

Syllabus

IN THE MATTER OF

FRANK J. MARKS, TRADING AS NATIONAL COMMITTEE
FOR EDUCATION AND AS PRESIDENT AND TREASURER
OF BOOK-A-WEEK CLUB, INC. AND BOOK-A-WEEK
CLUB, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4877. Complaint, Dec. 17, 1942—Decision, Sept. 13, 1944*

Where an individual, who traded as "National Committee for Education," and was president and treasurer, prior to its dissolution, of his "Book a Week Club, Inc.," engaged in the interstate sale and distribution of two sets of reference books respectively designated as "Standard American Encyclopedia" and "University of Knowledge Wonder Books"; through advertisements in newspapers, and periodicals, circulars and other advertising material, and radio broadcasts,—

- (a) Falsely represented that the "National Committee for Education was an organization, national in scope, consisting of a group of teachers and educators which sponsored and endorsed the Book-A-Week Club" and expressly edited and compiled valuable literature for distribution to the members of said Club, and that his "Standard American Encyclopedia" set of books was sold and distributed in cooperation with said National Committee for Education to members of the Book-A-Week Club, Inc.;

The facts being that said National Committee for Education was merely a trade name assumed by said individual in connection with the sale and distribution of the reference books hereinabove described, which he purchased from the publisher on a consignment basis; said "The Book-A-Week Club, Inc.," was a corporation dominated and controlled by said individual, and its so-called "membership" consisted merely of purchasers of said reference books, who did not receive any literature expressly edited and compiled for them; and the use of aforesaid trade name and sale and distribution of his said reference books by and through his said corporate entity, were a subterfuge to further the false representations that said reference books were endorsed by and sold in cooperation with some group of educators or teachers;

- (b) Falsely represented that said "Standard American Encyclopedia" contained complete and comprehensive information with respect to every conceivable subject and was one of the most important sets of books ever written, and had a retail value of \$65; that his "University of Knowledge Wonder Books" had a retail value of \$100; that a limited quantity of said books was being offered to charter members of the Book-A-Week Club, Inc., in good standing, and that said books were available at the prices quoted only to such members;

The facts being that value of the sets was not \$65 or \$100, respectively, but in the normal and ordinary course of business the books sold at 49¢ per volume for the regular edition and 69¢ for the deluxe, plus postage, for the 20 volume "Encyclopedia," and 59¢ per volume plus postage for the other 24 volume set of "Wonder Books"; and

- (c) Represented that the first volume of his said sets would be delivered free, and that persons receiving the first so-called "free" volume were obligated to accept and

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pay for succeeding volumes sent by him unless they notified him within ten days of receipt of the first volume that they did not desire succeeding volumes;

The facts being said first volume was not delivered free or without cost or obligation, but only upon payment of a consideration therefor, and persons receiving said so-called "free" volume were not legally obligated to accept and pay for succeeding volumes, but said statement was merely a subterfuge used by him to induce the purchase of the remaining volumes of said sets of books;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true and to induce it to purchase his reference books because of such belief; whereby trade was diverted unfairly to him from his competitors in commerce who truthfully advertised their products:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. William L. Pencke for the Commission.

Mr. Harvey J. Scribner, 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 Frank J. Marks, an individual, trading as National Committee for Education, and Book-A-Week Club, Inc., a corporation, 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. Respondent, Frank J. Marks, is an individual, trading and doing business under the firm name and style of National Committee for Education, with his office and principal place of business located at 147 West 22nd Street in the city of New York and State of New York; respondent, Book-A-Week Club, Inc., is a corporation, organized and existing under the laws of the State of New York with its office and principal place of business located at 147 West 22nd Street, in the city and State of New York. Respondent, Frank J. Marks, is president and treasurer of said corporation and as such formulates, controls and directs the policies and practices of said corporation. Said respondent, Frank J. Marks, is now and for more than two years last past has been engaged in the sale and distribution in commerce between and among the various States of the United States of reference books designated as Standard American Encyclopedia and the University of Knowledge Wonder Books. Respondent, Frank J. Marks, in the course and conduct of said business, during the time aforesaid, caused and does now cause said books to be transported from his said place of business in the State of New York to purchasers thereof located in the several States of the United States other than the State of New York and in the District of Columbia.

PAR. 2. There is now and has been at all times hereinafter mentioned a course of trade in said books of reference so sold and distributed by said respondent in commerce between and among the various States of the United States and the District of Columbia.

There are other persons, firms and corporations that have been and are engaged in offering for sale, selling and transportation in commerce between and among the various States of the United States of books of reference and encyclopedias, and respondents are engaged in substantial competition with such concerns.

PAR. 3. In the course and conduct of said business, respondent, Frank J. Marks, solicits the purchase of said books by means of advertisements in newspapers having an interstate circulation, advertising matter circulated by mail among prospective purchasers in various States of the United States and continuities broadcast from radio stations which convey the programs emanating therefrom to listeners thereto situated in various States of the United States. Typical of such advertising representations are the following:

Education Is The First Line of Defense
National Committee for Education
Either or Both
FREE of these FREE
Great Offers

Vol. One of the Famous Just Send Us
Standard American Your Name
Encyclopedia

We want you to actually see for yourself what a sensational value the Standard American Encyclopedia represents. So just send us your name and we will forward FREE your first volume as our gift to you . . .

And the first volume is yours absolutely FREE without any obligation on your part.

Act Now! Only a Limited Supply Currently Available.

Everything you've ever wanted to know—on every conceivable subject.

Offered in Cooperation with the National Committee for Education.

. . . one of the most important sets of books ever written, the Standard American Encyclopedia.

These costly features are offered to you as a charter member of the BOOK-A-WEEK CLUB of the National Committee for Education. In addition to this your membership entitles you to receive all further valuable literature edited and compiled expressly for its members by the National Committee for Education.

Book-A-Week Club—Inc.
Sponsored and Endorsed by the National
Committee for Education.

The offer . . . is made possible only through the cooperation of the National Committee for Education which for the first time has taken cognizance of the pressing needs of the American public and is now offering for a limited time the complete unabridged, original 20 volume illustrated Standard Encyclopedia with the first volume absolutely FREE.

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You may still order one or more volumes at a time under the original plan, at the old price of 49¢ for each volume of the regular edition, or 69¢ for each volume of the deluxe edition (plus 11¢ to cover postage, packing, and handling). Just think of owning a magnificent set of Encyclopedias, valued at \$65.00, for such a small fraction of its worth!

... a complete comprehensive and concise storehouse of knowledge. . .

The newest, most up-to-date set ever published.

The University of Knowledge Wonder Books

The Publishers of this magnificent wonderland of World-wide knowledge allowed us just a limited number of sets in order to make possible this extraordinary offer! Therefore, only Charter Members in good standing of the Book-A-Week Club may obtain this set on this convenient plan . . . and the First Volume is sent to you here-with absolutely FREE! Remember too that each volume is valued at \$4.00. The complete 24-volume set is actually worth \$100.00.

Each volume is yours for only 59¢ plus 11¢ for postage, packing, etc. . . a total of only 70¢ for splendid volumes valued at \$4.00 each. Available at this price only to Honor Roll Members like yourself.

In the absence of any word from you, within ten days, we shall send your succeeding volumes to you, one each week, and you agree that you are obligated to pay the post-man for same.

PAR. 4. By means of the foregoing statements and representations and others of like tenor and effect, the respondents represent to the purchasing public that the National Committee for Education consists of a group of teachers or educators which is national in scope; that said National Committee for Education cooperates in the sale and distribution of encyclopedias and reference books; and that any person may ask for and secure the first volume of Standard American Encyclopedia without cost or obligation; that only a limited supply of said books is available; that said encyclopedia contains complete and unabridged information on all conceivable subjects, is one of the most important and newest sets of books ever written, and valued at sixty-five dollars; that purchasers of said books become charter members of the Book-A-Week Club and as such are entitled to receive valuable literature expressly edited and compiled for such members. That the set of books, designated Wonder Books is available only to Honor Roll members at the specially low price of 59¢ and that each volume of said Wonder Books is valued at four dollars and that the entire set of 24 volumes is worth \$100.00 and that the supply of said books is limited by the publisher thereof. That persons having received the first so-called "Free" volume are legally obligated to accept and pay for succeeding volumes sent by respondents, unless they notify respondents within 10 days from receipt of said first volume that they do not desire the succeeding volumes.

PAR. 5. In truth and in fact, said National Committee for Education is not an aggregation or a committee of educators or teachers, but is merely the trade name assumed by the respondent, Frank J. Marks; and said National Committee for Education is not cooperating in the sale and distribution of said encyclopedias and reference books in the generally accepted sense of that term, but the respondent, Frank J. Marks, is a jobber

and retailer of said books which he purchases from the publisher on a consignment basis. In truth and in fact, the first volumes of the Standard American Encyclopedia and Wonder Books are not free, but are delivered only upon the payment of a consideration therefor. The supply of said books is not limited, either as to quantity or in point of time, but is available to all purchasers at all times, and the prices per volume for each of said respective sets of books are in fact the regular prices at which said books are customarily sold by respondent, Frank J. Marks. In truth and in fact, the value of the Standard American Encyclopedia is not \$65.00, but the price actually paid by purchasers is the regular value of said books; and the true value of all the Wonder Books is not \$100.00 per set, but is of the value regularly paid for by purchasers thereof.

While the Book-A-Week Club, Inc., is a corporation, it is actually employed as another trade name by the respondent, Frank J. Marks, who is president and treasurer and owns 90% of the stock.

Said corporation has no other officers or employees and is not engaged in any business or enterprise, its sole purpose being to further the impression among the purchasing public that a large organization, namely, the National Committee for Education, endorses and sponsors another large and independent organization, the Book-A-Week Club, for the distribution of encyclopedias and reference books. In truth and in fact, the so-called membership of said Club consists merely of the purchasers of said reference books from the respondent Frank J. Marks who is the sole owner and operator of both enterprises.

Said Standard American Encyclopedia does not in fact contain complete and comprehensive information with respect to every conceivable subject and is not one of the most important sets of books ever written, but, on the contrary, there are many subjects on which no information is contained in said encyclopedia, and generally the information given on the subjects listed is incomplete and limited in scope.

In truth and in fact no further literature has been edited or compiled expressly for the so-called members of the Book-A-Week Club; and representations to that effect are made for the purpose of inducing the purchase of said books.

In truth and in fact, persons to whom said so-called free volumes have been sent are under no obligation whatever to notify the respondents within ten days, or any other time, whether they do or do not desire to be furnished with additional volumes, and failure so to notify respondents does not obligate them to pay the postman or anyone else for any succeeding volumes which respondents may elect to send them.

PAR. 6. The false, misleading and deceptive representations, acts and practices hereinabove described have a tendency to and do induce the general purchasing public to purchase respondents' encyclopedias and reference books in the mistaken belief that the National Committee for Education is an aggregation of educators of national scope, and said Book-A-Week Club, Inc., is a substantial organization established for the purpose of enabling purchasers to buy various books under advantageous prices and conditions; that the first volumes of said sets of books are available without cost to any person asking therefor, and that said Standard American Encyclopedia contains complete and unabridged articles on every conceivable subject.

PAR. 7. There are among competitors of respondents, individuals and corporations, who sell and distribute encyclopedias and reference books who do not engage in any of the acts and practices hereinabove set forth.

PAR. 8. Each and all of the false and misleading statements and representations made by the respondents as hereinabove set forth are calculated to and do have a tendency and capacity to lead a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true. Further, as a direct consequence of such mistaken and erroneous belief induced by the aforesaid acts, practices and representations, a substantial number of the purchasing public has purchased respondents' books and as a result of said acts and representations substantial trade in commerce has been unfairly diverted to respondents from respondents' competitors in commerce who do not misrepresent their merchandise, to the injury of said competitors.

PAR. 9. The aforesaid acts of 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 December 17, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Frank J. Marks, trading as National Committee for Education, individually, and as president and treasurer of Book-A-Week Club, Inc., and Book-A-Week Club, Inc., a corporation, 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 the form of a stipulation as to the facts entered into upon the record between counsel for respondent, Frank J. Marks, and counsel for the Commission, were introduced before a trial 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. By said stipulation entered into upon the record the respondents expressly waived the filing of a report upon the evidence by the trial examiner and the filing of briefs and oral argument. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, and stipulation of facts entered into upon the record; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Frank J. Marks, is an individual, formerly trading as National Committee for Education, with his office and prin-

principal place of business located at 147 West 22nd Street, New York, N. Y. Respondent, Book-A-Week Club, Inc., was a corporation, organized and existing under the laws of the State of New York, with its office and principal place of business located at 147 West 22nd Street, New York, N. Y. Respondent, Frank J. Marks, was president and treasurer of said corporation and, as such, formulated, controlled, and directed the policies and practices of said corporation.

PAR. 2. For more than two years prior to April 1, 1943, respondent, Frank J. Marks, trading as National Committee for Education and as president and treasurer of Book-A-Week Club, Inc., was engaged in the sale and distribution in commerce among and between the various States of the United States of sets of reference books designated as "Standard American Encyclopedia" and "University of Knowledge Wonder Books." Said respondent caused said books, when sold, to be transported from his place of business in the State of New York to the purchasers thereof located in the various other States of the United States and in the District of Columbia. Respondent maintained, and at all times mentioned herein has maintained, a course of trade in said reference books 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 his said business, respondent, Frank J. Marks, was in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar merchandise in commerce among and between the various States of the United States.

PAR. 4. Since April 1, 1943, the business of respondent, Frank J. Marks, has been in the process of liquidation, said liquidation being in charge of persons other than said respondent, who, since April 1, 1943, has been totally inactive in the operation of said business. On or about December 23, 1942, the respondent, Book-A-Week Club, Inc., was dissolved by the filing of a Certificate of Dissolution with the Secretary of State of the State of New York.

PAR. 5. In the course and conduct of his said business and for the purpose of inducing the purchase of his said reference books, the respondent, Frank J. Marks, made false, deceptive, and misleading statements and representations concerning the nature of the business conducted by him and the reference books sold by him, by means of advertisements in newspapers and periodicals having a general circulation and by means of circulars and other advertising material circulated by means of the United States mails and by continuities broadcast from radio stations. Typical of such statements and representations in such advertising were the following:

Education is the First Line of Defense
National Committee for Education

FREE Either or Both FREE
 of these
 Great Offers

Vol. One of the Famous Just Send Us
Standard American Your Name
Encyclopedia

We want you to actually see for yourself what a sensational value the Standard American Encyclopedia represents. So just send us your name and we will forward FREE your first volume as our gift to you . . .

And the first volume is yours absolutely FREE without any obligation on your part.

Act Now! Only a Limited Supply Currently Available.

Everything you've ever wanted to know—on every conceivable subject.

Offered in Cooperation with the National Committee for Education.

. . . one of the most important sets of books ever written, the Standard American Encyclopedia.

These costly features are offered to you as a charter member of the BOOK-A-WEEK CLUB of the National Committee for Education. In addition to this your membership entitles you to receive all further valuable literature edited and compiled expressly for its members by the National Committee for Education.

Book-A-Week Club—Inc.

Sponsored and Endorsed by the National Committee for Education.

The offer . . . is made possible only through the cooperation of the National Committee for Education which for the first time has taken cognizance of the pressing needs of the American public and is now offering for a limited time the complete unabridged, original 20 volume illustrated Standard Encyclopedia with the first volume absolutely FREE.

You may still order one or more volumes at a time under the original plan, at the old price of 49¢ for each volume of the regular edition, or 69¢ for each volume of the deluxe edition (Plus 11¢ to cover postage, packing, and handling). Just think of owning a magnificent set of Encyclopedias, valued at \$65.00, for such a small fraction of its worth!

. . . a complete comprehensive and concise storehouse of knowledge . . .

The newest, most up-to-date set ever published.

The University of Knowledge Wonder Books

The Publishers of this magnificent wonderland of World-wide knowledge allowed us just a limited number of sets in order to make possible this extraordinary offer! Therefore, only Charter Members in good standing of the Book-A-Week Club may obtain this set on this convenient plan . . . and the First Volume is sent to you herewith absolutely FREE! Remember too that each volume is valued at \$4.00. The complete 24-volume set is actually worth \$100.00.

Each volume is yours for only 59¢ plus 11¢ for postage, packing, etc. . . a total of only 70¢ for splendid volumes valued at \$4.00 each. Available at this price only to Honor Roll Members like yourself.

In the absence of any word from you, within ten days, we shall send your succeeding volumes to you, one each week, and you agree that you are obligated to pay the postman for same.

PAR. 6. Through the use of the statements and representations hereinabove set forth and other similar thereto not specifically set out herein, the respondent, Frank J. Marks, represented that the National Committee for Education was an organization, national in scope, consisting of a group

of teachers and educators which sponsored and endorsed the Book-A-Week Club and expressly edited and compiled valuable literature for distribution to the members of said Club. By the same means it was further represented by said respondent that his set of books known as Standard American Encyclopedia was sold and distributed in cooperation with said National Committee for Education to members of the Book-A-Week Club, Inc., that said set of books contained complete and comprehensive information with respect to every conceivable subject and was one of the most important sets of books ever written, and that said set of books had a retail value of \$65. In the same manner said respondent also represented that his set of books known as University of Knowledge Wonder Books had a retail value of \$100 and that a limited quantity of said books was being offered to charter members of the Book-A-Week Club, Inc., who were in good standing and that said books were available at the prices quoted only to such members. It was also represented by said respondent that the first volume of his Standard American Encyclopedia and University of Knowledge Wonder Books would be delivered free and that persons receiving the first so-called "free" volume were obligated to accept and pay for succeeding volumes sent by the respondent unless they notified respondent within ten days of receipt of the first volume that they did not desire succeeding volumes.

PAR. 7. The Commission finds that the National Committee for Education was not an organization of national scope consisting of a group of teachers or educators, but was merely a trade name assumed by the respondent, Frank J. Marks, in connection with the sale and distribution of the reference books hereinabove described, which the respondent purchased from the publisher on the consignment basis. The Book-A-Week Club, Inc., was not sponsored by any group of teachers or educators but, instead, was a corporation dominated and controlled by the respondent, Frank J. Marks, and its so-called "membership" consisted merely of purchasers of said reference books. The so-called "members" of the Book-A-Week Club, Inc., did not receive any literature expressly edited and compiled for such members by any group or organization.

The use by the respondent, Frank J. Marks, of the trade name "National Committee for Education" and the sale and distribution of his said reference books by and through the corporate entity Book-A-Week Club, Inc., which was dominated and controlled by him, were a subterfuge to further the false representations that the said reference books were endorsed by, and sold in cooperation with, some group of educators or teachers. The supply of said books was not limited either as to quantity or in point of time but was available to all purchasers at all times. The prices per volume actually paid by purchasers for each of said respective sets of books were the usual and customary prices at which said respondent, Frank J. Marks, sold said books in the normal and ordinary course of business. The value of the Standard American Encyclopedia, consisting of 20 volumes, was not \$65, but the true value of said books was 49 cents per volume for regular edition and 69 cents per volume for deluxe edition, plus postage, which were the prices at which said books were actually sold. The value of the University of Knowledge Wonder Books, consisting of 24 volumes, was not \$100 or \$4 for each volume, but, instead, the true value of said books was 59 cents per volume, plus postage, the price at which they

were actually sold. The Standard American Encyclopedia did not contain complete and comprehensive information with respect to every conceivable subject and was not one of the most important sets of books ever written. The first volume of said Standard American Encyclopedia or University of Knowledge Wonder Books was not delivered free or without cost or obligation but was delivered only upon payment of a consideration therefor. Persons receiving the so-called "free" volume of respondent's so-called sets of reference books were under no contractual obligation and were not legally obligated to accept and pay for succeeding volumes unless they notified respondent within ten days of receipt of the first volume that they did not desire succeeding volumes, and this was merely a subterfuge used by respondent, Frank J. Marks, to induce the purchase of the remaining volumes of said set of books.

PAR. 8. The use by the respondent, Frank J. Marks, of the foregoing false, deceptive, and misleading statements and representations has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce a substantial portion of the purchasing public to purchase respondent's reference books because of such erroneous and mistaken belief. As a result, trade has been diverted unfairly to the respondent from his competitors in said commerce who truthfully advertise their products.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, were all to the prejudice and injury of the public and of respondent's competitors and constituted 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, and a stipulation as to the facts entered into upon the record, which stipulation provides, among other things, that the Commission may proceed upon the facts as stipulated without further evidence (the report of the trial examiner, briefs of counsel, and oral argument being expressly waived); and the Commission having made its findings as to the facts and conclusion that the respondent, Frank J. Marks, has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Frank J. Marks, his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of reference books, encyclopedias, and other publications in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from—

1. The use of the words "National Committee for Education" or any other words of similar import or meaning in respondent's trade name, or representing through any other means or device or in any manner that respondent's business is operated, endorsed, or sponsored by a group of teachers or educators or that such groups or individuals cooperate in the conduct of his business or endorse or sponsor the publications sold or distributed by him.

2. Representing directly or by implication that any publication sold or distributed by the respondent is available only to members of a particular group or organization at especially low prices.

3. Representing as a customary or regular price or value of any of respondent's publications, any price or value which is in fact in excess of the price at which said publication is customarily offered for sale and sold in normal and usual course of business.

4. Representing that purchasers of respondent's publications become members of any book club or any other organization and are thereby entitled to receive literature or publications expressly compiled for such members.

5. Representing that any person may secure the first volume of any set of books offered for sale without cost or other obligation, or that the supply of said books is limited.

6. Representing that the Standard American Encyclopedia contains complete and unabridged information on all subjects or is one of the most important sets of books ever written.

7. Representing that any person having received the first volume of any set of books is legally obligated to accept and pay for any succeeding volume or volumes which may be sent him by respondent, Frank J. Marks, unless such person notifies said respondent within any designated period of time that no succeeding volumes are desired.

It is further ordered, That respondent, Frank J. Marks, shall, within 60 days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

It is further ordered, That this proceeding be, and the same hereby is, dismissed as to said respondent, Book-A-Week Club, Inc.

IN THE MATTER OF

NEWTON E. WENTZ AND FRITZ O. LEE, DOING
BUSINESS AS DAVENPORT CANDYCRAFTS

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

Docket 5083. Complaint, Nov. 17, 1943—Decision, Sept. 14, 1944

Where two partners engaged in the competitive interstate sale and distribution of assortments of candy which were so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consuming public, a typical assortment including 28 packages of fudge candy and a 1,000 hole punchboard for use in its sale, as explained on board, under a plan by which the number punched by chance determined whether or not the customer received candy and the amount paid therefor, if any, the maker of the last punch on the board being also entitled, as announced, to box thereof;

Sold such assortments to dealers including retailers, by whom as direct or indirect purchasers they were exposed to the purchasing public in accordance with aforesaid plan, involving a game of chance or sale of a chance to secure merchandise at much less than its normal retail price, and thereby supplied to and placed in the hands of others means of conducting a lottery in the sale of their products, contrary to an established public policy of the United States Government and in competition with many who do not use methods involving chance or contrary to public policy;

With result that persons were attracted by said sales plans or methods and the element of chance involved therein, and were thereby induced to buy and sell said merchandise in preference to that of aforesaid competitors who do not use such methods, and with tendency and capacity thereby unfairly to divert trade in commerce to them from their competitors aforesaid; to the substantial injury of competition in commerce:

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

Mr. J. W. Brookfield, Jr. for the Commission.

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 Newton E. Wentz and Fritz O. Lee, individually, and trading under the name of Davenport Candycrafts, 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 interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Newton E. Wentz and Fritz O. Lee, are individuals, trading as copartners under the name of Davenport Candy-