

Syllabus

IN THE MATTER OF

THE WORLD SYNDICATE PUBLISHING CO., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4634. Complaint, Nov. 14, 1941—Decision, Nov. 22, 1949*

The word "Webster's," as respects dictionaries, simply means to the public, according to the greater weight of the evidence in the instant proceeding, a dictionary, and not any particular dictionary, nor the dictionary of a particular publishing company, although it does connote, according to scholars, that a dictionary in connection with which it is used, is a literary lineal descendant of the original Webster Dictionary written by Noah Webster, and was prepared according to principles employed by him in the preparation of his dictionaries; and certain segments of the public also understand and believe, it appears, that a dictionary bearing the name "Webster," by whomsoever published, is an accurate and up-to-date one.

While executors of the estate of Noah Webster, as respects the right to the use of the name "Webster" or "Webster's," by agreement of November 5, 1844, did transfer and assign to George and Charles Merriam all of the rights which said executors had to publish "The American Dictionary in two volumes, Royal Octavo entered for copyright in September 1840," and it appears that in 1853 and 1854 other agreements granted to the Merriams the right to renew the copyright of the same American Dictionary, to publish revisions and abbreviations thereof, and to publish Webster's School Dictionary, it did not appear that the Merriams were granted the exclusive right to publish "Webster's Dictionary," or that they ever purchased the trade name "Webster's Dictionary," or that they—or anyone else—ever acquired any rights of any description in the dictionaries produced by Noah Webster in 1806, 1807, and 1828; and as a matter of fact millions of copies of dictionaries bearing the name Webster as a principal part of their titles, were published by various publishers in the United States prior to 1904, one firm alone thus publishing more than a million dictionaries thus entitled, without any arrangement or contract with the Merriams; and there are now and have been since, a great many publishers, beside said company, who publish and sell dictionaries thus entitled.

Where a corporation and its successor, publishers, and sellers since 1928 of dictionaries, the title pages, covers, bindings, and jackets of which were frequently changed without substantially changing the vocabularies, and the approximately 25 different titles of which, both current and discontinued, included the name "Webster" or "Webster's"; a third concern, which held all the outstanding stock of the other two, made the dictionaries sold by them, and owned the plant in which said products were made; and two individuals, who as president and vice president, controlled and managed said concerns; engaged in the interstate sale and distribution of said products in competition with the G. & C. Merriam Co., and other concerns—

- (a) Represented to the purchasing public that the dictionaries in question were compiled or published by Noah Webster or his successor, through such statements on the title pages, covers, and paper jackets of their products as "WEBSTER'S UNIVERSAL DICTIONARIES * * *" "BEING THE UNABRIDGED DICTIONARY by Noah Webster, LL. D., edited," etc.;

The facts being that while their said dictionaries were based upon and derived from a dictionary originally compiled by Noah Webster, published in 1828, and entitled "An American Dictionary of the English Language," they were not actually written or published by either Noah Webster or his successors;

- (b) Represented, as aforesaid, that their said dictionaries had been edited or revised, enlarged and brought up to date by a staff of eminent scholars and educators, including some whose names were listed on the title pages of certain of said volumes;

The facts being that the individuals employed by them to edit and revise their dictionaries had not been generally recognized as outstanding scholars or specialists in philology or lexicography, and that some of those whose names appeared on the title pages or covers had never even been in their employ;

- (c) Represented that each of their dictionaries was substantially different from the others published by them and had been separately edited, and constituted a new dictionary as of the date of its publication, through such statements on their title pages, covers, bindings, and jackets as "newly revised," etc., "now thoroughly revised and greatly enlarged and improved," "a new work throughout," * * * as its title implies is new, right up-to-date, equipped with the latest words and language," * * *;

When in fact different editions or issues of said products were made from the same plates as other dictionaries theretofore published and sold by them under different titles and jackets;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and thereby into the purchase of their said dictionaries; whereby substantial trade was diverted unfairly to them from their competitors in commerce:

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

As respects the allegations of the complaint in said proceeding, that since 1847 the G. & C. Merriam Co. and its predecessors, George and Charles Merriam, had been engaged in publishing and selling dictionaries under trade names which included the word "Webster" or "Webster's," had long been associated by the public with the dictionaries thus published, and that the public now understands "Webster's Dictionaries" to be those published by that firm; and the charge that through the use of the name "Webster" or "Webster's" in the titles of their dictionary and elsewhere, the respondents represented that their dictionaries were those published by said company or the predecessors thereof; the excellence of which was generally recognized;

The Commission was of the opinion that the record did not show that the use by respondents of the name "Webster" or "Webster's" in the titles of their dictionaries and in advertisements with respect thereto was deceptive or misleading; and that the charge of the complaint as respects such misuse of the name had not been sustained by the weight of the evidence.

Complaint

With regard to the charge that respondents falsely represented the prices at which their dictionaries were offered for sale and sold as reduced or special prices, much less than the usual selling price of said dictionaries, the record failed to sustain the same.

Before *Mr. Andrew B. Duvall* and *Mr. Miles J. Furnas*, trial examiners.

Mr. Merle P. Lyon and *Mr. John M. Russell* for the Commission.

Wittenberg, Carrington & Farnsworth, of New York City, for respondents.

Mr. Gilbert H. Montague, of New York City, for G. & C. Merriam Co., *amicus curiae*.

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 World Syndicate Publishing Co., a corporation, The World Publishing Co., a corporation, The Commercial Bookbinding Co., a corporation, and Alfred Cahen, J. L. Russell, and Ben D. Zevin, individuals, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, The World Syndicate Publishing Co., The World Publishing Co., and The Commercial Bookbinding Co., are corporations organized, existing, and doing business under and by virtue of the laws of the State of Ohio, and respondents, Alfred Cahen, J. L. Russell, and Ben D. Zevin, individuals, are president, vice president, and secretary, respectively, of each of said corporations. The individual respondents have dominant control of the advertising policies and business activities of said corporate respondents and all of said respondents have cooperated each with the other and have acted in concert in doing the acts and things hereinafter alleged. Respondent's principal office and place of business is at 2231 West One Hundred and Tenth Street, Cleveland, Ohio. Respondents maintain sales offices in New York, N. Y.; Chicago, Ill.; Los Angeles, Calif.; and Toronto, Ontario, Canada.

PAR. 2. Respondents are now and have been for more than 2 years last past engaged in the publication and sale of dictionaries. Respondents cause their said dictionaries, 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 dictionaries 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 dictionaries 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 use the word "Webster" in connection with the sale of said dictionaries in such a manner as to deceive the public and who do not engage in any unfair or deceptive acts or practices in connection with the sale of their products in said commerce.

PAR. 4. In 1828, Noah Webster, who has long been recognized by the public as a master of lexicography, published the first unabridged dictionary under the title "American Dictionary of the English Language." This dictionary later became commonly known as Webster's Dictionary. Following the death of the said Noah Webster in 1843, George and Charles Merriam acquired all of the publisher's right, title, and interest in said dictionary, including the trade name Webster's Dictionary, which right, title, and interest they duly assigned to the G. & C. Merriam Co., a corporation, incorporated in 1892 under the laws of the Commonwealth of Massachusetts. Since 1847, the aforesaid individuals and said corporation have revised and published from time to time various editions of dictionaries which they have sold throughout the United States of America and in all of the English-speaking countries under trade names which include the word "Webster's." Although the exclusive right of said G. & C. Merriam Co. to the use of the name "Webster's" in connection with said dictionaries, which was secured by copyright, expired in 1889, the G. & C. Merriam Co. was the only publisher of a dictionary known as "Webster" or "Webster's" until 1904.

Due to the preeminence of the original publisher of Webster's Dictionary as a lexicographer and to the completeness, comprehensiveness, and accuracy of the Webster dictionaries published by Noah Webster and his successors, George and Charles Merriam, and their successor, said G. & C. Merriam Co., a corporation, and the exclusive usage of the word "Webster" by these publishers from 1828 to 1904, the word "Webster" or "Webster's" has long been associated by the

public with the dictionaries published by Noah Webster and his successors. The public understands Webster's dictionaries to be those published by said G. & C. Merriam Co. or its predecessors. The public understands an unabridged Webster's dictionary to be a complete, comprehensive, and accurate compendium of all the words in the English language, including new words, and abridged Webster's dictionaries to be accurate and up-to-date.

The "Webster's" dictionaries published by the G. & C. Merriam Co. and by their predecessors have acquired a wide and favorable reputation and good will which is of great monetary value to their publishers, due to the fact that the word "Webster" has been long associated with publications having the excellence of the dictionaries of the G. & C. Merriam Co. and its predecessors.

PAR. 5. In the course of their said business, in connection with the promotion of the sale of their said dictionaries in said commerce, respondents directly and indirectly simulate and imitate the advertisements of said G. & C. Merriam Co. and the titles of its said dictionaries, and respondents have made and are now making representations concerning the origin and authorship of their said dictionaries so as to confuse and deceive purchasers and prospective purchasers thereof and cause them to believe that respondents' said dictionaries are the Webster's dictionaries of the said G. & C. Merriam Co. and its predecessors, and that the respondents' unabridged dictionaries are complete, comprehensive, and accurate compendiums of all the words in the English language, including new words, and that respondents' abridged dictionaries are accurate and up-to-date. Respondents create said confusion and deception of the purchasing public through the use of advertisements featuring the name "Webster" or "Webster's," and through the use of the name "Webster" or "Webster's" in titles for said dictionaries, and through statements and implications as to the quality and completeness of their dictionaries and their value made on the front covers, bindings or title pages, on cover jackets therefor, on the cartons in which they are placed, in circular price lists, in newspaper and other published advertisements and in advertising literature distributed among the purchasing public throughout the various States of the United States and in the District of Columbia. Among and typical of the trade names used for said dictionaries and the representations made and used, as hereinabove alleged, are the following:

The New Supreme Webster Dictionaries.

Webster's New Age Dictionary.

The New Universities Webster Dictionary.

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New Home, Office, and School Webster Dictionary with Atlas of the World.

The Ideal Pocket Webster's Dictionary.

Webster's Qualified Dictionary.

Webster's Criterion Dictionary for Home, School and Office with Atlas of the World.

Webster's New World Dictionary * * * 1936.

The Royal Webster Dictionary.

Webster New School and Office Dictionary.

New Peerless Webster Home, School and office Dictionary.

Webster's New World Dictionary.

Webster's New Standard Dictionary * * * 1939. A New Compilation * * * \$1.00 * * * A Dollar Dictionary That Has Everything.

Webster's Popular Illustrated Dictionary.

Webster's Twentieth Century Dictionary of the English Language and Complete Atlas of the World, Being the Unabridged Dictionary by Noah Webster, LL. D., * * * Now Thoroughly Revised and Greatly Enlarged and Improved by 100 educators, specialists and eminent scholars under the editorial supervision of Thomas H. Russell, LL. B., LL. D., A. M.; A. C. Bean, M. E., LL. B.; and L. B. Vaughn, Ph. B., * * * prepared for publication by George W. Ogilvie * * *.

"Webster's Universal Unabridged Dictionary" Webster's Universal Dictionary of the English Language with a comprehensive Addenda of Newest Words Compiled by Joseph Devlin, M. A. * * * Being the Unabridged Dictionary by Noah Webster, LL. D. Edited under the supervision of Thomas H. Russell, LL. D.; A. C. Bean, M. E. L. E. B.; and L. B. Vaughn, Ph. B. and a staff of eminent scholars, educators, and specialists.

Including all the newest words in the English Language.

Authentic, Unabridged and Up-to-Date. The Mighty English Language Complete in every word and phrase.

The most complete and most practical unabridged dictionary yet published, the well known and justly famous Webster's Twentieth Century Dictionary * * *.

It's Yours ALMOST for the ASKING! * * * A WORLD-FAMOUS WORK.

In some instances, respondents' advertisements and the title pages of their said dictionaries contain this statement: "This dictionary is not published by the original publishers of Webster's Dictionary or by their successors," which is printed in relatively inconspicuous type and

frequently at some distance from the trade name in which appears the word "Webster" or "Webster's." In many instances, no such statement appears in respondents' said advertising literature or on the title page or elsewhere on or in said dictionaries.

PAR. 6. Through the use of the aforesaid titles, statements and representations, and others similar thereto not specifically set out herein, respondents represent directly and by implication that their said dictionaries are publications originally compiled and published by Noah Webster, later revised and published by his successors, George and Charles Merriam, or by their successor, the G. & C. Merriam Co., which have been recently revised and edited by the said G. & C. Merriam Co.; that they are the Webster's dictionaries which are generally recognized by the purchasing public as the standard dictionary of the English language; that respondents' unabridged dictionaries are complete, comprehensive, and accurate compendiums of all the words in the English language, including new words, and that respondents' abridged dictionaries are accurate and up-to-date; that said Webster's Twentieth Century Dictionary is the unabridged dictionary published by Noah Webster, thoroughly revised, greatly enlarged, improved and brought up-to-date by the successor to the publisher of the original Webster's Dictionary; that respondents' Webster's Universal Unabridged Dictionary is a complete dictionary, is edited by the successor to the publishers of the original Webster dictionaries, that it has been revised to date by eminent scholars, educators and specialists, and contains all of the newest words. Respondents represent and imply that each of their afore-mentioned dictionaries is substantially different from the others and has been separately edited, that the prices at which said dictionaries are offered for sale and sold are reduced or special prices much less than the usual selling price of said dictionaries; that respondents' "Webster's New Standard Dictionary" was a new compilation when it was published in 1939.

PAR. 7. In truth and in fact, said dictionaries are not publications originally compiled and published by Noah Webster, later revised and published by his successors, George and Charles Merriam, or by their successor, the G. & C. Merriam Co. Said dictionaries have never been revised or edited by the said G. & C. Merriam Co., nor are they the Webster's dictionaries which are generally recognized by the purchasing public as the standard dictionary of the English language. Respondents' said Webster's Twentieth Century Dictionary is not the unabridged dictionary originally published by Noah Webster, thoroughly revised, greatly enlarged, improved and brought up-to-date by the successors to the publisher of the original Webster Dictionary.

Respondents' said Webster's Universal Unabridged Dictionary is not a complete dictionary, it is not edited by the successors to the publisher of the original Webster's dictionaries, it has not been revised to date by eminent scholars, educators, and specialists and does not contain all of the newest words. Each of respondents' said dictionaries has not been separately edited and is not substantially different from others of said dictionaries which respondents represent to have been separately revised and edited. In many instances dictionaries represented as being separately revised and edited are substantially the same as both former and current publications of respondents. The prices at which respondents offer for sale and sell their said dictionaries are not reduced or special prices less than the usual selling price of said dictionaries, but are the prices at which respondents regularly and customarily offer for sale and sell said dictionaries. Respondents' Webster's New Standard Dictionary was not and is not a new compilation. None of the respondents' said dictionaries are as complete, comprehensive, and accurate as the dictionaries published by Noah Webster and his successors. Respondents' "unabridged" dictionaries are not complete; comprehensive, and accurate compendiums of all the words in the English language, including new words, and respondents' "abridged" dictionaries are not accurate and up-to-date as represented.

PAR. 8. The use by the respondents of the name "Webster" or "Webster's" in the titles of their said dictionaries and in advertisements with respect thereto is deceptive and misleading, and causes many members of the purchasing public, including school superintendents, teachers, librarians, and publishers, erroneously and mistakenly to believe that respondents' said dictionaries are the publications of said G. & C. Merriam Co. or its predecessors, and that respondents' said dictionaries are the Webster's dictionaries which are generally recognized by the purchasing public as the standard dictionary of the English language, and that respondents' "unabridged" dictionaries are complete, comprehensive, and accurate compendiums of all the words in the English language, including new words.

PAR. 9. The use by the respondents of the aforesaid acts, practices, and methods in connection with the offering for sale and sale of said dictionaries in said commerce has the tendency and capacity to, and does, deceive and mislead members of the public and causes them erroneously to believe that the aforesaid representations and implications are true, and gives respondents' said dictionaries a prestige which they do not merit and would not enjoy but for said acts, practices and methods, and, as a result, many members of the public purchase respondents' said dictionaries under the belief that they are purchasing

the Webster's dictionary published by said G. & C. Merriam Co., thereby 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.

PAR. 10. 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 in commerce 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 14, 1941, issued and subsequently served upon the respondents named in the caption hereof its complaint, 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' joint answer to the complaint, testimony, and other evidence in support of and in opposition to the allegations of said complaint were introduced before Andrew B. Duvall, a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondents' answer thereto, testimony, and other evidence, the trial examiner's recommended decision, and written briefs of counsel for the respondents, counsel in support of the complaint, and counsel for G. & C. Merriam Co., as *amicus curiae* (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, The World Syndicate Publishing Co., The World Publishing Co., and The Commercial Bookbinding Co., are corporations organized, existing, and doing business under and by virtue of the laws of the State of Ohio. Said respondents have their principal office and place of business at 2231 West One

Hundred and Tenth Street, in the city of Cleveland, State of Ohio, and they maintain sales offices in New York, N. Y., and Chicago, Ill.

The respondents, Alfred Cahen and Ben D. Zevin, are individuals having dominant control over and management of the corporate respondents, and they are, respectively, president and vice president of The World Publishing Co. and of The Commercial Bookbinding Co. Respondent Alfred Cahen is also president of The World Syndicate Publishing Co., which company, however, is now inactive, having been succeeded in 1939 by The World Publishing Co. Respondent J. L. Russell is vice president of The World Syndicate Publishing Co., and he was formerly vice president of the successor corporation, The World Publishing Co. This respondent, however, is no longer an officer of the latter corporation, and he now has nothing to do with the control or management of either The World Publishing Co. or The Commercial Bookbinding Co.

PAR. 2. The respondent, The World Syndicate Publishing Co., from 1928 to 1939 was, and the respondent, The World Publishing Co., since 1939 has been and now is, engaged in the business of publishing and selling dictionaries. Said dictionaries are manufactured by the respondent, The Commercial Bookbinding Co., which company is the parent corporation of the other two corporate respondents and the holder of all of the outstanding capital stock of both The World Syndicate Publishing Co. and The World Publishing Co. The Commercial Bookbinding Co. also owns the plant in which the dictionaries published and sold by The World Publishing Co. are made.

The respondents cause their dictionaries, when sold, to be shipped from their place of business in Cleveland, Ohio, to the purchasers thereof located in various States of the United States other than the State of Ohio and in the District of Columbia. The respondents maintain, and at all times mentioned herein they have maintained, a constant course of trade in their dictionaries in commerce among and between the various States of the United States and in the District of Columbia. The respondent, The World Publishing Co., advertises itself as one of the largest book publishers in America.

PAR. 3. In the course and conduct of their business, as aforesaid, the respondents are now, and at all times since they have been in business they have been, in competition with other corporations and with firms and other individuals also engaged in the publication and in the manufacture and sale of dictionaries. One of such competitors is the G. & C. Merriam Co., a Massachusetts corporation, with its principal office and place of business located in Springfield, Mass.

PAR. 4. Since 1928, the respondents have published and sold dictionaries bearing approximately 25 different titles. In all of said titles the respondents have included as a principal part thereof the name "Webster" or "Webster's." At the time of the hearing in this proceeding the dictionaries published by the respondents were the following:

Webster's Universities Dictionary Unabridged (Comm. Ex. 42-B).

Webster's Twentieth-Century Dictionary Unabridged (Comm. Ex. 43-B).

Webster's Practical Illustrated Dictionary (Comm. Ex. 39).

New Peerless Webster Home, School and Office Dictionary (Comm. Ex. 19).

Little Giant Webster Dictionary (Comm. Ex. 51).

Webster's Giant Illustrated Dictionary (Comm. Ex. 53-B).

Webster's Tower Dictionary and Atlas (Comm. Ex. 30-B).

Webster's New School and Office Dictionary (Comm. Ex. 33-B).

Webster's New Standard Dictionary (Comm. Ex. 29-B).

Webster's Approved Dictionary (Comm. Ex. 52-B).

New Handy Webster Dictionary (Comm. Ex. 40).

Included among those formerly published by the respondents, the publication and sale of which had been discontinued from 2 to 6 years prior to the hearing, were the following:

The Ideal Pocket Webster Dictionary (Comm. Ex. 41).

New Age Webster Dictionary (Comm. Ex. 20-B).

Webster's Popular Illustrated Dictionary (Comm. Ex. 28).

The Royal Dictionary (Comm. Ex. 21).

Webster's Criterion Dictionary for Home, School, and Office with Atlas of the World (Comm. Ex. 22).

Webster's New World Dictionary and Atlas (Comm. Ex. 35-B).

The New Universities Webster Dictionary (Comm. Ex. 37).

Webster's Universal Unabridged Dictionary and Atlas of the World (Comm. Exs. 23-A and B).

Webster's Universal Unabridged Dictionary (Comm. Exs. 77A and B).

The Modern Webster Dictionary with Atlas of the World (Comm. Ex. 36).

Webster's Qualified Dictionary (Comm. Ex. 38).

New Home Office and School Webster Dictionary (Comm. Ex. 31-B).

Webster's Quiz Kids Dictionary (Comm. Ex. 34-B).

The record discloses that the respondents themselves do practically no advertising to the general public. It appears, however, that on the

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title pages, covers, and paper jackets of their dictionaries the respondents have made a number of statements and representations, typical of which have been and are the following:

On the title page of the Webster's Criterion Dictionary for Home, School and Office with Atlas of the World, the statement:

Edited by
JOSEPH DEVLIN, M. A.

* * * * *

Assisted by a Corps of Recognized Authorities
In Philosophy and Lexicography (Comm. Ex. 22)

On the title page of the Webster's Universal Unabridged Dictionary, the statement:

WEBSTER'S
UNIVERSAL
DICTIONARY
of the English Language
with

A Comprehensive Addendum of Newest Words
Compiled by Joseph Devlin, M. A.
Profusely Illustrated

BEING THE UNABRIDGED DICTIONARY

by

NOAH WEBSTER, LL. D.

Edited under the supervision of
Thomas H. Russell, LL. D.; A. C. Bean, M. E., LL. B.; and
L. B. Vaughan, Ph. B. and a staff of eminent
scholars, educators, and specialists

Comm. Exs. 23-A&B; 77-A&B)

On the title page of the "New Home, Office and School Webster Dictionary" and of "The New Universities Webster Dictionary," the following statement:

"IT IS A NEW BOOK
Based on the Original Foundation
of Noah Webster

* * * * *

Edited by
JOSEPH DEVLIN, M. A.

* * * * *

Assisted by a Corps of Recognized Authorities in Philology
and Lexicography

This Dictionary contains an enlarged
vocabulary—modern, accurate—authoritative"

(Comm. Exs. 31-B and 37)

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On the title page of the "Webster's Universities Dictionary Unabridged," the following statement:

"WEBSTER'S
UNIVERSITIES
DICTIONARY
of the English Language
Being the Unabridged Dictionary by
NOAH WEBSTER, LL. D.
* * * * *
Edited under the supervision of
Thomas H. Russell, LL. D.; A. C. Bean, M. E., LL. B.; and
L. B. Vaughan, Ph. B.
Newly Revised
Under the direction of Joseph Devlin, Elsie Wright,
Joseph McCarter and a staff of eminent scholars,
educators, and office editors"

(Comm. Ex. 42-B)

On the paper jacket of the Webster's Approved Dictionary, the statement:

More than 60,000 words covering the widest possible range of information, defined in concise and understandable terms.

A modern compilation in every respect which meets every requirement of modern practice and modern scholarship.

Up-to-the-minute—for it includes the very latest additions to the language from all sources, words which have sprung up from the developments in arts, sciences, and world politics (Comm. Ex. 52-A).

On the title page of Webster's Twentieth-Century Dictionary Unabridged, the following statement:

WEBSTER'S
TWENTIETH-CENTURY DICTIONARY
of the English Language
And Complete Atlas of the World
Being the Unabridged Dictionary
by
NOAH WEBSTER, LL. D.
* * * * *
Now Thoroughly Revised and Greatly Enlarged and Improved
by over one hundred educators, specialists and eminent
scholars under the editorial supervision of
Thomas H. Russell, LL. B., LL. D., A. M., A. C. Bean, M. E., LL. B.,
and L. B. Vaughan, Ph. B.

* * * * *
Prepared for Publication by George W. Ogilvie

(Comm. Ex. 43-B)

PAR. 5. Through the use of the aforesaid statements and representations, and others similar thereto, the respondents have represented and still represent to the purchasing public that the dictionaries referred to were compiled or published by Noah Webster or his successors; that said dictionaries have been edited or revised, enlarged and brought up to date by a staff of eminent scholars and educators, some of whose names are listed on the title pages of certain of said dictionaries; and that each of their dictionaries is substantially different from the others published by the respondents and has been separately edited and constitutes a new dictionary as of the date of its publication.

PAR. 6. (a) The record in this proceeding shows that the respondents' dictionaries are in fact based upon and were derived from a dictionary originally compiled by Noah Webster, published in 1828, and entitled "An American Dictionary of the English Language." It is not true, however, as the respondents' statements imply, that their dictionaries were actually written or published by either Noah Webster or his successors. The respondents' representations to the effect that their dictionaries were so written or published were and are erroneous and misleading.

(b) The individual respondents testified that each time one of their dictionaries is reprinted and published it is first revised by the respondents' editorial staff. This editorial staff, according to the testimony of the respondent Zevin, at times, has consisted of as many as 12 to 15 people who worked on the editing and revising of the dictionaries. Some of these people have been college students, however, and none of them have had outstanding reputations as scholars or dictionary experts. Respondent Zevin testified further that in 1941 his wife, Mrs. Lillian C. Zevin, was designated as editor-in-chief of the respondents' publications, although he admitted that her work was chiefly administrative and not scholarly. For a number of years one Dr. Joseph Devlin was the respondents' consulting editor-in-chief, actually in charge of the technical phases of the work on the respondents' dictionaries, but during the last year or more prior to the hearing he had been too ill to work and his place had been taken by Dr. Harold Whitehall, a professor at the University of Indiana.

A number of the witnesses, including several prominent educators, were shown a list of the names of the respondents' editorial staff, and were asked whether they knew of any of said educators as men having outstanding qualifications or reputations as philologists or lexicographers. One of said witnesses knew Dr. Whitehall as an historian of the language, but he was not in a position to pass on Dr. Whitehall's

competency as a lexicographer or consulting editor for a dictionary. The other witnesses were not acquainted with the professional standing or competency of any of the individuals named as associate editors of the respondents' dictionaries. It is clear from the record that the individuals employed by the respondents to edit and revise their dictionaries have not been generally recognized or outstanding scholars or specialists in philology and lexicography. Certain of the individuals whose names appear on the title pages or covers of the respondents' dictionaries in connection with the editing or revising thereof, namely, Thomas H. Russell, A. C. Bean, and L. B. Vaughan, have never even been in the respondents' employ. The respondents' representations to the effect that their dictionaries have been edited or revised by a staff of eminent scholars and educators, some of whose names have been listed on the title pages of certain of said dictionaries, have been and are false and misleading.

(c) Throughout the years during which the respondents have been publishing and selling their Webster dictionaries, they have frequently changed the title pages, covers, bindings, and jackets of said dictionaries without substantially changing the vocabularies thereof. Notwithstanding the fact that many of these dictionaries with the new title pages, covers, bindings, and jackets have carried the same vocabularies and definitions as dictionaries then or formerly published by the respondents with the different title pages, covers, bindings, and jackets, such dictionaries having been described and referred to by the respondents as follows:

WEBSTER'S UNIVERSITIES DICTIONARY
of the English Language

* * * * *

Newly Revised

Under the Direction of Joseph Devlin,
Elsie Wright, Josephine McCarter and
a staff of eminent scholars, educators
and office editors

(Comm. Ex. 42-B)

WEBSTER'S TWENTIETH-CENTURY DICTIONARY

* * * * *

Now Thoroughly Revised and Greatly Enlarged
and Improved * * *

(Comm. Ex. 43-B)

THE ROYAL WEBSTER DICTIONARY

* * * * *

A New Work Throughout

(Comm. Ex. 21)

Findings

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It Is A New Book

* * * * *

The New Universities WEBSTER Dictionary

(Comm. Ex. 37)

New Peerless WEBSTER Home, School and Office DICTIONARY

This Dictionary, as its title implies, is new right up to date, equipped with the latest words in the language, * * *.

(Comm. Ex. 19)

WEBSTER'S Criterion DICTIONARY

It contains more useful words than any other similar volume in the, language, * * *.

(Comm. Ex. 22)

WEBSTER'S NEW STANDARD DICTIONARY

Completely Revised and Re-edited!

(Comm. Ex. 29-A)

The record shows, however, that the respondents' Twentieth-Century Dictionary Unabridged (Comm. Ex. 43-B) and their Universities Dictionary Unabridged (Comm. Ex. 42-B) are made from the same plates; that these two dictionaries are alike as far as vocabularies and definitions are concerned; and that the only differences between the two books are that they have different titles and bindings, and that the Twenty-Century Dictionary carries some minor additions that the Universities Dictionary does not contain. Respondent Cahen testified that the same set of plates was used for The Royal Dictionary (Comm. Ex. 21) and New Age Webster Dictionary (Comm. Ex. 20-B), and it was stipulated by the respondents' counsel that the vocabulary in The New Universities Webster Dictionary (Comm. Ex. 37) was the same as the vocabularies in the New Peerless Webster Home, School, and Office Dictionary (Comm. Ex. 19), the Webster's New School and Office Dictionary (Comm. Ex. 33) and the Webster's Quiz Kids Dictionary (Comm. Ex. 34-B), and that the vocabularies in Webster's Criterion Dictionary (Comm. Ex. 22), Webster's New Standard Dictionary (Comm. Ex. 29-B), and Webster's New World Dictionary (Comm. Ex. 35-B), were all the same. The Commission therefore finds that the respondents, through the use of statements on the title pages and jackets of their dictionaries, and elsewhere, have represented to the public that many of their dictionaries were new and different from other dictionaries published by the respondents, when in truth and in fact they were and are substantially the same in vocabularies and definitions as other dictionaries then and theretofore published and sold by the respondents under different titles and with different covers and jackets.

PAR. 7. In addition to the foregoing, the complaint in this proceeding alleged that since 1847 the G. & C. Merriam Co. and its predecessors, George and Charles Merriam, have been engaged in the business of publishing and selling dictionaries under trade names which include the word "Webster's"; that the word "Webster" or "Webster's" has long been associated by the public with the dictionaries published by the said G. & C. Merriam Co. and its predecessors; and that the public now understands "Webster's" dictionaries to be those published by that firm. The complaint further charged that through the use of the name "Webster" or "Webster's" in the titles of their dictionaries, and elsewhere, the respondents herein represent and have represented, directly and by implication, that their dictionaries are those published by the G. & C. Merriam Co. or by their predecessors George and Charles Merriam. The complaint charged further that the respondents have falsely represented that the prices at which their dictionaries are offered for sale and sold are reduced or special prices much less than the usual selling prices of said dictionaries.

PAR. 8. The allegations of the complaint referred to in paragraph 7, excepting only the allegation concerning the use of the name "Webster" by the Merriams, have not been sustained by the greater weight of the evidence thereon.

(a) The record is undisputed that Noah Webster is generally recognized as the greatest lexicographer in American history. His first dictionary was published in 1806 under the title "A Compendious Dictionary of the English Language." It was published by Hudson and Goodwin, and by Increase, Cook & Co., and bore on its spine the title "Webster's Dictionary." Webster's second dictionary appeared in 1807 under the title "A Dictionary of the English Language Compiled for the Use of Common Schools in the United States," and it too had on its spine the name "Webster's Dictionary." The third Webster's Dictionary appeared in 1817 under the title "Common School Dictionary." It was published by George Goodwin & Sons. The fourth Webster's Dictionary was entitled "An American Dictionary of the English Language—1828 Edition," was in two volumes, and bore on its spine the words "Webster's Dictionary Published by S. Converse." The fifth and last Webster's Dictionary to be published during the life of Noah Webster was the American Dictionary of the English Language, First Edition in Octavo, in two volumes. It was copyrighted in 1840, was published by Noah Webster himself, and was printed in 1841 by B. L. Hamlin.

As far as the record in this proceeding shows none of the publishers of the first four Webster's Dictionaries above referred to ever assigned their publishing rights to anyone. By an agreement dated November 5, 1844, the executors of the estate of Noah Webster did transfer and assign to George and Charles Merriam all of the rights which said executors had to publish the American Dictionary in two volumes, royal octavo, entered for copyright in September 1840, and in 1853 and 1854 other agreements granted to the Merriams the right to renew the copyright of the same American Dictionary, to publish revisions and abridgments thereof and to publish Webster's School Dictionary. There is no proof of any kind, however, that the Merriams were ever granted the exclusive right to publish Webster's Dictionaries, or that they ever purchased the trade name Webster's Dictionary, or that they ever acquired any rights of any description in the dictionaries produced by Noah Webster in 1806, 1807, and 1828.

Nor were the Merriams the only publishers of a dictionary bearing the name "Webster" or "Webster's" between 1889 and 1904, as alleged in the complaint. Reports from the copyright office of the United States and the dictionaries themselves, which were introduced as exhibits in this proceeding, show that between 1889 and 1904 there were millions of copies of dictionaries bearing the name "Webster's" as a principal part of their titles published by various publishers in the United States. One witness for the respondents who has been in the business of publishing dictionaries since 1887 testified that between 1889 and 1904 his firm alone sold more than 1 million dictionaries a year, all bearing the name "Webster's" in the titles, and all published without any arrangement or contract with the Merriams. This witness testified further that he personally knew of at least 11 other companies which were engaged in the business of selling "Webster's" dictionaries prior to 1904; and the record is undisputed that since 1904 there have been and are now a great many publishers of dictionaries in the United States besides the G. & C. Merriam Co. who publish and sell dictionaries bearing the name "Webster" or "Webster's" as a part of their titles.

(b) The Webster's dictionaries published by the Merriams over the years have acquired a wide and favorable reputation. The current Merriam-Webster dictionaries, namely, Webster's New International Dictionary and Webster's Collegiate Dictionary, admittedly are of first rank in accuracy, scope of vocabulary and pronunciation. This was the general opinion of professors, librarians, and many learned men who testified in this proceeding. Even counsel for the respondents freely conceded that Merriam dictionaries are "most superior."

It has not been established, however, that the general public, or any substantial segment thereof, understands or believes that all of the dictionaries bearing the name "Webster" or "Webster's" are published by the G. & C. Merriam Co. or its predecessors. Of more than 40 individuals who were called to testify as public witnesses on this point, more than 30 of them had no such understanding, and the testimony of the remaining 10 was so vague and indefinite as to be entitled to little weight. A great many of said public witnesses did not even connect "Webster's" dictionaries with Noah Webster, and a number of them did not know whether it was Daniel or Noah Webster who wrote the original Webster's Dictionary. The greater weight of the evidence is that to the public the word "Webster" simply means a dictionary. It does not mean any particular dictionary, nor the dictionary of a particular publishing company. That this is so is shown not only by the testimony of the witnesses in this proceeding drawn from the general public, but also by the testimony of a number of college and university professors and librarians of many public libraries, whose opinion it was that the general public does not pay any attention at all to the names of publishers of dictionaries.

(c) It seems to be well settled among scholars and learned men that the word "Webster," when used in connection with a dictionary, connotes that said dictionary is a literary lineal descendant of the original Webster's dictionaries written by Noah Webster, and that such a dictionary was prepared according to principles employed by Noah Webster in the preparation of his dictionaries. The evidence shows that two professors of Columbia University examined and compared a large number of the dictionaries published by the respondents in this case with the view of determining whether or not they met the aforesaid tests, and both of these professors testified that said dictionaries were entitled to be called "Webster's" dictionaries. This same opinion was expressed by a number of other outstanding literary authorities.

(d) There is some evidence in the record from which it may be concluded that certain segments of the public do understand and believe that a dictionary bearing the name "Webster," by whomsoever published, is an accurate and up-to-date dictionary. There was no testimony by witnesses who were scholars or lexicographers, however, who had examined or studied the contents of the respondents' dictionaries and who were prepared to testify that said dictionaries were inaccurate or not up to date. There was considerable testimony, on the other hand, by a number of college professors who approved the general use of the respondents' dictionaries in offices and other places,

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particularly where there is no demand for the study of scientific words or words in advanced English; and many other well-informed and highly educated people testified that they use certain of the respondents' dictionaries and that they find them adequate and entirely satisfactory for their purposes.

(e) The record in this proceeding does not show, and the Commission does not find, that the use by the respondents of the name "Webster" or "Webster's" in the titles of their dictionaries and in advertisements in respect thereto is deceptive or misleading. The record also fails to show that the respondents have falsely represented that the prices at which their dictionaries are offered for sale and sold are reduced or special prices less than the usual selling prices of said dictionaries.

PAR. 9. The use by the respondents of the exaggerated, erroneous, and misleading representations set forth in paragraphs 4 to 6, inclusive, has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that said representations are true and into the purchase of the respondents' dictionaries as a result of such false and erroneous belief. In consequence thereof, substantial trade has been diverted unfairly to the respondents from their competitors in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The acts and practices of the respondents as herein found (excluding those referred to in par. 7) 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer thereto, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, and written briefs for the respondents, counsel in support of the complaint, and counsel for G. & C. Merriam Co., as amicus curiae (oral argument not having been requested); and the Commission, having made its findings as to the facts and its conclu-

sion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the corporate respondents, The World Syndicate Publishing Co., The World Publishing Co., and The Commercial Bookbinding Co., and their officers, and the individual respondents, Alfred Cahen and Ben D. Zevin, and said respondents' respective agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of their dictionaries, do forthwith cease and desist from representing, directly or by implication:

1. That any of said dictionaries are the dictionaries of Noah Webster or that they are published by Noah Webster or his successors;
2. That said dictionaries have been edited or revised by a staff of eminent authorities in philology or lexicography; or that said dictionaries have been edited or revised by individuals who have not in fact actually assisted in the editing or revision thereof;
3. That certain of said dictionaries are new or different from other dictionaries published by the respondents when in truth and in fact said dictionaries contain identical or substantially identical vocabularies and definitions as other dictionaries then or theretofore published and sold by the respondents under different titles or with different prefaces, covers, bindings or jackets.

It is further ordered, For reasons set forth in the Commission's findings as to the facts in this proceeding, that the complaint herein be, and it hereby is, dismissed as to the respondent J. L. Russell.

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.

Complaint

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IN THE MATTER OF

AUTONATOR LABORATORIES CO. AND HARRY ABELSON

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

Docket 5638. Complaint, Feb. 11, 1949—Decision, Dec. 6, 1949

Where a corporation and its president, who controlled its policies, engaged in the manufacture and interstate sale and distribution of their immersion electrode type "Hot Donut Water Heater,"

- (a) Represented, through statements in advertisements in newspapers and circulars, that their said water heater would produce hot boiling water in a "jiffy," and that steaming hot water, heated to any temperature, would be afforded in a very short period of time, or before the user in normal course anticipated using it;

Notwithstanding the fact that it required considerable time in its heating action, depending in part upon the amount of water heated;

- (b) Represented falsely, through use of the word "Laboratories" as a part of the corporate name, in advertising literature, circulars, on letterheads and otherwise, that they owned, operated or controlled an establishment containing substantial equipment and apparatus for use in studying and experimentation by scientists or technicians employed for such purposes, and for the conduct of research in connection with the application of electricity to water heating facilities; and

- (c) Impliedly represented that their heater was harmless under all conditions of ordinary use, through failing to reveal in their advertising, or in the directions set forth upon the tag attached to said device, the dangerous consequences which might result therefrom, in that, used otherwise than as specified, and under some conditions, intolerably large amounts of electricity might flow through portions of the body, and electrocution was possible;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such statements were true, and that their said product was harmless in use, and thereby induce its purchase of said potential electrical hazard:

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

Before *Mr. Frank Hier*, trial examiner.

Mr. Morton Nesmith for the Commission.

Bell & Ehrlick, of Washington, D. C., and *Mr. Adolf Loeb*, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of authority vested in it by said act, the Federal Trade