

Syllabus

IN THE MATTER OF

THE PAEBAR COMPANY, INC., AND ALAN F. PATER,
TRADING UNDER THE NAMES THE PAEBAR COMPANY,
LITERARY PUBLICATIONS, WHO'S WHO PUBLISHING
COMPANY, COLUMBIA BOOK PUBLISHING COMPANY,
AND JUDICIAL PUBLISHING COMPANY

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

Docket 5369. Complaint, Aug. 22, 1945—Decision, Aug. 27, 1946

Where a corporation and its principal stockholder who controlled its business, operating as "Who's Who Publishing Co." and otherwise, engaged in the publication and competitive interstate sale and distribution of certain annual publications of the so-called vanity type, made up of the writings of unknown and unrecognized authors as hereinbelow set out—

- (a) Adopted and used the name "We, The People" as the title for a so-called yearbook of public opinion, and represented falsely thereby that their said publication was a product of the producers or sponsors of the well-known radio program "We, The People";
- (b) Adopted and used the trade name "Who's Who Publishing Co.," and the title "Who's Who in Poetry in America" for a book of biographical data, and through such title falsely represented or tended to represent to the purchasing public that said publication was a product of and associated with the long-established and well-known "Who's Who in America";
- (c) Induced the purchase of their said publication "We, The People" and the payment of the purchase price therefor through making such statements in form letters and pamphlets to writers of letters published in various newspapers as: "Because your letter voices an opinion of public interest, it has been selected by the Editorial Board of We, The People: The year book of public opinion to appear in the ——— edition of this annual publication. The object of the Year Book is to present outstanding letters of public-spirited citizens like yourself, that have appeared in newspapers and magazines throughout this country and Canada. * * * You will find that publication of your letter in 'We, the People' will * * * bring your message, your ideas, your beliefs, your convictions to the attention of we know not how many thousands of persons everywhere in this country * * *";

The facts being there was no real selection by their "editorial board" of letters to the editor, but it was said individual's practice to clip the editorial pages of various papers and circularize some 25,000 writers of letters to the editors annually for each volume, publishing the book when a sufficient number of subscriptions had been received to make it pay; 75 percent of the subscribers were the authors of the letters published in the volume; it was the practice, after receiving subscriber's permission and subscription price, to send him a form letter advising that the editor reserved the right to revise or abridge his "selected" article without recourse, that acceptance was on the basis of merit and public interest only, that publication was not conditioned upon

subscription, and that date of publication was indefinite; contrary to subscribers' expectations, months and sometimes a year passed before delivery of the volume; and representations that the volume "will contain your own contribution in permanent form," would place such contribution in the hands of "we know not how many thousands of persons everywhere in the country"; that the edition would "go to press soon," were inducements to buy which were not in accordance with the facts;

- (d) Further represented to such letter writers that they were being offered its publication at a special contributor's or reduced price of \$3, through such statements as: "The prepublication price of the book is \$3. The regular, retail price is \$5. Last year's big edition was oversubscribed. Many were disappointed because their reservations arrived too late * * *";

The facts being that the so-called contributor's price of \$3 was the ordinary and usual price of the book, market for which was almost exclusively limited to such unknown writers as were willing to pay such price to see their names and works in print;

- (e) Represented that they had been engaged in the book publishing business for a longer period of time than was the fact and, through use of date 1929, that the book antedated the radio program "We, The People," through statement on their letterheads: "We, The People. The Yearbook of Public Opinion. Issue for 1941-42. Published every year by the Paebur Company. Founded 1929, 220 West Forty-second Street, New York, N. Y.,"

The facts being that the company was incorporated in 1935, the first edition of their publication "We, The People" appeared in 1939, and the enterprise had not brought out annual editions of their said publications for the period of time indicated;

- (f) Made such exaggerated and extravagant representations in circulars to prospective subscribers to their publication "Who's Who in Poetry in America" as "You will be glad to learn, therefore, that this poem is regarded as an example of contemporary American poetry. We believe it is suited for inclusion in the forthcoming issue of Who's Who in Poetry in America and it is being considered for publication therein, along with the works of other favorite and promising writers * * *," while advising the prospect in a postscript that, due to limitations on paper and other materials as a result of the war emergency and the rising costs of production, they were compelled to give preference to the contributions of those authors who subscribed for at least one copy of "Who's Who in Poetry in America";

With the effect of deceiving and misleading members of the public, and of thereby inducing the purchase of said books by a substantial number thereof, and of unfairly diverting trade from their competitors, including many who did not engage in unfair or deceptive acts and practices in connection with the sale of their products in commerce, to the injury of said competitors and the public:

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

In a proceeding in which sellers' use of the title "Who's Who in Poetry in America" for their publication was challenged as deceptive under the circumstances of the case, including the fact that neither the sellers nor their said publication was connected in any way with the publishers of the well-known

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"Who's Who," and in which the Commission considered the possibility of permitting a qualification of said title so as to permit the continuance of the trade name without deception to the public: The Commission, noting that said seller-respondents had selected a title best calculated to deceive the public and one which gave to their publication a cloak of reliability, accuracy, and selectivity to which it was not entitled, was of the opinion that the name selected so closely simulated the well-known publication "Who's Who in America" that persons, when approached to purchase seller-respondents' publication or furnish data to be incorporated therein, would immediately associate it with "Who's Who in America" and believe that it was either published by the publishers of "Who's Who in America" or that respondents were associated with said publishers; and that the initial impression thus created was such that the deception thereby engendered could not be satisfactorily removed by any qualification thereof, but could best be removed and the public interest served by requiring respondents to discontinue the use of the term "Who's Who" in the title of their publication.

As respects the challenged use of the title, "We, The People" for respondent-sellers' publication, a so-called yearbook of public opinion, which had no connection with the radio program of the same name: It was the opinion of the Commission that, while the use of said words was calculated to appropriate to said title some of the good will established by the radio program of the same name, the activities of the respondent-sellers were so far removed from those of the radio program that any deception resulting from the use of such name could be satisfactorily removed by clearly and conspicuously qualifying such title to show that the publication "We, The People" had no connection with the radio program as named.

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

Mr. Daniel J. Murphy for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that The Paebare Co., Inc., a corporation, and Alan F. Pater, individually and trading as the Paebare Co., Literary Publications, Who's Who Publishing Co., Columbia Book Publishing Co., and Judicial Publishing Co., 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 charge in that respect as follows:

PARAGRAPH 1. Respondent, The Paebare Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York; the principal stockholder thereof is respondent Alan F. Pater, who exercises personal control over its business. Respondent Alan F. Pater also is a sole trader operating

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under various trade names as The Paebur Co., Literary Publications, Who's Who Publishing Co., Columbia Book Publishing Co., and Judicial Publishing Co. Respondents' principal place of business is now located at 1819 Broadway, New York 23, N. Y. Respondent Alan F. Pater resides at 4761 Broadway, New York, N. Y.

PAR. 2. Respondent Alan F. Pater is now and has for some time past, and The Paebur Co., Inc., has, heretofore, been engaged in the publication, sale and distribution of books, and in connection therewith 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 in connection with the solicitation for the sale and the sale of said books 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. The respondents maintain and have maintained 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 business, respondents are now, and have been, in competition with corporations, firms, and individuals engaged in the publication, sale, and distribution of books 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 deceptive acts or practices in connection with the sale of their products in said commerce.

PAR. 4. In the course and conduct of their business as hereinabove described, the respondents The Paebur Co., Inc., and Alan F. Pater have published, sold and distributed, in commerce, certain annual publications, and in connection therewith have engaged in the following acts and practices:

(a) Respondents have adopted and used the name "We, The People" as the title for a so-called yearbook of public opinion published, sold, and distributed by them. The designation or legend "We, The People" has become widely known and identified in the minds of the public generally as the title of a certain radio program sponsored by national advertisers; neither The Paebur Co., Inc., nor Alan F. Pater had, or has, any connection, direct or indirect, with the producers or sponsors of such radio program. The respondents' use of this well-publicized name had, and has, the tendency and capacity to deceive and mislead the purchasing public as to the source or authenticity of said book and the prestige and responsibility of its publishers, and constitutes a rep-

resentation to the public that such publication is a product of the producers or sponsors of the established and well known radio program "We, The People."

(b) Respondents adopted and used the trade name "Who's Who Publishing Co." under which they published and distributed a book of biographical data entitled "Who's Who in Poetry in America." For more than 40 years the A. N. Marquis Co. has published and distributed a well known biennial volume of biographical sketches and data concerning thousands of living Americans notable in the fields of letters, education, business and public affairs, entitled "Who's Who in America." The use by the respondents of the words "Who's Who in Poetry in America" as the title of its said publication represents or tends to represent to the purchasing public that such publication is the product of or is in some way associated with the publishers of the long established and well known "Who's Who in America," when such is not the fact.

(c) Respondents' publications are generally of the so-called vanity type: respondents clip poems and letters published in various newspapers and appeal to the vanity of the writers of such poems and letters and attempt to sell them the idea that their contributions to literature should be preserved for posterity in books to be published by respondents and subscriptions to such books are solicited from such contributors.

Typical representations appearing in form letters and pamphlets issued by respondents to the writer of "letter-to-the-editor" are as follows:

(1) Because your letter voices an opinion of public interest, it has been selected by the Editorial Board of WE, THE PEOPLE: The Year Book of public opinion to appear in the—Edition of this annual publication.

The object of the YEAR BOOK is to present outstanding letters of public spirited citizens like yourself, that have appeared in newspapers and magazines throughout this country and Canada. These timely, stimulating letters shed important light on what the great American public is really thinking. They are a segment of contemporary history, covering a wide range of subjects.

This unique work will provide a quick review of the significant developments at home and abroad, *expressed in the language of the very people who are the backbone of our present civilization.* Nearly 2,000 letters will be included in the new book. As you go through them, you will find, side by side, letters from persons in practically every walk of life.

* * * Will you please fill out and return to us, the form on the back page, thus giving us permission to quote your letter either in its entirety or in part. Your letter will not be revised in any way as we want to convey *your* opinions in *your* language. *Mail Your Reservation For a First Press Copy At Once!*

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Because of the many important events that have taken place during the past year, the 1940 Edition of **WE, THE PEOPLE** will be of exceptional interest. You will surely want a copy for your library—not only because it will contain your own contribution in permanent form, but also because it will bring to your attention the authoritative voice of the American People on subjects that vitally concern you.

The pre-publication price of the book is \$3.00. The regular, retail price is \$5.00. Last year's big edition was oversubscribed. Many were disappointed because their reservations arrived too late. Order now and take advantage of the present low price by returning the enclosed form immediately. Better mail it TODAY!

(2) And so you will find that publication of your letter in "**WE, THE PEOPLE**" will do what its appearance in your local newspaper cannot do: bring your message, your ideas, your beliefs, your convictions to the attention of we know not how many thousands of persons everywhere in this country.

But as the new edition of "**We, The People**" will go to press soon, please be sure to get your letter off at once. * * *

"**WE, THE PEOPLE**" is a pioneer in its field. By resurrecting from the newspaper file, each year, those quintessential elements of the year's written expressions which are deemed worthy of preservation in book form, the Year Book becomes a helpful, classified, quotational résumé for those who could not keep posted during the year. The excerpts will encourage not only study but also fugitive reading.

In truth and in fact, there was and is no real selection by "the Editorial Board of **We, the People**" of letters to the editor. Respondent Pater subscribes to various newspapers and clips the editorial pages thereof and said respondent scans the letters to the editors appearing thereon and circularizes some 25,000 writers of such letters, prospective subscribers, annually for each volume. Upon receipt of a sufficient number of subscriptions to make the volume a paying proposition the book is published, the date depending upon how fast the subscriptions are received. At least 75 percent of the subscribers were the authors of letters published in the volume. The representation that "last year's big edition was oversubscribed—many were disappointed because their reservations arrived too late" is not in accordance with the facts. The so-called special contributor's price of \$3 was the ordinary and usual price of the book, whose market is almost exclusively limited to such unknown and unrecognized writers as are willing to pay the price of the volume to see their names and works in print. Not more than 1 percent of the purchasers pay the purported "regular retail price of \$5." The representations: that the volume "will contain your own contribution in permanent form"; that said publication will place such contribution in the hands of "we know not how many thousands of persons everywhere in the country"; that the edition will "go to press soon," are inducements to buy, which

are not in accordance with the facts insofar as they import or imply that the inclusion of such "selected" article is a certainty, that the book is of general interest, with many thousands of readers, and that the date of publication is so imminent that prompt reservations must be made for a copy of the first printing.

(d) Respondents after receiving the subscribers' "permission to quote" and the \$3 subscription price issue follow up form letters which state the terms under which the "selected" article has been received, to wit: that the editor may revise or abridge said article without recourse on the part of the contributor; that its acceptance is on the basis of merit and public interest only; publication thereof not being conditional upon a subscription for copies of the book; that the subscriber had ordered the book on his "own volition" and if his contribution is omitted "neither the editor or publisher will be held responsible in any manner" and "shall not be obligated to cancel such order"; and that, as there will be a necessary consumption of time, the date of publication is indefinite. In fact, contrary to the subscriber's expectation, months have elapsed, sometimes a year, before the volume was finally delivered; and where the subscriber has desired a refund of his purchase price, there has been unnecessary delay in remitting the same.

Respondents' contact advertising material hereinabove quoted is thus further misleading and deceptive insofar as such material fails to disclose such terms under which the requested contribution and subscription price are to be received.

(e) Respondents have used letterheads as follows:

WE, THE PEOPLE
THE YEARBOOK OF PUBLIC OPINION. ISSUE FOR 1941-42
PUBLISHED EVERY YEAR BY THE PAEBAR COMPANY. FOUNDED 1929
220 WEST 42ND STREET. NEW YORK, N. Y.

In truth and in fact, neither said publication "We, The People" nor The Paebor Co. was founded in 1929. The Paebor Co. was registered as a trade name in 1934. The Paebor Co., Inc., was incorporated in 1935, and the first edition of "We, The People" appeared in 1939. Such representation, importing that the enterprise has had a longer existence than is the fact, and has brought out annual editions of "We, The People" over a period exceeding by 10 years the true span thereof, is misleading insofar as it causes or may cause an erroneous impression or belief by purchasers, as to the established foundation and reputability of said publication. Furthermore, such use of the date "1929" is a representation, contrary to fact, that the book title "We, The People"

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antedated the radio program "We, The People" which first appeared on the air in October 1936.

(f) Respondents in connection with their publication "Who's Who in Poetry in America" have made the following representations, in circulars, to progressive subscribers:

You will be glad to learn, therefore, that this poem is regarded as an example of contemporary American poetry. We believe it is suited for inclusion in the forthcoming issue of WHO'S WHO IN POETRY IN AMERICA and it is being considered for publication therein, along with the works of other favorite and promising writers.

We know you will also be delighted to learn that we wish to print your picture and a brief biography of your life, as well as this fine example of your writing ability.

* * * * *

Inclusion of your poem, together with an intimate biographical sketch and your picture will serve to bring your work, your personality, your appearance—in short, YOU—before the readers of WHO'S WHO IN POETRY IN AMERICA. These will, undoubtedly, lend much to the distinction and value of the book, and go far toward dispelling the belief that poets are different from other people. It will indicate clearly that they are flesh and blood like everyone else, but with that added quality, that, for want of a better word, we call "inspiration."

You cannot afford to be left out!

Please do not confuse WHO'S WHO IN POETRY IN AMERICA with any common type of anthology or review of poetry in which you may have previously appeared. Our book will be a work in a class by itself. It will definitely not be an anthology, but a Biographical Who's Who—a book that will present you and other writers whose work is either already known or should be more widely recognized than it is.

The publishers are sparing neither effort nor expense in making WHO'S WHO IN POETRY IN AMERICA a leading compilation of various modern American writers of verse. It will be edited with great care and will deal specifically and thoroughly with contemporary poets of America. As an indication of how well our two previous editions of this work were received (the first in 1941, the second in 1942) we are proud to announce that not one single copy of either edition was rejected by any subscriber for any reason; not only that, but every copy of each edition has been completely sold out. And, what is more, the forthcoming volume will definitely be an outstanding example of the bookmaker's art, as were the first two editions. It will be well printed and handsomely bound in full cloth with titles embossed in gold. The many illustrations will be excellently reproduced on high-grade paper. Taken all in all WHO'S WHO IN POETRY IN AMERICA will be a thing of beauty that will delight your eye as well as your mind and will be eminently suited for gift presentations.

Reserve your copies now!

* * * * *

P. S. 1—Because of the limitations on paper and other materials used for the production of books due to the war emergency, the War Production Board has limited the amount of such materials, which necessarily means a reduction in the size of all books. We are compelled, therefore, due to these restrictions, as well as to the rising costs of production, to give preference to the contributions

of those authors who subscribe for at least one copy of WHO'S WHO IN POETRY IN AMERICA.

In truth and in fact, such representations are exaggerated and extravagant, and are made for the purpose of securing subscriptions. Furthermore, respondents imply that if one does not subscribe, his work will not be published in their book.

PAR. 5. The use by the respondents of the aforesaid acts, practices and methods in connection with the offering for sale and the sale of their books, in said commerce, has had, and now has, the tendency and capacity to, and does, deceive and mislead members of the public, thereby inducing the purchase by a substantial number of the purchasing public of respondent's 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. 6. 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 August 22, 1945, issued and subsequently served its complaint in this proceeding upon the respondents The Paeber Co., Inc., and Alan F. Pater, individually and trading under the names The Paebear Co., Literary Publications, Who's Who Publishing Co., Columbia Book Publishing Co., and Judicial Publishing Co., 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. Respondents filed their answer on September 24, 1945. Subsequently, on March 21, 1946, respondents filed a motion to withdraw their original answer and in lieu thereof to substitute the answer dated March 21, 1946, admitting all of the material allegations of the fact set forth in said complaint and waiving all intervening procedure and further hearings as to the said facts. Respondents' said motion was granted by the Commission.

Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint and the answers thereto, 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

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the public and makes this its findings as to the facts and its conclusion based thereon.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent The Paebar Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York; the principal stockholder thereof is respondent Alan F. Pater, who exercises personal control over its business. Respondent Alan F. Pater also is a sole trader operating under various trade names as The Paebar Co., Literary Publications, Who's Who Publishing Co., Columbia Book Publishing Co., and Judicial Publishing Co. Respondents' principal place of business is now located at 1819 Broadway, New York 23, N. Y. Respondent Alan F. Pater resides at 4761 Broadway, New York, N. Y.

PAR. 2. Respondent Alan F. Pater is now and has from some time past, and The Paebar Co., Inc., has heretofore, been engaged in the publication, sale and distribution of books, and in connection therewith 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, in connection with the solicitation for the sale and the sale of said books, 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. The respondents maintain and have maintained 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 business, respondents are now, and have been, in competition with corporations, firms and individuals engaged in the publication, sale and distribution of books 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 deceptive acts or practices in connection with the sale of their products in said commerce.

PAR. 4. In the course and conduct of their business, as hereinabove described, the respondents The Paebar Co., Inc., and Alan F. Pater have published, sold, and distributed, in commerce, certain annual publications, and in connection therewith have engaged in the following acts and practices:

(a) Respondents have adopted and used the name "We, The People" as the title for a so-called yearbook of public opinion published, sold

and distributed by them. The designation or legend "We, The People" has become widely known and identified in the minds of the public generally as the title of a certain radio program sponsored by national advertisers; neither The Paebare Co. Inc., nor Alan F. Pater had, or has, any connection, direct or indirect, with the producers or sponsors of such radio program. The respondents' use of this well publicized name had, and has, the tendency and capacity to deceive and mislead the purchasing public as to the source or authenticity of said book and the prestige and responsibility of its publishers, and constitutes a representation to the public that such publication is a product of the producers or sponsors of the established and well-known radio program, "We, The People."

(b) Respondents adopted and used the trade name "Who's Who Publishing Company" under which they published and distributed a book of biographical data entitled "Who's Who in Poetry in America." For more than 40 years the A. N. Marquis Co. has published and distributed a well-known biennial volume of biographical sketches and data concerning thousands of living Americans notable in the fields of letters, education, business and public affairs, entitled "Who's Who in America." The use by the respondents of the words "Who's Who in Poetry in America" as the title of its said publication represents or tends to represent to the purchasing public that such publication is the product of or is in some way associated with the publishers of the long-established and well-known "Who's Who in America," when such is not the fact.

(c) Respondents' publications are generally of the so-called vanity type: respondents' clip poems and letters published in various newspapers and appeal to the vanity of the writers of such poems and letters and attempt to sell them the idea that their contributions to literature should be preserved for posterity in books to be published by respondents and subscriptions to such books are solicited from such contributors.

Typical representations appearing in form letters and pamphlets issued by respondents to the writer of "letter to the editor" are as follows:

(1) Because your letter voices an opinion of public interest, it has been selected by the Editorial Board of WE, THE PEOPLE: The Year Book of public opinion to appear in the — Edition of this annual publication.

The object of the YEAR BOOK is to present outstanding letters of public-spirited citizens like yourself, that have appeared in newspapers and magazines throughout this country and Canada. These timely, stimulating letters shed important light on what the great American public is really thinking. They are a segment of contemporary history, covering a wide range of subjects.

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This unique work will provide a quick review of the significant developments at home and abroad, *expressed in the language of the very people who are the backbone of our present civilization.* Nearly 2,000 letters will be included in the new book. As you go through them, you will find, side by side, letters from persons in practically every walk of life.

* * * * *

* * * Will you please fill out and return to us, the form on the back page, thus giving us permission to quote your letter either in its entirety or in part. Your letter will not be revised in any way as we want to convey *your* opinions in *your* language. *Mail Your Reservation For a First Press Copy At Once!*

Because of the many important events that have taken place during the past year, the 1946 Edition of WE, THE PEOPLE will be of exceptional interest. You will surely want a copy for your library—not only because it will contain your own contribution in permanent form, but also because it will bring to your attention the authoritative voice of the American People on subjects that vitally concern you.

The pre-publication price of the book is \$3.00. The regular, retail price is \$5.00. Last year's big edition was oversubscribed. Many were disappointed because their reservations arrived too late. Order now and take advantage of the present low price by returning the enclosed form immediately. Better mail it TODAY!

(2) And so you will find that publication of your letter in "WE, THE PEOPLE" will do what its appearance in your local newspaper cannot do: bring your message, your ideas, your beliefs, your convictions to the attention of we know not how many thousands of persons everywhere in this country.

But as the new edition of "We, The People" will go to press soon, please be sure to get your letter off at once. * * *

"WE, THE PEOPLE" is a pioneer in its field. By resurrecting from the newspaper file, each year, those quintessential elements of the year's written expressions which are deemed worthy of preservation in book form, the Year book becomes a helpful, classified, quotational resumé for those who could not keep posted during the year. The excerpts will encourage not only study but also fugitive reading.

In truth and in fact, there was and is no real selection by "the Editorial Board of We, The People" of letters to the editor. Respondent Pater subscribes to various newspapers and clips the editorial pages thereof and said respondent scans the letters to the editors appearing thereon and circularizes some 25,000 writers of such letters, prospective subscribers, annually for each volume. Upon receipt of a sufficient number of subscriptions to make the volume a paying proposition the book is published, the date depending upon how fast the subscriptions are received. At least 75 percent of the subscribers were the authors of letters published in the volume. The representation that "last year's big edition was oversubscribed—many were disappointed because their reservations arrived too late" is not in accordance with the facts. The so-called contributor's price of \$3 was the ordinary and usual price of the book, whose market is almost exclusively limited

to such unknown and recognized writers as are willing to pay the price of the volume to see their names and works in print. Not more than 1 percent of the purchasers pay the purported "regular retail price of \$5." The representations: that the volume "will contain your own contribution in permanent form"; that said publication will place such contribution in the hands of "we know how many thousands of persons everywhere in the country"; that the edition will "go to press soon," are inducements to buy, which are not in accordance with the facts insofar as they import or imply that the inclusion of such "selected" article is a certainty, that the book is of general interest, with many thousands of readers, and that the date of publication is so imminent that prompt reservations must be made for a copy of the first printing.

(d) Respondents, after receiving the subscribers' "permission to quote" and the \$3 subscription price, issue follow up form letters which state the terms under which the "selected" article has been received, to-wit: That the editor may revise or abridge said article without recourse on the part of the contributor; that its acceptance is on the basis of merit and public interest only, publication thereof not being conditional upon a subscription for copies of the book; that the subscriber had ordered the book on his "own volition" and if his contribution is omitted "neither the editor or publisher will be held responsible in any manner" and "shall not be obligated to cancel such order"; and that, as there will be a necessary consumption of time, the date of publication is indefinite. In fact, contrary to the subscriber's expectation, months have elapsed, sometimes a year, before the volume was finally delivered; and where the subscriber has desired a refund of his purchase price, there has been unnecessary delay in remitting the same.

Respondents' contact advertising material hereinabove quoted is thus further misleading and deceptive insofar as such material fails to disclose such terms under which the requested contribution and subscription price are to be received.

(e) Respondents have used letterheads as follows:

WE, THE PEOPLE

THE YEARBOOK OF PUBLIC OPINION. ISSUE FOR 1941-42

**PUBLISHED EVERY YEAR BY THE PAEBAR COMPANY. FOUNDED 1929
220 WEST 42ND STREET. NEW YORK, N. Y.**

In truth and in fact, neither said publication "We, The People" nor The Paebare Co., was founded in 1929. The Paebare Co., was registered as a trade name in 1934. The Paebare Co., Inc., was incorporated in 1935, and the first edition of "We, The People" appeared in 1939. Such representation, importing that the enterprise has had a longer existence than is the fact, and has brought out annual editions of "We, The

People" over a period exceeding by 10 years the true span thereof, is misleading insofar as it causes or may cause an erroneous impression or belief by purchasers, as to the established foundation and reputability of said publication. Furthermore, such use of the date "1929" is a representation, contrary to fact, that the book titled "We, The People" antedated the radio program "We, The People" which first appeared on the air in October 1936.

(f) Respondents in connection with their publication "Who's Who in Poetry in America" have made the following representations, in circulars, to prospective subscribers:

You will be glad to learn, therefore, that this poem is regarded as an example of contemporary American poetry. We believe it is suited for inclusion in the forthcoming issue of "WHO'S WHO IN POETRY IN AMERICA" and it is being considered for publication therein, along with the works of other favorite and promising writers.

We know you will also be delighted to learn that we wish to print your picture and a brief biography of your life, as well as this fine example of your writing ability.

* * * * *

Inclusion of your poem, together with an intimate biographical sketch and your picture will serve to bring your work, your personality, your appearance—in short, YOU—before the readers of WHO'S WHO IN POETRY IN AMERICA. These will, undoubtedly, lend much to the distinction and value of the book, and go far toward dispelling the belief that poets are different from other people. It will indicate clearly that they are flesh and blood like everyone else, but with that added quality, that, for want of a better word, we call "inspiration." *You cannot afford to be left out!*

Please do not confuse WHO'S WHO IN POETRY IN AMERICA with any common type of anthology or review of poetry in which you may have previously appeared. Our book will be a work in a class by itself. It will definitely not be an anthology, but a Biographical Who's Who—a book that will present you and other writers whose work is either already known or should be more widely recognized than it is.

The publishers are sparing neither effort nor expense in making WHO'S WHO IN POETRY IN AMERICA a leading compilation of various modern American writers of verse. It will be edited with great care and will deal specifically and thoroughly with contemporary poets of America. And an indication of how well our two previous editions of this work were received (the first in 1941, the second in 1942) we are proud to announce that not one single copy of either edition was rejected by any subscriber for any reason; not only that, but every copy of each edition has been completely sold out. And, what is more, the forthcoming volume will definitely be an outstanding example of the bookmaker's art, as were the first two editions. It will be well printed and handsomely bound in full cloth with titles embossed in gold. The many illustrations will be excellently reproduced on high grade paper. Taken all in all WHO'S WHO IN POETRY IN AMERICA will be a thing of beauty that will delight your eye as

well as your mind and will be eminently suited for gift presentations. *Reserve your copies now!*

* * * * *

P. S. 1.—Because of the limitations on paper and other materials used for the production of books due to the war emergency, the War Production Board has limited the amount of such materials, which necessarily means a reduction in the size of all books. We are compelled, therefore, due to these restrictions, as well as to the rising costs of production, to give preference to the contributions of those authors who subscribe for at least one copy of *WHO'S WHO IN POETRY IN AMERICA*.

In truth and in fact, such representations are exaggerated and extravagant and are made for the purpose of securing subscriptions. Furthermore, respondents imply that if one does not subscribe, his work will not be published in their book.

PAR. 5. The use by the respondents of the aforesaid acts, practices, and methods in connection with the offering for sale and the sale of their books in said commerce has had, and now has, the tendency and capacity to, and does, deceive and mislead members of the public, 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.

CONCLUSION AND OPINION

The aforesaid 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.

The Commission has given consideration to the possibility of permitting a qualification of the title "*Who's Who in Poetry in America*" so as to permit the continuance of the trade name without deception to the public.

It is admitted by the answer of the respondents that "*Who's Who in America*" has been published and distributed by the A. N. Marquis Co., as a biennial volume of biographical sketches for more than 40 years and that the use of the title "*Who's Who in Poetry in America*" tends to represent that said publication is the product of, or in some way associated with, the publishers of "*Who's Who in America*."

In the matter of *Julius C. Schwarz, et al.*, Docket 5108, the Commission, after consideration of the testimony and other evidence taken

Conclusion and opinion

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therein, made the following findings with reference to the publication "Who's Who in America":

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.

* * * * *

By reason of its reputation for accuracy, reliability, and selectivity built up and established over a period of more than 40 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."

In selecting a title for their publication "Who's Who in Poetry in America," the respondents have selected one best calculated to deceive the public and give to their publication a cloak of reliability, accuracy, and selectivity to which it is not entitled. As stated by the Circuit Court of Appeals in *Florence Manufacturing Co. v. J. C. Dowd & Co.*, 178 Fed. 73, 75:

It is so easy for the honest businessman, who wishes to sell his goods upon their merits, to select from the entire material universe, which is before him, symbols, marks, and coverings which by no possibility can cause confusion between his goods and those of competitors, that the courts look with suspicion upon one who, in dressing his goods for the market, approaches so near to his successful rival that the public may fail to distinguish between them.

It is the opinion of the Commission that the name so selected so closely simulates the well-known publication "Who's Who in America" that persons, when approached to purchase respondents' publication or furnish data to be incorporated therein, will, because of the name, immediately associate said publication with the publication "Who's Who in America" and believe that respondents' publication is either published by the publishers of "Who's Who in America" or that respondents are in some way associated with or connected with such publishers.

It is the further opinion of the Commission that the initial impression created in the public mind by the use of the term "Who's Who" in the title of respondents' publication is such that the deception thereby engendered cannot be satisfactorily removed by any qualification

thereof. In the opinion of the Commission the deception created by such title can best be removed and public interest served by requiring the respondents to discontinue the use of the term "Who's Who" in the title of their publication.

It is also the opinion of the Commission that while the use of "We, the People" in the title of respondents' second publication is calculated to appropriate to it some of the good will established by the radio program of the same name, the activities of the respondents are so far removed from that of the radio program that any deception resulting from the use of such name can be satisfactorily removed by clearly and conspicuously qualifying such title to show that the publication "We, the People" has no connection with the radio program of the same name.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of the respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts; 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 the respondents, The Paebare Co., Inc., a corporation, and its officers, and Alan F. Pater, individually and trading under the names The Paebare Co., Literary Publications, Who's Who Publishing Co., Columbia Book Publishing Co., and Judicial Publishing Co., 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 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 respondents' publication, "Who's Who in Poetry in America" or in the title of any other book of biographical reference, or using the term "Who's Who" in any other manner to represent or imply that the respondents are associated or connected with the publishers of "Who's Who in America."

2. Using the term "We, the People" in the title of any of respondents' publications unless wherever such words are used it shall be clearly and conspicuously stated in immediate connection and conjunction therewith that the respondents are not associated or connected

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with the producers or sponsors of the radio program "We, the People."

3. Inducing the purchase of respondents' publications and the payment of the purchase price by representing that the purchaser's article or poem will be incorporated in respondents' publication, without revealing to such purchaser until after payment that respondents reserve the right to revise, abridge, or omit the article or poem of the purchaser without return of the purchase price.

4. Representing that respondents have been engaged in the book-publishing business for a longer period of time than is the fact.

5. Representing, directly or by implication, that publications which are offered for sale at the usual and customary prices therefor are being sold at a special contributor's price or at reduced price; or in any other manner representing that a purchaser is receiving an advantage in price or other consideration not ordinarily available.

It is further ordered, that the respondents shall, within 60 days after the 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.

Commissioner Ferguson not participating on account of his absence from Washington.

Complaint

IN THE MATTER OF

WEST COAST PACKING CORPORATION ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5432. Complaint, Apr. 15, 1946—Decision, Sept. 5, 1946

Where a corporation and three officers thereof, engaged in the packing and interstate sale and distribution of fish and sea-food products, which they sold (1) through legitimate intermediaries who acted as their agents and to whom they paid commissions and brokerage fees for the services so rendered; (2) to direct buyers and so-called "buying brokers" who in fact purchased in their own names and for their own accounts; and (3) to direct buyers and "brokers", to whom they made fictitious "consignments", and upon whom they drew for payment in full prior to arrival of said "consignments" of their products, which said "consignee" buyers paid for and, at owner's risks and with full title, resold for their own accounts, at prices, terms, and conditions of sale determined by them, to firms and in quantities made known by said "consignee" buyers to said corporation and its officers—

- (a) Paid to said direct buyers and so-called "buyer brokers", first referred to, commissions, brokerage, or other compensation or allowances or discounts in lieu thereof, on said purchases made in their own names and for their own accounts for resale, (1) through allowing therefor on the face of the invoice, (2) through direct remittance, or (3) by invoicing said buyers at a net price which reflected commissions or brokerage, etc.; and
- (b) Paid brokerage to aforesaid "consignee buyers" on said direct sales—the true nature of which they masked under the fictionalized designation of "consignments" in order to impart a color of legality to such brokerage payments—through remitting brokerage on such consigned products represented as resold by said buyers:

Held. That the paying and granting, directly or indirectly, of commissions, brokerage, or other compensation or allowances or discounts in lieu thereof to buyers of their food products, who purchased such products in their own name and for their own account for resale as above set forth, were in violation of subsection 2 (c) of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Ekdale & Shallenberger, of San Pedro, Calif., for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13) as amended by