

Syllabus

IN THE MATTER OF

MILITARY ORDER OF THE PURPLE HEART, NATIONAL
PROGRESS LEAGUE, FRANK J. MACKEY AND HAROLD C.
SHERMAN

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

Docket 4721. Complaint, Mar. 5, 1942—Decision, May 26, 1945

Where a corporation and its president and secretary, engaged in the interstate sale and distribution, among other publications and pamphlets, of a twelve-volume set of history books entitled "Progress of Nations," and a two-volume set of history and war pictures entitled "Forward March";

Following adoption of a plan which involved the use, for a consideration, of the name and prestige of the "Military Order of the Purple Heart" in connection with the sale and distribution of said books, in furtherance of which—

- (1) Said president caused to be cancelled a prior contract between another corporation of which he was likewise president, namely, the "Disabled American Veterans of the World War Rehabilitation Department," and the Disabled American Veterans of the World War, whereby latter was to receive a certain income from the sale of publications including said "Progress of Nations" and "Forward March";
 - (2) Said corporate Rehabilitation Department through said president contracted with said "Military Order" to publish aforesaid sets and said other publications and sell the same to the order or its authorized agent at a specified price for a 5-year period and as long thereafter as was mutually satisfactory;
 - (3) Said corporation or National Progress "League" through its said president agreed with said Order to finance and assume complete control of the publications to be supplied by said corporate "Rehabilitation Department" and to use in connection with the sale thereof the name, letterheads, emblem, and official seals of the said Order, and the signature of its National Commander and that of its Americanism Legislative Chairman, to take contracts for the purchase of said books in the name of said Order, to accept checks payable to its order, and to endorse and deposit such checks in a bank account under the sole control of said League, over the funds of which received from the sale of the books said Order had no control except for the right of inspection of its books;
 - (4) Said League agreed to pay over to the said Order certain fixed sums for 11 months, and thereafter amounts ranging from 5 percent to 10 percent on orders depending upon the size thereof, with the further understanding that at the expiration of the contract or the complete liquidation of the business the League would pay over to the Order any profits shown on its books, without liability on the part of said Order for any loss—whereby said League and its said officers were placed in a position to act with full freedom as though they were in fact the Military Order of the Purple Heart; and,
 - (5) The opening of an office in the name of said Order by said League, and officers at the League offices in Chicago, and the employment of salesmen, who were approved by the Americanism Legislative Chairman of the Military Order of the Purple Heart, and were issued a credential letter by it on its stationery—
- (a) Carried out said plan of procedure involving the use of the name and prestige of said Military Order of the Purple Heart, which was designed to, and enabled them to induce the purchasing public to purchase said books in belief they were dealing directly with said Order; and did not through their various salesmen advise pro-

Complaint

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pects that they were engaged in the sale of publications as a commercial enterprise, but, instead, appealed directly to their patriotism and their sympathy for members of the armed forces who had been wounded in action;

- (b) Represented, directly and by implication, through their salesmen that said salesmen were soliciting donations or contributions for the Military Order of the Purple Heart; that all funds received were to be used by such Order in combating anti-Americanism and subversive activities of organizations and in the public schools and colleges and for assisting or financing the Dies Committee and continuing its work; and that the books to be delivered were of secondary importance and would be sent in appreciation of the donation given; without calling to the attention of the purchaser the statement in the contract—which, after reciting the Americanism program of the Order and under its name, put the prospect on record as wishing to express his approval thereof and desiring to support the activity, prior to his order—of “positively no donations accepted,” but, in most cases, hurriedly causing the purchaser to sign it, without reading it, in many cases as evidence of his contribution;

The facts being that during the period from April 1, 1941 to November 1943 none of the funds collected or contracts involved, gross sales on which in the name of said Order, amounted to \$650,000, went direct to the Order itself, but went instead to said League and the former received thereof only approximately \$60,000.00, practically all of which was used by said Order for service work for veterans and to pay the expenses of the Washington office; none of the funds were used to assist the Dies Committee or to combat subversive activities, as represented by the salesmen at the time the orders were obtained; while the contract entered into between the National Progress League and the Military Order of the Purple Heart provided for an annual statement to be supplied by said National Progress League showing expenses and details of operation, there was no evidence that any such statements were supplied or that any supervision was made of their books of account other than occasional examination by officers of said Order; and the amount of supervision maintained by said order over the conduct of said League, and of its said officers in the performance of their contract with the Order was not sufficient to inform either the officers of the Order or the members thereof as to the acts and practices actually being pursued by said League and said individuals, its officers, in the sale and distribution of their said books under the name of the Military Order of the Purple Heart;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and to induce them to purchase said publications for patriotic motives, in belief that the monies so paid were contributions to the Military Order of the Purple Heart, rather than a commercial transaction involving the purchase of a set of books from the National Progress League; only a small portion of the money from which went to said Order:

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

Before *Mr. Lewis C. Russell* and *Mr. Randolph Preston*, trial examiners.
Mr. Jesse D. Kash for the Commission.

LaRochelle, Brooks & Beardsley, of Chicago, Ill., *Mr. Adelbert J. Beyer*, of Milwaukee, Wis., and *Mr. Robert G. Thach* and *Mr. Joe W. McQueen*, of Washington, D. C., 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 Com-

mission having reason to believe that Military Order of the Purple Heart, a corporation, and National Progress League, a corporation, Frank J. Mackey and Harold C. Sherman, individually, and as officers of National Progress League, 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, Military Order of the Purple Heart, is a corporation, organized, existing and doing business by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 301 Seymore Street, Lansing, Mich. Respondent also maintains an office at 815 Fifteenth Street, Washington, D. C.

Respondent, National Progress League, is a corporation, organized, existing and doing business by virtue of the laws of the State of Illinois, with its office and principal place of business at 104 South Michigan Avenue, Chicago, Ill.

Respondent, Frank J. Mackey, is an individual, and is president and registered agent, of respondent, National Progress League, with his office and principal place of business at 104 South Michigan Avenue, Chicago, Ill. and whose home address is 1321 East 65th Street, Chicago, Ill.

Respondent, Harold C. Sherman, is an individual, and is secretary of corporate respondent, National Progress League, with his office and principal place of business located at 104 South Michigan Avenue, Chicago, Ill., and whose home address is 238 South Elmwood Avenue, Oak Park, Ill.

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

PAR. 2. The respondent, Frank J. Mackey, through various corporations owned or controlled by him is now and for several years last past has been engaged in the publication, sale and distribution of various publications including, among others, two sets of books, one entitled, "Progress of Nations," consisting of a twelve volume set of history books, and the other consisting of two volumes of history and war pictures entitled, "Forward March." The respondent, Frank J. Mackey, has for a number of years fostered and promoted the sale of the above-named publications and others through the means and by the instrumentality of contracts made by corporations, owned and controlled by him, with patriotic or veteran societies or associations. Under the terms of such contracts, the patriotic or veteran societies or associations are paid a royalty of 5% to 10% on collections from sales of said books, in consideration of said societies or associations sponsoring, or endorsing said publications and allowing said respondent's corporations to sell same under the names of said associations or societies or under the names of said respondent's corporations. Under said contracts, the respondent, Frank J. Mackey, through corporations owned or controlled by him, publishes and pays all the expenses incident to the publication of said books, appoints and has supervision over the salesmen selling same and owns and controls the copyrights or plates from which said publications are made.

Among the societies or associations with which said respondent, Frank J. Mackey, through Disabled American Veterans of The World War Rehabilitation Department, Inc., a corporation owned by him, had a contract as hereinabove mentioned, is "Disabled American Veterans of the World War," a corporation.

The corporate respondent, "Military Order of the Purple Heart" had full knowledge of and was familiar with the aforesaid contract.

PAR. 3. In September 1940 respondent, Frank J. Mackey, began negotiating with the respondent, Military Order of the Purple Heart, with the view of obtaining an agreement with said Military Order of the Purple Heart, similar to the contract which existed between Disabled American Veterans of the World War, Rehabilitation Department, a corporation, and Disabled American Veterans of the World War, a corporation. As a result of these negotiations a contract was entered into between the corporate respondent, Military Order of the Purple Heart and corporate respondent, National Progress League sometime during March 1941. Under the terms of said contract the respondent, Frank J. Mackey, was to purchase the books from the Disabled American Veterans of the World War, Department of Rehabilitation, a corporation solely owned by him at cost plus \$1 per set royalty. Respondent, Frank J. Mackey's organization, respondent, National Progress League, Inc., was to advance the money for the payment of these books and was to keep all money collected from the sale of same for the first twelve months of operation under said contract. The contract further provided that after it had been in effect for twelve months the respondent, Military Order of the Purple Heart, was to receive a minimum of five percent and a maximum of ten percent on all sales of books made by corporate respondent, National Progress League, said commission to be based on collections from the sale of the books and not on the actual sale price of said books. The variation of from five to ten percent in the commissions depended upon the sale price of the books, that is, those sets selling at a higher price paid the higher commission.

Respondent, National Progress League, furnished all the money for the financing of the sale of the books and had charge of all sales of same under the name of respondent Military Order of the Purple Heart. Corporate respondent, National Progress League, was to advance the sum of \$9,000 to the corporate respondent, Military Order of the Purple Heart, on a basis of \$600 cash for the purpose of furnishing respondent, Military Order of the Purple Heart, an office in Washington, D. C., and was to pay the sum of \$700 per month for twelve months. This \$9,000 advance was in lieu of any commissions which respondent, Military Order of the Purple Heart, might be entitled to as a result of the sales of books made by respondent, National Progress League, acting as the Military Order of the Purple Heart during the first twelve months of the operation under said contract.

Under the terms of said contract, all advertising, promotional work, employment of salesmen, was handled by corporate respondent, National Progress League.

PAR. 4. On February 22, 1932, by order of the President of the United States, the War Department revived the Order of the Purple Heart an award established by General George Washington at Newburgh, August 7, 1782, during the War of the Revolution. As far as known records show this award was granted to only three men by General Washington, it was granted for unusual gallantry, extraordinary fidelity and essential service, when such facts were certified to the Commander in Chief with certificates from the Commanding Officer of the regiment and brigade to which the candidate for reward belongs, or by other incontestable proofs. Subsequent to the Revolutionary War, the Order of the Purple Heart fell into disuse and no further awards were made. The Order vanished from public

sight and references to the scanty official records concerning it practically ceased.

In recent years public interest was aroused by publication of articles concerning this rare decoration, and its revival was projected and it was revived on the two hundredth anniversary of General Washington's birth. The award of the Purple Heart for acts or services performed prior to February 22, 1932, is confined to those persons who, as members of the Army, were awarded the Meritorious Service Citation Certificate by the Commander in Chief, American Expeditionary Forces, or who were wounded in action in any war, or campaign under conditions which entitled them to wear a wound chevron. The War Department has issued approximately 70,000 of these medals.

The first gathering of the Military Order of the Purple Heart was in 1935, at which time an organization was formed and a constitution was adopted. Shortly afterwards the organization was incorporated as the "Military Order of the Purple Heart." It is now National in scope and has some 4500 members.

PAR. 5. The respondent, National Progress League, and respondents, Frank J. Mackey and Harold C. Sherman, are now and since March, 1941, have been engaged in the sale and distribution of books, including a twelve volume set of books designated "Progress of Nations" and a two volume set entitled "Forward March."

In the course and conduct of their business, the said respondents, National Progress League, Frank J. Mackey and Harold C. Sherman, cause their books, when sold, to be transported from their place of business in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents, National Progress League, a corporation, Frank J. Mackey and Harold C. Sherman, maintain, and at all times mentioned herein have maintained, a course of trade in their said books in commerce among and between the various States of the United States and in the District of Columbia.

The respondents, Military Order of the Purple Heart, National Progress League, Frank J. Mackey, and Harold C. Sherman, have acted in conjunction and cooperation each with the other in carrying out the acts and practices herein set forth.

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, National Progress League, and respondents, Frank J. Mackey and Harold C. Sherman, have made and are now 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 members of the organization known as the "Military Order of the Purple Heart"; that respondents' books are being sold only to certain selected customers.

That the organization known as the "Military Order of the Purple Heart" receives the entire profit from the sales of said books and that one purchasing such book is in effect making contribution to said organization.

That the funds derived from the sale of said books will be used by said organization known as the "Military Order of the Purple Heart" to defray the expense of said organization's activities and efforts in combatting anti-American and subversive organizations and influences in the United States.

That said organization was attempting to raise a fund to continue the work of the Dies Committee, a Congressional Committee investigating subversive activities in the United States.

That on account of the failure of Congress to make further appropriations to said Committee it was necessary to call upon patriotic citizens to raise a fund to carry on this work.

A further practice on the part of the respondents in promoting the sale of said books is the wrongful use of letters from prominent military men and others prominent in public life endorsing the aims and purposes of the Military Order of the Purple Heart, Inc. Such letters are represented by the respondents as being endorsements of said books, when in truth and in fact such letters have no reference to said books, but relate to the general aims and purposes of said corporation.

¶ In numerous instances the fact that books are being sold by said respondents is concealed from customers and prospective customers, respondents' proposition as presented by their salesmen and representatives taking the form of a patriotic and emotional appeal addressed to said customers and prospective customers. The Military Order of the Purple Heart is represented as having launched a great legislative and educational campaign against subversive influences and activities in the United States and prospective purchasers of respondents' books are urged to participate in and contribute to such campaign. Those subscribing to such purported campaign are finally advised that they will receive a set of books, the books being made to appear as an incidental, however, to the subscription to such campaign fund. In numerous instances copies of contracts for the purchase of said books are not left with the buyers and said buyers are not aware that they have actually purchased a set of books until same are received by them, or until collection letters or acknowledgments of orders in the name of corporate respondent Military Order of the Purple Heart are received by said buyers.

PAR. 7. The foregoing representations made by and on behalf of said respondents are false, misleading, and deceptive. In truth and in fact said respondents' salesmen and representatives are not members of the organization known as Military Order of the Purple Heart. Said organization does not receive the entire profit derived from the sale of said books nor does the profit from the sale of said books constitute a contribution to said organization or to any campaign conducted by it. Said books, on the contrary, are sold by said respondents as an ordinary commercial transaction for the benefit of respondents, National Progress League, Frank J. Mackey and Harold C. Sherman, and the only profit derived by the respondent, Military Order of the Purple Heart, from the sale of such books, is, and has been, the respective royalties hereinabove mentioned, and the proceeds from the sale of said books are used by said corporate respondent, Military Order of the Purple Heart, for maintaining an office in Washington, D. C., in order to be in touch with the Congress of the United States and various Veterans' organizations at the seat of the Government in Washington, D. C., and to promote and sponsor legislation affecting its membership and is not used by said organization to defray its expenses in combatting anti-American and subversive organizations and influences in the United States. 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. Funds derived from the sale of said books are not used to assist the Dies Committee or any other Congressional committee in curbing subversive activities of groups unfriendly to the United States.

PAR. 8. A further deceptive and misleading practice employed by the respondent, Military Order of the Purple Heart, consists of placing in the hands of the corporate respondent, National Progress League, letterheads, stationery and billheads bearing the name, "The Military Order of the Purple Heart," and allowing said corporate respondent, National Progress League, to use contract forms bearing the title "Military Order of the Purple Heart" outlining the "Americanism program" of said organization and containing at the end of same an order blank for purchasing a set of books and directing checks to be made payable to said Order, and bearing the statement, "Positively No Donations Accepted."

A further deceptive and misleading practice of the respondents' salesmen is to represent to prospective purchasers or contributors that prominent citizens, residing in the locality wherein said prospective purchasers reside and who are known to said prospective purchasers, have purchased said books or made donations, when no such purchases have been made or donations given.

PAR. 9. The use by the respondents of the foregoing acts, practices and methods has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the above said false statements and representations are true, and to induce the purchasing public to purchase substantial quantities of respondents' books as a result of such erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute 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 March 5, 1942, issued and subsequently served its complaint upon the respondents, Military Order of the Purple Heart, a corporation, National Progress League, a corporation, and Frank J. Mackey and Harold C. Sherman, individually, and as officers of National Progress League, a corporation, charging them with the use of 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 and in opposition to the allegations of said complaint were introduced before trial examiners 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 this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiners upon the evidence and exceptions filed thereto, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; 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, Military Order of the Purple Heart, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 301 Seymore Street, Lansing, Mich. Said respondent also maintains an office at 815 Fifteenth Street, Washington, D. C. The Military Order of the Purple Heart, which was founded in 1935, is an organization of veterans of the wars of the United States who have been awarded the Order of the Purple Heart, established by General George Washington in 1782 and revived on February 22, 1932, by order of the President of the United States. All veterans and members of the armed forces who receive the Order of the Purple Heart automatically become members of respondent, Military Order of the Purple Heart, but only those members who pay dues have the power to vote.

PAR. 2. Respondent, National Progress League, is a corporation, organized, existing, and doing business by virtue of the laws of the State of Illinois, with its office and principal place of business at 104 South Michigan Avenue, Chicago, Ill.

Respondent, Frank J. Mackey, is an individual, and is president and director of the respondent, National Progress League, with his office and principal place of business at 104 South Michigan Avenue, Chicago, Ill., and whose home address is 1321 East 65th Street, Chicago, Ill. Said respondent is also president of the Disabled American Veterans of the World War Rehabilitation Department, a corporation.

Respondent, Harold C. Sherman, is an individual, and is a director and secretary of the corporate respondent, National Progress League, with his office and principal place of business located at 104 South Michigan Avenue, Chicago, Ill., and whose home address is 238 South Elmwood Avenue, Oak Park, Ill.

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

PAR. 3. During the latter part of the year 1929 the Disabled American Veterans of the World War Rehabilitation Department entered into a contract with the Disabled American Veterans of the World War, by the terms of which contract the Disabled American Veterans of the World War were to receive a certain income from the sale of certain books and pamphlets, including the publications "Progress of Nations" and "Forward March."

PAR. 4. For several years last past the corporate respondent, National Progress League, and the individual respondents, Frank J. Mackey and Harold C. Sherman, have been engaged in the sale and distribution of certain publications and pamphlets, including two sets of books, one entitled "Progress of Nations," consisting of a twelve-volume set of history books, and the other entitled "Forward March," consisting of two volumes of history and war pictures. The respondents cause said publications, when sold, to be transported from the place of business of the National Progress League in the State of Illinois to purchasers thereof located in various other States of the United States. The respondents maintain, and at all times mentioned herein have maintained, a course of trade in said books and publications in commerce among and between the various States of the United States

PAR. 5. For the purpose of inducing the purchase of the books and publications sold and distributed by them, the respondents, National Progress League, Frank J. Mackey, and Harold C. Sherman, adopted a plan of procedure which involved the use, for a consideration, of the name and prestige of the Military Order of the Purple Heart in connection with the sale and distribution of said books and publications.

In furtherance of this plan of procedure, the respondent, Frank J. Mackey, as president of the Disabled American Veterans of the World War Rehabilitation Department, caused the contract with the Disabled Veterans to be canceled as of April 1, 1941. The Disabled American Veterans of the World War Rehabilitation Department, by its president, respondent, Frank J. Mackey, thereupon entered into a contract with the Military Order of the Purple Heart on March 5, 1941, by the terms of which contract the Disabled American Veterans of the World War Rehabilitation Department, as publishers, agreed to publish the sets of books known as "Progress of Nations" and "Forward March" and certain other publications and to sell said publications to respondent Military Order of the Purple Heart or its authorized agent at manufacturing cost plus a royalty of \$1 per set for a period of five years and as long thereafter as was mutually satisfactory.

Thereafter, the 18th day of March 1941, the respondent, National Progress League, by its president, Frank J. Mackey, entered into an agreement with the Military Order of the Purple Heart to finance and assume complete control of the sale and distribution of the publications to be supplied by the Disabled American Veterans of the World War Rehabilitation Department and to use in connection with the sale of such publications the name, letterheads, emblem, and official seals of the Military Order of the Purple Heart and the signature of its National Commander and that of its Americanism Legislative Chairman. The respondent, National Progress League, was further authorized by this agreement to take contracts for the purchase of said books in the name of the Military Order of the Purple Heart, to accept checks payable to the order of the Military Order of the Purple Heart, and to endorse and deposit such checks in a bank account under the sole control of the respondent, National Progress League. Except for the right of inspection of the books of the National Progress League, the Military Order of the Purple Heart had no control over the funds received from the sale of the publications.

By the terms of this agreement the National Progress League agreed to pay over to the Military Order of the Purple Heart certain fixed sums payable as follows: \$750 each month for the period from May 15, 1941, to April 15, 1942; and on all business sold after April 1, 1942, 5 percent of the amount collected on all orders of \$50 or less, 7 percent of the amount collected on all orders from \$51 to \$100, inclusive, and 10 percent on all orders in excess of \$100, said payments to be made on the 15th of the month following the month in which collections were received, beginning May 15, 1942.

It was further agreed that at the expiration of the contract or the complete liquidation of the business, the respondent, National Progress League, would pay over to the respondent Military Order of the Purple Heart any profits shown on its books of account or, if a loss resulted from the operation of the business, such loss would be assumed by respondent, National Progress League, without any liability on the part of the respondent, Military Order of the Purple Heart.

Since it was provided that the contract should be for a period of five years and should remain in force and effect as long thereafter as was mutually satisfactory and since the profits, if any, were payable to the Military Order of the Purple Heart only at the expiration of this contract or the complete liquidation of the business, it is evident that it was not within the contemplation of the parties that there would be any substantial profits accruing to the Military Order of the Purple Heart over and above the fixed payments provided for in said contract.

PAR. 6. Pursuant to, and in performance of, their contract with the Military Order of the Purple Heart, the respondents, National Progress League, Frank J. Mackey, and Harold C. Sherman, opened an office in the name of the Military Order of the Purple Heart located at the offices of the National Progress League at 104 South Michigan Avenue, Chicago, Ill., and advertised for, investigated, and employed salesmen to sell said publications. After a salesman was selected, he was approved by the Americanism Legislative Chairman of the Military Order of the Purple Heart, who issued a credential letter to said salesman on the stationery of the respondent, Military Order of the Purple Heart.

PAR. 7. By means of the contract, hereinabove described, which authorized and permitted the respondent, National Progress League, to maintain an office in the name of the respondent, Military Order of the Purple Heart, to transact business under said respondent's name, to cash checks and to sign all correspondence in the name of said respondent, and to maintain complete control over all funds received from the sale of said books, the respondents, Frank J. Mackey, Harold C. Sherman, and National Progress League, were placed in a position to act with full freedom as though they were in fact the Military Order of the Purple Heart.

PAR. 8. In the course and conduct of their business of selling the publications hereinbefore described and in furtherance of the plan of procedure adopted to induce the purchase of these various books and publications, the respondents, National Progress League, Frank J. Mackey, and Harold C. Sherman, through their various salesmen, did not advise purchasers and prospective purchasers that they were engaged in the sale of publications as a commercial enterprise but, instead, appealed directly to the patriotism of purchasers and prospective purchasers and their sympathy for veterans and members of the armed forces who had been wounded in action.

The customary procedure of a salesman when contacting a purchaser or prospective purchaser was to inform such prospect that he was connected with the Military Order of the Purple Heart and then discuss in detail the Purple Heart award for those wounded in action and the aims and purposes of the Military Order of the Purple Heart. Considerable emphasis would be placed on subversive activities and anti-American influences of various organizations and in the public schools. It was only after the prospect was placed in a more or less receptive mood to contribute to the Military Order of the Purple Heart that any mention of books was made.

In making this presentation in connection with the offering for sale of said books and publications, the salesmen of said respondents variously represented, directly and by implication, that they were soliciting donations or contributions for the Military Order of the Purple Heart; that all funds received were to be used by the Military Order of the Purple Heart in combating anti-Americanism and subversive activities of organizations and in the public schools and colleges; that they were engaged in raising funds to be used by the Military Order of the Purple Heart for assisting or

financing the Dies Committee and continuing its work; that the funds so raised were to be used to finance an educational campaign against subversive activities and influences; and that the books to be delivered were of secondary importance and would be sent in appreciation of the donation given.

While it is true that the contract used contained the statement, "Positively no donations accepted," this was not called to the purchaser's attention but, instead, in most cases the salesmen hurriedly caused the purchaser to sign the contract without reading it, in many cases as evidence of his contribution. Furthermore, the entire plan of procedure was to convey to the purchaser that contributions were being solicited to carry out the aims and purposes of the Military Order of the Purple Heart. In support of such plan the contract first recited the Americanism program of the Military Order of the Purple Heart and then proceeded with the following:

Military Order of the Purple Heart
104 South Michigan Avenue
Chicago, Illinois

Wishing to express my approval of the above program and desiring to support it actively, I do hereby order and authorize you to deliver to any common carrier, addressed according to instructions attached * * *.

During the period from April 1, 1941, to November 1943 the gross sales on contracts taken in the name of the Military Order of the Purple Heart amounted to \$650,000. These funds so collected on such contracts did not go direct to the Military Order of the Purple Heart but to the National Progress League, and only five to ten percent of the money received, depending on the amount of the purchase, was paid over to the Military Order of the Purple Heart by the respondent, National Progress League. The percentage paid to the Military Order of the Purple Heart by the respondent, National Progress League, under the terms of their said contract amounted to approximately \$60,000, practically all of which was used by the Military Order of the Purple Heart for service work for veterans and to pay the expenses of the Washington office. None of the funds were used to assist the Dies Committee or to combat subversive activities, as represented by the salesmen at the time the orders were obtained.

While the contract entered into between the National Progress League and the Military Order of the Purple Heart provided for an annual statement to be supplied by the respondent, National Progress League, showing expenses and details of operation, there is no evidence that any such statements were supplied or that any supervision was made of respondents' books of account other than occasional examination by officers of respondent, Military Order of the Purple Heart.

PAR. 9. Without detracting from the laudable aims and purposes of the Military Order of the Purple Heart and with full sympathy with the results which it has accomplished in its assistance to veterans, the Commission is nevertheless of the opinion, and so finds, that the acts and practices and the plan of procedure followed by the respondents, National Progress League, Frank J. Mackey, and Harold C. Sherman, have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public and to induce them to purchase the publications sold by said respondents because of patriotic motives, in the belief that the monies

so paid were contributions to support the aims and purposes of the Military Order of the Purple Heart, rather than a commercial transaction involving the purchase of a set of books from the National Progress League, with only a small portion of the money so paid going to the Military Order of the Purple Heart.

PAR. 10. The Commission further finds that the amount of supervision maintained by the Military Order of the Purple Heart over the conduct of the respondents, National Progress League, Frank J. Mackey, and Harold C. Sherman, in the performance of their contract with the Military Order of the Purple Heart was not sufficient to inform either the officers or the members of the Military Order of the Purple Heart as to the acts and practices actually being pursued by said respondents in the sale and distribution of their said books under the name of the Military Order of the Purple Heart.

CONCLUSION

The aforesaid acts and practices of the respondents, National Progress League, a corporation, and Frank J. Mackey and Harold C. Sherman, individually, and as officers of the National Progress League, a corporation, as herein found, are all to the prejudice and injury of the public and constitute 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, answer of the respondent, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto, report of the trial examiners upon the evidence and exceptions filed thereto, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that respondents, National Progress League, a corporation, and Frank J. Mackey and Harold C. Sherman, have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, National Progress League, a corporation, and its officers, agents, representatives, and employees, and the respondents Frank J. Mackey, an individual, and Harold C. Sherman, 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 certain sets of books designated "Progress of Nations" and "Forward March" and other books and publications and in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Entering into, continuing, or carrying out any contract or plan of procedure involving the use of the name and prestige of the Military Order of the Purple Heart or any other similar patriotic organization, which is designed to or which enables the respondents to induce the purchasing public to purchase respondents' books or other publications in the belief that they are dealing directly with the Military Order of the Purple Heart or any other similar patriotic organization when, in fact, they are dealing with a private concern engaged in the sale of books and other publications as a commercial enterprise for profit.

2. Representing directly or by implication that any customer purchasing any of respondents' books or publications is in effect making a direct contribution to the Military Order of the Purple Heart or any other patriotic organization.

3. Representing directly or by implication that the funds derived from the sale of respondents' books or publications will be used by the Military Order of the Purple Heart or any other similar patriotic organization to defray the expense of such organization's activities and efforts in combating anti-American and subversive organizations and influences in the United States.

4. Representing directly or by implication that the respondents are engaged in raising funds to continue the work of any Congressional investigating committee.

5. Representing directly or by implication that any patriotic organization will participate in the profits derived from books or publications sold and distributed by the respondents without disclosing the extent to which such organization actually participates in the funds collected.

6. Representing directly or by implication that respondents are engaged in any enterprise other than a commercial enterprise for profit.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondent Military Order of the Purple Heart, a corporation.

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
LIQUID TIGHT PAPER CONTAINER ASSOCIATION ET AL.

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

Docket 4675. Complaint, Jan. 22, 1942—Decision, May 29, 1945

Where an association; its secretary; and eight members, engaged in the manufacture and interstate sale and distribution of cylindrical liquid tight paper containers in competition with one another and with others except insofar as such competition had been restrained as below set forth—

Entered into and carried out understandings, agreements, combinations and conspiracies among themselves for the purpose of restraining, and eliminating competition and creating a monopoly in the sale of cylindrical liquid tight paper containers in commerce, pursuant to which they—

- (1) Agreed to and did fix and maintain uniform delivered prices, and uniform discounts and other terms and conditions governing the sale of cylindrical liquid tight paper containers by said members, and standard uniform sizes and colors for such containers, and the quality of material used therein;
- (2) Agreed to and did fix and maintain certain percentage quotas which represented and limited the amount of business which each of said manufacturers should do, and exacted penalties of each member manufacturer whose business exceeded his designated percentage quota, and made payments to any who sold less than his specified quota;
- (3) Agreed to and did establish and maintain geographical zones throughout the United States and uniform price differentials between such zones, so that all purchasers within a given zone area, regardless of the distance of the purchaser from the manufacturer, paid the same delivered price for cylindrical liquid tight paper containers;
- (4) Agreed to and did arbitrarily classify customers either as jobbers or consumers, and established and maintained uniform price differentials between the two classes, and agreed to and did maintain resale prices at which jobber customers were required to sell the products of the said member manufacturers, and enforced such requirement through refusing the usual jobber discounts to jobbers who did not maintain the prices and terms fixed;
- (5) Held and sponsored meetings at which information was exchanged among the said manufacturers with respect to prices, discounts, charges, and other terms and conditions to be fixed for the sale of cylindrical liquid tight paper containers; and
- (6) Agreed to file and in practice did file with the association their price lists for their products, and, pursuant to agreement, abided by such filed prices until they filed new prices and agreed to file and in practice did file with the association invoices or copies thereof showing details of their sales, including price, discount, and terms of sale:

Whereby aforesaid manufacturer members, as an incident to and a necessary result of their members thus making identical delivered prices only, notwithstanding freight differences, arbitrarily and systematically charged and received larger sums of money from customers located near their respective manufacturing establishments than from those customers located farther away; forced their near-by customers to pay more to their manufacturers for their products in order that more distant ones might pay less; deprived their near-by customers of any price advantage