

IN THE MATTER OF

JULIUS C. SCHWARZ, FRED A SCHWARZ, AND
RUBIN ROCKER, AND W. W. IN THE
WESTERN HEMISPHERE, INC.

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

Docket 5108. Complaint, Dec. 29, 1943—Decision, Sept. 7, 1945

Where, by reason of its reputation for accuracy, reliability, and selectivity built up over a period of more than forty years, "Who's Who in America" had become known and identified in the minds of the public generally as an authoritative compilation of biographical sketches of outstanding and notable individuals in both North and South America, and the words "Who's Who" had come to be generally associated with such publication by the public, which believed that the book of biographical reference containing the words "Who's Who" in the title had been edited and compiled by the publishers of "Who's Who in America," who published also a monthly supplement containing biographies of persons prominent in the various countries of the Western Hemisphere, bearing upon its cover a map of the entire Western Hemisphere, and were collaborating with Stanford University in the preparation of the third edition of a volume entitled "Who's Who in Latin America," sponsored by the United States Government through the Office of the Coordinator of Inter-American Affairs, in the interest of friendly relationships with the Latin American republics; and Thereafter a man, his wife and brother-in-law, engaged in the publication and interstate sale and distribution of biographical reference books including, among others, books entitled "Who's Who in the Clergy," "Who's Who in Law," and "Who's Who Among Physicians and Surgeons;"

Making use of a plan under which they solicited certain individuals whose names they secured through mailing lists, telephone directories, etc., to furnish biographical information for publication in the forthcoming work and returned such information to the individual in the form of a proof sheet for correction, together with a card providing for purchase, for cash, at prepublication prices or reservation of a book upon publication, which agreement, in most instances, insured the inclusion of the biography of the purchaser in the published work; and, following a practice of soliciting biographical sketches from many of the individuals listed in "Who's Who in America" and, in the case of those who failed to respond, of copying copyrighted biographical sketches from "Who's Who in America" into their own published work—

- (a) Falsely represented through the use of the term "Who's Who" in the titles of their publications, that such publications had been compiled and published by the publishers of "Who's Who in America;" that they themselves were connected with the publishers of "Who's Who in America;" and that said publications had been edited and compiled with the accuracy, reliability, and selectivity used in the compilation of "Who's Who in America;"

The facts being that their said books, including "Who's Who in the Clergy," "Who's Who in Law," and "Who's Who Among Physicians and Surgeons,"

were not truly selective, but included biographies of many unimportant persons who had responded to solicitation, and excluded many outstanding and notable persons;

With the result that many persons furnished biographical material to them in the mistaken belief that they were, or were connected with, the publishers of "Who's Who in America;" and with tendency, through inclusion of biographical sketches of many individuals who were not generally recognized as persons of outstanding attainment or importance, to mislead and deceive clients or other members of the public who used such books for reference purposes; and

Where said individuals thereafter, acting by and through a New York corporate entity which they organized under the name "W. W. in the Western Hemisphere," and to which they transferred all the assets of their former business operated as "Who's Who in the Western Hemisphere"—in connection with the compilation and sale of a biographical reference book entitled "Who's Who in the Western Hemisphere;" using methods similar to those hereinbefore described, in accordance with which they circularized thousands of prospective biographies—

- (b) Falsely represented as above set forth, through use of the term "Who's Who" in the title, that said publications had been compiled and published by the publishers of "Who's Who in America," or that they were connected therewith;
- (c) Falsely represented that the purpose of the publication was to aid in bringing about a closer relationship between the countries of North and South America, through such statements on their letterhead and in the initial letter of contact, respectively, as "A Biographical Encyclopedia designed to promote Pan-American cultural relationship and to advance the cause of hemispheric solidarity;" and "This volume is intended to aid in bringing about closer ties between the people of North and South America through a more intimate knowledge of their leaders in the arts and sciences, commerce and industry, politics and public welfare;"

The facts being many of the individuals who were to be included in said book were not leaders or influential in the countries of the Western Hemisphere; the book was merely a commercial scheme for financial benefit; they were not qualified or equipped to undertake an enterprise of the scope indicated by the title of their publication, and their activities in connection therewith were detrimental, rather than helpful, to the continued friendly relationship of this country with the Latin American republics, and particularly so because of confusion and interference with the efforts of the Coordinator of Inter-American Affairs in sponsoring the publication "Who's Who in Latin America;"

Effect and tendency of which acts, practices and methods were to mislead and deceive members of the public, including particularly libraries, students, newspapers, writers, and others making extensive use of reference books, and thereby induce the purchase of said publications by a substantial number of the purchasing public, whereby trade was unfairly diverted to them from their competitors:

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

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Before *Mr. Miles J. Furnas* and *Mr. George Biddle*, trial examiners.

Mr. Joseph Callaway and *Mr. Daniel J. Murphy* for the Commission.

Mr. Samuel J. Krinn, 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 Julius C. Schwartz, Freda Schwartz, and Rubin Rocker, individuals, and W. W. in the Western Hemisphere, Inc., a corporation, hereinafter referred to as the 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. Respondents, Julius C. Schwartz and Freda Schwartz, are husband and wife, and reside at 3145 Brighton 6th Street, Brooklyn, N. Y. Respondent, Rubin Rocker, is the brother-in-law, of respondent, Julius C. Schwartz, and resides at 1085 Simpson Street, The Bronx, New York, N. Y. Respondent, W. W. in the Western Hemisphere, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York. The individual respondents have dominant control of the editorial and sales policies and business activities of the said corporate respondent, and own or control all of its corporate stock. All of said respondents have acted in concert in doing the acts and things hereinafter alleged. Respondents' principal office and place of business is at 1029 Brighton Beach Avenue, Brooklyn, N. Y., although they maintain a mailing address at 315 Fifth Avenue, New York, N. Y.

PAR. 2. Respondents, Julius C. Schwartz and Freda Schwartz, are now, and have been for several years last past, engaged in the publication and sale of books of biographical reference, including, among others, books entitled "Who's Who in the Clergy," "Who's Who in Law," and "Who's Who Among Physicians and Surgeons."

Respondent, Rubin Rocker, is now, and for several years last past has been engaged in assisting respondents, Julius C. Schwartz and Freda Schwartz, in the publication and sale of said books of biographical reference.

During the space of more than two years last past all of the respondents named herein have been and are now, engaged in securing subscriptions and biographical sketches for, and otherwise pro-

moting a proposed publication to be entitled, "Who's Who in the Western Hemisphere," which publication has not yet been issued from the press. Respondent, Julius C. Schwartz, is the actual owner of said publication and manager and promoter of the various activities in connection therewith. Respondent, Rubin Rocker, is the nominal head of said enterprise, but in reality is only a screen or cover for the activities of respondent Schwartz. During the year 1941 respondent, Rubin Rocker, acting in cooperation and conjunction with, and at the instance of respondent, Julius C. Schwartz, filed in the office of the New York County Clerk a certificate of doing business under the fictitious name and style of "Who's Who in the Western Hemisphere." Subsequently, on or about August 10, 1943, said individual respondents caused a corporation to be organized under the laws of the State of New York under the name of "W. W. in the Western Hemisphere, Inc.," and caused to be transferred to it all of the assets of the business formerly operated by respondent Rubin Rocker, doing business as "Who's Who in the Western Hemisphere."

Respondents, Julius C. Schwartz and Freda Schwartz, in connection with the sale and distribution of the books of biographical reference heretofore published by them and issued from the press, including "Who's Who in the Clergy," "Who's Who in Law," and "Who's Who Among Physicians and Surgeons," have caused said books, when sold, to be shipped from their place of business in the State of New York to the purchasers thereof located in States outside of the State of New York, and in the District of Columbia.

Said respondents, together with the respondents, Rubin Rocker and W. W. in the Western Hemisphere, Inc., in connection with the solicitation for the sale, and the sale of the proposed new publication to be entitled "Who's Who in the Western Hemisphere" have maintained, and now maintain activities of a commercial and business nature involving intercourse and communication with numerous individuals located in States other than the State of New York. All of the respondents named herein maintain, and have maintained at all of the times hereinbefore mentioned, a course of trade 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 said business, respondents are now and have been in competition with corporations, firms and individuals engaged in the sale and distribution of books of biographical reference in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors are many who do not engage in unfair or decep-

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tive acts or practices in connection with the sale of their products in said commerce.

PAR. 4. Beginning in the year 1899 there has been published and distributed by the A. N. Marquis Company, Chicago, Ill., a co-partnership, composed of Wheeler Sammons and Dorothy Sammons, and their predecessors in interest, a biennial volume of biographical sketches and data concerning thousands of living Americans notable in the fields of letters, education, business and public affairs. This book is entitled "Who's Who in America," and is commonly known and generally referred to by members of the public as "Who's Who." The contents of the biographical sketches in the successive volumes are protected by copyright, and the title "Who's Who" is trademarked by the publishers of said volumes. For many years "Who's Who in America" has been published in a distinctive red binding with gold lettering, and the biographical matter has been set in a distinctive style and format, so that the book can be, and is, readily identified. It has become the only recognized authoritative volume of biographical sketches of national interest published in the United States, and it has gained an outstanding and favorable reputation for reliability and is in widespread use in libraries, schools, colleges, newspaper offices and business concerns for reference purposes.

"Who's Who in America" is a book of hemispheric scope, and contains biographical sketches of prominent men and women in South America, Central America, Mexico and Canada, as well as in the United States. The publishers of "Who's Who in America" also publish a monthly supplement containing biographies of persons prominent in the various countries of the Western Hemisphere and bearing upon its cover a map of the entire western hemisphere. Said publishers are presently collaborating with Stanford University in the preparation of the third edition of a volume entitled "Who's Who in Latin America," which is sponsored and financially supported by the United States Government through the Office of the Coordinator of Inter-American Affairs, in the interest of friendly relationships with the Latin American republics.

PAR. 5. By reason of its reputation for accuracy, reliability and selectivity built up and established over a period of more than forty years, "Who's Who in America" has become known and identified in the minds of the public generally as an authoritative compilation of biographical sketches of outstanding and notable individuals in both North and South America. To the public generally the words "Who's Who" have come to indicate and mean only one certain publication, i e., the red volumn "Who's Who in America," and one sole and exclusive publishing source, i.e., The A. N. Marquis Company, publishers

of "Who's Who in America." To the public generally the words "Who's Who" means also "Who is Notable." and to them a "Who's Who" means a person whose biography is included in "Who's Who in America." The use of such words in the name of a publication, or in connection therewith, constitutes a representation to the public that such publication is a compilation of the biographies of notable people, selected and qualified by, and edited under, the rigid and exacting standards established and enforced for many years by the publishers of "Who's Who in America." A large portion of the public associate the words "Who's Who" not only with a high standard of selectivity, accuracy and reference value, but also with a single and exclusive publishing source. The use of such term in the title of a book of biographical reference or in connection therewith constitutes a representation to the public that such publication is a product of the publishers of the long established and well known "Who's Who in America."

PAR. 6. Several years ago respondents, Julius C. Schwartz and Freda Schwartz, began the publication of certain volumes purporting to include a selective list of biographical sketches of persons prominent in various professions or classifications, beginning with the publication of "Who's Who in American Jewry," and continuing with "Who's Who in Government," "Who's Who in the Clergy," "Who's Who in Law" and "Who's Who Among Physicians and Surgeons." All of said volumes bore titles which included the words "Who's Who," and said books closely resembled in style, format and binding the well known "Who's Who in America."

Said respondents followed the plan of contacting certain individuals whose names were secured through mailing lists, professional lists, telephone directories and other sources, and soliciting them to furnish biographical information for publication in the forthcoming work. If such information was furnished, it was prepared in the form of a proof sheet and returned to the individual for correction, together with a card providing for purchase for cash or reservation of a book upon publication. Purchase or reservation of a copy was in most instances sufficient to insure the inclusion of the biography of the purchaser in the published work.

Many of the individuals thus solicited were not and are not generally recognized as being persons of outstanding attainment or importance in their respective fields or professions, and the inclusion of their biographical sketches in the published work usually depended upon whether they ordered or paid for a copy of the book. If the biographical sketches of such individuals were included in the published work, such inclusion naturally had and has the result of

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giving them a reputation and importance to which they were not and are not entitled, thus tending to mislead and deceive clients and prospective clients or other members of the public who used such book for reference purposes.

Furthermore, said respondents, Julius C. Schwartz and Freda Schwartz, in soliciting said biographical sketches, made a practice of soliciting many of the individuals listed in "Who's Who in America." Many of such individuals furnished information or biographical material to said respondents in the mistaken belief that said respondents were, or were connected with, or associated with, the publishers of "Who's Who in America," or that they maintained the same high standards of selectivity as the publishers of that publication. Others of such individuals failed to respond to such solicitations, and in such cases said respondent pursued the practice of copying or "lifting" the copyrighted biographical sketches contained in "Who's Who in America" and inserting such sketches or garbled versions thereof in their own published work without the knowledge or consent of the biographee.

The books of biographical reference heretofore published by the respondents, Julius C. Schwartz and Freda Schwartz, including "Who's Who in the Clergy," "Who's Who in Law" and "Who's Who Among Physicians and Surgeons" contained the names of many individuals of no outstanding importance or reputation in the particular profession involved, and omitted the names of many outstanding and notable individuals. Said books were not truly selective, but included biographies of many unimportant persons who had responded to solicitation or had purchased or reserved copies for their personal use, while it excluded many truly notable persons, who should have been included in any truly selective list.

PAR. 7. The publication by said respondents of books containing the words "Who's Who" in their titles, but not otherwise compiled or prepared in accordance with the high standards established for many years by the publishers of "Who's Who in America," had and has a tendency and capacity to deceive the purchasers thereof into the belief that their biographical sketches would be included in a truly selective volume of a type or class comparable to "Who's Who in America," published by the same publishers under the same rigid standards of selectivity, when such was and is not the fact. It also had and has the tendency and capacity to deceive members of the general public, particularly librarians, students newspaper editors, writers and others making extensive use of reference books, into the belief that said books included the biographical sketches of most or all of the prominent and notable members of the particular profes-

sion involved, and excluded the unimportant and obscure, when such was not the fact.

PAR. 8. Beginning in the year 1941 the respondents, Julius C. Schwartz and Rubin Rucker, began the preparation of a new "Who's Who" volume to be called "Who's Who in the Western Hemisphere." They selected a Fifth Avenue mailing address in New York City, and caused letterheads to be printed representing that the proposed publication would be "A Biographical Encyclopedia designed to promote Pan-American cultural relationship and to advance the cause of hemispheric solidarity." Using methods similar to those employed in the publication of "Who's Who in the Clergy," "Who's Who in Law" and other Schwartz "Who's Who" publications, as heretofore set out, said respondents began to circularize thousands of prospective biographies whose names were obtained from various mailing lists, "Who's Who" books and other sources. The usual method of approach was to represent to the customer by a form letter that his name had been recommended for inclusion in the forthcoming "edition" of "Who's Who in the Western Hemisphere." Respondents in said letter stated, "This volume is intended to aid in bringing about closer ties between the peoples of North and South America through a more intimate knowledge of their leaders in the arts and sciences, commerce and industry, politics and public welfare." Respondents enclosed with said letter a questionnaire to be filled out and returned, following receipt of which a draft of the proposed biographical sketch would be sent by respondents for correction and approval. The letters of solicitation were signed "R. Rucker, Associate Editor," and all of the business connected with said enterprise was carried on ostensibly by respondent Rubin Rucker as the responsible owner, manager and promoter of said enterprise.

Said respondents have collected to date more than \$25,000 in cash from members of the public who have purchased copies thereof prior to publication, and also have received an additional \$25,000 in unpaid subscriptions from members of the public who have reserved copies to be delivered and paid for upon publication and delivery of said book.

PAR. 9. Many of the persons who have thus paid for or reserved copies of the forthcoming "Who's Who in the Western Hemisphere" have done so under the false and erroneous belief that it is to be a truly selective biographical compilation of all of the outstanding and important leaders in the countries of North and South America, when such is not the case. Many of the individuals who are to be included in said book are not leaders in connection with, and do not hold positions influential in respect to "hemispheric solidarity" or

in the "arts and sciences, commerce and industry, politics and public welfare" of the countries of the western hemisphere. The book was not and is not designed or intended to "aid in bringing about closer ties between the peoples of North and South America," but is merely a commercial scheme or promotion to enrich its promoters, the respondents herein.

Many others of the persons who have subscribed for or paid cash in advance of publication for said work, or who have contributed their biographical sketches or other data to be published therein, have done so under the false and erroneous belief that it has been compiled, authorized or otherwise sponsored by, or connected with, the well known and authoritative "Who's Who in America" or the publishers thereof.

Furthermore, the respondents herein are not financially, professionally or otherwise equipped either to undertake the editorial duties or to assume the financial risks and burdens involved in the publication of so extensive and ambitious a project as "Who's Who in the Western Hemisphere." They have no educational or professional background or qualifications which would fit them adequately to select or pass upon the qualifications of individuals to be included in such a book, and they lack sufficient capital to undertake the exhaustive research and expense necessarily connected with such a book. If sufficient copies thereof are not sold or reserved prior to publication, said proposed book may never actually be published, to the manifest and substantial loss and injury of the purchasing public.

PAR. 10. The use by the respondents of the aforesaid acts, practices and methods in connection with the offering for sale and sale of books of biographical reference in said commerce has had, and now has, the tendency and capacity to, and does, deceive and mislead members of the public, and unfairly to disparage and defame the products of competitors, thereby inducing the purchase by a substantial number of the purchasing public of respondents' books and unfairly diverting trade to the respondents from their competitors in commerce between and among the several States of the United States and in the District of Columbia, to the injury of said competitors and the public.

PAR. 11. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition 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 29, 1943, issued and subsequently served its complaint in this proceeding upon the respondents, Julius C. Schwarz (named in the complaint as Julius C. Schwartz), Freda Schwarz (named in the complaint as Freda Schwartz), and Rubin Rocker, individuals, and W. W. in the Western Hemisphere, 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 the answers of the respondents thereto, testimony and other evidence in support of, and in opposition to, the allegations of said complaint were taken 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, answers thereto, testimony and other evidence, report of Trial Examiner George Biddle upon the evidence and exceptions filed thereto, and brief filed in support of the complaint (no brief having been filed by the respondents or oral argument 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. Respondents, Julius C. Schwarz and Freda Schwarz are husband and wife and reside at 3145 Brighton Sixth Street, Brooklyn, New York. Respondent Rubin Rocker is the brother-in-law of respondent Julius C. Schwarz and resides at 1085 Simpson Street, The Bronx, New York, N. Y. The respondent, W. W. in the Western Hemisphere, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 1029 Brighton Beach Avenue, Brooklyn, N. Y., and an office or mailing address at 315 Fifth Avenue, New York, N. Y.

PAR. 2. During the periods of time and in the manner hereinafter described, the respondents have been engaged in the publication and in the sale and distribution of various books of biographical reference which contain the words "Who's Who" as part of their respective titles.

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In the course and conduct of their business, the respondents have solicited subscriptions for their publications from purchasers located in the various States of the United States and have caused their biographical reference books, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in various other States of the United States. During the times mentioned herein the respondents have maintained a course of trade in said biographical 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 their said business, respondents were engaged in competition with corporations, firms, and individuals engaged in the sale and distribution of books of biographical reference in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Since the year 1899, the A. N. Marquis Company of Chicago, Illinois, has published and distributed a biennial volume of biographical sketches and data concerning thousands of living Americans notable in the fields of letters, education, business, and public affairs. This book is entitled "Who's Who in America" and is commonly known and generally referred to by members of the public as "Who's Who." The contents of the biographical sketches in the successive volumes are protected by copyright, and the title "Who's Who" is trade-marked by the publishers of said volumes. For many years "Who's Who in America" has been published in a distinctive red binding with gold lettering, and the biographical matter has been set in a distinctive style and format, so that the book can be, and is, readily identified. It has become the principal recognized authoritative volume of biographical sketches of national interest published in the United States, and it has gained an outstanding and favorable reputation for reliability and is in widespread use in libraries, schools, colleges, newspaper offices, and business concerns for reference purposes.

"Who's Who in America" is a book of hemispheric scope and contains biographical sketches of prominent men and women in South America, Central America, Mexico, and Canada, as well as in the United States. The publishers of "Who's Who in America" also publish a monthly supplement containing biographies of persons prominent in the various countries of the Western Hemisphere and bearing upon its cover a map of the entire Western Hemisphere. Said publishers are presently collaborating with Stanford University in the preparation of the third edition of a volume entitled "Who's Who in Latin America," which is sponsored by the United

States Government through the Office of the Coordinator of Inter-American Affairs, in the interest of friendly relationships with the Latin American republics.

PAR. 5. By reason of its reputation for accuracy, reliability, and selectivity built up and established over a period of more than forty years, "Who's Who in America" has become known and identified in the minds of the public generally as an authoritative compilation of biographical sketches of outstanding and notable individuals in both North and South America. When the words "Who's Who" are used in the title of a book of biographical reference, the public generally associates such publication with "Who's Who in America" and believes that any such publication containing the words "Who's Who" in the title thereof has been edited and compiled by the publishers of "Who's Who in America" or has been compiled and edited with the same accuracy, reliability, and selectivity as that used in the compilation of "Who's Who in America."

PAR. 6. For several years prior to March 1940 the respondents Julius C. Schwarz and Freda Schwarz were engaged in the publication and in the sale of books of biographical reference, including, among others, books entitled "Who's Who in the Clergy," "Who's Who in Law," and "Who's Who Among Physicians and Surgeons." The respondent Rubin Rocker from time to time assisted said respondents Julius C. Schwarz and Freda Schwarz and actively participated in the publication and in the sale of said publications. In compiling and selling said publications the respondents followed the plan of contacting certain individuals whose names were secured through mailing lists, professional lists, telephone directories, and other sources and solicited them to furnish biographical information for publication in the forthcoming work. If such information was furnished it was prepared in the form of a proof sheet and returned to the individual for correction, together with a card providing for purchase, for cash, at prepublication prices or reservations of a book upon publication. Purchase or reservation of a copy was in most instances sufficient to insure the inclusion of the biography of the purchaser in the published work.

Many of the individuals thus solicited were not generally recognized as being persons of outstanding attainment or important in their respective fields or professions. The inclusion of the biographical sketches of such individuals in the published work gave to such individuals a reputation and importance to which they were not entitled, thus tending to mislead and deceive clients and prospective clients or other members of the public who use such book for reference purposes.

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In soliciting said biographical sketches, said respondents made a practice of soliciting many of the individuals listed in "Who's Who in America." Many of such individuals furnished information or biographical material to said respondents in the mistaken belief that said respondents were, or were connected with or associated with, the publishers of "Who's Who in America." Others of such individuals failed to respond to such solicitations, and in such cases the respondent sometimes pursued the practice of copying or lifting the copyrighted biographical sketches contained in "Who's Who in America" and inserting such sketches or versions thereof in their own published work.

The books of biographical reference heretofore published by said respondents, including "Who's Who in the Clergy," "Who's Who in Law," and "Who's Who Among Physicians and Surgeons," contained many names of individuals of no outstanding importance or reputation in the particular professions involved and omitted the names of many outstanding and notable individuals. Said books were not truly selective but included biographies of many unimportant persons who had responded to solicitation or who had purchased or reserved copies for their personal use, while excluding many truly notable persons who should have been included in any truly selective list.

PAR. 7. Subsequent to March 1940 the individual respondents engaged in the compilation and sale of a proposed book of biographical reference entitled "Who's Who in the Western Hemisphere." During the year 1941, the respondent, Rubin Rocker, acting in cooperation and conjunction with respondent, Julius C. Schwarz, filed in the office of the County Clerk for the county of New York, State of New York, a certificate of conducting business under the name of "Who's Who in the Western Hemisphere." Subsequent thereto, on or about August 10, 1943, said individual respondents caused a corporation to be organized under the laws of the State of New York under the name of "W. W. in the Western Hemisphere, Inc.," and caused to be transferred to it all the assets of the business formerly operated by the respondent Rubin Rocker, doing business as Who's Who in the Western Hemisphere.

Based upon the testimony and other evidence, the Commission is of the opinion, and so finds, that the individual respondents have acted in conjunction and cooperation with each other in the compilation and offering for sale of the biographical reference book "Who's Who in the Western Hemisphere." The Commission further finds that the said individual respondents have dominant control of the editorial and sales policies and business activities of the cor-

porate respondent, W. W. in the Western Hemisphere, Inc., and have acted by and through said corporate entity with the same freedom as through no corporation existed.

PAR. 8. In compiling said publication "Who's Who in the Western Hemisphere" and in soliciting subscriptions for the purchase of said publication, the respondents used methods similar to those employed in the publication of "Who's Who in the Clergy," "Who's Who in Law," and other "Who's Who" publications sold by them. The respondents circularized thousands of prospective biographies, whose names were obtained from various mailing lists, Who's Who books, and other sources. The usual method of approach was to represent to the customer by a form letter that his name had been recommended for inclusion in the forthcoming edition of "Who's Who in the Western Hemisphere." Respondents enclosed with said letter a questionnaire to be filled out and returned, following receipt of which a draft of the proposed biographical sketch would be sent by respondents for correction and approval, together with a card providing for purchase for cash at prepublication prices or reservation of a book upon publication. By this means the respondents obtained approximately five thousand subscriptions for said publication "Who's Who in the Western Hemisphere" from persons located in various States of the United States, a substantial portion of which, amounting to approximately \$25,000, was received in cash on contracts for purchase at prepublication prices.

A substantial amount of confusion has been occasioned through the use of the term "Who's Who" in the title of respondents' publication "Who's Who in the Western Hemisphere." Many members of the public, believing that said publication was being compiled and issued by the publishers of "Who's Who in America," have forwarded contracts for the purchase of respondents' publication to the A. N. Marquis Company, publishers of "Who's Who in America." In addition, many members of the public have filled out questionnaires submitted by the respondents and, when completed, have forwarded such questionnaires and other data to the publishers of "Who's Who in America." In many instances many members of the public have forwarded contracts of purchase and remittances to the respondents in the belief that they were in fact purchasing the publication "Who's Who in America."

Many of the persons who have subscribed for, or paid cash in advance of publication for, respondents' publication or who have contributed their biographical sketches or other data to be published therein, have done so under the false and erroneous belief that said publication has been compiled, authorized, or otherwise

sponsored by the well-known and authoritative "Who's Who in America" or the publishers thereof.

PAR. 9. For the purpose of inducing customers to send in biographical data and to purchase a copy of respondents' publication "Who's Who in the Western Hemisphere," the respondents represented by means of printed statements on their stationery and by statements contained in their initial contact letter requesting biographical data that the purpose of the publication was to aid in bringing about a closer relationship between the countries of North and South America. For example, the following printed statement appeared on respondents' letterhead:

A biographical Encyclopedia designed to promote Pan-American cultural relationship and to advance the cause of hemispheric solidarity.

and in the initial letter of contact appeared the statement:

This volume is intended to aid in bringing about closer ties between the peoples of North and South America through a more intimate knowledge of their leaders in the arts and sciences, commerce and industry, politics and public welfare.

PAR. 10. Many of the persons who have paid for, or contracted to purchase, copies of the forthcoming "Who's Who in the Western Hemisphere" have done so in the false and erroneous belief that it was to be a truly selective biographical compilation of all the outstanding and important leaders in the countries of North and South America. Many of the individuals who were to be included in said book were not leaders in connection with and did not hold positions influential in respect to, hemispheric solidarity or in the arts and sciences, commerce and industry, or politics and public welfare of the countries of the Western Hemisphere. The book was not designed or intended to aid in bringing about closer ties between the peoples of North and South America but was merely a commercial scheme or promotion for the financial benefit of the respondents. In fact, respondents are not qualified or equipped to undertake an enterprise of the scope indicated by the title of their publication, and their activities in connection therewith have been detrimental, rather than helpful, to the continued friendly relationship of this country with the Latin American republics. This has been particularly true because of the confusion and interference of respondents' activities with the efforts of the Coordinator of Inter-American Affairs in sponsoring the publication "Who's Who in Latin America."

PAR. 11. Through the use of the term "Who's Who" in the title of their publications, the respondents have falsely represented that

their publications so designated have been compiled and published by the publishers of "Who's Who in America"; that the respondents are connected with, or associated with, the publishers of "Who's Who in America"; and that said publications have been edited and compiled with the same accuracy, reliability, and selectivity as that used in the compilation of "Who's Who in America." Such use of the term "Who's Who" also has the tendency and capacity to deceive members of the general public, particularly libraries, students, newspapers, writers, and others making extensive use of reference books, into the belief that said books are authoritative publications which include the biographical sketches of most or all of the notable or prominent members of the particular profession involved and exclude the unimportant and obscure.

PAR. 12. The use by the respondents of the aforesaid acts and practices and methods in connection with the offering for sale and sale of books of biographical reference has had, and now has, the tendency and capacity to, and does, mislead and deceive members of the public, thereby inducing the purchase of respondents' publications by a substantial number of the purchasing public. As a result, trade has been unfairly diverted to the respondents from their competitors engaged in the sale of biographical reference books in commerce among and between the several States of the United States and in the District of Columbia.

CONCLUSION

The acts and practices of the respondents, as herein found, 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answers of the respondents, testimony and other evidence in support of the complaint and in opposition thereto taken before trial examiners of the Commission theretofore duly designated by it, report of Trial Examiner George Biddle upon the evidence and exceptions filed thereto, and brief filed in support of the complaint; and the Commission having made its findings as to the facts and its conclusion that the respondents Julius C. Schwarz and Freda Schwarz (named in the complaint, respectively, as Julius C. Schwartz and Freda

Schwartz) and Rubin Rocker, individuals, and W. W. in the Western Hemisphere, Inc., a corporation, have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Julius C. Schwarz, Freda Schwarz, and Rubin Rocker, individuals, and respondent W. W. in the Western Hemisphere, Inc., a corporation, and its officers, and their respective representatives, agents, and employees, directly or indirectly through any corporate or other device or in any other manner in connection with the offering for sale, sale, and distribution of books of biographical reference or other similar publications in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "Who's Who" in the title of any book of biographical reference; or representing in any other manner that the respondents are associated or connected with the publishers of "Who's Who in America" or that their publications are edited or compiled with the same accuracy, reliability, and selectivity as that used by the publishers of "Who's Who in America."

2. Representing directly or by implication that respondents' books of biographical reference are designed to, or intended to, promote inter-American or international relationship.

3. Representing as an authoritative book of biographical reference any publication where the inclusion of the biography of any individual therein is dependent upon the purchase of, or agreement to purchase, such publication.

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.

Syllabus

IN THE MATTER OF
EASTMAN KODAK COMPANYCOMPLAINT, MODIFIED FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4322. Complaint, Sept. 23, 1940—Decision, Sept. 12, 1945¹*

Amateur photographic film for the taking of still and motion pictures in natural color, which was sold under the trade name of the manufacturer and seller, and was made and developed for prints under secret processes protected by patents, was not sold in free and open competition with commodities of the same general class produced or distributed by others, including black-and-white film, other natural color film, and color processed film, so as to bring the seller's resale price maintenance contract covering said film within the Miller-Tydings amendment to the Sherman Antitrust Act, where it appeared, (1) that an English natural color motion picture film placed on the American market in 1935, was withdrawn in 1939 for recognized deficiencies, that importation of the English still films became impossible subsequent to 1940, following which the American distributor became bankrupt, and that such film was no longer available on the American market, except, possibly, in small quantities remaining on dealers' shelves; (2) that the "Dupac" and "Tripac" photographic films on the market since 1937 were not natural color films but were for use in color processing, and were sold on the market entirely for professional use, and that sales of each during the three-and-a-half-year period concerned, amounted to less than \$2,000 at wholesale price; (3) that certain German natural color film, both motion picture and still, which had appeared in the United States, had never been imported for resale and sold in competition with the American product, the amount having been limited to extremely small quantities brought in by purchasers thereof in Europe or in Mexico; (4) that the American product herein concerned was the only natural color film made and distributed in the United States for taking motion pictures, and, except for the English product above noted, for taking still pictures, and (5) that purchaser, therefore, wishing to take still or motion pictures in natural color was required to purchase film for such purpose solely from the seller herein concerned.

An amateur so-called "Magazine Film" for taking motion pictures sold under the seller's trademark and name, and which (1) consisted of the enclosure of either the seller's black-and-white film, or natural color Kodachrome motion picture film, in a special magazine or container designed to fit seller's "Magazine Cine-Kodak Camera," covered by seller's patents—which also covered said magazine, enclosure of aforesaid film therein, and some of the combination features involved in the use of said magazine with said camera; (2) was designed to facilitate loading and unloading of the camera and permitted the removal of one magazine before it was entirely exposed and replacement with another, thus permitting the operator to change at will to either black-and-white or Kodachrome; and

¹ Date is that of the modified findings. Original order, which was not modified, is republished as of Sept. 9, 1944. See 39 F. T. C. 154.