

Syllabus

IN THE MATTER OF

UNITED EDUCATORS, INC., GENERAL RESEARCH FOUNDATIONS, INC., PUBLISHERS FINANCE COMPANY, INC., WARREN T. DAVIS, JOSEPH J. RINK, AND ELMER C. WOLFORD

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

Docket 3428. Complaint, May 18, 1938—Decision, Aug. 5, 1939

Where three corporations, which were known as United Educators, Inc., General Research Foundation, Inc., and Publishers Finance Co., Inc., and which were carried on as different branches or departments of one business concern, and three individuals who were directors and owners of a controlling interest of said United Educators, Inc., and were general officers thereof, and who controlled and directed the policies and activities of said three companies; engaged in selling and distributing set of reference books known as the "American Educator Encyclopedia," and of certain research services and of loose leaf extension service for use in connection therewith, through numerous salesmen or solicitors whom they employed to canvass individual customers in various States and to forward orders and contracts secured to their office for shipment of books on such orders or contracts, and as thus engaged in making use of said United Educators, Inc., for publication of said encyclopedia and loose leaf service and distribution of units thereof, and of said General Research Foundation, Inc., for supplying said "research service," and of said Publishers Finance Co., Inc., as collection agency or department for United Educators, Inc.; and, as aforesaid engaged, in competition with others likewise engaged in similar business involving sale and distribution of books in interstate commerce—

- (a) Represented that the volumes of said encyclopedia were free and that the buyer was to pay for and did pay for only loose leaf extension service at stated price, or that said volumes were given free or at an especially low price as part of an advertising program because of prominence of prospective purchaser or for other reasons appealing thereto, or that price at which the units of the offer were being offered and sold was a special price;

Facts being said volumes were not given free nor offered or sold at especially low prices to selected individuals as part of an advertising scheme or otherwise but sales were made of said units, in which the bound volumes of the encyclopedia were an important element, at their then current and usual prices and alleged special prices were such current and usual prices;

- (b) Represented that instrument presented to prospects for their signature in connection with sale of such units was simply a receipt or an order blank, facts being such instruments were cleverly worded promises to pay certain sums in money, which were of same force and effect as promissory notes, and which purchasers were induced to and did sign in mistaken belief that they were signing simple receipts or orders which were not such notes;

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- (c) Represented that the so-called "research service" was furnished by the General Research Foundation of which purchaser became a member, facts being corporation in question, true name of which was General Research Foundation, Inc., was not an institution supported in whole or in part by disinterested or eleemosynary funds and was not a foundation in sense in which such term or designation is usually used, understood, and accepted by the general public;
- (d) Represented that purchase price covered entire ultimate cost of the units, facts being purchase price of units, as shown in their contract order forms, did not show entire ultimate cost, but buyers, in addition to prices there stated, were able to obtain quarterly loose leaf extension service issues only by paying 24 cents each and total amount of \$9.60 for said service for 10 years, and failed at times to understand that such additional sums for said extension service were required; and
- (e) Represented to buyers, in order to enforce collection of accounts due on purchase orders for sets of books and services obtained as aforesaid, that such accounts, and aforesaid written instruments evidencing the debts, had been purchased by said Publishers Finance Co., Inc., before maturity and for a valuable consideration from United Educators, Inc., and that said former company was an innocent purchaser of such obligations, and threatened some purchasers with action through local banks and, in case of teacher purchasers, through school authorities, facts being corporation in question was not an innocent purchaser for value before maturity of said obligations, but had full knowledge of all the facts surrounding each of such transactions;

With result, through such false, misleading, and deceptive statements and representations with respect to terms and conditions upon which said units were sold, nature of said order blank, status of said General Research Foundation, Inc., and terms upon which said loose leaf extension could be obtained, of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false, deceptive, and misleading statements and representations were true and into purchase, because of such belief, of substantial quantities of their said books and services and of thereby diverting unfairly trade to them from their competitors in commerce; to the injury of such competition:

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

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

Mr. Wm. T. Chantland, *Mr. James L. Fort* and *Mr. R. W. Branch* for the Commission.

Winston, Strawn & Shaw, 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 United Educators, Inc., General Research Foundation, Inc., Publishers Finance Co., Inc., Warren T. Davis, Joseph J. Rink, and Elmer C. Wolford, hereinafter

referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, United Educators, Inc., is a Delaware corporation chartered in 1931, with offices and principal place of business at 180 North Michigan Avenue, Chicago, Ill., and licensed to do business in the State of Illinois. Respondents Warren T. Davis, Joseph J. Rink, and Elmer C. Wolford have been and are directors and owners of a controlling interest in, and Warren T. Davis has been and is the president, Joseph J. Rink has been and is the vice president, and Elmer C. Wolford has been and is the secretary-treasurer of United Educators, Inc.

Respondent, General Research Foundation, Inc., is an Illinois corporation organized in 1933, under the provisions for corporations not for pecuniary profit. Its offices are with, and it is controlled by and operated as a subsidiary of, and all of its operation expenses are paid by, respondent United Educators, Inc. Respondent Elmer C. Wolford has been and is president and treasurer of respondent General Research Foundation, Inc.

Respondent, Publishers Finance Co., Inc., is an Illinois corporation chartered in 1932, with an authorized capital stock of 100 shares, all of which have been and are owned by respondent, United Educators, Inc. Respondent Elmer C. Wolford has been and is president and treasurer of respondent Publishers Finance Co., Inc.

The policies and activities of respondents, United Educators, Inc., General Research Foundation, Inc., and Publishers Finance Co., Inc., are all controlled and directed by respondents, Warren T. Davis, Joseph J. Rink, and Elmer C. Wolford, and the activities of said three corporations are carried on as different branches or departments of one business concern.

All of respondents have been for several years last past and now are engaged in the sale, transportation, and distribution in interstate commerce of sets of reference books known as "American Educator Encyclopedia" and other books, and a so-called quarterly loose-leaf extension service for the encyclopedia, and certain research services. The "American Educator Encyclopedia" consists of sets of 10 or 20 volumes, selling during said period at prices from \$49.50 to \$80 per set, depending upon binding, and said sales prices include extension material or service for a period of 10 years, and the right to the use of a so-called "research bureau" operated under the name of

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General Research Foundation. Certain other sets of books have been and are sold in combination with such reference sets, and certain premiums have been and are at times given to obtain larger down payments, and to induce purchases and to aid in collection of delinquent accounts.

PAR. 2. In the course and conduct of their business, respondents have been at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in similar business involving the sale and distribution of books in interstate commerce.

PAR. 3. In the course and conduct of their business as hereinbefore described, respondents employed and utilized the services of many salesmen or solicitors, varying in number from 25 to several hundred, both men and women, who canvassed individual prospective customers located in various States of the United States. When signed orders or contracts are received by such solicitors, the orders or contracts are forwarded to the Chicago offices of respondents and the wares called for therein are shipped from there either directly to the purchasers throughout the various States, or to such solicitor-salesmen for delivery to such purchasers throughout the various States. All shipments of books are on orders or contracts sent in by such salesmen. All payments made for said books, except the initial payments made to the sales people, are remitted directly to the respondents' offices in Chicago.

PAR. 4. Respondent, Publishers Finance Co., Inc., is now and has been performing the function of a collection agency or collection department for the respondent, United Educators, Inc. In some instances said respondent, Publishers Finance Co., Inc., has falsely represented to purchasers of said books that the amount due and the written instrument evidencing the debt had been purchased by it before maturity and for a valuable consideration from the respondent, United Educators, Inc., and that it was an innocent purchaser of such obligation, and that therefore such purchasers were not entitled to any adjustment of, or in a position to make any defense to, the claim of respondent, Publishers Finance Co., Inc., arising out of said obligation.

In truth and in fact said respondent, Publishers Finance Co., Inc., was not an innocent purchaser for value before maturity of said obligations, but had full knowledge of all the facts surrounding each of such transactions, and said purchasers were entitled to and could make any and all defenses to the claims of said respondent, Publishers Finance Co., Inc., which such purchasers could have made against the respondent United Educators, Inc.

PAR. 5. To aid their agents or solicitors, and to increase the sale of said books, the respondents have furnished such agents or solicitors with various forms of suggested sales approaches and other printed advertising matter relating to said books. These agents or solicitors as a result of the sales approaches suggested, and the advertising matter supplied, by the respondents have used the following means and methods in soliciting the sale of and in selling said books to the purchasing public:

1. Said agents or solicitors have falsely represented to prospective purchasers that certain items, which were in fact a part of a regular combination offer and included in the price thereof, were being given free to the particular customer for some special reason, thereby influencing such customer to purchase said books. Among such representations was the representation that the books were free, and that the prospective purchaser was to pay for and did pay for only the loose-leaf extension service, whereas, in truth and in fact, the price purported to be charged for the loose-leaf extension service was, and is, the customary and ordinary price charged for said books and the loose-leaf extension service.

2. In many instances the agents or solicitors of the respondents represented to prospective purchasers that, for advertising purposes and as a part of an advertising program, certain of said books were given free, or at an especially low price, because of the alleged prominence of the prospective purchaser, or for some other reason appealing to such prospective purchaser, when in truth and in fact such books were not given free or at an especially low price to such prospective purchaser for any reason, but were sold at the price at which said books are customarily and ordinarily sold by the respondents. This misrepresentation was more frequently made to young women school teachers, to each of whom it was represented that such reference books were necessary to her work and would enhance her standing with the school authorities, and that failure to buy said books would imperil her standing with said school authorities. In some instances these representations were threatening and coercive in their nature. In truth and in fact, said agents or solicitors had no knowledge or information on which to base such representations as to the effect which the purchase or failure to purchase respondents' said books would have on the teacher's standing with the school authorities.

3. Said agents or solicitors on occasion represented to parents of students who had performed some work of special merit in school that such student, as a reward for or in recognition of such work of special merit, would be permitted to purchase said books and

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said extension service at a special price, when in truth and in fact the price at which said books and said extension service were offered for sale and sold to the parents of such students was not special, but was the usual and customary price at which said books and said extension service were sold to the public generally.

4. Said agents or solicitors in many instances failed or neglected to inform prospective purchasers that the securing of loose-leaf extension service material entailed an additional cost of 24 cents a copy in addition to the price stated to such prospective purchasers, although said agents or solicitors represented that the stated price included such loose-leaf extension material.

5. The agents or solicitors in many instances represented to prospective purchasers that an instrument presented to such purchasers for signature in connection with the sale of said books was simply a receipt or an order blank, when in truth and in fact said instruments so presented were cleverly worded promises to pay a certain sum in money and are of the same force and effect as a promissory note. Many purchasers were induced to and did sign such promissory note contracts under the mistaken belief that they were signing a simple receipt or order which created no monetary obligation on their part.

6. Said agents or solicitors in many instances represented to prospective purchasers of said books generally that the price at which said loose-leaf extension service and said books were being offered for sale and sold was a special price, when in truth and in fact the price at which said loose-leaf extension service and said books were offered for sale and sold was the usual and customary price at which they were generally sold.

PAR. 6. In an attempt to enforce collection of the amount due on orders obtained as a result of the acts and practices of said agents or solicitors, as hereinabove alleged, in some instances the respondents threatened purchasers with action through local banks and attorneys and, in case of teacher purchasers, through school authorities.

PAR. 7. The respondent, Warren T. Davis, carries on certain of his activities in connection with the business of respondents through a so-called "Child Development Foundation." In truth and in fact, neither the so-called "Child Development Foundation" nor the respondent, General Research Foundation, Inc., is a foundation in the sense in which such term or designation is usually used, understood, and accepted by the general public, that is, as being in whole or in part supported by disinterested or eleemosynary funds. The general public understands and believes that the activities or publications of such foundations are impartial and of especially high value,

and the use of the word "foundation" by the respondents in said names leads the purchasing public to believe that said organizations are foundations in the sense in which this term or designation is used, understood, and accepted by the general public, as hereinabove set forth. In truth and in fact, neither the activities nor the publications of the so-called "Child Development Foundation" or the respondent General Research Foundation, Inc. are impartial or of especially high value.

PAR. 8. Among the competitors of the respondents as described in paragraph 2 hereof are many who do not in any manner misrepresent the price, nature, or the services rendered in connection with their said books and loose-leaf extension service.

PAR. 9. The acts and practices of the respondents as above alleged in the course of selling and offering for sale their books and services in commerce as described herein have the capacity and tendency to and do mislead and deceive a substantial portion of the purchasers into the erroneous belief that said representations are true, and into the purchase of respondents' books and services because of the erroneous and mistaken beliefs induced as aforesaid. As a result thereof, substantial trade in said commerce has been unfairly diverted to the respondents from those of their competitors who do not misrepresent their products. In consequence thereof, injury has been and is being done to respondents' competitors in commerce among and between the various States of the United States.

PAR. 10. The above and foregoing acts and practices have been and are all to the prejudice of the public and the respondents' competitors and constitute unfair methods of competition in interstate commerce within the meaning and intent 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 18th day of May 1938, issued, and on the 21st day of May 1938, served its complaint in this proceeding upon respondents, United Educators, Inc., General Research Foundation, Inc., Publishers Finance Co., Inc., Warren T. Davis, Joseph J. Rink, and Elmer C. Wolford, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. No answer was filed by any of the respondents. On the 23rd day of July 1938, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts, signed and executed by the

respondents and their counsel, Winston, Strawn and Shaw, and Wm. T. Chantland, attorney for the Commission, and certain testimony taken in November and December 1936, in the matter of Perpetual Encyclopedia Corporation, and others, Docket No. 1371, and duly recorded and filed in the office of the Commission, may be taken as the facts in this proceeding and in lieu of other testimony in support of the charges stated in the complaint, or in opposition thereto, and that the proceeding will be submitted and decided on the record as stipulated for without further evidence or hearings. On August 5, 1938, said stipulation was introduced in evidence at a hearing before John W. Addison, an examiner of the Commission, theretofore duly designated by it. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, testimony and other evidence, brief in support of the complaint and in opposition thereto (oral argument not having been requested); 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. Respondent, United Educators, Inc., is a Delaware corporation, chartered in 1931 with offices and principal place of business at 6 (formerly 180) North Michigan Avenue, Chicago, Ill., and licensed to do business in the State of Illinois. Respondents, Warren T. Davis, Joseph J. Rink, and Elmer C. Wolford, have been and are directors and owners of a controlling interest and have been and are, respectively, president, vice president, and secretary-treasurer of United Educators, Inc.

PAR. 2. Respondent, General Research Foundation, Inc., is a corporation organized in 1933 under the provisions of the laws of the State of Illinois applicable to corporations not organized for pecuniary profit. Its offices are with, and it is controlled by and operated as a subsidiary of, and all of its operating expenses are paid by respondent, United Educators, Inc. Respondent, Elmer C. Wolford, has been and is president and treasurer of respondent, General Research Foundation, Inc.

PAR. 3. Respondent, Publishers Finance Co., Inc., is an Illinois corporation chartered in 1932 with an authorized capital stock of 100 shares, all of which have been and are owned by respondent, United Educators, Inc.

PAR. 4. The policies and activities of respondents, United Educators, Inc., General Research Foundation, Inc., and Publishers Finance Com-

pany, Inc., are all controlled and directed by respondents Warren T. Davis, Joseph J. Rink, and Elmer C. Wolford, and the activities of said three corporations are carried on as different branches or departments of one business concern.

PAR. 5. All of the respondents are now and have been for several years last past engaged in the business of selling and distributing a set of reference books known as the "American Educator Encyclopedia," certain research services in connection therewith, and a loose-leaf extension service therefor.

Sales were made in units, which consisted of a set of the encyclopedia, a right to receive the research service and a right to obtain the loose-leaf extension service. Neither of these services were delivered or contemplated to be delivered simultaneously with the volumes of the encyclopedia. The research service was intended and understood as something to be supplied to the purchasers from time to time as requested. The loose-leaf extension service was to supplement the encyclopedia and was designed to keep this information up to date over a period of years.

The cost of the unit during said period has been from \$49.50 to \$80, depending upon the number of volumes in which the encyclopedia was bound and the character of the binding. The publication of the encyclopedia, and the loose-leaf service and the distribution of units were through United Educators, Inc., and the "research service" was supplied through the General Research Foundation, Inc. Publishers Finance Co., Inc., acted as a collection agency or department for United Educators, Inc.

PAR. 6. In the course and conduct of their business, as hereinbefore described, respondents employed and utilized the services of many salesmen or solicitors varying in number from 25 to several hundred, both men and women, and canvassed individual prospective customers located in various States of the United States. When signed orders or contracts are received by such solicitors, the orders or contracts are forwarded to the Chicago offices of respondents and the wares called for therein are shipped in interstate commerce from there either directly to the purchasers throughout the various States or to such solicitor-salesmen for delivery to such purchasers throughout the various States. All shipments of books are on orders or contracts sent in by such salesmen. All payments made for said books, except the initial payments made to sales people, are remitted directly to the offices of respondents in Chicago.

PAR. 7. In the course and conduct of their business, respondents have been at all times herein referred to in competition with other corpora-

tions, individuals, firms and partnerships likewise engaged in similar businesses involving the sale and distribution of books in interstate commerce.

PAR. 8. To promote the sale of said books respondents have represented that:

(a) The volumes of the encyclopedia were free and the buyer was to pay for and did pay for only loose-leaf extension service at a stated price.

(b) The volumes of the encyclopedia were given free or at an especially low price as part of an advertising program because of the prominence of the prospective purchaser or for other reasons appealing to the prospect.

(c) The price at which the units were being offered for sale and sold was a special price.

(d) An instrument presented to prospects for their signature in connection with the sale of said units was simply a receipt or an order blank.

(e) The "research service" was furnished by "The General Research Foundation," of which the purchaser became a member.

(f) The purchase price represented the entire ultimate cost of the unit.

PAR. 9. In truth and in fact there were at all times regular prices established by the respondents for the various units at which they were usually and customarily offered and sold. The volumes of the encyclopedia were not given free nor were they offered or sold at especially low prices to selected individuals as a part of an advertising scheme or otherwise. Sales were made of the units in which the bound volumes of the encyclopedia were an important element at respondents' then current and usual prices. Alleged special prices which were offered were in fact respondents' then current and usual prices.

The instruments presented for signature of prospective purchasers in connection with the sale of the units were cleverly worded promises to pay certain sums in money and are of the same force and effect as promissory notes. Purchasers, however, were induced to sign and did sign under the mistaken belief that they were signing simple receipts or orders that were not promissory notes.

The General Research Foundation, the true name of which was "General Research Foundation, Inc.," is not a "foundation" in the sense in which that term or designation is usually used, understood and accepted by the general public, that is, an institution in whole or in part supported by disinterested or eleemosynary funds.

The purchase price of the unit as shown in respondents' contract-order-forms did not show its entire, ultimate cost. In addition to the

price stated in the contract-order-form, buyers were able to obtain the quarterly loose-leaf extension service issues only by paying 24¢ each, aggregating \$9.60 for the service for 10 years. Buyers at times failed to understand that they were to pay additional sums for the extension service.

PAR. 10. To enforce collection of accounts due on purchase orders for sets of books and services obtained as aforesaid, respondents represented to the buyers that the accounts due and the said written instruments evidencing the debts had been purchased by respondent, Publishers Finance Co., Inc., before maturity and for a valuable consideration from respondent, United Educators, Inc., and that said Publishers Finance Co., Inc., was an innocent purchaser of such obligations. Respondents threatened some purchasers with action through local banks and attorneys and, in the case of teacher-purchasers, through school authorities.

PAR. 11. Said respondents, Publishers Finance Co., Inc., was not an innocent purchaser for value before maturity of said obligations, but had full knowledge of all the facts surrounding each of such transactions.

PAR. 12. Respondents utilized the services of many salesmen or solicitors and their sales aggregated 17,937 sets between April 1931 and April 1936. There is evidence that the respondents knew the selling tactics employed by certain of their employees, and in any event the respondents should, if reasonably observant, have known of their use and the Commission so finds. While there is evidence that respondents on occasion cautioned some individual persons in their employ against the use of such practices, such cautions were given after, rather than before, the event. The individual respondents assert that subsequent to December 14, 1936, active steps to put a stop to the sales tactics described herein were taken. The record does not disclose the nature or extent of such steps, and other than this testimony there is no evidence that any general affirmative step was taken by the respondents to prevent the use of these practices prior to May 27, 1937, when a notice with reference to them was sent to all salesmen and solicitors. Prior to that time it appears that respondents' efforts to this end were occasional, and were given personally to a limited number of the numerous solicitors.

PAR. 13. The use by respondents of the foregoing false and misleading statements and representations with respect to the terms and conditions upon which the said units were sold, the nature of its order blank, the status of General Research Foundation, Inc., and the terms upon which the loose-leaf extension could be obtained, has had and

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now has the capacity to, and has, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false, deceptive and misleading statements and representations are true, and because of such erroneous and mistaken belief to purchase substantial quantities of respondents' said books and services.

As a result thereof trade has been diverted unfairly to the respondents from their competitors in said commerce. In consequence thereof injury has been and is now being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia:

CONCLUSION

The aforesaid acts and practices of respondents, United Educators, Inc., General Research Foundation, Inc., Publishers Finance Co., Inc., Warren T. Davis, Joseph J. Rink, and Elmer C. Wolford, have been and are to the prejudice and injury of the public and of competitors of 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, the answer of respondents, 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, and briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, United Educators, Inc., General Research Foundation, Inc., Publishers Finance Co., Inc., Warren T. Davis, Joseph J. Rink, and Elmer C. Wolford, and each of them, their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of any books, set of books, or publications, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

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

3. Advertising or representing, in any manner, to purchasers or prospective purchasers that any books or set of books are offered at an especially low price, unless and until the price at which the books or set of books are offered is less than the price for which said books or set of books are usually or customarily offered for sale and sold.

4. Representing that any instrument presented to prospective customers for signature in connection with the sale of any books or set of books is a mere receipt or order blank, when such instrument is an agreement to pay a specified sum or sums on a date or dates certain.

5. Representing that any instrument presented to prospective customers for signature in connection with the sale of any books or set of books is not a promissory note, when such instrument contains an agreement by the signer to pay a specified sum or sums on a date or dates certain.

6. Representing that the holder of any instrument acquired in connection with the sale of any books or set of books is a bona fide purchaser for value before maturity, when such is not the fact.

7. Representing as a "foundation" any organization other than one in whole or in part supported by disinterested or eleemosynary funds.

8. Advertising or representing, in any manner, as the purchase price of any books or set of books, together with any loose-leaf extension service therefor, or any other service or article, any sum other than the entire ultimate cost of such books or set of books and service and article to the purchaser.

9. Advertising or representing, in any manner, that any specific sum is, or includes, the price or the full price of any books or set of books together with any right or option to purchase other books, services or articles, unless all the terms and conditions in connection with the exercise of such right or option are clearly and conspicuously stated in immediate connection therewith.

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.

IN THE MATTER OF
OSTREX COMPANY, INC.

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

Docket 3354. Complaint, Mar. 11, 1938—Decision, Aug. 8, 1939

Where a corporation engaged in sale and distribution of its "Ostrex" medicinal preparation to wholesale and retail druggists in various States for resale to members of purchasing public, in substantial competition with others engaged in sale and distribution of medicinal and other preparations and products designed and used for the same general purposes for which it represented its said "Ostrex" as effective, as below set forth, and including many who do not in any manner misrepresent their preparations or products or therapeutic properties thereof and who do not make any other false statements in connection with their sale and distribution; in advertisements which it disseminated through newspapers, publications, and bulletins circulating among the various States and in the District of Columbia—

- (a) Represented, directly and by implication, that use of said "Ostrex" would build up or regenerate the blood, and that it constituted a competent and effective gland stimulant and invigorator, and that quickest blood-building iron was contained in raw oysters, through such statements, among numerous others, as "Get rid of the weak, exhausted, pepleless condition that makes you feel half a man. Get rich red blood * * *," "Get package Ostrex Tablets today. They make you red-blooded, * * * make you feel peppy, younger," "Men get vigor at once * * * One dose peps up organs, glands," and "The quickest blood-building iron, copper, manganese and calcium are obtained from raw oysters. New discovery, Ostrex, contains these especially quick blood builders and weight builders * * * in highly concentrated form";

Facts being it had no therapeutic value for building up or regenerating blood of persons who were normal as regards blood count, it was not a competent or effective gland stimulant or invigorator for the various glands of the body, except insofar as iodine and calcium contained therein might beneficially affect thyroid or parathyroid glands, was not a competent or effective stimulant or invigorator of any other endocrine glands of the body, and quickest blood-building iron is not found in organic iron contained in raw oysters, but iron in inorganic compounds is better utilized by body to build up and improve blood than is iron contained in organic compounds;

- (b) Represented that use of said product would carry new life and power to every nerve cell and enliven and revitalize weak organs, and afforded a competent, effective, and reliable method for gaining substantial amount of weight, and was beneficial to the nerves and in treatment of anemia;

Facts being it would not carry new life or power to nerve cells or invigorate or revitalize weak organs as aforesaid, had no value as a method for gaining weight, except insofar as nux vomica therein contained might cause increase in intake of food through stimulating the appetite, and calcium, phosphorus, and iron content might tend to counteract deficiencies in such minerals, and would not beneficially affect nerves of users in those cases of nervous dis-