

Order

IN THE MATTER OF
AMERICAN ASSOCIATION OF LAW BOOK PUBLISHERS
ET AL.

ORDER MODIFYING ORDER OF AUG. 23, 1944

Docket 4526. Order, Mar. 31, 1948

Order in proceeding in question—in which findings, and cease and desist order, as modified June 26, 1944, are reported in 38 F. T. C. 319, and as further modified August 23, 1944, in 39 F. T. C. 101—in which said last named order required respondent association, its members, etc., in connection with the offer, etc., in commerce, of law books and related publications, to cease and desist from concertedly or cooperatively establishing, fixing, or maintaining discounts and terms or conditions of sale therefor, and maintaining or adhering to the selling price, terms, and conditions fixed and established by the respondent-publisher; and from various other practices in such connection, and subject to certain exceptions as to the joint publication of any specific law book, or set of law books or related legal publication; and in which the Circuit Court of Appeals for the Second Circuit, on August 19, 1947, in *Callaghan and Co. v. Federal Trade Commission*, 163 F. (2d) 359, held said order of August 23, 1944, valid and enforceable in its entirety except with respect to one petitioner, the Frank Shepard Co., as to whom the court held said order should be modified to apply only to the extent that it forbids agreement as to allowable discounts—

Modifying aforesaid order of August 23, 1944, to apply to said the Frank Shepard Co. only to the extent that it forbids such agreement.

ORDER MODIFYING ORDER OF AUGUST 23, 1944

The order entered herein August 23, 1944, modifying an earlier modified order to cease and desist issued by the Federal Trade Commission, have been presented for review on a petition to the United States Circuit Court of Appeals for the Second Circuit by respondents, Callaghan & Co., the Frank Shepard Co., West Publishing Co., the American Law Book Co., Edward Thompson Co., Vernon Law Book Co., Washington Law Book Co., Burdette Smith Co., and James R. Spillane, and said court having held that said order is valid and enforceable in its entirety except with respect to one petitioner, the Frank Shepard Co., as to whom the court held said order should be modified to apply to said petitioner only to the extent that it forbids agreement as to allowable discounts,

It is therefore ordered, That the said order of August 23, 1944, herein, be and the same is hereby modified to apply to the Frank Shepard Co. only to the extent that it forbids agreement as to allowable discounts.

NOTE.—Order entered August 23, 1944, modifying modified order to cease and desist, follows:

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission; the answers of the respondents; a stipulation as to the facts and a supplemental stipulation as to the facts entered into between W. T. Kelley, chief counsel for the Federal Trade Commission, and the following corporate respondents: The W. H. Anderson Co., Baker, Voorhis & Co., Bancroft-Whitney Co., Matthew Bender & Co., Inc., Bender-Moss Co., Clark Boardman Co., Ltd., Bobbs-Merrill Co., John Byrne & Co., Dennis & Co., Inc., the Harrison Co., the Lawyers Co-Operative Publishing Co., Little, Brown & Co., the Michie Co., National Law Book Co., Public Utilities Reports, Inc., Soney & Sage Co., Thomas Law Book Co., Williamson Law Book Co., and Fallon Law Book Co., which stipulations provide among other things, that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of further testimony, argument, filing of briefs, or other intervening procedure; and also upon testimony and other evidence taken in support of the allegations of said complaint and in opposition thereto as to the respondents American Association of Law Book Publishers, and unincorporated association, and its officers James R. Spillane, president, Clifford W. Mueller, vice president, Richard Reiner, treasurer, and R. Walter White, secretary, and the American Law Book Co., George T. Bisel, an individual trading as George T. Bisel Co., the Frank Shepard Co., Burdette Smith Co., Edward Thompson Co., Vernon Law Book Co., Washington Law Book Co., West Publishing Co., and Callaghan & Co., before a trial examiner of the Commission theretofore duly designated by it; report of the trial examiner upon the evidence and exceptions filed thereto; briefs in support of the complaint and in opposition thereto; and oral argument of counsel; and the Commission having made and entered its findings as to the facts, conclusion, and order to cease and desist April 26, 1944, and modified order to cease and desist June 26, 1944, and thereafter, upon motion by counsel for certain of the respondents, the Commission reconsidered the modified order to cease and desist heretofore entered and being of the opinion that an order modifying such modified order to cease and desist should be issued in said cause and having duly considered the record and being now fully advised in the premises issues this its order modifying its modified order to cease and desist:

It is ordered, That the respondents, American Association of Law Book Publishers, an unincorporated association; the American Law Book Co., a corporation, the W. H. Anderson Co., a corporation; Baker, Voorhis & Co., a corporation; Bancroft-Whitney Co., a corporation; Matthew Bender & Co., Inc., a corporation; Bender-Moss Co., a corporation; Clark Boardman Co., Ltd., a corporation; Bobbs-Merrill Co., a corporation; John Byrne & Co., a corporation; Dennis & Co., Inc., a corporation; the Harrison Co., a corporation; the Lawyers Co-Operative Publishing Co., a corporation; Little, Brown & Co., a corporation; the Michie Co., a corporation; National Law Book Co., a corporation; Public Utilities Reports, Inc., a corporation; the Frank Shepard Co., a corporation; Burdette Smith Co., a corporation; Soney & Sage Co., a corporation; Thomas Law Book Co., a corporation; Edward Thompson Co., a corporation; Vernon Law Book Co., a corporation; Washington Law Book Co., a corporation; West Publishing Co., a corporation; Williamson Law Book Co., a corporation; Callaghan & Co., a corporation; and Fallon Law Book Co., a corporation, and their respective officers, agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of law books and related legal publications in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out, or directing, instigating, or cooperating in, any planned common course of action, mutual agreement, understanding, combination, or conspiracy between and among any two or more of said respondents or between any one or more of said respondents and others not parties hereto to do or perform any of the following acts or practices:

1. Establishing, fixing, or maintaining discounts, terms, or conditions of sale for law books and related legal publications or adhering to or promising to adhere to the discounts, terms, or conditions of sale so fixed.

2. Maintaining or adhering to the selling price, terms, and conditions of sale of law books and related publications fixed and established by the respondent who publishes such books.

3. Holding or participating in any meeting, discussion, or exchange of information among themselves or under the auspices of the respondent American Association of Law Book Publishers or any other medium or agency concerning proposed or future discounts, terms, or conditions of sale or concerning bids and price quotations in advance of the submission of such bids or price quotations to purchasing officials of the Federal Government or to awarding authorities of other

governmental units or subdivisions or to any buyer of law books and related legal publications.

4. Arriving at the amount of any bid or the discount, terms, or conditions of sale to be submitted to purchasing officials of the Federal Government, to awarding authorities of other governmental units or subdivisions, or to any buyer of law books and related legal publications through agreement, understanding, or collusion with other bidders.

5. Establishing, fixing, or maintaining the rates of allowances to be made, used, and applied on books and other publications received in trade, or fixing and maintaining the prices, terms, or conditions of sale governing the resale of such law books and related legal publications taken in trade.

6. Jointly or cooperatively inducing or promoting adherence to, or attempting to induce or promote adherence to, agreements and understandings relative to the sale and distribution of law books and related legal publications by interchange of correspondence, by personal contact with one another individually or in groups, or by policing the bids or sales transactions of respondent members through the respondent Association or otherwise.

7. Employing or utilizing any of the actual practices specifically prohibited herein as a means or instrumentality of otherwise restricting, restraining, or eliminating competition in the sale and distribution of law books and related legal publications.

8. Employing or utilizing American Association of Law Book Publishers or any other medium or central agency as an instrument, vehicle, or aid in performing or doing any of the acts and practices prohibited by this order.

It appearing to the Commission that the record herein does not directly and specifically raise any issue of the legality of joint publication ventures and that it is not necessary to determine any such issue in the present proceeding: *It is therefore further ordered*, That the order to cease and desist herein shall not be construed as prohibiting joint publishers of any specific law book, set of law books or related legal publication, from engaging in the cooperative activities otherwise prohibited by this order: *Provided*, That such activities are pursued in good faith and solely with respect to publishing and selling such jointly published law book, set of law books, or related legal publications in the usual and ordinary course of business and are not used for the purpose of evading the terms of the order. By this action the Commission does not now pass upon the legality or illegality of joint publication ventures as such, and this action is without prej-

udice to the Commission's right to institute a new proceeding at any time with respect to the legality of such ventures.

It is further ordered, That nothing herein contained shall be construed as prohibiting a parent corporation from directing the prices or terms at which any of its subsidiary corporations shall sell any law book or related legal publication published by the parent corporation or by any of its subsidiaries when such prices or terms have been arrived at by the parent corporation acting separately and independently of any competitor of the parent corporation or of any of its subsidiary corporations.

It is further ordered, That nothing in this order is to be construed as prohibiting any of said corporate respondents from entering into such contracts or agreements relating to the maintenance of resale prices as are not prohibited by the provisions of an act entitled, "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890 (the Sherman Act), as amended.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to George T. Bisel, an individual trading as George T. Bisel Co.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
KENITE LABORATORY, INC.

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

Docket 4976. Complaint, June 4, 1943—Decision, Mar. 31, 1948

Where a corporation engaged in the interstate sale and distribution of a product which was designated "Kek" and advertised and used as a boiler cleaner and steam conditioner; in advertising folders, pamphlets, circular letters, labels, and other advertising material, directly and by implication—

(a) Falsely represented that its said product was an effective cure for defective heating generally and could be depended upon to separate foreign matter from the water in a boiler;

(b) Represented falsely that use thereof would increase steam pressure in a boiler or heating system, and create dry steam; that it could be depended upon to cause an abundance of steam to fill and heat radiators; and that it would otherwise eliminate defective steaming conditions in cast iron or steel boilers;

The facts being that it would not bring about such results when any of said conditions were caused by mechanical defects not associated with the contamination of the water in the system, such as faulty installation of the heating system, defective check valves, leaky condensers, etc.;

(c) Falsely represented that defective steaming conditions are prevalent in cast iron and steel boilers;

(d) Falsely represented that it would completely remove the scale from boilers;

(e) Falsely represented that it would correct the inefficiency of a steam heating system as indicated by its inability to raise steam pressure, water leaving the boiler when the pressure rises, hammering in pipe lines and radiators, water in radiators, ejection of water by air valves, or excessive fuel consumption;

The facts being that said manifestations may be caused by mechanical defects not associated with the contamination of the water in the system; and

(f) Represented that a certain testing powder or chemical supplied by it could be depended upon to determine whether the water content of a boiler contained ingredients deleterious to the boiler or heating system;

The facts being the results of such tests were limited to a determination of whether the boiler contents had an alkalinity greater than approximately pH 8.5; a certain amount of alkalinity in a boiler or heating system is necessary for the proper operation thereof; and other tests than that recommended by it are necessary to determine specifically the hardness of the water or the presence of calcium, magnesium, chlorides, sulfurs, dissolved carbon dioxide and other chemicals in a boiler, presence of which its said testing chemicals would not specifically disclose;

With effect of misleading prospective purchasers into the mistaken belief that its said product would accomplish all the results claimed therefor and thereby causing a substantial portion to purchase the same: