

Syllabus

IN THE MATTER OF

COMMONWEALTH PUBLISHING COMPANY

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

Docket 3668. Complaint, Dec. 17, 1938—Decision, Mar. 19, 1940

Where a corporation engaged in selling "Liberty Income Tax Record" and other bookkeeping systems to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of similar products in commerce as aforesaid; in advertisements in newspapers and periodicals, and through statements and depictions in pamphlets, circulars, and letters circulated between and among the various States and in said District—

- (a) Represented to public that it printed, bound and published its books in building depicted by it in such advertisements, with machinery and skilled binders and printers under its control, through setting forth, in some of its said advertising, series of pictures of exterior and interior views of a large building with purported display sign on one wall thereof reading "publishers, printers, binders of blank books and bookkeeping systems," and with pictures of large printing presses with numerous workmen and showing various operations in the printing and binding of its said book, facts being its said products were printed and bound by independent contractors not under its control, its business was transacted by correspondence entirely and was carried on in office and storeroom of building resembling that pictured and described as above set forth, but few persons were employed by it to fill orders for books sold by it, and it was not a printer or binder of record books and bookkeeping systems, from whom, as such, there are purchasers of such products with preference for dealing directly with printer or binder as securing them, in their belief, better prices, superior merchandise, and other advantages not secured in purchasing such products after having gone through hands of middleman; and
- (b) Represented that Federal and State laws required that books of account be kept on its record books, and that its said books had been approved by State and Federal officials and tax authorities, facts being no such law requires keeping of books of account on its said record books or any particular form or book, and while certain State and Federal officials had written it stating that its said book was useful for keeping records for purpose of income taxation, no such official was permitted to approve any tax record book or bookkeeping system, nor had official approved its said product;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that all said representations were true, and with result, as consequence thereof, that number of consuming public purchased substantial volume of its said books and trade was thereby diverted unfairly to it from its competitors engaged in sale in commerce of products intended, designed and used for purposes for which it recommended its said book, and who truthfully represent the same:

Complaint

30 F. T. C.

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. R. A. McQuat for the Commission.

Rogers, Woodson & Rogers, of Chicago, Ill., for respondent.

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 Commonwealth Publishing Company, 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. The respondent, Commonwealth Publishing Co., is a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business at 508 South Dearborn Street, Chicago, Ill. For more than two years last past, respondent has been, and still is, engaged in the business of selling a certain record book entitled "Liberty Weekly Income Record." Respondent causes said book, when sold, to be transported from its aforesaid place of business in the city of Chicago and State of Illinois to the purchasers thereof at their respective places of location in States of the United States other than the State of Illinois and in the District of Columbia. Respondent maintains, and during all the times mentioned herein has maintained, a course of trade in said record books so sold by it in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is, and at all times herein mentioned has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. There has been and is a preference on the part of a substantial portion of the purchasing public for dealing direct with the publisher and printer of the books which it buys. Such preference is brought about by the belief on the part of said members of the purchasing public that in dealing direct with the publisher or

printer they can secure better prices, superior merchandise and other advantages which cannot be secured when merchandise is purchased after having gone through the hands of middlemen.

PAR. 4. In the course of its business as hereinabove described and for the purpose of inducing the purchase of its books, respondent has made many statements concerning its status, business methods and record books. Said statements are made by means of advertisements inserted in newspapers and magazines and by means of statements and picturizations in pamphlets, testimonials, letters and in the "Liberty Weekly Income Record," all of which are circulated between and among the various states of the United States and in the District of Columbia. Among many the following are typical examples of said advertisements:

SALESMEN AND AGENTS WANTED

A HELPING HAND FROM UNCLE SAM!

Federal and State Tax Laws now command every business keep Tax Records. None dares risk heavy fines and penalties. Tremendous forced demand. Make year's income next 3 months selling Liberty Tax Records. Officially approved. Satisfies legal requirements. Endorsed by business leaders. New and countless thousands established users eagerly order now to comply with law. Up to \$4.10 profit per sale. Repeat commissions without call-backs. Salesmen coining money on leads furnished. One sold 22 first 2 days. Another filled 500 repeat mail orders in 2 months.

You can average from 10 to 20 Liberty Record sales a day, \$3.50 or more profit on each sale.

LIBERTY INCOME TAX RECORD \$3.50. YEAR'S INCOME IN 3 MONTHS. "GOLD MINE" now to January 1st, because all retailers start records forced by New Federal and State Tax Laws under severe penalties. Tremendous forced demand. Leads furnished. Your success assured with Officially Approved Tax Record. Sight seller. Buyers everywhere. 5-25 sales daily easy. \$4.10 profit each sale.

Publishers, printers, binders of blank books and bookkeeping systems.

Hundreds of thousands of repeat customers * * * sales of Libertys have increased by leaps and bounds * * * thousands of Libertys have been sold everywhere—everywhere in the United States and Canada Liberty Records are in use by thousands—and since this service must be renewed every year this is an immense established demand now ready and waiting.

Now, in addition to heavy penalties for Federal Income Tax Law violations, New State Sales Tax and Income Tax Laws Provide severe fines and even prison sentences. The Liberty Tax Record is the only REAL protection.

Officially O.K'd by Tax Authorities EVERYWHERE. Positive proofs—By the Hundred—Placed Into Your Hands.

All of said statements, together with similar statements and with picturizations appearing in the respondent's advertising literature, represent that salesmen of respondent's record book can earn from

\$3.50 to \$4.10 profit on each sale and that \$50 per day is not unusual even for salesmen beginning work; that hundreds of thousands of persons have purchased "Liberty Weekly Income Tax Records" and that there is an immense established demand for renewals by said purchasers; that State and Federal laws compel every person to keep books of account on respondent's record book; that State and Government officials have officially approved the "Liberty Weekly Income Record" and that respondent is a publisher, printer, and binder of blank books and bookkeeping systems.

PAR. 5. The said representations made by the respondent are grossly exaggerated, misleading, deceptive, and false. Salesmen do not earn the amount set forth in respondent's advertising literature nor any amount comparable therewith. Respondent's record books have not been purchased by hundreds of thousands of people and there is no established demand for renewals. State and Federal laws do not require any person to keep records on the respondent's book. No Government official has ever endorsed the "Liberty Weekly Income Record." Respondent is not a publisher, printer, or binder of record books and bookkeeping systems.

The true facts are that State and Federal laws merely require the payment of a tax on income and leave the method of accounting for income to the taxpayer. Some State and Federal officials have suggested that respondent's book is useful in keeping records for the purpose of income taxation and respondent has caused these comments to appear in its advertising literature in such a manner as to indicate official approval. Respondent causes its books to be printed and bound in plants other than its own.

PAR. 6. There are now and have been competitors of respondent selling and distributing record books in commerce among and between the various States of the United States and in the District of Columbia who do not in any manner misrepresent their status, their business methods or their record books sold or offered for sale by them.

PAR. 7. The false and misleading representations used by the respondent as set forth herein in connection with the sale of its record books have the capacity and tendency to, and do, mislead and deceive members of the purchasing public into the mistaken and erroneous belief that said representations are true. As a direct consequence of the false, deceptive and misleading representations of the respondent and the erroneous and mistaken belief induced thereby, the purchasing public has purchased a substantial number of record books from the respondent with the result that trade in said commerce has been diverted unfairly to respondent from competitors engaged in the business of selling record books who truthfully advertise and represent the

nature of their record books and their status and business methods. As a result thereof, injury has been done and is now being done by the respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 December 17, 1938, issued, and thereafter served, its complaint in the above entitled proceeding upon respondent, Commonwealth Publishing Co., a corporation, charging it with violation of section 5 of the provisions of said act. Respondent entered an appearance and filed an answer to the complaint and thereafter testimony and other evidence in support of the allegations of said complaint were introduced by R. A. McQuat, attorney for the Commission, and in opposition to the allegations of the complaint by James H. Rogers, of Rogers, Woodson & Rogers, attorneys for respondent, before A. F. Thomas, a trial examiner of the Commission, theretofore duly designated by it. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition 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, Commonwealth Publishing Co., is a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business located in Chicago, State of Illinois. For several years last past respondent has been and still is engaged in the business of selling a certain record book entitled "Liberty Income Tax Record" and other bookkeeping systems. Respondent causes said products, when sold, to be transported from its principal place of business in the city of Chicago, State of Illinois, to the purchasers thereof at their respective places of location in States of the United States other

than the State of Illinois and in the District of Columbia. Respondent maintains, and during all the times mentioned herein has maintained, a course of trade in said record books sold by it in commerce between and among the various States of the United States and in the District of Columbia. Respondent is now, and has been during the past several years, in substantial competition with other firms, individuals, and corporations also engaged in the business of selling and distributing products similar to those of respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as herein described and for the purpose of inducing the purchase of its books, respondent has made many statements concerning its business status and its record books. Said statements are made by means of advertisements inserted in newspapers and magazines and by means of statements and picturizations in pamphlets, circulars, and letters, all of which were circulated between and among the various States of the United States and in the District of Columbia. In some of its advertising the respondent represents by a series of pictures and appropriate printed matter adjoining thereto, exterior and interior views of a large building with a purported display sign appearing on one wall of said building reading as follows:

Publishers, printers, binders of blank books and bookkeeping systems.

On the same page there are pictures of large printing presses with numerous workmen showing various operations in printing and binding of respondent's book.

Following are typical examples of other advertisements of the respondent:

A Helping Hand from Uncle Sam!

Federal and State Tax Laws now command every business to keep Tax Records. None dares risk heavy fines and penalties. Tremendous forced demands. * * * Officially approved. Satisfies legal requirements. * * * New and countless thousands established users eagerly order now to comply with law.

"Gold Mine" now to January 1st, because all retailers start records forced by New Federal and State Tax Laws under severe penalties.

Federal and State Deputy Checking Agents are checking up the records of firms and individuals demanding figures and the use of proper book of records—The Officially Approved Liberty Tax Record Is the Answer!

Now, in addition to heavy penalties for Federal Income Tax Law violations, New State Sales Tax and Income Tax Laws Provide severe fines and even prison sentences. The Liberty Tax Record is the only REAL protection. Officially O. K'D By Tax Authorities Everywhere. Positive proofs—By the Hundred—Placed Into Your Hands.

These picturizations, together with the printed matter adjoining, and also the additional advertising statements herein set out, represent to the public that the respondent prints, binds, and publishes its book in this building with machinery and skilled binders and printers under its control; that Federal and State laws require that books of account be kept on respondent's record books; and that respondent's record books have been approved by Federal and State officials and tax authorities.

PAR. 3. There are purchasers of record books who prefer to deal direct with the printer or binder of such books, because of the belief that they can secure better prices, superior merchandise, and other advantages which cannot be secured when said books are purchased after having gone through the hands of middlemen.

PAR. 4. The Commission finds that respondent's book is printed and bound by printers and binders not under the control of the respondent. Respondent is not a printer or a binder of record books and bookkeeping systems. Respondent employs a few persons to fill orders for books which it sells. These books are printed and bound by independent contractors not under the control of the respondent. All of the business of the respondent is transacted by correspondence. This correspondence and the filling of orders are carried on in an office and storeroom on the ninth floor of a building resembling the building pictured and described as herein set forth.

PAR. 5. The Commission further finds that while certain State and Federal officials have written respondent stating that respondent's book is useful in keeping records for the purpose of income taxation, no State or Federal Government official is permitted to approve any tax record book or bookkeeping system. No State or Federal official has officially approved respondent's book. While State and Federal laws require that certain persons pay an income tax, no Federal or State law required that books of account be kept on respondent's record books or on any particular form or book.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondent in describing the status of its business and product, the tax record book, as hereinabove set out, were, and are, calculated to, and have had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. As a result of this erroneous belief a number of the consuming public have purchased a substantial volume of respondent's books with the result that trade has been diverted unfairly to respondent from its competitors engaged in the business of selling and distributing in commerce among and between the various States of

Order

30 F. T. C.

the United States products intended, designed, and used for the purposes for which respondent recommends its said product, and who truthfully represent their respective products.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence taken before A. F. Thomas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Commonwealth Publishing Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its record books in commerce as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from representing that:

1. Federal and State laws require that books of account be kept on respondent's record books.

2. Respondent's record books have been approved by Federal or State officials or taxing authorities.

3. Respondent is a printer or binder of record books and book-keeping systems.

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.

Syllabus

IN THE MATTER OF
DARLING & COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3766. Complaint, Dec. 14, 1939¹—Decision, Mar. 19, 1940*

Where a corporation which was engaged for more than ten years, directly and through subsidiaries, in purchase of raw materials consisting chiefly of shop fats, bones, suet, and calfskins and hides, and in processing such raw materials and selling and offering for sale finished products therefrom to purchasers in other States, and which, operating chiefly in the eastern and midwestern portions of the United States, was in substantial competition with others similarly engaged in purchase of raw materials in commerce among the various States and in sale of processed calfskins, hides, fertilizer, and products manufactured or rendered from fats, bones, and suet, in commerce as aforesaid, and, by reason of its financial strength, was predominating organization in business in question in territory in which it and its subsidiaries operated; with intent to injure and eliminate competition in purchase of unprocessed hides, calfskins, fats, bones, and suet in said territories—

- (a) Paid, in localities in which it met competition in purchase of raw materials, prices higher than justified by trade conditions, and quoted, in such localities, without intending to pay, prices higher than justified, as aforesaid set forth;
- (b) Enticed, through higher wages and otherwise, drivers covering routes of sources of supply of raw materials of competitors to leave employ of latter and enter into its own employ, with intent of obtaining for itself supply previously obtained by drivers aforesaid for such competitors;
- (c) Held out as independent certain of its subsidiaries; and
- (d) Solicited making of, and did make, loans to butchers in various cities upon agreement that all fats, bones, suet, and other offal from said butchers' shops should be sold exclusively to respondent by such butchers, by whom, pursuant to agreements aforesaid, sales were thereafter refused to its competitors;

With result that said acts and practices actually injured, hindered, and prevented competition in purchase of unprocessed hides, calfskins, fats, bones, and suet in commerce, and had dangerous tendency so to do and to create in it, in territories in question, monopoly in purchase of products aforesaid, and with result of unreasonably restraining commerce in question therein:

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

¹ Amended.