

Syllabus

IN THE MATTER OF
AMERICAN ASSOCIATION OF LAW BOOK
PUBLISHERS ET AL.

ORDER MODIFYING MODIFIED ORDER TO CEASE AND DESIST¹¹ For findings, and cease and desist order as modified June 26, 1944, see 38 F. T. C. 319.*Docket 4526. Order, August 23, 1944*

Order, modifying prior modified order requiring respondent association, its members, their officers, etc., in connection with the offer, etc., in commerce, of law books and related publications to cease and desist from concertedly or cooperatively establishing, fixing or maintaining discounts and terms or conditions of sale therefor, etc., as in detail there set forth and subject to the provisos there set out; so as to make such order subject to the proviso that it is not to be construed as prohibiting joint publishers of any specific law book, set of law books or related legal publication, from engaging in the cooperative activities otherwise prohibited by this order, provided that such activities are pursued in good faith and solely with respect to publishing and selling such jointly published law book, set of law books, or related legal publications in the usual and ordinary course of business and are not used for the purpose of evading the terms of the order, it appearing that the record did not specifically raise any issue of the legality of joint publication ventures, and that it was not necessary to determine any such issue in the present proceeding, and the Commission's instant action being taken without passing upon the legality or illegality thereof and without prejudice to the Commission's right to institute a new proceeding at any time with respect to such legality.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Lynn C. Paulson, *Mr. James H. Boyle* and *Mr. Karl E. Steinhauer* for the Commission.

Lundgren & Lincoln, of New York City, for *James R. Spillane*, *The American Law Book Co.*, *Burdette Smith Co.*, *Edward Thompson Co.*, *Vernon Law Book Co.*, *Washington Law Book Co.* and *West Publishing Co.*

Paxton & Seasongood, of Cincinnati, Ohio, for *Clifford W. Mueller*.

Mr. Neile F. Towner, of Albany, N. Y., for *Richard Reiner*.

Goodwin, Nixon, Hargrave, Middleton & Devans, of Rochester, N. Y., for *R. Walter White*.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., for *Baker, Voorhis and Co.*, *Bancroft-Whitney Co.*, *Bender-Moss Co.*, *The Michie Co.* and *Thomas Law Book Co.*, and along with—

Paxton & Seasongood, of Cincinnati, Ohio, for *The W. H. Anderson Co.*;

Mr. Neile F. Towner, of Albany, N. Y., for *Matthew Bender and Co.*, *Inc.* and *Fallon Law Book Co.*;

Walton, Bannister & Stitt, of New York City, for *Clark Boardman Co.*, *Ltd.*;

Mr. Julius Birge, of Indianapolis, Ind., for *Bobbs-Merrill Co.*;

Mr. Henry Ward Beer, of New York City, for *John Byrne and Co.*;

Garono, Jaekle & Kelly, of Buffalo, N. Y., for *Dennis and Co., Inc.*;

Dorsey, Stubbs & Dorsey, of Atlanta, Ga., for *The Harrison Co.*;

Goodwin, Nixon, Hargrave, Middleton & Devans, of Rochester, N. Y., for The Lawyers Co-Operative Publishing Co.; and

Mr. Clifton P. Williamson, of New York City, for Williamson Law Book Co.

Saul, Ewing, Remick & Harrison, of Philadelphia, Pa., for George T. Bisel.

Haussermann, Davison & Shattuck, of Boston, Mass., for Little, Brown and Co.

Sullivan & Cromwell, of New York City, for The Frank Shepard Co.

Colie & Waltzinger, of Newark, N. J., for Soney and Sage Co.

Isham, Lincoln & Beale, of Chicago, Ill., for Callaghan & Co.

ORDER MODIFYING MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission; the answers of the respondents; a stipulation as to the facts and a supplemental stipulation as to the facts entered into between W. T. Kelley, Chief Counsel for the Federal Trade Commission, and the following corporate respondents: The W. H. Anderson Company, Baker, Voorhis and Co., Bancroft-Whitney Co., Matthew Bender and Co., Inc., Bender-Moss Co., Clark Boardman Co., Ltd., Bobbs-Merrill Co., John Bryne and Co., Dennis and Co., Inc., The Harrison Co., The Lawyers Co-Operative Publishing Co., Little, Brown and Co., The Michie Co., National Law Book Co., Public Utilities Reports, Inc., Soney and Sage Co., Thomas Law Book Co., Williamson Law Book Co., and Fallon Law Book Co., which stipulations provide, among other things, that the Commission may proceed upon said statement 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 further testimony, argument, filing of briefs, or other intervening procedure; and also upon testimony and other evidence taken in support of the allegations of said complaint and in opposition thereto as to the respondents American Association of Law Book Publishers, and unincorporated association, and its officers, James R. Spillane, president, Clifford W. Mueller, vice president, Richard Reiner, treasurer, and R. Walter White, secretary, and The American Law Book Co., George T. Bisel, an individual, trading as George T. Bisel Co., The Frank Shepard Co., Burdette Smith Co., Edward Thompson Co., Vernon Law Book Co., Washington Law Book Co., West Publishing Co., and Callaghan & Co., before a trial examiner of the Commission theretofore duly designated by it; report of the trial examiner upon the evidence and exceptions filed thereto; briefs in support of the complaint and in opposition thereto; and oral argument of counsel; and the Commission having made and entered its findings as to the facts, conclusion, and order to cease and desist April 26, 1944, and modified order to cease and desist June 26, 1944, and thereafter, upon motion by counsel for certain of the respondents, the Commission reconsidered the modified order to cease and desist heretofore entered and being of the opinion that an order modifying such modified order to cease and desist should be issued in said cause and having duly considered the record and being now fully advised in the premises issues this its order modifying its modified order to cease and desist.

It is ordered, That the respondents, American Association of Law Book Publishers, an unincorporated association; The American Law Book Co., a corporation, the W. H. Anderson Co., a corporation; Baker, Voorhis and Co., a corporation; Bancroft-Whitney Co., a corporation; Matthew Bender and Co., Inc., a corporation; Bender-Moss Co., a corporation; Clark Boardman Co., Ltd., a corporation; Bobbs-Merrill Co., a corporation; John Byrne and Co., a corporation; Dennis and Co., Inc., a corporation; The Harrison Co., a corporation; The Lawyers Co-Operative Publishing Co., a corporation; Little, Brown and Co., a corporation; The Michie Co., a corporation; National Law Book Co., a corporation; Public Utilities Reports, Inc., a corporation; The Frank Shepard Co., a corporation; Burdette Smith Co., a corporation; Soney and Sage Co., a corporation; Thomas Law Book Co., a corporation; Edward Thompson Co., a corporation; Vernon Law Book Co., a corporation; Washington Law Book Company, a corporation; West Publishing Company, a corporation; Williamson Law Book Co., a corporation; Callaghan & Co., a corporation; and Fallon Law Book Co., a corporation, and their respective officers, agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of law books and related legal publications in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out, or directing, instigating, or cooperating in, any planned common course of action, mutual agreement, understanding, combination, or conspiracy between and among any two or more of said respondents or between any one or more of said respondents and others not parties hereto to do or perform any of the following acts or practices:

1. Establishing, fixing, or maintaining discounts, terms, or conditions of sale for law books and related legal publications or adhering to or promising to adhere to the discounts, terms, or conditions of sale so fixed.

2. Maintaining or adhering to the selling price, terms, and conditions of sale of law books and related publications fixed and established by the respondent who publishes such books.

3. Holding or participating in any meeting, discussion, or exchange of information among themselves or under the auspices of the respondent American Association of Law Book Publishers or any other medium or agency concerning proposed or future discounts, terms, or conditions of sale or concerning bids and price quotations in advance of the submission of such bids or price quotations to purchasing officials of the Federal Government or to awarding authorities of other governmental units or subdivisions or to any buyer of law books and related legal publications.

4. Arriving at the amount of any bid or the discount, terms, or conditions of sale to be submitted to purchasing officials of the Federal Government, to awarding authorities of other governmental units or subdivisions, or to any buyer of law books and related legal publications through agreement, understanding, or collusion with other bidders.

5. Establishing, fixing, or maintaining the rates of allowances to be made, used, and applied on books and other publications received in trade, or fixing and maintaining the prices, terms, or conditions of sale governing the resale of such law books and related legal publications taken in trade.

6. Jointly or cooperatively inducing or promoting adherence to, or attempting to induce or promote adherence to, agreements and understand-

ings relative to the sale and distribution of law books and related legal publications by interchange of correspondence, by personal contact with one another individually or in groups, or by policing the bids or sales transactions of respondent members through the respondent Association or otherwise.

7. Employing or utilizing any of the actual practices specifically prohibited herein as a means or instrumentality of otherwise restricting, restraining, or eliminating competition in the sale and distribution of law books and related legal publications.

8. Employing or utilizing American Association of Law Book Publishers or any other medium or central agency as an instrument, vehicle, or aid in performing or doing any of the acts and practices prohibited by this order.

It appearing to the Commission that the record herein does not directly and specifically raise any issue of the legality of joint publication ventures and that it is not necessary to determine any such issue in the present proceeding, *It is therefore further ordered* that the order to cease and desist herein shall not be construed as prohibiting joint publishers of any specific law book, set of law books or related legal publication, from engaging in the cooperative activities otherwise prohibited by this order, provided that such activities are pursued in good faith and solely with respect to publishing and selling such jointly published law book, set of law books, or related legal publications in the usual and ordinary course of business and are not used for the purpose of evading the terms of the order. By this action the Commission does not now pass upon the legality or illegality of joint publication ventures as such, and this action is without prejudice to the Commission's right to institute a new proceeding at any time with respect to the legality of such ventures.

It is further ordered, That nothing herein contained shall be construed as prohibiting a parent corporation from directing the prices or terms at which any of its subsidiary corporations shall sell any law book or related legal publication published by the parent corporation or by any of its subsidiaries when such prices or terms have been arrived at by the parent corporation acting separately and independently of any competitor of the parent corporation or of any of its subsidiary corporations.

It is further ordered, That nothing in this order is to be construed as prohibiting any of said corporate respondents from entering into such contracts or agreements relating to the maintenance of resale prices as are not prohibited by the provisions of an Act entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890 (the Sherman Act), as amended.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to George T. Bisel, an individual, trading as George T. Bisel Company.

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.

Order

IN THE MATTER OF

ULTRA-VIOLET PRODUCTS, INC.

ORDER MODIFYING CERTAIN PORTIONS OF ORDER TO CEASE AND DESIST

Docket 4407. Order, August 26, 1944

Order modifying prior order, in connection with respondent's advertisement of its "Life Lite" therapeutic lamp, pursuant to provision of Sec. 5 (i) of the Federal Trade Commission Act and in accordance with decision below referred to, in proceeding in question, in which original order issued on June 8, 1942, 34 F. T. C. 1325, and in which Circuit Court of Appeals for the Ninth Circuit on June 30, 1944, 143 F. (2d) 814, 38 F. T. C. 923, handed down its opinion, which decreed the enforcement of the Commission's order with respect to certain items, modified it with respect to another item, and set it aside with respect to two others, but without prejudice to the Commission's right to treat the proceeding as submitted upon said items and to make such order with respect thereto as it may be advised to make; so as to modify such prior order with respect to the aforesaid two items in accordance with opinion and decision, as below set forth.

ORDER MODIFYING CERTAIN PORTIONS OF ORDER TO CEASE
AND DESIST

The Commission having on July 20, 1944, issued and subsequently served upon the respondent and its attorney of record an order requiring the respondent to show cause, if any it had, why subsections 1(a) and 1(f) of the Commission's order to cease and desist issued on June 8, 1942, should not, in conformity with the decision of the United States Circuit Court of Appeals for the Ninth Circuit, be modified as set forth in said order to show cause;

And the respondent having on August 12, 1944, filed with the Commission its return to said order to show cause;

And the Commission having duly considered said return and having further considered said subsections of said order to cease and desist and the record herein, and being of the opinion that said subsections should be modified as set forth below:

It is therefore ordered that subsections 1(a) and 1(f) of said order to cease and desist be, and they hereby are, modified to read as follows:

1 (a) that said lamp is a sun lamp; or that it affords benefits to the user comparable to those afforded by natural sunlight, other than the benefits resulting from the production of vitamin D, the benefits resulting from the bactericidal action of said lamp upon bacteria existing at the surface of the skin, and the benefits resulting from such stimulation of the skin as may be caused by the irritating effect of said lamp.

1 (f) that said lamp builds up in the body resistance to any diseases other than those, such as rickets, due to disorders of calcium and phosphorus metabolism arising from vitamin D deficiency.