil thus disposed of, and receipt by customer of camera or other article being thus disposed of was dependent upon success or failure in selecting from list of feminine names displayed, name corresponding with that concealed under card's master seal, and by which, failing such contingency, customer received nothing; and

Supplied thereby and placed in the hands of others means of conducting lotteries in sale of his merchandise in accordance with sales plan above described, under which receipt by purchaser of article or nothing for amount of money paid, and which article, if any, purchaser was to receive, and whether person receiving such article received same without cost was determined wholly by lot or chance, and involving game of chance or sale of a chance to procure article of merchandise at price much less than normal retail price thereof, contrary to an established public policy of the United States Government, and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance or any other method contrary to public policy and refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by him in sale and distribution of his merchandise and were thereby induced to buy or sell same in preference to buying or selling like or similar articles of merchandise offered by competitors who do not use such or equivalent method, and with effect, by reason of use of such method and game of chance of unfairly diverting trade to him from his competitors, who do not so do, to the substantial injury of competition in commerce;

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

Mr. D. C. Daniel for the Commission.

Zukernick & Zukernick, of Miami Beach, Fla., for respondent.