

IN THE MATTER OF

W. B. SAUNDERS COMPANY, J. B. LIPPINCOTT COMPANY,
C. V. MOSBY COMPANY, CHICAGO MEDICAL BOOK
COMPANY, ET AL.

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

Docket 3558. Complaint, Aug. 26, 1938—Decision, Aug. 26, 1942

Where three corporations, engaged in the sale and distribution at wholesale and retail of medical books, and constituting, respectively, the largest wholesale distributors in New York and vicinity, in the Middle West, and in the South and Southwest of such books, substantial portion of which were purchased by schools, colleges, libraries, hospitals, and other State, county, and municipal institutions, and by departments and agencies of the United States Government—

- (a) Agreed among themselves, in 1935 and 1936, that in bidding and quoting prices for the medical book business of public institutions and Governmental agencies they, and each of them, would uniformly bid at, and quote, the prices and discounts fixed by the respective publishers, and thereafter did adhere to and quote prices and discounts so fixed; and
- (b) Entered into, on or about May 1936, an agreement and understanding assigning to one another certain territories of the United States for the handling and bidding for the medical book business of public institutions and Governmental agencies therein, agreeing not to bid or compete for such business in the particular territory assigned to one of the other distributors concerned; and pursuant thereto, refrained during the year aforesaid from bidding against or competing with one another in a large part of the United States, including the States of Texas, Illinois, and New York;

Tendency and effect of which agreements and understandings, and acts and things done pursuant thereto, were to eliminate and prevent price competition in the sale and offering for sale of medical books to public institutions and Governmental agencies throughout the United States, and to place in the hands of said distributors power to control and enhance prices of such books, and to restrain a normal flow of trade in commerce therein:

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

As respects proceeding involving alleged understandings and agreements entered into in 1935 and 1936 between the three largest wholesale distributors of medical books in New York and vicinity, in the Middle West, and in the South and Southwest, pursuant to which they uniformly bid at and quoted the prices and discounts for the medical book business of public institutions and Governmental agencies fixed by the publishers, and also assigned certain territories in the United States to one another, agreeing not to bid or compete against one another therein, and abiding thereby: A contention that it was more profitable for said distributors to confine their sale

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and distribution of such books within the geographical limits of the territory located in and adjacent to the cities in which their respective businesses were situated, and further, that as of July 1942 all of the books were received by said distributors from medical book publishers on a commission basis, did not affect disposition of proceeding in question.

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

Mr. Fletcher G. Cohn for the Commission.

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.

Ballard, Spahr, Andrews & Ingersoll, of Philadelphia, Pa., for Lea & Febiger.

Denning & Cross, of Washington, D. C., for T. H. McKenna, Inc.

Campbell, Clithero & Fischer, of Chicago, Ill., for Chicago Medical Book Co.

Turner, Rodgers, Winn & Sellers, of Dallas, Tex., for J. A. Majors & Co.

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, 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 copartners, 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.

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Respondent, T. H. McKenna, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with principal office and place of business at 878 Lexington Avenue, New York City.

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, J. A. Majors & Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with principal office and place of business at Medical Arts Building, Dallas, Tex.

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. Respondents, T. H. McKenna, Inc., Chicago Medical Book Co. and J. A. Majors and Co., are wholesale and retail dealers in medical books. Respondent, T. H. McKenna, Inc., is the largest wholesale distributor of medical books in New York City and vicinity. Respondent, Chicago Medical Book Co., is the largest wholesale distributor of medical books in the Middle West. Respondent, J. A. Majors & Co., is the largest wholesale distributor of medical books in the South and Southwest. Each of said respondent dealers purchases, sells, and deals in medical books published and sold by each of said respondent 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. A substantial portion of the medical books sold annually in the United States are purchased by schools, colleges, libraries, hospitals, and other State, county, and municipal institutions and by departments and agencies of the United States Government. This institutional or governmental business is usually awarded after receipt of bids or quotations from medical book dealers and publishers, and the books required are generally purchased from the lowest bidder. Respondent dealers are or have been competitors for such busi-

ness throughout the United States and respondent publishers also frequently submit bids or quotations for such business, competing therefor with respondent dealers.

PAR. 5. Each of said respondent publishers fixes and prescribes the prices and discounts to be used by medical book dealers and distributors in bidding or quoting prices on the medical books of such publisher to Government agencies and public institutions. Each of said respondent publishers requires that the respondent dealers and other wholesale dealers to whom it sells or consigns medical books shall not quote prices to Government agencies and public institutions lower than the prices so fixed by such publisher, and sells medical books to such dealers on the condition, agreement and understanding that such dealers, respectively, will adhere to the prices and discounts fixed by the publisher, in selling or offering to sell to such Government agencies and public institutions.

PAR. 6. During the years 1935 and 1936 the three respondent dealers herein agreed, combined and conspired together, and each with the other, that in bidding and quoting prices for the medical book business of Government agencies and public institutions they, and each of them, would uniformly bid at and quote the prices and discounts fixed and prescribed for such business by the respective publishers of such medical books. Thereafter, in bidding and competing for such business said respondent dealers, in furtherance of said agreement, combination and conspiracy, have adhered to and quoted the prices and discounts on medical books fixed and prescribed by the respective publishers thereof.

PAR. 7. In or about May 1936 said respondent dealers entered into an agreement and understanding, each with the other, dividing and assigning certain territory in the United States for the purpose of handling and bidding for the medical book business of schools, colleges, libraries, hospitals, and Government agencies and institutions in such territory. Each of said respondents agreed not to bid or compete for such business in the states or territory assigned to one of the others. Pursuant to said agreement and understanding, said respondents have ceased and refrained from bidding against or competing with each other for such business in a large part of the United States, including the States of Texas, Illinois, and New York.

PAR. 8. The tendency and effect of the acts and practices above complained of has been and is to lessen, eliminate, and prevent price competition in the sale and offering for sale of medical books to schools, colleges, libraries, hospitals, and other public institutions and Government agencies throughout the United States, including

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departments, agencies and instrumentalities of the Federal Government; to place in respondents the power to control and enhance prices for such books; to increase the prices paid by such purchasers thereof; and to obstruct, restrain and interfere with the normal and natural flow of trade and commerce in such books. 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 subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce and unfair acts and practices in commerce in violation of the provisions of said act. After the filing of answers by each of the respondents in this proceeding, stipulations were entered into by all the respondents, except respondent, J. B. Lippincott Co., whereby it was stipulated and agreed that, subject to the approval of the Commission, statements of facts signed and executed by respondents and by W. T. Kelley, Chief Counsel for the Federal Trade Commission, may be taken as the facts in this proceeding in lieu of testimony in support of the charges stated in the complaint and in opposition thereto, and that the Commission may proceed upon said statements of facts to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Respondent J. B. Lippincott Co. not having entered into a stipulation, testimony, and other evidence were taken before an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint, answers, stipulations (the stipulation executed by respondents, T. H. McKenna, Inc., Chicago Medical Book Co., and J. A. Majors & Co., having been approved, accepted, and filed), testimony and other evidence, report of the trial examiner and exceptions thereto, and brief in support of the complaint and brief in opposition thereto filed by respondent, J. B. Lippincott Co. (oral argument not having been requested); and the Commission, having duly considered the matter and being

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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, 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 its 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 its principal office and place of business located 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 its principal office and place of business located 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 their principal office and place of business located at 600 South Washington Square, Philadelphia, Pa.

Respondent, T. H. McKenna, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 878 Lexington Avenue, New York, N. Y.

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 its principal office and place of business located at Congress and Honore Streets, Chicago, Ill.

Respondent, J. A. Majors & Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at the Medical Arts Building, Dallas, Tex.

PAR. 2. Respondents, W. B. Saunders Co., J. B. Lippincott Co., C. V. Mosby Co., and Lea & Febiger, are publishers and sellers of various medical and other scientific books. Respondents, T. H. McKenna, Inc., Chicago Medical Book Co., and J. A. Majors & Co., are distributors of medical books at wholesale and retail. Respondent, T. H. McKenna, is the largest wholesale distributor of medical books in New York, N. Y., and vicinity; respondent, Chicago Medical Book Co., is the largest wholesale distributor of medical books in the Middle West; and respondent, J. A. Majors & Co., is the

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largest wholesale distributor of medical books in the South and Southwest. Each of said respondent medical book distributors during the years 1935 and 1936 purchased, sold, and dealt in medical books published and sold by the aforesaid respondent medical book publishers.

PAR. 3. In the course and conduct of their respective businesses, respondents, T. H. McKenna, Inc., Chicago Medical Book Co., and J. A. Majors & Co., each transported, and do transport, medical books, or caused, and cause, the same to be transported from their respective places of business to purchasers thereof located in States of the United States other than the States in which their respective places of business are located, and have received, and receive, from States other than those States in which their respective places of business are located, medical books from the publishers thereof. Said respondents have maintained, and maintain, a current of trade in commerce in medical books between and among the States wherein their places of business are located and various other States of the United States.

PAR. 4. A substantial portion of the medical books sold annually in the United States were, and are, purchased by schools, colleges, libraries, hospitals, and other State, county, and municipal institutions, and by departments and agencies of the United States Government.

PAR. 5. During the years 1935 and 1936, respondents, T. H. McKenna, Inc., Chicago Medical Book Co., and J. A. Majors & Co., agreed among and between themselves that in bidding and quoting prices for the medical book business of public institutions and governmental agencies they, and each of them, would uniformly bid at and quote the prices and discounts fixed and prescribed for such business by the respective publishers of such medical books; and thereafter, during the aforesaid period, in bidding and competing for such business, said respondent medical book distributors, in furtherance of said agreement, did adhere to and quote the prices and discounts on medical books fixed and prescribed by the respective publishers thereof.

PAR. 6. On or about May 1936 said respondent medical book distributors entered into, and thereafter carried out, an agreement and understanding each with the other, dividing and assigning to one another certain territories in the United States for the purpose of handling and bidding for the medical book business of schools, colleges, libraries, hospitals, and other Governmental agencies and institutions in such territories. Each of said respondent medical book distributors agreed not to bid or compete for such business in the particular terri-

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tory assigned to one of the other respondent medical book distributors. Pursuant to such agreement and understanding, said respondent medical book distributors did cease and refrain during the year 1936 from bidding against or competing with one another for such business in a large part of the United States, including the States of Texas, Illinois, and New York. The said medical books were received by respondent medical book distributors in commerce between and among the several States of the United States, in some instances by means of outright sale from the publishers thereof and in other instances by means of consignment from the publishers thereof.

Respondent book distributors contend that it is more profitable for them to confine their sale and distribution of medical books, purchased as above set forth, within the geographical limits of the territory located in and adjacent to the States in which their respective businesses are situated, and, further, that as of July 1942 all of the books which they receive from medical book publishers are received on a consignment basis. The Commission concludes, however, that these matters do not affect the disposition of the present proceeding.

PAR. 7. The tendency and effect of the aforesaid agreements and understandings and the acts and things done pursuant thereto have been to lessen, eliminate, and prevent price competition in the sale and offering for sale of medical books to schools, colleges, libraries, hospitals, and other public institutions and Governmental agencies throughout the United States, including departments, agencies, and instrumentalities of the Federal Government, and to place in the hands of said respondent medical book distributors the power to control and enhance prices of such books, to increase the price paid by purchasers thereof, and to obstruct, restrain, and interfere with a normal and natural flow of trade in commerce in such books.

CONCLUSION

The aforesaid acts and practices of respondents, T. H. McKenna, Inc., Chicago Medical Book Co., and J. A. Majors & Co., 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.

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, testimony and other evidence with respect to respondent, J. B. Lippincott Co., taken before an examiner of the Commission thereto-

fore duly designated by it and briefs filed by said respondent and by counsel for the Commission, and upon certain stipulations as to the facts entered into between W. T. Kelley, Chief Counsel for the Commission, and respondents, other than, J. B. Lippincott Co., which provide, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon said respondents findings as to the facts and conclusion based thereon and an order disposing of the proceeding; and the Commission having made its findings as to the facts and its conclusion that certain of respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Chicago Medical Book Co. a corporation, T. H. McKenna, Inc., a corporation, and J. A. Majors & Co., a corporation, their officers, agents, and employees, or any two or more of said respondents, with or without the cooperation of others not parties hereto, in connection with the offering for sale, sale, and distribution of medical books in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, or carrying out, or directing, instigating, or cooperating in any mutual understanding, agreement, combination, or conspiracy to fix, establish, or maintain the prices of medical books, or to determine, establish, or control the territory in which any of said respondents offers for sale or sells medical books, and from doing any of the following acts or things pursuant thereto:

1. Refraining from offering for sale or selling medical books in any place, locality, or territory.

2. Fixing, establishing, or maintaining any price, discount, or other terms of sale for any medical book or books to any purchaser or class or group of purchasers.

It is further ordered, That respondents shall, within 60 days after the 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.

It is further ordered, That with respect to respondents, 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, trading under the firm name and style of Lea & Febiger, this proceeding be, and the same hereby is, closed without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

Complaint

IN THE MATTER OF

KERSH A. SMITH, TRADING AS TEETERBABE COMPANY
OF COLORADOCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3709. Complaint, Feb. 14, 1939—Decision, Aug. 31, 1942*

Where an individual engaged in competitive interstate sale and distribution of electric irons, toasters, cameras, fans, and other articles—

Made use of certain devices and plans of merchandising which involved the operation of games of chance, gift enterprises or lottery schemes, through supplying a pull card for use in sale and distribution of articles concerned under a plan by which the person selecting the feminine name found to correspond with that concealed under card's master seal received choice of "Six useful, attractive household items," as thereon displayed, the amount paid for a chance was determined by the number disclosed under the pull tab selected, and operator was compensated, after sale of articles concerned, by having forwarded to him, along with the particular item of merchandise selected by the winning customer, a "Teeterbabe jumper seat"; and thereby supplied to and placed the means of conducting lotteries in the sale of his merchandise in the hands of operators who made use of aforesaid sales plan, involving chance to obtain article at less than normal retail price thereof; contrary to an established public policy of the United States Government, and in competition with many who, unwilling to use such or other method contrary to public policy, refrain therefrom;

With result that many persons were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell said merchandise in preference to that offered by said competitors; whereby trade was diverted unfairly from them to him:

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

Before *Mr. William C. Reeves* and *Mr. Miles J. Furnas*, trial examiners.

Mr. L. P. Allen, Jr. and *Mr. J. V. Mishou* for the Commission.

Mr. Robert T. Kingsley, of Denver, Colo., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Kersh A. Smith, individually, and trading as Teeterbabe Co. of Colorado, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect