

IN THE MATTER OF
AMERICANA CORPORATION AND FRED P. MURPHY,
JOSEPH C. GRAHAM, JR., AND THOMAS J. KIRK

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

Docket 5085. Complaint, Nov. 20, 1943—Decision, July 14, 1948

Where a corporation and its successor, and three officers thereof, engaged in the publication and competitive interstate sale and distribution of an encyclopedia designated "Americana" or "Encyclopedia Americana" and supplements and yearbooks issued in connection therewith; through advertisements, circulars, and pamphlets and also through sales talks, manuals, and radio broadcasts, directly or by implication—

- (a) Represented that said publication was the only national American encyclopedia and was the best known and most authoritative one published in the United States, was "America's Supreme Authority for Over One Hundred Years," and stood "alone as the first National American Encyclopedia";

The facts being that the corporation first referred to was the successor to the publisher of a work thus named in 1904 which was based on a similarly entitled publication first published in 1829; much of the text and many of the articles were similar to or identical with or evolved from those in the 1832 and 1846 editions, as revised and supplemented from time to time; their said publication was not the only national or the best known or most authoritative American encyclopedia, and neither it nor any other encyclopedia had ever been determined to be America's supreme authority;

- (b) Falsely represented that it was the unanimous choice of every government department, educational institution, board of education, and public library as the official reference work, and that it contained more articles and presented more information on subjects of practical, present day interest and importance than any other set of books;
- (c) Represented that the publication offered for sale was a new and revised one, and that prior to its introduction to the public generally it was offered to a few selected individuals in each community at special and reduced prices or under special conditions unavailable to ordinary purchasers;
- (d) Represented, through such statements by them and others as "I am not here to sell you," that the solicitors were not salesmen, and were paid no commission for selling, but were interviewing reputable persons for the purpose of conferring upon them a special favor, that they were authorized to place a few sets with a limited number of prominent people in the community at a normal cost, and that because of the prominence of the prospect they would give him a set at no cost or at a reduced price in return for a letter of recommendation thereafter, and that such special prices would not be offered to the general public but were limited in time and to a selected group as aforesaid, and displayed through some salesmen purchase orders showing the sales price to be as much as \$250;

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The facts being the publication was not as aforesaid noted, new, but was simply a new printing prepared from old plates with some revisions and new articles inserted; persons employed to introduce the publication to the public were in fact salesmen soliciting prospects to purchase at regularly established prices; so-called special or introductory prices were the usual prices, available to all purchasers; and no sets were reserved or given free or at a special reduced price or sold in consideration of a letter of commendation but buyer was required to pay as aforesaid the established full purchase price; and, following initiation of sales to the general public in 1939 in combination with the annual supplements or yearbooks, and through salesmen, the price increased progressively from \$99.50 to the present price of \$169.50 in the Sealcraft binding;

With tendency and capacity to mislead a substantial portion of the purchasing public into the mistaken belief that such representations were true, and with result of inducing it to purchase substantial quantities of their said work, whereby substantial trade was thereby diverted unfairly 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 in commerce, and unfair and deceptive acts and practices therein.

In said proceeding in which respondent corporation had theretofore subscribed to the trade practice conference rules for the subscription and mail order book publishing industry, which covered all of the practices involved in said proceeding; and in which the individual respondents, its officers, contended that all of the practices employed in connection with the sale of said work since said time had been engaged in only by respondents' salesmen, all of whom had, as a consequence, been discharged, and that they, i. e., said individual respondents were not responsible in any way for a continuation of such practices; the Commission, in the absence of any direct evidence to the contrary, accepted such contention as an accurate statement of the situation, and under the circumstances found that no further corrective action was necessary against said individual respondents.

Before *Mr. Randolph Preston*, trial examiner.

Mr. John M. Russell for the Commission.

Mr. J. Raymond Tiffany and *Mr. Benjamin Werne*, 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 Americana Corp., a corporation, and Fred P. Murphy, Joseph C. Graham, Jr., and Thomas J. Kirk, individuals, 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

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public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Americana Corp., is a corporation organized, existing, and doing business under any by virtue of the laws of the State of New Jersey, and respondents Fred P. Murphy, Joseph C. Graham, Jr., and Thomas J. Kirk, individuals, are respectively president, vice president and treasurer, and secretary of said corporation. The individual respondents have dominant control of the advertising and sales policies and business activities of said corporate respondent, and 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 2 West Forty-fifth Street, New York, N. Y., and sales offices are maintained in various other principal cities throughout the United States.

PAR. 2. Respondents are now and for several years last past have been engaged in the publication and sale of an encyclopedia designated "Americana" or "Encyclopedia Americana." Respondents cause their said encyclopedias, when sold, to be shipped from their aforesaid places of business to the purchasers thereof located in States other than those from which such shipments are made, and in the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a course of trade in their said encyclopedias 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 are now and have been for several years last past in competition with corporations, firms, and individuals engaged in the sale and distribution of encyclopedias 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 said business, and in connection with the sale of "Americana" or "Encyclopedia Americana" as hereinbefore set out, respondents have made numerous false, misleading, and disparaging statements and representations to purchasers and prospective purchasers of said encyclopedias by means of advertisements, circulars, broadsides, and pamphlets, and also by means of sales talk manuals and oral representations by their sales agents and representatives.

Among and typical of the statements made in respondents' advertising circulars, broadsides, and pamphlets are the following:

Made in America—For Americans—By Americans.

England has her Britannica, France has her Larousse, Germany has her Brockhaus, and America has her Americana, The Great National Encyclopedia.

The Americana stands alone as the first National American Encyclopedia.

There are only two recognized major encyclopedias published in the English language today—and only *one* is American throughout—The New Americana. That is why every government department, every important university and college, every public library, every Board of Education uses it as the official reference work.

The Americana is published in America by Americans for Americans. It has the American viewpoint and looks at the world through American eyes.

Americana was first published in 1829 in America and is today the outstanding American institution of its kind with more than one hundred years of experience in giving unbiased facts to Americans.

America's Supreme Authority For Over One Hundred Years.

110 years old.

A brand-new edition of The Americana has just come off the press.

Americana's New Second Century Edition.

The Americana has more than 24,000 pages with signed articles by 3,000 experts.

It has more articles by many thousands than any other encyclopedia and presents more information on subjects of practical present-day interest and importance than any one set of books that has ever been printed.

What impresses a Catholic most in the new Americana is the evident intention of the editorial staff to play fair; not to make the work a series of pegs, on which every Tom, Dick or Harry might hang his theories and vagaries; but to issue a storehouse of information, accurately garnered by men of authority on all leading subjects. In this, the Americana is a striking contrast with the Britannica. The editors of that encyclopedia impress one as having of set purpose picked out the foes of the Church, to misrepresent her. They are accurate in this misrepresentation as we might expect Benedict Arnold to have been, had he written on the separation of the American Colonies from England. Not so the Americana. It chooses loyal Catholics to write on Catholic subjects. The Jesuits are assigned to a Jesuit; and not, as in the Britannica, to their avowed enemy.

Its clarity, simplicity, completeness and reliability have made it the unanimous first choice of Board of Education and educational institutions throughout the country.

The Americana Annual is the most costly volume of its kind to produce now published in America.

Americana is 100% American in Editing, Printing, and Binding. It is International in authorship and America's Most Complete Major Encyclopedia.

The Encyclopedia Americana, published by an old American firm of the highest reputation, was first published in 1829 and is the best known and authoritative American major reference work.

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Among and typical of the statements made by respondents by means of sales talk manuals and oral representations by agents and canvassers are the following:

We are coming in here in about six months with our 1938 Edition of Americana which has just been completed at an expenditure of over two million for the purpose of competing with our English competitor, Britannica.

The purpose of my work here is to contact a diversified group of business and professional men to establish a foundation in this community for future activities. I'm not here to sell you.

We are the only company in existence who publish a complete bound volume annually.

The base set of 30 volumes retails at \$150.00. The Annuals will cost \$10.00 each. In other words there will be a total obligation of \$250 up to the year 1949. However, if you will agree to cooperate with us by giving us a letter of commendation or the privilege of listing your name as a "local owner," we will send out the entire set of 30 volumes, mark the \$150.00 paid in full for a handling charge of \$19.50. Will supply the Annuals, not at \$10 per year, but at cost to us at the rate of \$8.00. In other words, your total obligation would be ten times eight for the Annuals, plus the \$19.50 handling charge on the original \$150.00 set.

The Britannica is a good encyclopedia but even if you have the 14th edition, it came out in 1929 and is now ten years out of date and in ten years more will be twenty years out of date, while this work will have increased by ten volumes and approximately 8,000 pages and be as new as the day it was delivered.

If the account is liquidated within a year or a year and a half, we will also include without additional cost your choice of this \$20.00 Book Case, which has been made especially for the work, or the New Century Dictionary in 2 volumes which retails for \$25.00.

If you will give us this sort of cooperation, we will send you the entire set of 30 volumes in the maroon Artex which, as you may know, has sold for \$150.00 in library buckram (and in full leather as high as \$300.00) at a cost to you of only \$29.50. We will supply the Annual, not at \$10 a year, but at the rate of \$8.95 and bind ourselves to give it at that cost for the ten-year period. \$1.95 of this amount partially represents current editorial and administrative expenses, and naturally we will not even permit you to pay at this time but yearly when the annual is delivered to you; deducting this amount from the \$8.95 leaves a net to you at this time of only \$7.00, so your total obligation at the present time would be ten times \$7.00, which is \$70, for the Annuals plus your cost of \$29.50 on the original 30 volumes, or a total to you at this time of \$99.50.

And if you will liquidate the account within about a year, we will also include without additional cost to you, your choice of this \$17.50 bookcase, which has been made specially for the work, or the New Century Dictionary in two volumes, which the publishers priced at \$25.00 on this broadside.

Mr. Prospect, the Americana is to America what Britannica is to England and the LaRousse is to France.

On this combination offer, we will send you the entire thirty volumes, bound in red Artex, which set we consider equivalent in content to the edition in Library Buckram sold for many years at \$150, at a cost to you of only \$29.50.

PAR. 5. In addition to the aforesaid false, misleading, and disparaging representations made by respondents in their advertising literature and by their official sales talks and manuals for the guidance and instruction of their salesmen, which representations have likewise been made orally by respondents' salesmen in the regular course of their sales activities, respondents' salesmen and agents have made numerous and varied misrepresentations of fact to customers and prospective customers, with the knowledge, consent, and ratification of the respondents, for the purpose of inducing the purchase of the "Americana" or "Encyclopedia Americana" and supplements thereto.

Said misrepresentations have varied according to the ingenuity or mendacity of the individual salesmen or the exigencies of individual sales transactions, but they have in general conformed to the pattern and scheme of approach officially approved and taught to the salesmen by the written sales talks and manuals furnished by respondents for the guidance and instruction of their salesmen.

Among, and typical of, representations made by respondents' canvassers and sales representatives and the practices used are the following:

It is represented that a recently completed, new and up-to-date edition of the Encyclopedia Americana was just off the press, and that preliminary to a general offering to the public a number of sets had been reserved for a prepublication offer to certain selected persons as a means of advertising, rather than to spend large sums in national advertising in the magazines and newspapers; that the solicitor was not a salesman and was paid no commission for selling, but was a spotter for the publisher's publicity department, hunting reputable persons in various communities to receive this special favor; that he was authorized to place a few sets with a limited number of prominent people in the community, the chosen list being restricted to certain outstanding or prominent individuals whose names and endorsements would be of value when the encyclopedia was later put on general sale.

The prospect solicited in each instance was represented to be one of the selected few to receive this special introductory offer, variously represented to be at a reduced price, at one-half the regular price, or much cheaper than the price to be paid by general public. The regular price of the set of Encyclopedia Americana was variously represented to be \$150, \$240, \$250, \$520, or \$600, and the "special" reduced price was variously set at \$99.50, \$129.50, or \$139.50, including a 10-year membership in the American Institute or Research Bureau, or a 10-year subscription to an annual supplement or year book.

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Other customers were required to pay \$19.50 for the set of 30 volumes and \$80 for the annual supplements, others \$29.50 for the set and \$70 for the supplements. The supplements were alleged to be payable over a 10-year period, but to customers who paid in full within 18 months or less additional inducements or bonuses were offered, such as a special bookcase worth \$20 or \$17.50, or a dictionary worth \$25. It was emphasized in all cases that these special prices and bonuses would not be offered to the general public, but would be offered only for a limited time to a selected group of influential and prominent citizens in the community. Some salesmen exhibited or displayed a "flash contract" or fake order blank showing \$250.00 as the regular price of the Americana, or made false statements regarding purported recommendations by alleged purchasers of the work.

In all cases, the contract submitted by the salesman for signature by the prospect provided for an initial payment with the order and monthly payments thereafter until the entire amount was paid, with the further provision that the contract was noncancellable and not by any agreement not stated therein.

PAR. 6. By means of the foregoing statements, representations, and practices made and used by respondents and their salesmen in circulars, pamphlets, sales talks and advertisements, and other statements not specifically set out herein, respondents have represented, directly and by implication and inference, that the Encyclopedia Americana is the only American encyclopedia, and that other encyclopedias, including the Britannica, have a foreign origin, background, and viewpoint; that Americana has been continuously published for over a hundred years, and has more articles and presents more information than any other encyclopedia; that it is preferred by all of the leading educational and governmental institutions in the United States, and is the best known and most authoritative encyclopedia published in the United States; that respondents offer a special or reduced price to a few selected individuals in each community prior to introduction of a new and revised edition of the Americana soon to come off the press; that the Americana regularly sells for \$150 or more and annual supplements thereto regularly sell for \$10 each; that the Encyclopedia Britannica is not up to date and is not revised by means of annual supplements as is the Americana; and that the bookcase and dictionary offered as "premiums" with the Americana are worth \$20 and \$25 respectively.

PAR. 7. The representations and practices set out in paragraphs 4 and 5 so made and used by the respondents and their salesmen as aforesaid, and others of similar import and effect not specifically set out

herein are misleading and deceptive to the public and defamatory and disparaging to respondents' competitor publication, the *Encyclopedia Britannica*.

The *Encyclopedia Britannica* has been entirely owned and published in the United States since 1902, and is not an English publication. It is as American throughout as is the *Encyclopedia Americana*. Its presentation of subjects dealing with various religious faiths is as complete and unbiased as that of the *Americana*. The *Americana* does not "stand alone" as "The great national American encyclopedia," since the *Encyclopedia Britannica* is also published in America, by Americans, for Americans. It is not true that every government department, every important university and college, every public library, and every board of education uses the *Americana* as the official reference work. The *Encyclopedia Britannica* also has the American viewpoint and is just as widely, and is in fact more widely used, in American public institutions than is the *Encyclopedia Americana*.

The encyclopedia published by respondents and known as "*Americana*" was first compiled and published in 1903-04. It has no connection with an encyclopedia published in 1829 also called *Americana*. An *Encyclopedia Americana* edited by Francis Lieber was published in 1829, but the present "*Americana*" published in 1903-04 is not a continuation of, and has no historical or other connection with the previous work. Respondent corporation is not an "old American firm," but was organized not more than 30 years ago. The "*Americana*" is not "110 years old," and has not been continually published for over a hundred years.

The current issue of *Americana* is not a "brand-new edition" but is merely a plate revision of the fourth edition published in 1918. There has been no complete revision or new edition of the *Americana* published since that date; subsequent printings having been made from the old plates, with some revisions and new articles inserted from time to time. It does not have 3,000 contributors or experts and does not have more articles or present more information than any other encyclopedia or any other set of books that has ever been printed. It has only about one-half the word content of the *Encyclopedia Britannica*, and is neither the unanimous nor the first choice of Boards of Education or of educational institutions throughout the country. The *Americana Annual* is not the most costly volume of its kind to produce now published in America.

The *Americana Corp.* is not the only company in existence which publishes a complete bound volume annually. A similar annual supplement has been published by the *Encyclopedia Britannica* since 1938.

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The Britannica is not now 10 years or more out of date, since newer revisions and printings of the Britannica have been made as late as 1939 and the "Britannica Book of the Year" has been published annually since 1938 to enable owners to keep their sets up to date.

The prepared sales talks and methods of sales solicitation employed by respondents and their salesmen are false, misleading, and deceptive. The canvassers or agents employed by respondents are in fact salesmen, who solicit any likely prospects to purchase at prices regularly established by respondents. The prices quoted by them as being "special" or "introductory" or "prepublication" are not limited or restricted to a selected few persons or to certain prominent or outstanding and influential citizens of the community, but are the usual and customary prices available to all purchasers. The sets of Americana offered by respondents' salesmen are not reserved or given free, or at a special reduced price, or in consideration for a letter of commendation, as represented, but the buyer is in fact required to pay the full purchase price as established by respondents.

Prior to 1937, the Americana had been sold principally to educational institutions, libraries and Government agencies, and practically no salesmen were employed. About that date a campaign was inaugurated to sell sets of the Americana to the general public, and the price of \$99.50 was established for a combination offer of the set with 10 annual supplements or year books. The maroon Artex binding for which the purchasers contracted had never been sold at higher prices or for the prices alleged by respondents' salesmen. The bookcases and dictionary offered by respondents as bonuses or additional inducements to purchase the "Americana" were not in fact of the value as represented.

PAR. 8. The use by the respondents of the aforesaid acts, practices, and methods in connection with the offering for sale and sale of said encyclopedias in said commerce has had, and now has, the tendency and capacity to, and does, deceive and mislead members of the public, and to unfairly disparage and defame the products of competitors, thereby unfairly inducing the purchase by a substantial number of the purchasing public of respondents' encyclopedias 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. 9. 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 com-

petition 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 November 20, 1943, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging said respondents 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 that act. After the filing of the respondents' answers, a trial examiner of the Commission was designated by it to take testimony and receive evidence in support of and in opposition to the allegations of the complaint, and a number of hearings were held and a substantial amount of evidence was introduced and duly recorded and filed. Subsequently, on June 7, 1948, a written stipulation was entered into by and between the respondents and Daniel J. Murphy, chief of the trial division of the Commission, and in this stipulation it was provided that, subject to the approval of the Commission, the statement of facts contained therein may be taken as the facts in this proceeding in lieu of all testimony, and that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts, including inferences which it may draw from the stipulated facts, and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. In said stipulation the respondents agreed that the Americana Corp., a Delaware corporation, organized in 1945, may be substituted as a respondent in this proceeding for the Americana Corp., a New Jersey corporation, originally named as a respondent herein, and the respondents expressly waived the filing of a recommended decision by the trial examiner. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint, the answers thereto, and the stipulation, said stipulation having been approved, accepted and filed; 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. At the time of issuance of the complaint the then respondent, Americana Corp., was a corporation organized, existing,

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and doing business under and by virtue of the laws of the State of New Jersey. Said respondent maintained executive offices at No. 2 West Forty-fifth Street, New York, N. Y. Respondents Fred P. Murphy, Joseph C. Graham, Jr., and Thomas J. Kirk, were, respectively, president, vice president and treasurer, and secretary of said corporation.

In 1945 Americana Corp., the New Jersey corporation, caused to be created under the laws of the State of Delaware a new corporation which was and is also known as Americana Corp., and transferred to it all of the assets of the New Jersey corporation, which was formally dissolved. In accordance with the stipulation hereinabove referred to, Americana Corp., the Delaware corporation, has been substituted as a respondent in this proceeding for the Americana Corp., the New Jersey corporation, and unless it otherwise appears, the word respondents wherever used hereinafter shall be deemed to include said Americana Corp., the Delaware corporation.

From 1945 until the latter part of 1947, respondents Fred P. Murphy, Joseph C. Graham, Jr., and Thomas J. Kirk, were, respectively, president, vice president and treasurer, and secretary of Americana Corp., the Delaware corporation. Since the latter part of 1947 the officers of said corporation have been respondent Fred P. Murphy, chairman of the board of directors, Vincent Sutliff, president and treasurer, and respondent Thomas J. Kirk, secretary. Respondent Joseph C. Graham, Jr., is no longer connected with Americana Corp. as an officer thereof. The principal office and place of business of Americana Corp., the Delaware corporation, is located at 333 North Michigan Avenue, Chicago, Ill., and its executive offices are maintained at No. 2 West Forty-fifth Street, New York, N. Y.

Respondents Murphy and Kirk are now, and prior to the latter part of 1947 respondents Murphy, Kirk, and Graham were at all times mentioned herein, active in their capacities as officers of both of the aforesaid corporations.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the publication and in the sale and distribution of an encyclopedia designated "Americana" or "Encyclopedia Americana" and supplements and yearbooks issued in connection therewith. Respondents, other than respondent Graham, now cause, and all of said respondents have caused, their said encyclopedia and supplements and yearbooks issued in connection therewith, when sold, to be shipped from their aforesaid places of business to the purchasers thereof located in States other than those from which said shipments are made and in the District of Columbia. Respondents maintain, and for

many years have maintained, a course of trade in their encyclopedia and supplements and yearbooks issued in connection therewith among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondents are now, and for several years last past have been, in competition with other corporations, firms, and individuals also engaged in the sale and distribution of encyclopedias and other reference works in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business, and in connection with the sale of their encyclopedia, including the supplementary material, respondents and their salesmen, by means of advertisements, circulars and pamphlets, and also by means of sales talks, manuals, and radio broadcasts, have made many statements and representations to purchasers and prospective purchasers.

Among and typical of the statements made in respondents' advertising circulars, broadcasts, and pamphlets, are the following:

The Americana stands alone as the first National American Encyclopedia.

* * * That is why every government department, every important university and college, every public library, every Board of Education uses it as the official reference work.

America's Supreme Authority for Over One Hundred Years.

A brand-new edition of the Americana has just come off the press.

It has more articles by many thousands than any other encyclopedia and presents more information on subjects of practical present day interest and importance than any one set of books that has ever been printed.

Its clarity, simplicity, completeness and reliability have made it the unanimous first choice of Boards of Education and educational institutions throughout the country.

Among and typical of the statements made by respondents' salesmen, by means of sales talks, manuals, and oral representations, is the following:

I am not here to sell you.

PAR. 5. In addition to the aforesaid statements and representations, respondents in their advertising literature and in sales talks and manuals issued for the guidance and instruction of their salesmen have made numerous and varied other statements and representations to customers and prospective customers for the purpose of inducing the purchase of "Americana" or "Encyclopedia Americana" and supplements thereto.

Among and typical of the statements and representations which the respondents have made in this manner and which have been used by

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salesmen in the course of their sales activities have been many to the following effect: (1) that the solicitors were not salesmen and were paid no commission for selling, but were interviewing reputable persons in various communities for the purpose of conferring upon them a special favor; that said solicitors were authorized to place a few sets of the encyclopedia with a limited number of prominent people in the community at a nominal cost; (2) that the prospect solicited was to be one of the selected few individuals to receive a special introductory offer, including the privilege of purchasing the encyclopedia and supplements at a reduced price, for a limited time, prior to the time when the encyclopedia was offered to the public generally; (3) that because of the prominence of the individuals interviewed respondents would give them a set of Encyclopedia Americana at no cost, or at a reduced price, if, after using it for a while, such individuals would write a letter of recommendation therefore; and (4) that the special prices for the encyclopedia and supplementary material would not be offered to the general public, but would be offered only for a limited time to a selected group of influential and prominent citizens in the community, some salesmen exhibiting or displaying purchase orders showing the sales price of the publication to be as much as \$250.00.

PAR. 6. By means of the foregoing statements, representations, and practices made and used by respondents and their salesmen, as aforesaid, respondents have represented, directly and by implication and inference, that the Encyclopedia Americana is the best known and most authoritative encyclopedia published in the United States; that it is the unanimous choice of every government department, every educational institution and board of education, and every public library as the official reference work; that it has been determined to be America's supreme authority for over 100 years; that it contains more articles than any other encyclopedia and presents more information on subjects of practical present-day interest and importance than any other set of books that has ever been printed; that the publication offered for sale was a new and revised edition; and that prior to the introduction of the publication to the public generally it was offered to a few selected individuals in each community at special and reduced prices or under special conditions unavailable to the ordinary purchaser.

PAR. 7. All of the foregoing representations were wholly false and deceptive. The Americana Corp., the New Jersey corporation, and one of the original respondents in this proceeding, was incorporated in about 1913 and was the successor of the Americana company which published the Americana Encyclopedia in 1903-04. That publica-

tion was based on the Americana Encyclopedia edited by Francis Lieber and subsequent editions of the Encyclopedia Americana that were first published in 1829, and much of its text and many of its articles are similar to or identical with or evolved from the articles in the 1832 and 1846 editions of the publication, such text and articles having been revised and supplemented from time to time to keep the encyclopedia current.

It is not true, however, as respondents have represented, that the Encyclopedia Americana is the only national American encyclopedia. This publication is not the best known or the most authoritative encyclopedia published in the United States, nor is it the first or unanimous choice of all government departments or every educational institution or board of education or public library as the official reference work. No encyclopedia has ever been determined to be America's supreme authority. The Encyclopedia Americana does not contain more articles than any other encyclopedia, and it does not present more information on subjects of practical present-day interest and importance than any other set of books. The issue of the Americana which was represented as being a new edition was not in fact a new edition, but was simply a new printing prepared through the use of old plates with some revisions and new articles inserted. The persons employed by respondents to introduce their publication to the public were in fact salesmen soliciting prospects to purchase the work at prices regularly established by respondents, and the prices quoted by them as being "special" or "introductory" were not limited or restricted to a few persons or to certain prominent and outstanding and influential citizens of a community and were not offered only for a limited time, but were the usual and customary prices for the publication which were available to all purchasers. The sets of the Americana offered by respondents' salesmen were not reserved or given free or at a special reduced price or sold in consideration of a letter of commendation as represented, but the buyer was in fact required to pay the full purchase price established by respondents.

Prior to 1937 the Americana was sold principally to educational institutions, libraries, and government agencies, and practically no salesmen were employed by respondents. About that date a campaign was inaugurated to sell sets of the Americana to the general public, and the price of \$99.50 was established as the selling price for a combination of the set with 10 annual supplements or yearbooks. Since then the price of the publication has increased progressively from \$99.50 for a set with Artex binding, in combination with the supple-

ments or yearbooks, to \$169.50, the present price of a combination set, with Sealcraft binding. The publication has not been sold since 1936 other than in combination with the annual supplements or yearbooks, except in the DeLuxe edition, which is presently sold for a price of \$249.50, and in the School and Library bindings, which bindings are not offered to the public.

PAR. 8. The use by respondents of the foregoing false and deceptive statements and representations has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such statements and representations were true. As a result of such erroneous and mistaken belief the purchasing public has been induced to purchase and has purchased substantial quantities of respondents' encyclopedias and in consequence thereof substantial trade has been diverted unfairly to the respondents from their competitors.

PAR. 9. On September 3, 1940, the respondent Americana Corp. subscribed to the Trade Practice Conference Rules for the Subscription and Mail Order Book Publishing Industry, which rules cover all of the practices involved in this proceeding. The individual respondents, Fred F. Murphy, Joseph C. Graham, Jr., and Thomas J. Kirk, contend that all of said practices which have been employed in connection with the sale of the Americana since the above date have been engaged in only by respondents' salesmen, all of whom have been discharged as a consequence thereof, and that said individual respondents were not responsible in any way for a continuation of these practices. In the absence of any direct evidence to the contrary, the Commission accepts this as an accurate statement of the situation, and in the circumstances finds that no further corrective action is necessary against the individual respondents.

CONCLUSION

The acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and of the 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.

Commissioner Mason not participating.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the re-

spondents, and a stipulation of facts entered into by and between the respondents and Daniel J. Murphy, chief of trial division of the Commission, which stipulation provides, among other things, that the statement of facts contained therein may be taken as the facts in this proceeding in lieu of other evidence and that the Commission may proceed upon said stipulated facts to make its report stating its findings as to the facts, including inferences which it may draw therefrom, and its conclusions based thereon, and enter its order disposing of the proceeding (the recommended decision of the trial examiner, briefs and oral argument of counsel having been expressly waived); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Americana Corp., a Delaware corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of its encyclopedia designated "Americana" or "Encyclopedia Americana" and material supplementary thereto, or any other publication, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from—

(1) Representing, directly or by implication, that said publication is the only national American encyclopedia.

(2) Representing, directly or by implication, that said publication is the best known or most authoritative encyclopedia published in the United States, or that it is America's supreme authority.

(3) Representing, directly or by implication, that said publication contains more articles than any other encyclopedia, or that it presents more information than any other set of books.

(4) Representing, directly or by implication, that said publication is the choice of all government departments, educational institutions, boards of education, or public libraries as the official reference work.

(5) Representing, directly or by implication, that said publication is available only to selected individuals under special conditions.

(6) Representing, directly or by inference, that individuals employed by the respondent to sell its publication are anything other than salesmen soliciting prospects to purchase said publication at prices regularly established by the respondent.

(7) Representing as the customary or usual price of said publication any price or value which is in fact in excess of the price at which it is customarily offered for sale and sold in the usual course of business.

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(8) Representing that any issue of said publication, prepared through the use of old plates which have been merely revised, with new articles inserted, is a new edition.

It is further ordered, For reasons appearing in the Commission's findings as to the facts, that the complaint herein be, and it hereby is, dismissed as to the individual respondents, Fred P. Murphy, Joseph C. Graham, Jr., and Thomas J. Kirk.

It is further ordered, That the respondent, Americana Corp., shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

Commissioner Mason not participating.

Complaint

IN THE MATTER OF

WALTER B. JACKSON AND JUANITA G. JACKSON, TRADING AS JACKSON RESEARCH LABORATORIES

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

Docket 5493. Complaint, May 9, 1947—Decision, July 14, 1948

Where a husband and wife, partners, engaged in the mixing and interstate sale and distribution of insecticides including one designated by the letters "D. P. T."; in advertisements thereof in newspapers and through circulars and other advertising material—

(a) Represented that their said "D. P. T.", when used as directed, would repel fleas, lice or ticks, and kill moths and bedbugs, and was suitable for use on clothing and fabrics;

The facts being that, being composed of 84 percent mineral oil, it was not suitable for use on clothing and other fabrics, and said other representations were likewise false, misleading and deceptive;

(b) Represented through the use of the words "Research Laboratories" as a trade name that they were engaged in scientific research and maintained a staff of trained and qualified scientists and chemists who made tests and conducted experiments with insecticides;

The facts being neither of said individuals was a qualified chemist, or engaged in making such tests or scientific experiments; their activities were limited to mixing patented commercial ingredients according to a fixed formula; and they did not maintain a staff or own, operate or control a laboratory as above represented;

(c) Falsely represented through similarity of the letters "D. P. T.", trade name of their product, that preparation in question contained "D. D. T."; with the result that purchasers confused it with "D. D. T.";

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said representations were true, and with result of causing it to purchase their said preparation:

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

In said proceeding in which complaint charged that respondents' preparation, when used as directed, would not, as represented, kill moths and bedbugs, and in which no evidence was adduced with respect to said charges, no findings were made with relation thereto.

Before *Mr. J. Earl Cox*, trial examiner.

Mr. Charles S. Cox 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