

IN THE MATTER OF

GENERAL DIARIES, INC., AND ALBERT A. FRIEDMAN,
AND MRS. ELIZABETH FRIEDMAN, TRADING IN THE
NAME OF GENERAL DIARIES, AND AS OFFICERS OF
SAID CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5002. Complaint, July 10, 1943—Decision, Aug. 20, 1945*

Where a corporation and the individual who organized it and was its president, engaged in the interstate sale and distribution of their "Dial" appointment book for the use of doctors, dentists and other professional people; following acquisition by said individual of several hundred copies of the "Professional Diary" appointment book of a competitor; in canvassing drug stores, supply houses, and others who purchased quantities of appointment books for distribution to their customers at Christmas-time—

Falsely represented, through said individual and his salesmen, that said corporation and individual were the publishers and distributors of the "Professional Diary" or that they were affiliated with its publishers, and that purchasers of their product would receive the "Professional Diary," through making use of copies of said "Professional Diary" as samples of the appointment book they were offering, and representing to prospective purchasers who were familiar with it and wished to continue buying it, that aforesaid competitor was their agent and was now selling direct to purchasers; that they were the actual publishers of the "Professional Diary;" and that they now handled the "Professional Diary," which could not be obtained elsewhere;

The facts being that the "Diary" they actually delivered to purchasers bore said corporations name as publisher and was materially different from the "Professional Diary" sample exhibited, being substantially smaller, with a different type of binding, and carrying no marking ribbon, and with record-keeping pages which were different in number and content; they were not publishers or distributors of the "Professional Diary," and had no affiliation with its publisher;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said representations were true, whereby a substantial number of the purchasing public purchased their said "Dial:"

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Mr. Samuel Herbsman, of New York City, for respondents.

Complaint

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 General Diaries, Inc., a corporation, and Albert A. Friedman and Mrs. Elizabeth Friedman, individuals, trading in the name of General Diaries, and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the 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, General Diaries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents, Albert A. Friedman and Mrs. Elizabeth Friedman, are individuals and officers, of said corporate respondent, which was chartered in December 1940. Prior to December 1940, the individual respondents, Albert A. Friedman and Mrs. Elizabeth Friedman, operated their business in the trade name of General Diaries. All of the respondents have their principal place of business at 145 West 41st Street, New York, N. Y.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the publication and in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of a professional appointment book designated as "Dial."

Respondents cause the said product, when sold, to be transported from their aforesaid place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said product in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents either directly or by implication have themselves represented or through their agents, servants, employees and salespeople, have represented to customers and prospective customers, that respondents are the original publishers of a competitive product designated as "Professional Diaries," that the publishers of said competitive product constitute a subsidiary of respondents; that respondents print said competitive product for its customers, or that there is otherwise some connection between respondents and said

publishers. By said means and in the manner aforesaid, the respondents exhibit to prospective customers copies of said competitive product "Professional Diary," and by direct statements and references thereto falsely indicate to them and mislead them into the belief that the diaries which respondents are selling are the same as said competitive product, which, in numerous instances, is well and favorably known to said prospective customers, many of whom are previous buyers of the same. The "Professional Diary" is superior to and a more expensive product than respondents' "Dial" diary.

PAR. 4. By the means and in the manner aforesaid, respondents represent and have represented directly and by implication, that they are the publishers and distributors of said competitive product "Professional Diary," that they are the owners of or are otherwise affiliated with the publishing house which compiles "Professional Diary," and that customers who purchase diaries from them will receive the "Professional Diary."

PAR. 5. The said statements and representations are false and misleading. In truth and in fact, respondents are not the publishers and distributors of "Professional Diary"; they neither own nor have any affiliation with the publishing house which compiles "Professional Diary," and customers who purchase diaries from respondents have not, and will not, receive the "Professional Diary" but receive the inferior and cheaper product of respondents which is designated "Dial."

PAR. 6. The use by respondents of the aforesaid false, deceptive and misleading statements, representations and methods as herein set out, has had, and now has, the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and that in ordering diaries from respondents they are buying and will receive the said "Professional Diary," and because of said erroneous and mistaken belief, a substantial number of the purchasing public has purchased respondents' said product "Dial."

PAR. 7. 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 July 10, 1943, issued and subsequently served its complaint in this proceeding upon the respon-

dents named in the caption hereof, 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 the complaint were introduced before an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, answer, testimony, and other evidence, report of the trial examiner and exception thereto, and briefs in support of and in opposition to the complaint (oral argument not having been requested); 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. (a) Respondent, General Diaries, Inc., is a corporation, organized and existing under the laws of the State of New York, with its office and principal place of business at 145 West 41st Street, New York, N. Y.

(b) Respondent, Albert A. Friedman, is an individual, trading as General Diaries, with his office and principal place of business at 145 West 41st Street, New York, N. Y. About the beginning of 1940 this respondent with a partner, one M. M. Faske, commenced his present business under the trade name "General Diaries." Sometime during that year the partnership was dissolved and respondent, Albert A. Friedman, continued trading as an individual proprietor under the trade name "General Diaries." Early in January 1941, respondent, Friedman, caused the organization of the corporate respondent, General Diaries, Inc., as a means and vehicle for continuing the business previously carried on by him under the trade name "General Diaries." After about two years, respondent, Friedman, ceased carrying on his business through General Diaries, Inc., and thereafter continued the same business as an individual proprietor under the trade name "General Diaries."

(c) Respondent, Mrs. Elizabeth Friedman, is not shown by the record to have been an officer of the corporate respondent or active in the conduct of the business at any time since its commencement in 1940. She is not hereafter referred to in these findings or included in any reference to respondents.

(d) Respondent, Albert A. Friedman, directly and through the

corporate respondent, of which he was president, for a number of years last past has been engaged in the publication, sale, and distribution of a professional appointment book designated as "Dial" and intended for the use of doctors, dentists, and other professional people.

PAR. 2. In the course and conduct of the aforesaid business, respondents have caused their said product, when sold, to be transported from their place of business in the State of New York to purchasers thereof at their points of location in various other States of the United States and in the District of Columbia, and maintain, and for several years last past have maintained, a course of trade in appointment books in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. (a) For some years prior to 1940, respondent, Albert A. Friedman, was employed by and served as general manager for Burrows Appointment Books, Inc. This corporation became involved in financial difficulties and was liquidated in 1939, whereupon respondent, Friedman, initiated the business he now conducts as General Diaries. The Elliott Publishing Company, Inc., is also engaged in the publication, sale, and distribution of a professional appointment book designated "Professional Diary." Shortly before Burrows Appointment Books, Inc., became involved in financial difficulties, Elliott Publishing Company, Inc., sold it approximately a thousand copies of its "Professional Diary" bearing the name of Burrows Appointment Books, Inc., and without its own name appearing thereon. Burrows Appointment Books, Inc., never paid for these books and at the time of liquidation a part of them, approximately four or five hundred copies, were returned to Elliott Publishing Company, Inc. In February or March 1940, respondent, Friedman, purchased from Elliott Publishing Company, Inc., a few hundred copies of its "Professional Diary" and some of the appointment books which had been recovered from Burrows, presumably to fill a few special orders.

(b) Respondent, Friedman, and several salesmen employed by him commenced canvassing drug stores, supply houses, and others who purchase quantities of appointment books for distribution to their customers at Christmas time as a gesture of their appreciation of the business received and for the creation of good will. Respondent, Friedman, himself used, and furnished to the salesmen employed by him, copies of the "Professional Diary" purchased from the Elliott Publishing Company, Inc., as samples of the appointment book they were offering for sale. In some instances where a prospective purchaser had previously dealt with Elliott Publishing

Company, Inc., and wished to continue buying the "Professional Diary" published by that concern, respondent Friedman or his salesmen made various representations as a means of persuading such prospective purchasers to buy from them. Among the representations thus made to prospective purchasers who were familiar with the "Professional Diary" were statements to the effect that the Elliott Publishing Company, Inc., was an agent of General Diaries and General Diaries was now selling direct to purchasers; that General Diaries was the actual publisher of the "Professional Diary;" and that General Diaries now handles the "Professional Diary" and it could not be obtained elsewhere. Said respondent and his sales representatives also exhibited samples of the "Professional Diary" as the book they were offering for sale and as being the book which would be delivered, or assured prospective purchasers that a book substantially identical thereto would be delivered. One of respondents' former salesmen who was employed in September 1940 testified that the appointment book given him to use as a sample was the "Professional Diary" of the Elliott Publishing Company, though the sample did not carry the name of the Elliott Publishing Company and he did not at the time know that it was the product of that company, and that in soliciting business for General Diaries he used this sample as representing the product which would be furnished by General Diaries on purchases made through him. It was not until four to six weeks after the commencement of his employment that he was furnished with a copy of the "Dial," published by General Diaries, for use as a sample to show to prospective purchasers in soliciting business from them. Respondent, Friedman, testified that the 1941 copy of the "Dial" was published in August 1940, but the record shows that the products of the Elliott Publishing Company, Inc., were used as samples for a considerable period thereafter.

(c) The appointment book actually delivered to purchasers by respondents under the designation "Dial" bore the name of respondent General Diaries, Inc., as publisher and was materially different from the "Professional Diary" sample exhibited. It was substantially smaller, had a different type of binding, carried no marking ribbon, and its record-keeping pages were different in number and content.

PAR. 4. Through the aforesaid practices, respondents represented that they were the publishers and distributors of the product of the Elliott Publishing Company, Inc., known as the "Professional Diary" or that they were affiliated with said concern and that purchasers of their product would receive the "Professional Diary." In truth and in fact, respondents are not publishers or distributors of the "Professional Diary" and they do not own or have any affiliation

Order

41 F. T. C.

with the publisher of that product, and customers who purchased appointment books from respondents have not received the "Professional Diary" but were furnished with respondents' product "Dial," which differs from the "Professional Diary" as heretofore found.

PAR. 5. The use by respondents of the aforesaid acts and practices has had, the capacity and tendency to, and has in fact, misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations made by respondents were true, and that in purchasing appointment books from respondents they were buying and would receive the "Professional Diary," and because of such erroneous and mistaken belief a substantial number of the purchasing public purchased respondents' product "Dial."

CONCLUSION

The acts and practices of the respondents, 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, the answer of respondents, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, and briefs filed by counsel, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, General Diaries, Inc., its officers, representatives, agents, and employees, and respondent Albert A. Friedman, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of appointment books in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing or implying that they are the publishers or distributors of the "Professional Diary" or that they are in any way affiliated or connected with the publishers of the "Professional Diary."

2. Representing that customers purchasing their appointment books will receive the "Professional Diary," or any publication materially different from that actually delivered by respondents.

It is further ordered, that for the reasons appearing in the findings as to the facts, the complaint herein be, and the same hereby is, dismissed as to respondent, Mrs. Elizabeth Friedman.

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.

114

FEDERAL TRADE COMMISSION DECISIONS

Complaint

41 F. T. C.