

Syllabus

IN THE MATTER OF

PARKE, AUSTIN & LIPSCOMB, INC., SMITHSONIAN INSTITUTE SERIES, INC., AND OFFICERS THEREOF

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

Docket 4465. Complaint, Feb. 14, 1941—Decision, Feb. 3, 1942

Where a corporate publisher of books of an encyclopedic and historical nature, its wholly owned subsidiary, and three individuals who served both as general officers; following the entering into of a contract by said subsidiary with the Smithsonian Institution of Washington, D. C., whereby it agreed to engage in the publication, sale, and distribution exclusively of a 13-volume set of books compiled from data collected by said Institution in various scientific investigations, to be designated as "Smithsonian Scientific Series," manuscripts for which were to be furnished by said Institution upon certain terms, including payment to it of a royalty of 10 percent of gross sales, the copyrights, plates, manuscripts, etc., to remain said subsidiary's exclusive property—

- (a) Represented, directly and through salesmen and agents, to whom they issued a so-called "authorized presentation" setting out in detail the sales talk to be used for the purpose, that such salesmen were representatives of the Smithsonian Institution, that the books in question were published and sold by the Institution, the entire profit derived from the sale thereof accruing to it, and that sales were restricted to a small number of selected individuals in each community; and
- (b) Caused said Smithsonian Institution to issue to all purchasers of said "scientific series" a certificate under its seal and duly signed by its secretary certifying that the particular purchaser had been registered in its archives as a patron of series in question, in recognition of support of the Institution's program for the diffusion of knowledge among men; facsimiles of which certificates their salesmen exhibited to prospective purchasers;

Notwithstanding the fact sale and distribution of books in question was an ordinary commercial enterprise for profit; the small royalty aforesaid was the only benefit derived from sale thereof by said Institution, which did not publish said books, own or control the copyright, plates and other material thereof, or have any control over agents or salesmen, who were employees of aforesaid corporations and individuals; and purchasers had not been specially selected to act as patrons of said Institution, but the books were sold indiscriminately to the general public; and

- (c) Falsely and misleadingly represented, through use in corporate name of said subsidiary of words "Smithsonian Institution," that such corporation was part of or connected with the Smithsonian; thereby also accentuating other false and misleading representations made in the sale of their said books;
- With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that they were purchasing said "Smithsonian Scientific Series" directly from the Smithsonian Institution of Washington, D. C., long identified in the public mind as a nonprofit organization devoted

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to scientific research and promotion of learning, which was to receive the entire profits therefrom, and that they had been specially selected to act as its patrons, as a result whereof they purchased substantial quantities of said publications, thereby diverting trade unfairly to said publishers from their competitors; and

Where said parent corporation and officers, engaged also in the publication and competitive interstate sale and distribution of a set of books designated "World Epochs," under contract with the United States Flag Association, whereby said set and other pamphlets and documents were to be sold in the name of and under the imprint of said association, which was to receive certain royalties, and later under agreement whereby said corporation was to act as the exclusive agent of said association for 10 percent of gross receipts, plus costs—

- (d) Represented, directly and indirectly, that said association was the publisher of such books, and received the entire profits derived from the sale thereof for use in combatting anti-Americanism and subversive organizations and influences in the United States, and that proposal to purchase was not an ordinary commercial transaction, but a patriotic appeal to assist in such efforts; letters of identification upon the stationery of said association and signed by its President General, which were issued to their salesmen in furtherance of such plan, reciting that they were accredited regional directors of the association, calling on a matter of very serious national importance; and aforesaid corporation and individuals also causing said association to issue to all purchasers of "World Epochs" a certificate of life membership in the association; and
 - (e) Used, in endorsement of said publication, letters from United States Senators and other prominent men, which were in fact endorsements of the aims and purposes of the aforesaid association and written without knowledge that they were to be used as endorsements of any series of books; and continued such use even after objection had been made by the writers;
- The facts being that sales of the books in question were made as an ordinary commercial enterprise for profit, only benefit derived from which by said association was the royalty involved, plus, later, reimbursement for costs and minor additions; series in question was not published by such association, which did not own or control the copyrights or plates, or have any control over the salesmen, who were employees of corporation and individuals concerned, with whom rested control of such matters as accounts and collections, and title to the publication, including copyrights, etc.; purchasers were not specially selected, but the books were sold to the general public, and life memberships were indiscriminately issued to all purchasing in amounts of \$25 or more; in some instances, such memberships being issued by the association to persons designated by sellers for the purpose of establishing initial contact;

With effect of causing purchasers of said "World Epochs" and other publications to believe that they were dealing directly with the United States Flag Association, organized under the laws of the District of Columbia in 1924 "in the interest of lofty Americanism, sturdy patriotism and good citizenship which shall make stronger and more secure the foundations of this Republic," and other patriotic objectives; that said books were published and sold by said association as above set forth and that prospective

purchasers had been specially selected to be made life members of the association because of previous achievements or standing in the community, as a result whereof they purchased substantial quantities of publications in question, whereby trade was unfairly diverted to said publishers from their competitors:

Held, That such acts and practices, as above set forth, were all to the prejudice and injury of the public, and constituted unfair methods of competition in commerce, and unfair and deceptive acts and practices therein.

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

Mr. Jesse D. Kash for the Commission.

Marlow & Hines, of New York City, 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 Parke, Austin & Lipscomb, Inc., a corporation, Smithsonian Institution Series, Inc., a corporation, and Alfred Monett, Robert A. Hogan, Jr., and Joseph M. McAndrews, individually and as officers of said corporations, hereinafter referred to as respondents, 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. Respondents, Parke, Austin & Lipscomb, Inc., and Smithsonian Institution Series, Inc., are corporations organized, existing, and doing business, under and by virtue of the laws of the State of New York, with their offices and principal places of business located at 500 Fifth Avenue, New York, N. Y. Respondent, Smithsonian Institution Series, Inc., was organized by, and is a wholly owned subsidiary of, respondent Parke, Austin & Lipscomb, Inc., and its policies, practices, and methods are formulated, controlled, directed, and dominated by Parke, Austin & Lipscomb, Inc.

Respondent, Alfred Monett, is an individual, and is president of both of the corporate respondents, with his office and principal place of business at 500 Fifth Avenue, New York, N. Y.

Respondent, Robert A. Hogan, Jr., is an individual and is treasurer of respondent, Parke, Austin & Lipscomb, Inc., and secretary of respondent, Smithsonian Institution Series, Inc., with his office and principal place of business at 500 Fifth Avenue, New York, N. Y.

Respondent, Joseph M. McAndrews, is an individual and is secretary of respondent, Parke, Austin & Lipscomb, Inc., with his office and principal place of business at 500 Fifth Avenue, New York, N. Y.

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The individual respondents formulate, control, direct, and dominate the policies, practices, and methods of the corporate respondents.

PAR. 2. The respondents are now, and for more than 2 years last past, have been, engaged in the publication and in the sale and distribution of books, including, among others, a 12-volume set of books of an encyclopedic nature designated "Smithsonian Scientific Series." In the course and conduct of their business the respondents cause their books, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business as aforesaid the respondents are now, and at all times mentioned herein have been, in substantial competition with other corporations and individuals, and with firms and partnerships, engaged in the sale and distribution of books of an encyclopedic nature in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. On or about December 14, 1926, the respondent, Smithsonian Institution Series, Inc., entered into an agreement or contract with the Smithsonian Institution of Washington, D. C., under the terms of which the said Smithsonian Institution furnished to respondent Smithsonian Institution Series, Inc., certain manuscripts and illustrations, which material was placed in book form by respondent Smithsonian Institution Series, Inc., and sold under said designation of "Smithsonian Scientific Series." Said agreement further provided that the Smithsonian Institution should receive a royalty of 10 percent on all gross sales of said books.

PAR. 5. In the course and conduct of their said business, and for the purpose of promoting the sale of said books, the respondents have made, and are making, many false and misleading statements and representations to prospective purchasers of such books, such statements and representations being made through respondents' salesmen and representatives and by other means. Among and typical of said statements and representations are the following:

That respondents' salesmen and representatives are in the employ of, or connected with, the Smithsonian Institution of Washington, D. C.; that said books are published and sold by the Smithsonian Institution; that the entire profit derived from the sale of said books accrues to the Smithsonian Institution; that the sale of said books is restricted to a comparatively small number of selected individuals in each community.

PAR. 6. The foregoing statements and representations so made by the respondents in connection with the sale of their books are grossly exaggerated, false and misleading. In truth and in fact, respondents' salesmen and representatives are not in the employ of, nor have they any connection with, the Smithsonian Institution. Said books are not published or sold by the Smithsonian Institution but are sold by the respondents as an ordinary commercial enterprise. The Smithsonian Institution does not receive the entire profit derived from the sale of said books, but in fact receives only the royalty of 10 percent hereinabove mentioned. The sale of said books is not restricted to any group or number of persons, but said books are sold indiscriminately to the general public.

The Smithsonian Institution of Washington, D. C., is now, and for many years last past has been, identified in the public mind as a non-profit organization devoted to scientific research and the promotion of learning. The use by the corporate respondent, Smithsonian Institution Series, Inc., of the words "Smithsonian Institution" as a part of its corporate name constitutes within itself a false and misleading representation that said respondent is a part of, or is connected with, the Smithsonian Institution of Washington, D. C. The use of said name by said respondent serves also to accentuate the other false and misleading representations made by the respondents in the sale of their said books.

PAR. 7. Another publication sold and distributed by the respondent, Parke, Austin & Lipscomb, Inc., and the individual respondents, in commerce as aforesaid, is a set of books of an encyclopedic nature designated "World Epochs." On or about August 27, 1938, said corporate respondent entered into an agreement or contract with the United States Flag Association of Washington, D. C., under which said Association agreed to cooperate with said corporate respondent in the sale of said books to the extent of issuing bulletins and letters recommending said books. In return for its cooperation in the sale of said books, said Association was to receive a royalty of 5 percent on gross collections on all units of books sold for \$79.50 or less and 10 percent on gross collections on units sold for more than \$79.50.

The United States Flag Association is a patriotic nonprofit organization which is engaged in conducting an educational program among the adult citizenry and school children of the United States for the purpose of cultivating and stimulating patriotism and national spirit.

PAR. 8. In the course and conduct of their business as aforesaid, and for the purpose of promoting the sale of said books, said respondents have made many false and misleading statements and representations to prospective purchasers, such statements and representations

being made through salesmen and representatives and by other means. Among and typical of said statements and representations are the following:

That respondents' salesmen and representatives are representatives of the United States Flag Association; that the United States Flag Association receives the entire profit derived from the sale of said books, and that one purchasing such books is in effect making a contribution to said association which will be used by the association in combatting anti-American and subversive organizations and influences in the United States; that said association maintains a lobby in the city of Washington for the purpose of combatting anti-American and subversive organizations and influences, and that the profits derived from the sale of said books will be used by the association to defray the expense of such lobbying activities.

The purchase of said books is presented by the respondents to the prospective purchaser not as an ordinary commercial transaction, but is presented under the guise of an appeal to the prospective purchaser, on grounds of patriotism, to assist in the efforts of the association to combat anti-American and subversive organizations and influences in the United States.

PAR. 9. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondents' salesmen and representatives are not representatives of the United States Flag Association, but are merely salesmen of the respondents. The United States Flag Association does not receive the entire profit derived from the sale of said books, nor does the purchase of said books constitute a contribution to said association. Said books are sold by the respondents as an ordinary commercial enterprise for profit, and the only benefit derived by the United States Flag Association from the sale of such books is the small royalty hereinabove mentioned. Said association does not conduct any lobbying activities.

A further practice on the part of the respondents in promoting the sale of said books is the wrongful use of letters from United States Senators and others prominent in American public life endorsing the aims and purposes of the United States Flag Association. Such letters are represented by the respondents as endorsements of said books, when in truth and in fact such letters have no reference to said books but relate only to the general aims and purposes of said association.

PAR. 10. The use by the respondents of said false and misleading statements and representations in connection with the sale of their products has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the er-

roneous and mistaken belief that such statements and representations are true, and into the purchase of substantial quantities of respondents' products as a result of such belief. Thereby trade has been diverted unfairly to the respondents from their competitors, many of whom do not make false or misleading representations with respect to their products, and in consequence substantial injury has been done, and is now being done, by the respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 11. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and of respondents' 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 February 14 A. D. 1941, issued and subsequently served its complaint upon the respondents, Parke, Austin & Lipscomb, Inc., a corporation; Smithsonian Institution Series, Inc., a corporation; Alfred Monett, individually and as an officer of Parke, Austin & Lipscomb, Inc., and Smithsonian Institution Series, Inc.; Robert A. Hogan, Jr., individually and as an officer of Parke, Austin & Lipscomb, Inc., and Smithsonian Institution Series, Inc.; and Joseph M. McAndrews, individually and as an officer of Parke, Austin & Lipscomb, Inc., charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of said complaint were introduced by Jesse D. Kash, attorney for the Commission, and in opposition to the allegations of the complaint by Ernest W. Marlow and Richard Lincoln, attorneys for the respondents, before W. W. Sheppard, a trial examiner of the Commission therefore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, and briefs in support of the complaint and in opposition thereto (oral argument not having been requested); and

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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. Respondents, Parke, Austin & Lipscomb, Inc., and Smithsonian Institution Series, Inc., are corporations organized, existing, and doing business under and by virtue of the laws of the State of New York, with their offices and principal places of business located at 500 Fifth Avenue, New York, N. Y. Respondent Smithsonian Institution Series, Inc., was organized by, and is a wholly owned subsidiary of, Parke, Austin & Lipscomb, Inc., and its policies, practices, and methods are formulated, controlled, directed, and dominated by Parke, Austin & Lipscomb, Inc.

Respondent, Alfred Monett, is an individual and is president of both of the corporate respondents, with his office and principal place of business at 500 Fifth Avenue, New York, N. Y.

Respondent, Robert A. Hogan, Jr., is an individual and is treasurer of both of the corporate respondents, with his office and principal place of business at 500 Fifth Avenue, New York, N. Y.

Respondent, Joseph M. McAndrews, is an individual and is secretary of both of the corporate respondents, with his office and principal place of business at 500 Fifth Avenue, New York, N. Y.

The individual respondents, as officers of said corporate respondents, formulate, control, direct, and dominate the policies, practices, and methods of said corporate respondents.

PAR. 2. Respondents are now, and for more than 3 years last past have been engaged in the publication and in the sale and distribution of various books of an encyclopedic or historical nature, including, among others, a 13-volume set of books designated "Smithsonian Scientific Series." In addition, the corporate respondent, Parke, Austin & Lipscomb, Inc., and the individual respondents are also engaged in the publication and in the sale and distribution of a set of books known as "World Epochs." In the course and conduct of their business, the said respondents cause said books, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business as aforesaid, the respondents are now, and at all times mentioned herein have been, in substantial competition with other corporations and individuals and with firms and partnerships engaged in the sale and distribution of books of an encyclopedic or historical nature in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the early part of 1926 negotiations were entered into between the respondent, Parke, Austin & Lipscomb, Inc., and the Smithsonian Institution of Washington, D. C., for the purpose of having said respondent engage in the publication, sale, and distribution of a set of books compiled from data collected by the Smithsonian Institution in various scientific investigations. For the purpose of keeping the sale and distribution of this particular set of books separate and apart from the other publications sold and distributed by the respondent, Parke, Austin & Lipscomb, Inc., a new corporation was formed, known as Smithsonian Institution Series, Inc., which was, and is, a wholly owned subsidiary of the respondent, Parke, Austin & Lipscomb, Inc.

PAR. 5. Immediately after its organization, the respondent, Smithsonian Institution Series, Inc., on December 14, 1926, entered into a contract with the Smithsonian Institution of Washington, D. C., whereby said respondent agreed to engage in the publication, sale, and distribution, exclusively, of a set of books to be designated as "Smithsonian Scientific Series," manuscripts for which to be furnished by the Smithsonian Institution, subject to reimbursement for cost of preparation of such manuscripts of not to exceed \$2,500 per volume. This contract further provided for the payment of a royalty of 10 percent of gross sales. Said respondent further agreed to raise a fund of \$250,000 to be devoted exclusively to the financing, publication, and sale of said books, which were to be copyrighted in the name of the respondent, Smithsonian Scientific Series, Inc., all copyrights, plates, manuscripts, etc., to remain the exclusive property of said respondent. The funds required by the contract were deposited and the respondent proceeded with the publication, sale, and distribution of said books, exclusively. These books were sold at various prices ranging from \$59.50 to \$250 per set, depending upon binding and type of paper used.

PAR. 6. In the course and conduct of their said business and for the purpose of promoting the sale of said books, the corporate respondent, Smithsonian Institution Series, Inc., and the individual respondents, directly and through salesmen and agents, have made many false and misleading statements and representations to pro-

spective purchasers to the effect that respondents' salesmen and representatives were in the employ of, or connected with, the Smithsonian Institution of Washington, D. C.; that said books were published and sold by the Smithsonian Institution; that the entire profit derived from the sale of said books accrued to the Smithsonian Institution; and that the sale of said books was restricted to a comparatively small number of selected individuals in each community.

In furtherance of this form of misrepresentation, the said respondents prepared and issued to their various salesmen and representatives a so-called "Authorized Presentation," which set out in detail the method of approach and sales talk to be used in attempting to close a sale of these books with a prospective purchaser. This sales talk is so prepared and designed to lead prospective purchasers to believe that the salesman is a representative of the Smithsonian Institution of Washington, D. C.; that the entire profit derived from the sale of the books accrues to the Smithsonian Institution; and that they have been specially selected to be designated as patrons of the Smithsonian Institution. In furtherance of this plan, the said respondents cause the Smithsonian Institution of Washington, D. C., to issue to all purchasers of the said Smithsonian Scientific Series, a certificate under the seal of the Smithsonian Institution of Washington, D. C., signed by its secretary, certifying such purchaser as being registered in the archives of the Institution as a patron of the Smithsonian Scientific Series in recognition of support of the Institution's program for the diffusion of knowledge among men, facsimiles of which certificate are carried by the salesmen and exhibited to prospective purchasers.

PAR. 7. The acts and practices of the respondents as hereinbefore described are designed to and have the effect of causing purchasers and prospective purchasers to believe that they are purchasing said books designated as Smithsonian Scientific Series directly from the Smithsonian Institution of Washington, D. C.; that said books are published and sold by the Smithsonian Institution of Washington, D. C.; that the entire profits derived from the sale of said books accrue to the Smithsonian Institution of Washington, D. C.; and that they have been specially selected to act as patrons of the Smithsonian Institution of Washington, D. C. -

PAR. 8. The sale and distribution by the respondents of the books designated as Smithsonian Scientific Series constitute an ordinary commercial enterprise for profit, and the only benefit derived by the Smithsonian Institution of Washington, D. C., from the sale of said books is the small royalty hereinabove described. The books are not published by the Smithsonian Institution of Washington,

D. C., nor are the copyrights, plates, and other material owned or controlled by the Smithsonian Institution. The Smithsonian Institution of Washington, D. C., does not select, nor does it have any control over, the agents or salesmen who sell said Smithsonian Scientific Series, but, instead, such agents and salesmen are employees of the respondents and subject to the supervision and control of the respondents. Purchasers and prospective purchasers have not been specially selected to act as patrons of the Smithsonian Institution of Washington, D. C., but, instead, said books are sold indiscriminately to the general public. The use of the so-called "patron certificate" is designed to and has the effect of furthering the representations that the prospective purchaser has been specially selected because of his standing in the community and that the prospective purchaser is dealing with the Smithsonian Institution on a basis different from an ordinary commercial transaction.

PAR. 9. The Smithsonian Institution of Washington, D. C., is now, and for many years last past has been, identified in the public mind as a nonprofit organization devoted to scientific research and the promotion of learning. The use by the corporate respondent Smithsonian Institution Series, Inc., of the words "Smithsonian Institution" as part of its corporate name, constitutes, within itself, a false and misleading representation that said respondent is part of, or is connected with, the Smithsonian Institution of Washington, D. C. The use of said name by said respondent serves also to accentuate the other false and misleading representations made by the respondents in the sale of their said books.

PAR. 10. In addition to the acts and practices hereinabove described, the corporate respondent, Parke, Austin & Lipscomb, Inc., and the individual respondents also engage in the publication and in the sale and distribution in commerce of a set of books of an encyclopedic or historical nature designated "World Epochs." On or about August 27, 1938, the corporate respondent, Parke, Austin & Lipscomb, Inc., entered into a contract with the United States Flag Association whereby said corporate respondent agreed to publish, sell, and distribute a set of books to be designated "World Epochs," together with other pamphlets and documents prepared by the United States Flag Association or otherwise, which sales were to be made in the name of, and under the imprint of, the United States Flag Association, with the understanding that the United States Flag Association be paid a royalty of 5 percent on gross collections on sales up to \$79.50 and 10 percent on gross collections on sales in excess of \$79.50. Subsequent thereto, on November 18, 1940, a new agreement was entered into between the said corporate respondent and the United States Flag Association whereby

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the corporate respondent was to act as the exclusive agent of the United States Flag Association on a commission basis of 10 percent on gross receipts, plus reimbursement for costs. Prior to entering into the above-mentioned contracts with the United States Flag Association, the said corporate respondents had sold and distributed said series of books known as "World Epochs" under an arrangement with the Veterans of Foreign Wars National Home, under which arrangement a royalty was paid to the Veterans of Foreign Wars National Home for its endorsement of this work.

PAR. 11. The United States Flag Association was organized as a corporation under and by virtue of the laws of the District of Columbia on April 10, 1924, for the object and purpose, as expressed in its charter, of "in the interest of lofty Americanism, sturdy patriotism, and good citizenship, which shall make stronger and more secure the foundations of this republic established on the principles of freedom, equality, justice, and humanity, to bring into proper consideration and appreciative regard by the citizenry of the republic the flag of the United States as the visible, symbolic representation of our national sovereignty, ideals, traditions, and institutions."

PAR. 12. For the purpose of inducing the purchase of said set of books designated "World Epochs" and other pamphlets and publications sold under their agreement with the United States Flag Association, the respondents represented to purchasers and prospective purchasers directly and indirectly, that the United States Flag Association was the publisher of said set of books known as "World Epochs"; that it received the entire profit derived from the sale of said books, which proceeds were to be used by the Association in combating anti-Americanism and subversive organizations and influences in the United States; and that the proposal to purchase said books was not based upon an ordinary commercial transaction but was an appeal on the grounds of patriotism to assist in the efforts of the Association to combat anti-Americanism and subversive organizations and influences in the United States. In furtherance of this plan, respondents' salesmen were issued letters of identification upon the stationery of the United States Flag Association, signed by the President General of the Association, reciting that such salesmen were accredited Regional Directors of the United States Flag Association and that the purpose of their call was in connection with a matter of very serious national importance. The respondents also caused the United States Flag Association to issue to all purchasers of said "World Epochs" a certificate of life membership in the United States Flag Association.

PAR. 13. In addition to the acts and practices hereinbefore described, the respondents used as letters of endorsement of said publication

"World Epochs," letters from United States Senators and others prominent in American Life, which were, in fact, endorsements of the aims and purposes of the United States Flag Association and which were written without knowledge that such letters were to be used as endorsements of any series of books. In fact, the respondents continued to use a number of such letters even after objection had been made by the writers of such letters, to their use as an endorsement of the books being sold.

PAR. 14. The acts and practices of the respondents as hereinbefore described were designed to and had the effect of causing purchasers and prospective purchasers to believe that they were purchasing said books designated as "World Epochs" and other publications directly from the United States Flag Association; that said books were published and sold by the United States Flag Association; that the entire profits derived from the sale of said books accrued to the United States Flag Association; that all funds obtained from the sale of such books over and above actual publication expense were to be used in combating anti-Americanism and subversive organizations and influences in the United States; and that said prospective purchasers had been specially selected, because of previous achievements or standing in the community, to be made life members of the United States Flag Association.

PAR. 15. The entire plan of operation in connection with the sale of said set of books designated "World Epochs," and other pamphlets and publications connected therewith, was false and misleading. Prior to November 18, 1940, said books were sold by the respondents as an ordinary commercial enterprise for profit, and the only benefit derived by the United States Flag Association from the sale of such books was the small royalty hereinabove described. The series of books "World Epochs" was not published by the United States Flag Association, nor were the copyrights, plates, and other material owned or controlled by the United States Flag Association. The United States Flag Association did not select, nor did it have any control over, the agents or salesmen who sold said "World Epochs," but, instead, such agents and salesmen were employees of the respondents and subject to the supervision and control of the respondents. The designation of respondents' salesmen as "Regional Directors," over the signature of the president general of the United States Flag Association, was designed to, and did, mislead prospective purchasers into believing that they were dealing directly with the United States Flag Association on a patriotic basis which did not involve a commercial enterprise for profit.

The contract of November 18, 1940, while ostensibly shifting the respondent, Parke, Austin & Lipscomb, Inc., from publisher and owner

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to exclusive agent, did not materially change the status of the parties or remove the sale of these books from being an ordinary commercial enterprise for profit. The supervision and control of agents and salesmen continued in the respondents, subject only to the approval of the United States Flag Association. Complete control over accounts and their collection remained in the respondents, subject only to accounting as provided in the contract. The preparation and publication of the books sold under this arrangement continued to be handled by the respondents, subject to reimbursement from gross collections, and title to the publication "World Epochs," including copyrights, plates, etc., remained in the respondents and was not transferred to the United States Flag Association. Furthermore, the contract of November 18, 1940, provides for payment by the respondents to the United States Flag Association of a guaranteed percentage of gross sales, which percentages are the same as the royalties provided for in the original contract, with minor additions.

Purchasers and prospective purchasers have not been specially selected to be recipients of the books sold and distributed by the respondents under their contract with the United States Flag Association, but, instead, said books are sold indiscriminately to the general public. The use of the life membership certificates is designed to and has the effect of furthering the representation that the prospective purchaser has been specially selected because of his standing in the community and that said prospective purchaser is dealing with the United States Flag Association on a basis different from an ordinary commercial transaction, particularly since such life memberships were indiscriminately issued to all persons purchasing such publications in amounts of \$25 or more. In some instances life memberships in the so-called "Legion of the Flag" have been issued by the United States Flag Association to persons designated by the respondents, deliveries of which certificates were made by the respondents or their representatives for the purpose of establishing initial contact and accomplishing the sale of books by the respondents.

PAR. 16. The use by the respondents of the foregoing acts and practices in connection with the sale and offering for sale of the series of books designated "Smithsonian Scientific Series," has a tendency and capacity to, and did, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that they are purchasing said books designated as "Smithsonian Scientific Series" directly from the Smithsonian Institution of Washington, D. C., that the entire profits derived from the sale of said books accrue to the Smithsonian Institution of Washington, D. C., and that they have been specially selected to act as patrons of the Smithsonian Institution

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Order

of Washington, D. C.; and the use by the respondents of the foregoing acts and practices in connection with the sale and offering for sale of the series of books designated "World Epochs," and other pamphlets, under contracts with the United States Flag Association has had a tendency and capacity to, and did, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that they were dealing directly with the United States Flag Association, that all the profits derived from the sale of such books would be used to further the purposes of the United States Flag Association and to combat anti-Americanism and subversive organizations and influences in the United States, and that such transactions did not involve any commercial enterprise for profit. As a result of such erroneous and mistaken beliefs, a substantial portion of the purchasing public has purchased substantial quantities of respondents' publications designated "Smithsonian Scientific Series" and "World Epochs," and other publications, thereby diverting trade unfairly to the respondents from their competitors who are engaged in competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

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

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 respondents, testimony, and other evidence taken before W. W. Shepard, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiner upon the evidence and exceptions filed thereto, and briefs filed in support of the complaint and in opposition thereto; 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, Parke, Austin & Lipscomb, Inc., a corporation, and Smithsonian Institution Series, Inc., a corporation, and their respective officers, agents, representatives, and employees, and respondents Alfred Monett, an individual, Robert A. Hogan, Jr.,

an individual, and Joseph M. McAndrews, an individual, and their respective agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of a set of books designated "Smithsonian Scientific Series," or other books, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that respondents' salesmen or representatives are in the employ of the Smithsonian Institution of Washington, D. C., or have any direct connection with said Smithsonian Institution.

2. Representing, directly, or indirectly, that the books sold and distributed by the respondents are published by the Smithsonian Institution of Washington, D. C., or that the entire profit or proceeds obtained from the sale of such books accrues to the Smithsonian Institution of Washington, D. C.

3. Representing, directly, or indirectly, that the sale of said books is restricted to a selected number of individuals in any community or that any individual has been selected to act as patron of the Smithsonian Institution of Washington, D. C.

4. The use of "patron certificates" of the Smithsonian Institution in such a way as to imply that a purchaser has been specially selected, because of prominence in the community, or for any other reason, or that such purchaser has contributed to a cause other than by the purchase of a set of books as an ordinary commercial transaction for profit.

5. The use of the words "Smithsonian Institution" in respondents' trade or corporate name, or in any other manner, to designate or describe an organization engaged in a commercial enterprise for profit, which is not a part of, or has no direct connection with, the Smithsonian Institution of Washington, D. C.

6. Representing, directly, or indirectly, that respondents are engaged in any enterprise other than that of a commercial enterprise for profit.

It is further ordered, That the respondents, Parke, Austin & Lipscomb, Inc., a corporation, and its officers, and Alfred Monett, an individual, Robert A. Hogan, Jr., an individual, and Joseph M. McAndrews, an individual, and their respective agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of a set of books designated "World Epochs," or other books, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly, or indirectly, that any salesman or representative who is not directly responsible to the United States Flag Association or who is not working under the direct supervision and control of said Association, is in the employ of, or directly connected with, the United States Flag Association.

2. Representing, directly, or indirectly, that the entire profit or proceeds derived from the sale of said books accrues to the United States Flag Association.

3. Representing, directly, or indirectly, that respondents are engaged in any enterprise other than that of a commercial enterprise for profit, or that a purchaser of such books is, in effect, making a contribution to the United States Flag Association to be used by the Association in combating anti-Americanism and subversive organizations and influences in the United States.

4. The use of letters endorsing the aims and purpose of the United States Flag Association as endorsements of books sold and distributed by the respondents.

5. The use of life membership certificates in the United States Flag Association or other organizations in such a way as to imply that a purchaser has contributed to a cause other than by the purchase of a set of books as an ordinary commercial transaction for profit.

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

J. L. RAMSAY AND G. P. MASTERS, TRADING AS ROGERS
SILVERWARE EXCHANGE AND ROGERS REDEMPTION
BUREAUCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4094. Complaint, Apr. 22, 1940—Decision, Feb. 9, 1942*

Where an individual, engaged in the competitive interstate sale and distribution to retail dealers of sales stimulation plans, under which the dealer contracted to purchase a designated number of said individual's gift cards at \$1 per 1,000, for distribution among his customers, based on their purchase of merchandise, and said individual agreed to redeem the cards by sending the customer a designated number of pieces of Wm. A. Rogers silverware, packed in units of six—

- (a) Prominently displayed in his contract forms and in circulars and other advertising material, and in the specimen gift cards made use of by him and his agents, the legends "Wm. A. Rogers Silverware," "Rogers Silverware" and "Wm. A. Rogers, Ltd.," and his trade names "Rogers Silverware Exchange" and "Rogers Redemption Bureau," and set forth on said gift cards the statement that "Through a national advertising campaign sponsored by this organization you may receive any of the beautiful gifts listed in free schedule by saving these gift cards," and represented orally and through his said agents that he was connected with and a representative of Oneida, Ltd., manufacturer of Wm. A. Rogers silverware, and, by said sales stimulation plan, was conducting an advertising campaign for such concern;

When in fact he was not a part of or in any way connected with said Oneida, Ltd., manufacturer of said long favorably known silverware, and his said sales plan was initiated solely on his own behalf and to sell his said cards;

- (b) Represented that he would distribute circulars and other advertising materials throughout the trade area served by the dealer, and thus assist the latter in putting plan in question into operation, and undertook, through provisions of contract in question, affirmed orally to dealers by himself and his agents, to supply to the dealer without cost a 26-piece display set of silverware with case, to remain the dealer's property, and to make cash refunds to dealer at the rate of \$1 for each 1,000 cards forwarded for redemption after 25 percent of the cards had been thus forwarded;

The facts being he made no such distribution of advertising material, did not render the dealer any other assistance in putting the plan into operation, in many instances wholly failed to supply the dealer with any display set of silverware, and did not make said cash refund; and

- (c) Represented, through contract in question, affirmed orally to dealers, that he would send to dealer's customer forwarding a specified number of cards a complete unit of six of the designated pieces of silverware;

The facts being he failed in many instances to redeem gift cards with silverware; in many instances, upon receiving the designated number of cards for redemption, required that six times that number be forwarded for the unit