

Syllabus

IN THE MATTER OF

CHICAGO MEDICAL BOOK COMPANY, W. B. SAUNDERS
COMPANY, J. B. LIPPINCOTT COMPANY, C. V. MOSBY
COMPANY, AND VAN ANTWERP LEA AND CHRISTIAN
FEBIGER, TRADING AS LEA & FEBIGER

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

Docket 3557. Complaint, Aug. 26, 1938—Decision, Nov. 28, 1941

Where a corporation dealing exclusively in medical books at wholesale and retail in Chicago and throughout the United States, together with the four publishers from whom it purchased about 60 percent of such books; having in mind the price cutting or allowance of discounts by one W. & F. Co., a Chicago jobbing concern dealing in books of all types and doing a Nation-wide business;

- (a) Entered into agreements and conspiracies among themselves which were intended to and did prevent said W. & F. Co., competitor of aforesaid distributor, from securing medical books at the regular dealer's discount; and
- (b) Refused, pursuant to such agreements, etc., to sell the medical books of the publishers in question at the regular dealer's discount; with purpose and effect of cutting off the supply of such books to said company, and with result that said company, which had received requisitions from the Government for medical books for more than 30 years, was unable to submit bids in response to such requisitions because of its inability to secure most of the books thus called for at the regular dealer's discount; and

Where aforesaid distributor and two of aforesaid publishers of medical books—

- (c) Entered into separate agreements and conspiracies to prevent, and which did prevent a concern which sold new and slightly used medical books in Chicago and throughout the United States, and which was becoming a strong competitive factor in the new book business, from obtaining the medical books of said publishers at the regular dealer's discount; and
- (d) Refused, pursuant to said agreement, etc., to sell such medical books to such concern at the regular dealer's discount, with intent and effect of cutting off said concern's supply thereof, and with result that it was deprived of a substantial portion of its business of selling to hospitals, medical libraries, and government institutions requiring a 10 percent discount:

Tendency and effect of which acts and practices were to lessen competition in the sale and distribution of medical books, published by said publishers, in Chicago and in interstate commerce; to restrain the normal trade in and place a direct burden upon, such commerce from aforesaid publishers' places of business in other States to said concerns in Illinois; to create a monopoly in aforesaid distributor in sale and distribution of such books

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in said commerce, to injure said concerns, competitors of aforesaid distributor, and unfairly divert business from them to said distributor:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public, had a dangerous tendency to prevent competition and to create a monopoly in the sale and distribution of medical books in interstate commerce, to unduly restrict and restrain the sale and distribution of such books in said commerce, and constituted unfair methods of competition.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Fletcher G. Cohn for the Commission.

Mr. Carlton L. Fischer and *Mr. J. Milton Guy, Jr.* of Campbell, Clithero & Fischer, of Chicago, Ill., for Chicago Medical Book Co.

Mr. Carroll Wetzel of Dechert, Smith & Clark, of Philadelphia, Pa., for W. B. Saunders Co.

Evans, Bayard & Frick, of Philadelphia, Pa., for J. B. Lippincott Co.

Mr. William Kohn, of St. Louis, Mo., for C. V. Mosby Co.

Mr. Boyd L. Spahr, Jr. of Ballard, Spahr, Andrews & Ingersoll, of Philadelphia, Pa., for Lea & Febiger.

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 the above named respondents, and each of them, have 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, Chicago Medical Book Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with principal office and place of business at Congress and Honore Streets, Chicago, Ill.

Respondent, W. B. Saunders Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with principal office and place of business at West Washington Square, Philadelphia, Pa.

Respondent, J. B. Lippincott Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with principal office and place of business at East Washington Square, Philadelphia, Pa.

Respondent, C. V. Mosby Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of

Missouri, with principal office and place of business at 3523 Pine Boulevard, St. Louis, Mo.

Respondents, Van Antwerp Lea and Christian Febiger, are co-partners doing business under the firm name and style of Lea & Febiger, with principal office and place of business at 600 South Washington Square, Philadelphia, Pa.

PAR. 2. Respondents, W. B. Saunders Co., J. B. Lippincott Co., C. V. Mosby Co., and Lea & Febiger, are publishers and sellers of medical and other scientific books. A large proportion of the books and treatises on medical and allied subjects (hereinafter referred to as medical books) sold annually and in current use in the United States are published by one or the other of said publishers. Respondent Chicago Medical Book Co. is engaged in the business of selling and dealing in such books, both at wholesale and retail, and purchases or receives on consignment, sells and deals in books published by all of said respondent publishers. Said Chicago Medical Book Co. is engaged in substantial competition with other wholesalers and retailers of such books, in the sale and resale of books published by said publisher respondents and other publishers.

PAR. 3. In the course and conduct of their respective businesses each of said respondents transports books, or causes the same to be transported, from their respective places of business to their customers, purchasers or consignees in other States of the United States; and there is and has been at all times herein mentioned a current of trade and commerce in such books between the States wherein these several respondents are located and various other States of the United States.

PAR. 4. Wilcox & Follett Co. is an Illinois corporation engaged in the business of selling and dealing in books at wholesale and retail, with principal office and place of business in Chicago, Ill., and stores in other cities. Several years ago said Wilcox & Follett Co. commenced to sell and deal in medical books, and in that field became a competitor of respondent Chicago Medical Book Co. In and prior to the year 1936 said Wilcox & Follett Co. purchased medical books in varying quantities from each of the respondents herein. During said year the respondents herein agreed and conspired together, and each with the others, and each of said respondent publishers separately agreed and conspired with respondent Chicago Medical Book Co., thereafter to refuse to sell to said Wilcox & Follett Co. medical books published, respectively, by said respondent publishers. Respondent Chicago Medical Book Co. notified each of said respondent publishers and other publishers of medical books that it would

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no longer sell to said Wilcox & Follett Co., and warned said publishers that as a result they might receive orders direct from Wilcox & Follett Co. In furtherance of said conspiracies, all of said respondents thereafter have refused to sell medical books to said Wilcox & Follett Co., and said respondent publishers have in many instances referred Wilcox & Follett Co. orders to Chicago Medical Book Co. The purpose and effect of said agreements and conspiracies was and is to cut off from said Wilcox & Follett Co. its supply of medical books published by said respondent publishers, to injure and prevent competition with respondent Chicago Medical Book Co. and to tend to give a monopoly to said respondent in the sale of medical books in Chicago and surrounding territory.

PAR. 5. Samuel Login and William Login are engaged in the business of selling and dealing in medical books as a partnership under the firm name and style of Login Brothers, with principal place of business in Chicago, Ill., and are competitors in such business with respondent Chicago Medical Book Co. During the year 1937 respondent Chicago Medical Book Co. agreed and conspired with respondent J. B. Lippincott Co., and separately, with respondent C. V. Mosby Co., thereafter to refuse to sell medical books to said Login Brothers. During 1937, previous to such agreements and conspiracies, Login Brothers had purchased medical books from time to time from each of said three named respondents. Thereafter, in furtherance of said conspiracies, said three respondents, respectively, refused to make further sales of medical books to said Login Brothers, and said two named publisher respondents notified Login Brothers that orders received were being referred to respondent Chicago Medical Book Co. The purpose and effect of said agreements and conspiracies was and is to cut off from said Login Brothers their supply of medical books published by said two respondent publishers, to injure and prevent competition with respondent Chicago Medical Book Co. and to tend to give a monopoly to said respondent in the sale of such medical books in Chicago and surrounding territory.

PAR. 6. During and subsequent to the year 1936, respondent Chicago Medical Book Co. has from time to time made false representations and complaints to said respondent publishers and other publishers of medical books regarding certain competitors of said Chicago Medical Book Co. in Chicago and the Middle West, including said Login Brothers and said Wilcox & Follett Co. Thereby, and by virtue of its dominant position in the medical book field in Chicago, said respondent has attempted to persuade and induce, and has persuaded and induced, said respondent publishers and other

publishers to refuse to sell medical books to its said competitors or to refuse to sell to said competitors at wholesale or dealers' discount. Said competitors are engaged in the sale and transportation of medical books in interstate commerce. Respondent Chicago Medical Book Co. has by this means attempted to monopolize and has conspired with others to monopolize, commence in the purchase and sale of medical books flowing to and from Chicago, Ill., and vicinity.

PAR. 7. The tendency and effect of the acts and practices above complained of is and has been to hinder and lessen competition in the distribution and sale of medical books in the city of Chicago and throughout the United States; to obstruct, restrain and interfere with the normal and natural flow of trade and commerce in such books; and to injure those competitors of respondent Chicago Medical Book Co. against whom said acts and practices are directed by unfairly diverting business and trade from them and depriving them thereof. The aforesaid acts and practices of respondents, and each of them, are all to the prejudice of the public, and constitute unfair methods of competition in commerce and unfair 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 August 26, 1938, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition and unfair acts and practices, in commerce, in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Fletcher G. Cohn, attorney for the Commission, and in opposition to the allegations of the complaint by Carlton L. Fischer and J. Milton Guy, Jr., of the firm of Campbell, Clithero & Fischer, Carroll Wetzell, Benjamin O. Frick, William Kohn, and Boyd L. Spahr, attorneys for respondents, before W. W. Sheppard, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding; and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, the proceedings regularly came on for final hearing before the Commission on said complaint, the answers thereto, the testimony and other evidence, the report of the trial examiner and exceptions to said report, and briefs in support of the complaint and

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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. Respondent, Chicago Medical Book Co., is a corporation organized in the year 1897, under the laws of the State of Illinois, with its principal place of business and office in Chicago, Ill.

Respondent, W. B. Saunders Co., is a corporation organized under the laws of the State of Pennsylvania, with its principal office and place of business in Philadelphia, Pa.

Respondent, J. B. Lippincott Co., is a corporation organized under the laws of the State of Pennsylvania, with its principal office and place of business in Philadelphia, Pa.

Respondent, C. V. Mosby Co., is a corporation organized under the laws of the State of Missouri, with its principal office and place of business in St. Louis, Mo.

Respondents, Van Antwerp Lea and Christian Febiger, are co-partners doing business under the firm name Lea & Febiger, with their principal place of business in Philadelphia, Pa. For brevity they will be hereinafter referred to as Lea & Febiger.

PAR. 2. All of the respondents named in paragraph 1 hereof, except Chicago Medical Book Co., are engaged in the business of publishing, offering for sale, and selling medical and other scientific books. The term "medical books" as herein used, refers to books relating to curative or remedial agents in the treatment of ailments and diseases. There are but few publishers of medical books in the United States other than the respondents herein, who publish the majority of all medical books published in the United States.

PAR. 3. Respondent Chicago Medical Book Co. publishes no medical books, but since 1924 has exclusively been engaged in the business of buying, selling, and dealing in such books, both at wholesale and at retail, in Chicago, Ill., and throughout the United States. It publishes a bulletin listing the various medical books it has for sale, which it distributes throughout the United States. Respondent transports, or causes to be transported, such books, when sold by it, to purchasers thereof located in various States of the United States and in the District of Columbia. Said respondent is probably the oldest and largest dealer in medical books in the United States.

Said respondent purchases or receives on consignment from respondent publishers, medical books published by them and shipped to it from their respective places of business located in States other than the State of Illinois. During the years 1935, 1936, and 1937, said respondent purchased from each of said respondent publishers medical books to an amount in excess of \$10,000 annually, its purchases from respondent W. B. Saunders Co. being substantially greater than those from the other respondent publishers. Approximately 60 percent of the books sold by said respondent are published by respondent publishers. Edward T. Speakman is president and Chester D. Speakman is secretary and treasurer of said respondent company. Said respondent operates a retail store in Chicago, under the name "Speakman Book Store," which is the retail outlet of said respondent.

Said respondent is engaged in substantial competition with wholesale and retail dealers in the sale, resale, and distribution in Chicago, Ill., and in commerce between and among the several States of the United States and in the District of Columbia, of medical books published by the respondent medical book publishers and other publishers of such books.

PAR. 4. In the course and conduct of their respective businesses, each of respondent publishers transports or causes to be transported medical books from their respective places of business to their customers, purchasers or consignees located in other States of the United States and in the District of Columbia, and there is, and has been at all times herein mentioned, a current of trade and commerce in such books between the States wherein the several respondent publishers are located and various States of the United States.

PAR. 5. The respondent publishers, in the course and conduct of their respective businesses, have been and are in competition with each other, and with other corporations, partnerships, and individuals in publishing and distributing medical books in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 6. The J. W. Wilcox & Follett Co., hereinafter referred to as Wilcox & Follett, is a corporation organized in 1872, under the laws of the State of Illinois. Its principal place of business has ever since been, and now is, in Chicago, Ill. It is a jobbing concern and deals in books of all types issued by various publishers, and it does a nation wide business. C. W. Follett is its president. There are several divisions of this company—(1) the Follett Book Co.,

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which handles library books and material; (2) the Follett Publishing Co., which publishes text books, and (3) the Clarkson Publishing Co., which handles direct distribution to consumers. It also has two retail outlets in Chicago, Ill., and one each in Minneapolis, Minn; Ann Arbor, Mich.; and Champaign, Ill. The two Chicago stores obtain their medical books direct from Wilcox & Follett and others.

Among the books dealt in by said Wilcox & Follett are medical books, which it has handled since about 1926. The total sales of this company, including all its divisions, for the year 1936 amounted to approximately \$2,000,000—\$500,000 of which was in its jobbing line of business. Its sales of medical books during said year did not exceed \$10,000. From 1926 until September 1936 its sales of medical books had gradually increased, but in September 1936 its supply of such books was materially curtailed, in the manner hereinafter set forth.

This company has approximately 20 traveling salesmen who call upon dealers, educational institutions, and libraries, in about 30 States of the United States, and sell its books, including medical books, and when sales are made, the books so sold are transported or caused to be transported by said company to the purchasers thereof located in various States of the United States and the District of Columbia.

PAR. 7. Prior to September 1936, the Wilcox & Follett Co. secured its medical books, in the main, from respondent Chicago Medical Book Co.; it also purchased books direct from the respondent medical book publishers, as hereinafter set forth. When Wilcox & Follett made such purchases directly from respondent medical book publishers, as an incident to such purchase and as a part thereof, said respondent medical book publishers would ship or cause to be shipped such medical books so purchased, from their respective places of business in States of the United States other than the State of Illinois, to the said Wilcox & Follett Co. in the State of Illinois.

Wilcox & Follett is in competition with respondent Chicago Medical Book Co. in selling and attempting to sell to the same types of customers in the medical field, in Chicago, Ill., and throughout the United States:

PAR. 8. In 1935, the Wilcox & Follett Co. purchased for its wholesale branch and its two retail stores in Chicago, medical books from Chicago Medical Book Co. in the net amount of \$2,586.89. Of this sum \$850.22 was for medical books published by respondent publishers in the following amounts: W. B. Saunders Co., \$624.36; C. V. Mosby Co., \$43.79; J. B. Lippincott Co., \$19.98; Lea & Febiger, \$162.09.

In 1936, up to September of that year, Wilcox & Follett Co. purchased from respondent Chicago Medical Book Co., medical books of the net value of \$1,630.69, of which a total of \$891.59 was for books published by respondent medical book publishers in the amounts stated, respectively:

Respondent W. B. Saunders Co.....	\$758.48
Respondent C. V. Mosby Co.....	48.46
Respondent J. B. Lippincott Co.....	17.57
Respondents Lea & Febiger.....	67.08

Thereafter, respondent Chicago Medical Book Co. refused to sell Wilcox & Follett Co. at the regular dealer's discount.

All figures herein representing purchases by Wilcox & Follett Co. and by Login Brothers, unless otherwise indicated are net amounts after discounts have been deducted.

PAR. 9. During the convention of the American National Medical Association held at Kansas City, Mo., in May, 1936, J. LeRoy Smith, a representative of respondent W. B. Saunders Co., met in his hotel room with Edward T. Speakman, president of the respondent Chicago Medical Book Co., John Mosby, of respondent C. V. Mosby Co., and W. D. Wilcox and Harold J. Cowell, representing respondents Lea & Febiger, and three dealers in medical books from New York, Dallas, and New Orleans, respectively. At this meeting the Wilcox & Follett Co. was discussed at length. John Mosby told of his experience with the company in buying a book at a discount and stated that C. V. Mosby Co. was not going to sell it any more books. LeRoy Smith told the meeting that his company was going to allow Chicago Medical Book Co. to handle, as it saw fit, the business of W. B. Saunders Co. with the Wilcox & Follett Co. Edward T. Speakman promised to look into the situation when he returned to Chicago.

PAR. 10. On July 3, 1936, respondent Chicago Medical Book Co. wrote a letter signed by E. T. Speakman and addressed to Charles C. Thomas, a medical book publisher, in which it is stated:

We hope you will pardon our tardy reply to your letter of June 25 regarding the Wilcox & Follett Co. of Chicago. ***

The medical book business for the last 20 or 25 years has been exceptionally clean, with reference to maintenance of publishers' list prices, but about 2 years ago they decided that they would invade the medical book field and extend this pernicious influence. Right away we began to hear of medical books being offered at cut prices, and as distributors for all of the publishers and representing their interests, we called up the Sr. Mr. Follett on the telephone, whom the writer has known for some 30 or 40 years. The promise was made that there would be no cutting of prices of medical books, but from time to time we hear about certain books being sold at a discount, some of it probably fiction, but nevertheless,

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these reports continue from time to time. Just last fall we had an epidemic of price-cutting on an \$8.50 publication of the C. V. Mosby Company of St. Louis, and it became so serious that Mr. John Mosby came up here to Chicago and not being known to them went into their place and ordered a copy of this book, which they said they would get for him, and actually gave him a receipt for a copy less 10 percent.

There is a book room in each of the medical schools in this city and the only reason that a student would go 3 or 4 miles for a book is to get a lower price. The publishers have determined to nip this thing in the bud, as this firm was the subject of considerable conversation at a meeting in Kansas City in May, which the writer attended. These people do not carry or have invested any money in a medical book store, nor could they be classed in any way as medical booksellers. Any firm whose business is predicated on the selling of books at a lower price than his competitor, has no place in the business world, much less in the medical book field. McKenna, Majors and ourselves, including other medical book dealers, are subject to the restrictions made by the medical publishers, relating to the maintenance of list prices, discounts to libraries, State institutions and those legitimately entitled to a discount, while these unregulated dealers, a majority of them, do not carry a penny's worth of stock, are hard to regulate, and there are sufficient outlets now, here and elsewhere, to take care of this business.

To make matters worse, they have recently entered into the Government bidding. Mind you, without carrying stock or even being listed as "regular dealers," State institutions and medical libraries. The only possible way they could get any business from these sources would be by offering a better price, and you know what this means—demoralization and the flight of the profits, as small as they are.

An attempt was made by these people to start a store in Evanston, Ann Arbor, Madison, and Minneapolis. We learned that the dealers in Evanston are so wrought up that they practically ran them out of town and we think that the one in Ann Arbor was finally given up. We are surprised to learn from your letter that they have a Wisconsin office (Madison?). The one in Minneapolis is run under the name of The Minnesota Book Co. and we do not know how active they are. Of course it might be possible that they could buy through these different branches and this brings up quite a complication in the matter because there are some high school and collegiate books published by medical publishers which they are probably entitled to buy. This has been the case with us, as they buy certain physical education and elementary textbooks from us published by Saunders, Blackiston, and other medical publishers.

We really do believe that they should be shut out, and shut out properly, from the medical book business, for even if they charge full price on medical books—yours for instance—they allow a cash discount which none of the medical book sellers allow, and this in itself is quoting a lower price than the regular medical book distributors quote. In other words, if we quote net on your books, as we have been doing, and they come along and quote 2 percent off for cash, the orders ordinarily will go to them, while we, who are legitimately entitled to that business, have exceptionally large investments in stock, get nothing. Most of the publishers will back this situation up, but there are a few of them who will sell anybody, and no doubt the books that cannot be purchased at a discount can be obtained through other sources. The situation is a serious one and the writer has given it considerable thought, with a view to a way out.

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Any suggestions you may have regarding this would be very much appreciated, as we would like to get something settled before the next school term. * * *

This firm has such a wide spread and national field that we have practically everything to lose and nothing to gain through agreements as to territories and discounts. With this in view, there is a constant pressure being applied to shut us out here and there, and consequently this is not looked upon with favor by the writer. We occupy rather a peculiar position in view of the fact that we have such a widespread business and efforts are being constantly made to chisel in by various means.

On July 9, 1936, said Charles C. Thomas replied to this letter as follows:

Thank you very much for your letter of the 3d of July about Follett. Fortunately his very, very small purchases from us have been for biological books, and we have no record of supplying him with medical items. Our prospective difficulties with him have been avoided by our reading of your letter. Our actual difficulties will be avoided by an intention not to sell the Follett Chicago organization our titles. We have done a small business with—I should have correctly stated—their Minnesota Book Co. Our opinion is that the closer the medical publishers and medical booksellers cooperate in such matters, the better off we shall all be. Any orders for medical titles from Follett will be refused by us, but we shall refer them to you. Certainly we expect no one and would not knowingly permit any one to quote our books at our regular discount and, in addition, allow 2 percent for cash. Let's keep the business where it legitimately belongs.

Respondent Chicago Medical Book Co., on February 6, 1936, wrote respondent C. V. Mosby Co. as follows:

Just as your telegram came in we were about to wire you about the same situation here in Chicago about MacLeod's "Physiology." We have had three or four reports that somebody is selling this for \$7.50, as mentioned in the telegram—could it be your Chicago salesman? You will remember last fall we had the same situation, and at that time somebody was cutting prices on your books and your salesman's name was mentioned. We are wondering if he is trying to dabble in the student business. Perhaps you can tell from your records to whom you have been sending any copies of MacLeod's "Physiology."

We hope you are not selling any books to the Wilcox & Follett Co., as they are notorious price-cutters, advertising that they cut the price of every book and have gotten the medical students running down to their place on the South side to get these cut prices. If they ever get into the medical book business, you will see the most demoralized condition that has ever been seen in the medical book business. They have practically ruined the high school and grammar school business in this city for all the other dealers.

This letter is signed, "Chicago Medical Book Co., E. T. Speakman," and the following is added in script:

P. S.—Has Powell of the Professional Book Co. bought any. He's a price cutter!

On September 19, 1936, respondent Chicago Medical Book Co. wrote the following letter to the respondent publishers and four other medical book publishers:

You may receive orders in the future from Wilcox & Follett Co., 1255 South Wabash, Chicago, by reason of the fact that we have decided not to do any business with them and have notified them that we will not supply them with any further merchandise.

The reason for this decision is that their continued wholesale price cutting, in repeated violation of their promises, to the contrary, has tended to result in the demoralization of retail business in Chicago, and, perhaps, in the entire Middle West.

We are writing you thus so that you will understand any application for books direct to you from Wilcox & Follett Co.

PAR. 11. Between May and August of 1936, respondent Edward T. Speakman, of respondent Chicago Medical Book Co., told C. W. Follett, president of Wilcox & Follett Co., that the medical book publishers and himself had had a meeting and had agreed not to sell his company any more medical books, and that his company could no longer obtain medical books from respondent Chicago Medical Book Co. A few days after this conversation, said Speakman conferred with Follett, and at this and other conferences which took place in the fall of 1936, Speakman stated that if respondent Chicago Medical Book Co. did not want Wilcox & Follett Co. to have medical books they could not obtain them.

The last sale at a discount which respondent Chicago Medical Book Co. made to Wilcox & Follett Co. was on September 18, 1936. On September 19, 1936, respondent Chicago Medical Book Co. wrote the attorney of J. W. Wilcox & Follett Co., returning several orders from that company and stating that respondent Chicago Medical Book Co. would not accept any orders from Wilcox & Follett Co. in the future, and would likewise return any orders from said company forwarded to it by respondent W. B. Saunders Co. and other publishers.

Wilcox & Follett Co. have attempted on several occasions since September, 1936, to purchase medical books from respondent Chicago Medical Book Co. at the usual discounts allowed dealers in such books, and have been unable to do so, and can only purchase same by paying respondent Chicago Medical Book Co. the full retail price of such books.

PAR. 12. In 1935, and through June 1936, Wilcox & Follett bought medical books directly from respondent W. B. Saunders Co. at the regular dealer's discount. The last direct purchase so made was in June, 1936. The first refusal by respondent W. B. Saunders Co. to sell directly to Wilcox & Follett Co. was on August 10, 1936, when

it referred a number of said company's orders to respondent Chicago Medical Book Co. and wrote Wilcox & Follett Co. that the interests of W. B. Saunders Co. in Chicago were looked after by Chicago Medical Book Co.

On August 18, 1936, Wilcox & Follett Co. wired respondent W. B. Saunders Co. as follows:

On orders you returned to us to be sent to South Bend, Ind., Turlock, Calif., Syracuse, N. Y. and one book to us, you referred us to the Chicago Medical Book Co. They refused to ship these items. Must we abide by their decisions? I would like to notify our customers that we are unable to supply. Would you kindly wire me, so that I can telegraph our customers to secure their books elsewhere. Thanks for your courtesy. Wire, our expense.

To this wire, on the same date, respondent W. B. Saunders Co. wired Wilcox & Follett Co.:

Must abide by decision Chicago distributors.

On September 12, 1936, respondent W. B. Saunders Co. referred another order from Wilcox & Follett Co. to respondent Chicago Medical Book Co. On September 14, 1936, Wilcox & Follett Co. wrote Lawrence Saunders of respondent W. B. Saunders Co., enclosing copy of an earlier letter in which Wilcox & Follett Co. had complained that all the orders which respondent W. B. Saunders Co. had referred to respondent Chicago Medical Book Co. had been ignored by said company.

On February 13, 1937, respondent W. B. Saunders Co. wired Wilcox & Follett Co. that all of its orders were referred to Chicago Medical Book Co. On February 3, 1938, respondent W. B. Saunders Co. refused to sell the Michigan Book Store, which is owned by Wilcox & Follett Co., and which fact was indicated on the order.

The orders from Wilcox & Follett Co. which respondent W. B. Saunders Co., on August 10, 1936, referred to respondent Chicago Medical Book Co., were for the same type of books as those which respondent W. B. Saunders Co. had previously sold directly to Wilcox & Follett Co. at the usual discounts allowed by said respondent to dealers. On August 10, 1936, respondent W. B. Saunders Co. decided for the first time that its oral contract with respondent Chicago Medical Book Co. required it to refer to said Chicago Medical Book Co. all orders from Chicago, regardless of the type of books ordered or where they were to be shipped.

PAR. 13. In 1935 and 1936, respondent J. B. Lippincott Co. sold medical books directly to Wilcox & Follett Co. at the discount usually allowed dealers in such books. On September 26, 1936, Wilcox & Follett Co. wired said respondent to ship 10 medical books. On Sep-

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tember 29, 1936, which was 10 days after respondent Chicago Medical Book Co. had written said respondent that it would no longer sell Wilcox & Follett, respondent J. B. Lippincott Co. wrote Wilcox & Follett Co. acknowledging its wire of September 26, 1936, and referring the order to respondent Chicago Medical Book Co., stating that said company had the agency for their nursing books in Chicago.

On October 7, 1936, respondent J. B. Lippincott Co. referred another order of Wilcox & Follett Co. to respondent Chicago Medical Book Co., stating to Wilcox & Follett Co.:

We respectfully return herewith your order of October 2 for one Barboka, with the information that this book is carried in Chicago by the Chicago Medical Book Co., which has our exclusive agency, and to whom we must refer you.

Respondent Chicago Medical Book Co., acting in accordance with its letter of September 17, 1936, to respondent J. B. Lippincott Co., refused to fill the orders from Wilcox & Follett Co. which had been referred to it by respondent J. B. Lippincott Co.

Respondent Chicago Medical Book Co. was not the exclusive agent of respondent J. B. Lippincott Co. in Chicago.

Some time between October 7, 1936, and January, 1937, C. W. Follett, of Wilcox & Follett Co., contacted J. B. Lippincott, president of respondent J. B. Lippincott Co., who invited this company to buy all the medical books it could possibly use from his company, and since January, 1937, respondent J. B. Lippincott Co. has regularly sold books directly to Wilcox & Follett Co.

PAR. 14. Respondent, C. V. Mosby Co., from October 8, 1934, to September 11, 1936, sold directly, at the regular dealer's discount, to Wilcox & Follett Co., \$113.59 worth of medical books. The last direct sale made was on September 11, 1936. There was a sale of \$1.95 made by said respondent to Clarkson Publishing Co., a subsidiary of Wilcox & Follett Co., for a book to be shipped to Texas on July 25, 1938, which sale was the result of an agreement between an employee of Wilcox & Follett Co. and respondent C. V. Mosby Co., to the effect that this book would not be shipped to Wilcox & Follett Co. in Chicago.

On September 22, 1936, respondent C. V. Mosby Co. wrote respondent Chicago Medical Book Co. as follows:

Relative to your letter of September 19, we wish to advise you that any order we might receive from Wilcox & Follett will be referred to you.

I realize only too well that this firm has been unscrupulous in the merchandising of books. As nearly as I can determine, they have paid absolutely no attention to the publisher's wishes. We would much rather have them buy our books through you, and in this way you will be in a better position to control the price situation in the vicinity of Chicago.

Once again let me assure you of our cooperation in this matter.

Respondent, C. V. Mosby Co.'s first refusal to fill an order from Wilcox & Follett Co. was an order of September 24, 1936, 5 days after respondent Chicago Medical Book Co. had written respondent C. V. Mosby Co. its letter of September 19, 1936, set forth in paragraph 10 hereof. Thereafter, respondent C. V. Mosby Co. rejected orders from Wilcox & Follett Co. on September 29, October 1, 2, 6, 7, and November 19, 1936, and on January 1, 1937; and respondent C. V. Mosby Co. still refuses to sell Wilcox & Follett Co.

PAR. 15. From May 6, 1935, to August 1, 1936, respondents Lea & Febiger sold medical books amounting to approximately \$175, directly to Wilcox & Follett Co. at a discount of 20 percent. On September 11, 1936, these respondents changed their discount from 20 percent to 10 percent. On November 7, 1936, Wilcox & Follett Co. sent said respondents a copy of a letter it had written to another publisher, explaining that it was not cutting prices, and that respondent Chicago Medical Book Co. was making this charge from an ulterior motive. To this letter respondents Lea and Febiger replied on November 9, as follows:

Replying to your letter of November 7, we will allow you a 10 percent discount f. o. b. Philadelphia, on any publication you may order.

On January 25, 1937, respondents Lea & Febiger gave their last discount of 10 percent on orders from Wilcox & Follett Co., and on February 1, 1937, they returned orders from this company and referred them to Chicago Medical Book Co. and to A. C. McClurg & Co., of Chicago. After February 1, 1937, respondents Lea & Febiger never accepted any orders from Wilcox & Follett Co., nor did they refer them to any other dealer. Such failure to fill orders or to refer them to a dealer, was, in fact, pursuant to the understanding reached at the meeting in Kansas City referred to in paragraph 9 hereof, and the understanding and arrangement entered into between respondents Lea and Febiger and respondent Chicago Medical Book Co. pursuant to the letters set out in paragraph 10 hereof.

PAR. 16. Wilcox & Follett Co., as a competitor of respondent Chicago Medical Book Co. in the sale of medical books both at wholesale and at retail, must purchase books from the publishers thereof, or from respondent Chicago Medical Book Co., in order to obtain the regular dealer's discount; and as a direct consequence of and pursuant to the agreement, understanding, combination and conspiracy existing, as hereinafter stated, between respondent Chicago Medical Book Co. and the respondent medical publishers, Wilcox & Follett Co. has been unable to compete with respondent Chicago Medical Book Co. in the sale of such books published by respondent

medical book publishers, due to its inability to purchase such books at a discount.

PAR. 17. Wilcox & Follett Co. has solicited Government bids for books for more than 30 years and has received requisitions from the Government for medical books since respondent Chicago Medical Book Co. and the respondent publishers, pursuant to the understandings, agreements, combinations and conspiracies between and among them, as hereinafter stated, have refused to supply to Wilcox & Follett Co., at the regular dealer's discount, medical books published by respondent medical book publishers. Said company has, however, been unable to submit bids on such requisitions because of its inability to secure most of the medical books so requisitioned at the regular dealer's discount.

PAR. 18. Samuel Login is the sole owner of the business known as Login Bros., which is located in the medical center of Chicago, Ill., about a block from Speakman's book store, the retail outlet of respondent Chicago Medical Book Co. The Login concern has been in business for over 27 years and handles medical books only, and surgical instruments. It sells new and slightly used medical books in Chicago, and in commerce among and between the several States of the United States and in the District of Columbia. It sells such books to doctors and students throughout the United States, receiving at least 10 mail orders for from 10 to 20 books each, per day, the number of orders increasing in each September to about 25 per day. The books sold in filling these orders are shipped by mail and express from the place of business of Login Bros. in Chicago, Ill., to the purchasers of said books located in the several States of the United States and in the District of Columbia. Most of Login Bros.' business is retail, but they do some wholesale business. Their retail business primarily consists in selling to students attending medical schools. In money volume their business is about equally divided between the sale of new and second-hand books. They formerly purchased medical books directly from respondents J. B. Lippincott Co. and C. V. Mosby Co., which books were shipped to them in Illinois from other States of the United States where the places of business of these publishers were located.

PAR. 19. From June 1933 to January 1, 1938, Login Bros., purchased at the regular dealer's discount a total of \$10,620.98 worth of medical books from respondent Chicago Medical Book Co., of which approximately \$38,600 represented books published by respondent W. B. Saunders Co., the balance being for books published by other publishers in the United States and England.

In the summer of 1937, Edward T. Speakman, president of respondent Chicago Medical Book Co., told Samuel Login that Login Bros. were selling too many books; that he could sell them himself and did not need anybody to do that for him. He was objecting to the competition of Login Bros. Respondent Chicago Medical Book Co. made its last sale to Login Bros. on December 26, 1937.

Chester Speakman, secretary-treasurer of respondent Chicago Medical Book Co., some time in December, 1937, after the 25th, told William Login, when asked why respondent Chicago Medical Book Co. had cut off Login Bros.' supplies, "Well, I don't like the looks of your hair. That's as good an excuse as any." He then informed said Login that the reason was that Login Bros. were doing too much business in new books, and he would see to it that Login Bros. did not get the books. On June 1, 1938, Chester Speakman told William Login that respondent Chicago Medical Book Co. would not supply Login Bros. with books. Login Bros. have tried to secure books from respondent, Chicago Medical Book Co., but since December 1937, have been unable to do so.

PAR. 20. From July 1937, to October, 1937, Login Bros. purchased directly, at the regular dealer's discount, from respondent J. B. Lippincott Co., a total of \$440.40 worth of medical books. The last sale made by said respondent to Login Bros. was on October 1, 1937. On January 3, 1938, respondent J. B. Lippincott Company wrote Login Bros. that it was referring their orders to respondent Chicago Medical Book Co. Respondent Chicago Medical Book Co. did not fill these orders.

The methods used by respondent in preventing Login Bros. from securing their supplies were essentially the same as in the case of Wilcox & Follett Co.

PAR. 21. From 1934 to September 1937, Login Bros. purchased directly from respondent C. V. Mosby Co. at the regular dealer's discount, medical books of the total amount of \$7,159.87. The last direct sale by said respondent to Login Bros. was on September 3, 1937. Between September and December, 1937, Dr. C. V. Mosby, chairman of the board of directors of respondent C. V. Mosby Co., requested a conference with William Login of Login Bros., at the Drake Hotel, in Chicago, Ill. At this conference William Login asked why respondent C. V. Mosby Co. had refused to sell Login Bros. books and Dr. Mosby told Login that he had discussed the matter with Chester Speakman, secretary-treasurer of respondent Chicago Medical Book Co. for half a day, and that said Speakman had promised to push respondent C. V. Mosby Co.'s books and also

to supply Login Bros. with books. However, respondent Chicago Medical Book Co. refused to furnish Login Bros. with any books.

Early in 1938, William Login called upon John Mosby, vice president of respondent C. V. Mosby Co., in an effort to secure books from this company and was referred to respondent Chicago Medical Book Co. After being told by Login that they would be unable to secure books from this source, Mosby discussed the matter with Chester Speakman, of respondent Chicago Medical Book Co. by long distance telephone, but Login Bros. have never since been able to obtain books from either of these respondents.

PAR. 22. A substantial portion of the business of Login Bros., has been the sale of medical books to hospitals, medical libraries and State and Government institutions, all of which require a 10 percent discount, and due to the acts and practices hereinbefore set forth of respondents Chicago Medical Book Co., C. V. Mosby & Co. and J. B. Lippincott Co., Login Bros. have been compelled to pay the full list prices for such books, and as a result, have been deprived of the business of such institutions.

PAR. 23. During the year 1936, respondent medical book publishers entered into, and thereafter carried out, agreements, understandings, arrangements, combinations, and conspiracies between and among themselves and with respondent Chicago Medical Book Co., to prevent, and which did prevent, the securing at the regular dealer's discount of medical books by Wilcox & Follett Co., a competitor of respondent Chicago Medical Book Co. in the sale and distribution of medical books in Chicago, Ill., and in commerce between and among the several States of the United States and in the District of Columbia; and pursuant to said agreements, understandings, arrangements, combinations and conspiracies, all of respondent medical book publishers and respondent Chicago Medical Book Co. have refused to sell, at the regular dealer's discount, medical books of said respondent publishers to Wilcox & Follett Co., with the common and concerted purpose and effect of cutting off the supply of such books to said company.

PAR. 24. The tendency of the acts and practices of the respondents and the effect of same, as hereinbefore set forth are, and have been to lessen competition in the sale and distribution of medical books in the city of Chicago, Ill., and in commerce between and among the several States of the United States and in the District of Columbia; to obstruct, restrain and interfere with the normal and natural flow of trade in commerce, of medical books between and among the several States of the United States and in the District of Columbia; to place a direct burden upon the normal and natural flow of trade

in commerce of such books published by respondent medical publishers which are transported from the respective places of business of respondent publishers located in States of the United States other than the State of Illinois, to Wilcox & Follett Co., in the State of Illinois; to create a monopoly in respondent Chicago Medical Book Co. in the sale and distribution of such books in commerce; to injure Wilcox & Follett Co., a competitor of respondent Chicago Medical Book Co., in the sale and distribution of such books in said commerce, and to unfairly divert business and trade from said Wilcox & Follett Co. to respondent Chicago Medical Book Co.

PAR. 25. During the year 1937, respondent, J. B. Lippincott Co. and respondent C. V. Mosby Co., each entered into separate agreements, understandings, arrangements, combinations, and conspiracies with respondent Chicago Medical Book Co., to prevent, and which resulted in the prevention of the obtaining of medical books published by respondents J. B. Lippincott Co. and C. V. Mosby Co., at the regular dealer's discount, by Login Brothers, a competitor of respondent Chicago Medical Book Co. in the sale and distribution of such books in Chicago, Ill. and in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 26. Pursuant to the said agreements, understandings, arrangements, combinations and conspiracies, and in furtherance thereof, the respondents refusal to sell Logan Bros. at the regular dealer's discount medical books published by respondents J. B. Lippincott Co. and C. V. Mosby Co., with the purpose, intent and effect of cutting off Login Bros.' supply of such books.

PAR. 27. The tendency and effect of the acts and practices of respondents Chicago Medical Book Co., J. B. Lippincott Co. and C. V. Mosby Co., as herein set out, are and have been to lessen competition in the sale and distribution of medical books published by said respondent publishers in the city of Chicago, Ill., and in commerce between and among the several States of the United States and in the District of Columbia; to obstruct, restrain and interfere with the normal trade in commerce of medical books between and among the several States of the United States and in the District of Columbia; to place a direct burden upon such commerce in medical books published by said J. B. Lippincott Co. and C. V. Mosby Co. which are transported from the respective places of business of said respondent publishers located in States of the United States other than the State of Illinois to Login Bros. in the State of Illinois; to create a monopoly in respondent Chicago Medical Book Co. in the sale and distribution of such books in said commerce; to injure

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Login Bros., a competitor of respondent Chicago Medical Book Co. in the sale and distribution in said commerce of such books; and to unfairly divert business and trade from said Login Bros. to respondent Chicago Medical Book Co.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public, have a dangerous tendency to unduly hinder and prevent competition, and to create a monopoly in the sale and distribution of medical books in commerce as "commerce" is defined in the Federal Trade Commission Act; to unduly restrict and restrain the sale and distribution of medical books in said commerce; 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 respondents, the testimony and evidence introduced in support of the complaint and in opposition thereto before W. W. Sheppard, a duly appointed trial examiner of the Commission theretofore designated by it to serve in this proceeding, the report of the trial examiner thereon and the exceptions to said report, the briefs filed on behalf of the Commission and of the respondents, and the Commission having made its findings as to the facts and its conclusion that all of the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents Chicago Medical Book Co., a corporation, W. B. Saunders Co., a corporation, J. B. Lippincott Co., a corporation, C. V. Mosby Co., a corporation—and their respective officers, directors, representatives, agents, and employees, and the successors of each of said corporate respondents, and respondents Van Antwerp Lea and Christian Febiger, individually and as co-partners doing business under the firm name and style of Lea & Febiger, or under any other trade name or style, or through any corporate or other device, together with their representatives, agents, and employees—directly or indirectly, in connection with the offering for sale, sale and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act, of books relating to curative or remedial agents in the treatment of ailments and diseases, commonly known as "medical books," or of any other scientific, educational or other books, shall forthwith cease and desist from:

Entering into or carrying out any agreement, understanding, arrangement, combination, or conspiracy, among themselves, or between and among any two or more of them, or between any one or more of them and any other competitor, for the purpose or with the effect of restraining, restricting, hindering, obstructing or eliminating competition in the sale of any such book or books, and as a part or consequence of such agreement, understanding, arrangement, combination or conspiracy, from doing any of the following acts or things:

- (a) Boycotting or attempting to boycott any dealer in such books;
- (b) Refusing to sell books to any such dealer;
- (c) Preventing or attempting to prevent any dealer from purchasing such books at the regular price, trade discount, terms and other usual conditions of sale;
- (d) Discriminating against any dealer in such books as to price, terms, delivery, discounts or other conditions of sale,

It is further ordered, That the respondents, Chicago Medical Book Co., a corporation; W. B. Saunders Co., a corporation; J. B. Lippincott Co., a corporation; C. V. Mosby Co., a corporation; and Van Antwerp Lea and Christian Febiger, copartners doing business under the firm name and style of Lea & Febiger, and each of them, 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

AR. WINARICK, INC., UNION BEAUTY & BARBER SUPPLY, INC., LOUIS SAUL AND ANTHONY NICASTRI, TRADING AS A. B. C. BARBER & BEAUTY SUPPLY COMPANY, VASILIS THALIS, TRADING AS AMERICAN BEAUTY & BARBER SUPPLY COMPANY, JOSEPH A. GALLAGHER, GEORGE MILLER, E. D. CHAPMAN, FRANK WATERS, AND GLADYS WELCH

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4470. Complaint, Feb. 28, 1941—Decision, Nov. 28, 1941

Where a corporation and the four officers who formulated and directed its policies, two partners, and an individual, engaged in Washington, D. C., in competitive sale of beauty and barber supplies and shipment of such merchandise to purchasers in the District of Columbia and nearby points in Maryland and Virginia,—constituting a group so large and influential as to be able to control and influence the flow of trade and commerce in products in question within, to and from such areas, with aforesaid corporate jobber alone having exclusive contracts covering the sale of 80 percent of the items concerned in the territory in question—and, but for acts and practices below set forth, in free and active competition with one another;

Acting upon the suggestion of an individual, vice president and general sales manager of a corporate manufacturer of beauty and barber supplies, who, following complaints of chaotic conditions in the industry concerned, due to sale by some jobbers at less than manufacturer's list prices and the granting of discounts of more than 20 percent, and including particularly the price cutting activities of one "S"; and who, acting in his own behalf and that of his corporation, arranged a dinner and meeting attended, with the exception of two corporate officers, by jobbers above referred to and also by several others—

- (a) Agreed to sell their merchandise at the prices suggested by the manufacturers' price lists and not to give discounts in excess of 10 percent, and concertedly abided by said agreements; and, in order to effectuate them,
- (b) Attempted to coerce said competitor "S" to refrain from cutting prices of his merchandise and to prevent him from giving discounts in excess of aforesaid percentage, and threatened to prevent him from securing merchandise in event of his continuing in disregard of such course; and in order to carry out their said threats,
- (c) Sought to coerce manufacturers into refusing to sell to "S," with result that a number thereof did so refuse;

With effect that operators of beauty parlors and barber shops, and other purchasers of beauty and barber supplies in said District and nearby points were deprived of the benefits of normal competition theretofore existing, and the consuming public was deprived of the benefits which would flow from normal competition in sale of such products by beauty parlors, bar-