

Order

33 F. T. C.

IN THE MATTER OF
EDUCATORS ASSOCIATION, INC., ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 3139. Order, July 23, 1941

Modified order, pursuant to provisions of section 5 (1) of Federal Trade Commission Act, in proceeding in question, in which (1) Commission, on March 9, 1939, 28 F. T. C. 1006, made its findings and conclusion, and issued cease and desist order, and (2) Circuit Court of Appeals for the Second Circuit, on March 24, 1941, in *Educators Association, Inc., et al. v. Federal Trade Commission*, 118 F. (2d) 562, 32 F. T. C. 1870, issued its decree modifying paragraph (1) of said order and affirming all other paragraphs thereof, and directed Commission to modify its order accordingly—

Requiring respondent corporation, its officers, etc., and various other individuals, individually and trading under trade name and style of Educators Association, their representatives, etc., in connection with offer, etc., in commerce, of a students' reference book entitled "The Volume Library," forthwith to cease and desist from (1) using the words "Educators Association" as a corporate or trade name, or otherwise in aforesaid connection, etc., except when qualified as in said order set forth; (2) representing to prospective representatives that they will refund deposits or pay any specific sums of money or salaries to them without adequately and fully disclosing all terms and conditions; and (3) representing or implying that they or their representatives, etc., are connected in any manner with public schools, etc., or that said or other similar publication is prescribed as a textbook or required to be used in connection with school work.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding is coming on for further hearing before the Federal Trade Commission, and it appearing on March 9, 1939, the Commission made its findings as to the facts herein and concluded therefrom that the respondents had violated the provisions of section 5 of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on March 24, 1941, the United States Circuit Court of Appeals for the Second Circuit issued its decree modifying paragraph 1 of the aforesaid order of the Commission, and affirming all other paragraphs of the aforesaid order, and directed the Commission to modify its aforesaid order to cease and desist in accordance with the aforesaid decree;

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said court decree.

It is ordered, That the respondent, Educators Association, Inc., its officers, representatives, agents, and employees, and the respondents, Leo L. Tully, Oron E. Richards, and Donald W. Henry, individ-

ually and as officers of Educators Association, Inc., Miss Marian A. Miller, Mrs. B. M. Gambert, Mrs. Marie C. Hostler, Mr. J. E. Stronks, Mr. H. Lyle Goldsberry, Mr. J. R. Hostler, Mr. J. P. Tully, Mrs. M. W. Lees, Mrs. Bessie Morrell, each individually, and trading under the trade name and style of Educators Association, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a students' reference book entitled "The Volume Library," in commerce, as commerce is defined in the Federal Trade Commission Act, forthwith cease and desist:

1. From using the words "Educators Association" as a corporate or trade name, or otherwise, in connection with the offering for sale or sale of "The Volume Library" or other books distributed for profit: *Provided however*, That the petitioners may continue to offer for sale and sell said book or books under the trade-name "Educators Association" so long only as they shall in each instance of the use of said trade-name in spoken, written, or printed form, or by radio broadcast, accompany said trade-name with a statement of equal conspicuousness and in immediate connection and conjunction therewith in the following words, to wit: "Commercial Distributors of The Volume Library": *And Provided Further*, That in each instance of the use of the corporate name "Educators Association, Inc." in carrying on its said corporate business, whether in spoken, written, or printed form, or by radio broadcast, said corporate name shall be accompanied with a statement of equal conspicuousness and in immediate connection and conjunction therewith in the following words, to wit: "Commercial Publishers of The Volume Library."

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

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

Complaint

33 F. T. C.

IN THE MATTER OF

DAVID S. WRIGHT, DOING BUSINESS AS LAKE SHORE
SEED COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3994. Complaint, Jan. 19, 1940—Decision, July 23, 1941*

Where an individual engaged in packaging, and in competitive interstate sale and distribution of, vegetable and garden seeds, in the course of which he required from leading supplier-growers, from which he purchased, invoices showing high laboratory tests in all cases and, in addition, submitted seeds to the National Seed Laboratory for testing and made tests himself in mechanical germinators and in the fields, all of which tests showed high germinal powers; reselling, along with new seed, seed which he had theretofore sold to dealers and which he took off their hands at the end of the season—

- (a) Represented that seeds contained in certain packages would germinate in approximate percentages through causing to be stamped upon or attached thereto statements of their germination percentage and the month and year of the test on which such percentage was based; and
- (b) Represented also that his seeds would meet or exceed the published standard percentage of germination established by certain States in which he sold the same;

When in fact many of his said packages contained seeds of a much lower percentage of germination than that represented on packages or otherwise, as disclosed by various tests conducted by the States in question over a period of years, and action taken by said States with respect thereto;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that his seeds would germinate in the percentages represented, and into purchase thereof, in consequence of such belief, to the injury and prejudice of the public, whereby trade was unfairly diverted to him from his competitors who do not misrepresent the germination percentages of their seeds; to their substantial injury:

Held, That such acts and practices constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Morton Nesmith for the Commission.

Woodin & Woodin, of Dunkirk, N. Y., 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 David S. Wright, an individual, doing business as Lake Shore Seed Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appear-