

IN THE MATTER OF
NEW STANDARD PUBLISHING COMPANY, INC., 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 4697. Complaint, Feb. 4, 1942—Decision, May 25, 1951

Where a corporation engaged in the interstate sale and distribution of sets of "Doubleday's Encyclopedia", and annual supplements or yearbooks therefor, and other publications such as the "New Century Dictionary", "Funk & Wagnalls Practical Standard Dictionary", the "Nature Library", sets of classics, and some other items such as bookcases and pencils; acting under the direction and control of its president who was also its principal stockholder;

In selling its said encyclopedia and supplements or yearbooks on a commission basis through salesmen who were provided with advertising literature furnished by the publisher, and other material including contract forms furnished by said corporation in which was set forth the price to be paid for the encyclopedia and other items included therewith, and also an order for the annual supplements or yearbooks, price of which, however, were not included in the figures stated, but was taken cognizance of in the small type statements "As provided in certificate", or "As provided below", beneath the words "Bound Annual Yearbooks"—

- (a) Falsely represented that the books were offered at a special low price for a limited time only, after which they would be considerably higher;
- (b) Falsely represented that the books were given away as an advertising plan to a limited number of persons selected because of their prominence, and that the only return requested was a recommendation which could be shown to other prospective customers;
- (c) Represented that the price of the books as shown in the body of the contract was the total price to be paid by the purchaser, including the cost of the annual supplements or yearbooks, that transportation charges would be paid by the corporation, and that the sum of \$1.85 or \$1.95, to be paid yearly for the annual supplements or yearbooks, was a handling charge only;

The facts being that said encyclopedia was a part of a combination sale; said total price represented as that of the yearbooks alone, was one of the prices at which such combination was regularly offered and sold; and the price of the books as shown in the body of the contract was not the total to be paid by the purchaser, including the cost of the annual supplements or yearbooks, for which the customer was required to pay the aforesaid \$1.85 or \$1.95, each, plus mailing charges, through the forwarding of certificates with which he was not provided until after the signing of the contract;

- (d) Falsely represented that salesmen of the corporation were salesmen of the publisher of said encyclopedia, and that the corporation was a subsidiary organization of said publisher for distribution of encyclopedias in the Southern States;

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- (e) Falsely represented that said encyclopedias had been approved by educational authorities of the State in which the prospects were located and was on the list of recommended reference books of such state;
- (f) Falsely represented that sets of said encyclopedias had been sold to and were recommended by superior officers, fellow workers, persons in authority, school superintendents, and college professors;
- (g) Falsely represented that testimonials and letters of recommendation concerning said encyclopedia were unsolicited and genuine;
- (h) Falsely represented that pencils to be supplied with sets of the encyclopedias sold to school authorities and actually of inferior quality, were of a 5-cent value and could be sold to students at that price, and were the same as the sample exhibited to the customer at the time he signed the contract; and,
- (i) Represented that the books ordered by the customer could be paid for as he sold the pencils, when in fact the customers were required to make payments according to the terms of the contracts they signed; and

Where said corporation, for the purpose of enforcing payment under its contracts—

- (j) Adopted the name "Commercial Finance" to induce its customers by means of threats, intimidations and coercive practices, to make payments according to the terms of the contracts they signed as a result of such false and misleading representations;
- (k) Falsely represented that "Commercial Finance" was a bona fide collection agency in no way connected with said corporation, that customers' contracts had been assigned to it for collection, that such contracts had been discounted with said "Commercial Finance" and that it was the holder of them in due course and for value; and
- (l) Falsely represented that said "Commercial Finance" did nation-wide business from its main office in Chicago, and that an office in Richmond, Va., was its branch;

The facts being that said "Commercial Finance" was merely a trade name used by the corporation to secure credit information concerning customers and prospective customers, which was furnished in the belief that it was a legitimate collection agency; and the Chicago address was that of a separate concern whose encyclopedia it also sold, and from which correspondence was forwarded to it at its office in Richmond;

With the result that it thereby deceived purchasers of said books and harassed them into the payment to said "Commercial Finance" of money which they might not have been legally obligated to pay; and

- (m) Falsely represented that said corporation was a large concern with numerous employees through the use of various fictitious trade names and numerous fictitious names and titles of pseudo employees;

The facts being that its office force consisted of a manager and six or seven other employes whose duty consisted mainly of file work and typing numerous letters written by the organization; it was housed in a small room large enough only to accommodate the desks of the employes; other space included a small rear storeroom and the office of said individual, partitioned off from aforesaid room; and certain names used by said individual and employes in signing letters to customers were fictitious;

With effect of deceiving the purchasing public into the mistaken belief that the representations thus made were true, as a result of which many members of the purchasing public were induced to buy aforesaid products:

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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.

- As respects certain other charges in the complaint including the charge that respondents falsely or misleadingly represented that the encyclopedia would be shipped on approval and could be returned if not desired by the customer after examination; that the encyclopedia contained separate volumes devoted to such subjects as "flowers", "home economics", etc.; that the prospective customer would receive the exact edition of the encyclopedia disclosed in the prospectus displayed by the salesman; that blank checks signed by the customer at the request of the salesman would not be used as such but would be mailed directly to the customer as notice that a payment under the contract was due; and that respondent individual and respondent corporation, through the use of the words "press" and "publishing" in connection with the business of said corporation and through trade names used by them, have falsely represented and implied that said corporation is a publishing company:

The Commission was of the opinion that such charges were not sustained by the evidence.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Clark Nichols and *Mr. Randolph W. Branch* for the Commission.

Mr. Henry Ward Beer, of New York City, for New Standard Publishing Co., Inc., and Julius B. Lewis.

Mr. J. Raymond Tiffany, of Hoboken, N. J., for Doubleday-Doran & Co., Inc.

COMPLAINT¹

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 corporations and the individual named in the caption hereof, 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. Respondent New Standard Publishing Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 301-303 East Grace Street, Richmond, Va. Said corporate respondent also does business under the follow-

¹ The Commission on June 16, 1950 on joint motion, dismissed the complaint against Doubleday-Doran & Co., Inc., as not requiring further corrective action in the public interest, it appearing from the motion "that on May 23, 1941, respondent Doubleday-Doran & Co., Inc., sold all of its rights to publish the Doubleday Encyclopedia to another publishing company with which it now has no connection. In this sale were included all the plates and other matters pertaining to the Doubleday Encyclopedia. Since that date, said respondent has not in any way owned or controlled the publication or sale of said encyclopedia and has not engaged in the advertising thereof, and the encyclopedia is now being sold under a different name by another company."

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ing trade names: Publishers Guild, Foundation Press, Geological Publishing Co., Commercial Finance, National Research Bureau, Standard Research Bureau, Geological Society, and Modern Health Institute. Said respondent is hereinafter referred to as New Standard.

PAR. 2. Respondent Julius B. Lewis, also known as Jack Lewis, is an individual and is president of respondent New Standard Publishing Co., Inc., and his business address is 301-303 East Grace Street, Richmond, Va. Said respondent is the principal stockholder of respondent New Standard, and he directs and controls the business policies and activities of said corporation in carrying out the acts and practices hereinafter alleged, whether said corporate respondent is doing business under its legal corporate name or under any of the trade or fictitious names heretofore mentioned.

PAR. 3. Respondent Doubleday-Doran & Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business located at Garden City, Long Island, N. Y. Said respondent is hereinafter referred to as Doubleday-Doran.

PAR. 4. Respondent New Standard, from the time of its incorporation in the year 1930 until the latter part of the year 1935, was engaged solely in the business of selling in commerce an encyclopedia published by the Standard Education Society of Chicago, Ill.

Thereafter, said respondent New Standard entered into an agreement with the respondent Doubleday-Doran, according to the terms of which respondent New Standard was to purchase from said respondent Doubleday-Doran and to sell sets of an encyclopedia published by respondent Doubleday-Doran and known as Doubleday's Encyclopedia.

Respondent New Standard continued to sell the encyclopedia published by the Standard Education Society heretofore referred to after the agreement entered into by it with respondent Doubleday-Doran, whereby it agreed to sell Doubleday's Encyclopedia. For the purpose of separating the business done by it in the sale of the Standard Education Society's publication and that of Doubleday, said respondent New Standard adopted the trade name "Foundation Press" under which name Doubleday's Encyclopedia was sold, and on or about November 8, 1937, said respondent New Standard, in accordance with the laws of the State of Virginia, filed a certificate to the effect that it was doing business under the trade names "Publishers Guild," "Foundation Press," "Geological Publishing Co.," and "Commercial Finance."

PAR. 5. Respondent New Standard, in the course and conduct of its business, causes said sets of Doubleday's Encyclopedia and other books

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and materials to be shipped or transported from its place of business in Richmond, Va., or from the place of business of respondent Doubleday-Doran in the State of New York, to its customers who are located at points in various States of the United States other than the State of Virginia, and in the District of Columbia, and respondent Doubleday-Doran, in the course and conduct of its business, causes sets of its Doubleday Encyclopedia, annual supplements, yearbooks, and other publications sold by it to be shipped and transported from its place of business in the State of New York to its customers and, at the direction of respondent New Standard, to customers of respondent New Standard located at points in various States of the United States other than the State of New York and in the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. Respondent New Standard, pursuant to the agreement between it and respondent Doubleday-Doran, was to pay respondent Doubleday-Doran the sum of \$12.50 for each current set of Doubleday's Encyclopedia sold by said respondent New Standard to its customers. Later, when respondent Doubleday-Doran revised or issued a new edition of Doubleday's Encyclopedia, respondent New Standard was obligated to buy one set of the older editions of said encyclopedia with each set of the new edition of the encyclopedia sold by respondent New Standard to its customers. Still later, respondent Doubleday-Doran offered all of its remaining sets of old editions of its encyclopedia to respondent New Standard at a price of \$5.50 per set.

Respondent Doubleday-Doran furnished respondent New Standard with all necessary advertising material to be used in selling the Doubleday's Encyclopedia, including prospecti, booklets, stretches, annual supplements, and annual yearbooks wherein the name Doubleday-Doran was prominently displayed.

PAR. 7. Respondent New Standard, in the course and conduct of its business, employs various salesmen on a commission basis to sell Doubleday's Encyclopedia and annual supplements or yearbooks to school teachers, prospective school teachers, students, college professors, business and professional men, club women prominent in local communities and to the general public. Each salesman is provided with the literature, prospecti, and stretches furnished by respondent Doubleday-Doran, and, in addition thereto, letters of endorsement of such publication, sales talks, blank checks, and the contracts to be signed by the purchasers of said encyclopedia are provided the salesmen by respondent New Standard. The copies of the contracts fur-

nished by respondent New Standard are of various colors, depending upon the price to be paid by the purchaser for the encyclopedia and whatever other items are included therewith. These prices range generally from \$59.50, \$69.50, and \$79.50, which prices are printed on the contract. Where the foregoing prices cannot be secured, the space for prices is left blank in other copies of the contract. These contracts are in duplicate, one copy of which is retained by the purchaser and the original forwarded to respondent New Standard by the salesman. Upon receipt of the signed contract by the respondent New Standard, it sends to said purchaser an acknowledgment of the contract, which acknowledgment purports to, but which in fact does not, contain the identical terms of the contract as signed by the customer. After receipt of the signed contract by the respondent New Standard, it either notifies respondent Doubleday-Doran to forward from its place of business in New York a set of Doubleday's Encyclopedia to the purchaser thereof or ships said sets of Doubleday's Encyclopedia to its customers directly from its place of business in Virginia. Reference is made in the contract to the fact that the purchaser is obligated to pay an amount greater than that printed on the contract, said reference being indicated by the following words: "as provided in certificate," or "as provided below," which statements are printed in small type directly beneath the words "bound annual yearbooks."

Respondent New Standard, in addition to selling sets of Doubleday's Encyclopedia, includes in its contract for sale certain other publications, such as Century Dictionary, Funk & Wagnalls Practical Standard Dictionary, The Nature Library, and sets of the works of Stevenson, Victor Hugo, and Dickens, and in some instances other items such as lead pencils.

The contracts above referred to for the sale of Doubleday's Encyclopedia also included the sale of an annual supplement which was published by the respondent Doubleday-Doran, and later changed to an annual yearbook not published by, but sold by, respondent Doubleday-Doran for a period of 10 years, the purpose of which was to keep current the Doubleday's Encyclopedia.

PAR. 8. Respondent New Standard, in the course and conduct of its business as aforesaid, for the purpose of inducing customers and prospective customers to sign a contract for the purchase of said encyclopedia and other publications, has directly and indirectly made many false and misleading statements regarding said encyclopedia and the nature and terms of said contract. Among and typical of the

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false and misleading statements made and used by the respondent New Standard are the following:

That the books are offered at a special low price, which price will be in effect for a limited time only, after which time the books will be sold for an amount considerably higher than that at which they are offered; that the books are offered to a limited number of persons who are selected because of said persons' prominence and standing in the community; that the books are given away as an advertising plan and the only return requested of the prospective purchaser is a recommendation which can be shown to other prospective customers at some time in the future; that Doubleday's Encyclopedia is free but that there is a charge of \$5.95 each for the 10 annual yearbooks and that the payment of these amounts may be made yearly instead of monthly; that the price of said books as shown in the body of the contract is the total price to be paid by the purchaser, including the cost of the annual supplements or yearbooks; that transportation charges will be paid by respondent New Standard and that the sum of \$1.85 to be paid yearly for the annual supplements or yearbooks is a handling charge only; that Doubleday's Encyclopedia will be shipped upon approval and can be returned if not desired by the customer after examination and inspection; that salesmen of respondent New Standard are salesmen of Doubleday-Doran, and that respondent New Standard is a subsidiary organization of respondent Doubleday-Doran for distribution of encyclopedias in the southern States; that said encyclopedia has been approved by State educational authorities and is on the list of recommended reference books; that sets of said encyclopedia have been sold to and are recommended by superior officers, fellow workers, persons in authority, school superintendents, boards of education, and college professors; that testimonials and letters of recommendation concerning said Doubleday's Encyclopedia are unsolicited and genuine; that Doubleday's encyclopedia contains separate volumes devoted to such subjects as "flowers" "home economics" and other subjects; that the prospective customer will receive the exact editions of said encyclopedia, the prospecti of which said salesman of respondent New Standard displays and shows to said prospective customer; that blank checks signed by the customer at the request of respondent's salesman will not be used as such but will be mailed directly to the customer as notice that a payment under said contract is due; that pencils to be supplied with sets of the encyclopedia sold to school authorities are of a 5 cents value and can be sold to students at that price, that said pencils to be supplied are exactly the same as the sample exhibited to the customer at the time the con-

tract is signed, and that the pencils offered to school teachers or school authorities are offered for a limited time only and that the books so ordered by said customer may be paid for as the pencils are sold by said customer.

PAR. 9. In truth and in fact, the said books are not offered at a special low price for a limited time only, but are sold to all customers at all times at one of the following prices: \$59.50, \$69.50 or \$79.50, depending upon what "throw-ins" are included in the contract with the purchase of Doubleday's Encyclopedia, and, where a sale cannot be made at any of the above prices, said books are sold at whatever price the salesman feels he can close the deal. The books are not offered to a limited number of persons selected because of their prominence and standing in the community, but are sold to any and all persons who desire to buy them. The books are not given to members of the public in return for a recommendation which may be displayed to prospective customers at some future time, but each customer is obligated to pay for said books as provided in the contract between said customer and respondent New Standard. Said encyclopedia is not given free in connection with the purchase of 10 yearbooks at \$5.95 each, but is part of a combination sale, consisting of the encyclopedia, the yearbooks, and such other books or materials as may be included, and the \$59.50 purportedly the price of the yearbooks alone, is one of the prices at which such combination is regularly offered for sale and sold and the price of \$59.50 includes the price of encyclopedia, the yearbooks, and such other books and materials as may be included and is not the price of the yearbooks alone. The price of the books as shown in the body of the contract is not the total price to be paid by the purchaser, including the cost of the annual supplements, or yearbooks, but the customer is required to pay \$1.85 for each annual yearbook furnished, and the sum of \$1.85 is not a handling charge, but the amount to be paid yearly for the annual supplement or yearbook. Said sets of encyclopedias are not shipped upon approval and cannot be returned if not wanted by the purchaser after examination or inspection, for the customer is obligated to pay for such sets according to the terms of the contract. The salesmen selling said sets of encyclopedias are not representatives or agents of respondent Doubleday-Doran, and respondent New Standard is not a subsidiary of respondent Doubleday-Doran. The encyclopedia has not been approved by the State educational authorities in the State within which the prospective customer resides, and it is not on the list of recommended reference books. The encyclopedia has not been sold to or recommended by the superior officers

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of, fellow workers to, or persons in authority over the prospective purchaser as represented, or to school superintendents, boards of education, and college professors within the locality in which the said customer resides. The testimonials and letters recommending said encyclopedia are not unsolicited and are not genuine, and in some instances said letters of recommendation have been altered and the signature of the purported signer of said letter has been placed on the letter of recommendation as altered by the respondent without authority. The blank checks are not mere reminders or memorandums which will be mailed directly to the customer as notice that a payment is due, but are in fact actual checks which are deposited for collection by the respondent even after the customer signing such checks has notified respondent of his or her desire to cancel said contract. The pencils supplied with the sets of encyclopedias sold to school authorities and school teachers are not of a 5-cent value and are not the same as the samples exhibited at the time the contract is signed and are not offered to school teachers or school authorities for a limited time only. Said pencils are of an inferior quality which cannot be sold to the students or others for 5 cents each but must be sold at a price much less than 5 cents each, and the said books purchased cannot be paid for as the pencils are sold but must be paid for according to the terms set forth in the contract signed by the customer.

PAR. 10. For the purpose of enforcing payment under the contracts executed by the purchasers of said encyclopedia and other books and materials, which contracts were signed as a result of the false and misleading representations heretofore referred to, respondent New Standard Publishing Co., Inc., adopted the name "Commercial Finance" to induce its customers to continue payments according to the terms of the contract by means of threats, intimidation, and deceptive practices. It falsely represents that "Commercial Finance" is a bona fide collection agency in no way connected with respondent New Standard and to whom the customer's contract has been assigned for collection; that the customer's contract has been discounted with "Commercial Finance" and that the said respondent is the holder in due course and for value of the contract signed by the respective customers; that "Commercial Finance" will notify employers and superior officers of the customer's failure to comply with the terms of the contract unless payment is made forthwith; that "Commercial Finance" does a Nation-wide business from its main office at 103 North Wells Street, Chicago, Ill., and that an office at Richmond, Va., is a branch office of said company.

In truth and in fact "Commercial Finance" is not a company independent and apart from respondent New Standard but is a trade name under which respondent New Standard does business for the purposes herein set forth. "Commercial Finance" is not a holder in due course and for value of the customer's contract, and there could be no assignment of said contract to it by respondent New Standard for the purpose of making collections. Said trade name is used by respondent New Standard for the purpose of securing credit information concerning its customers and prospective customers, which information is furnished upon the belief that said "Commercial Finance" is in fact a legitimate collection agency; and "Commercial Finance" does not have any main office in Chicago, Ill., and the location of the office as designated on its letterheads is the office of the Standard Education Society, whose encyclopedia, as heretofore stated, is also sold by respondent New Standard. By agreement with said Standard Education Society all correspondence addressed to "Commercial Finance" at the Chicago, Ill., address is forwarded to the respondent New Standard at Richmond, Va.

Respondent New Standard, through the use of said trade name "Commercial Finance," and through the practices aforesaid, misleads and deceives purchasers of said books and thereby intimidates and harasses such purchasers into the payment to said "Commercial Finance" of sums of money which they may not be legally obligated to pay.

PAR. 11. Respondent New Standard, acting under the direction and control of respondent Julius B. Lewis, has greatly exaggerated and has misled and deceived purchasers as to its size and standing in the publishing business by the use of numerous fictitious names and titles of pseudo-employees and by the use of the number of fictitious names under which said respondent does business. Respondent New Standard, doing business under its corporate name and under the various trade and fictitious names heretofore referred to, represents that it is a large concern with numerous employees, whereas in truth and in fact it is a small organization with an office force of eight employees consisting of the manager and seven other employees whose duties consist mainly of file work and typing numerous letters which are written by the organization. This office is housed in a small room only sufficiently large to accommodate the desks of the employees. Respondent Julius B. Lewis occupies a small office partitioned off from the room occupied by the employees and, in addition, there is a small storeroom in the rear wherein office supplies are stored.

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PAR. 12. Respondent Julius B. Lewis, as principal stockholder in, and in directing the policies and practices of, respondent New Standard and the respondent New Standard, by using the words "press" and "publishing" in connection with the business of the respondent New Standard and by using said words in the trade names used by said respondents and by using the corporate name of the respondent New Standard, have falsely represented and implied that respondent New Standard is a publishing company, when in truth and in fact said respondent possesses no printing press nor does it maintain facilities for the publication of printed matter.

PAR. 13. Respondent Doubleday-Doran & Co., Inc., has aided, abetted, and encouraged respondents New Standard Publishing Co., Inc. and Julius B. Lewis in using, and in promoting the use of, and has induced, directly and indirectly, said respondents to use and to promote the use of the unfair and deceptive acts and practices hereinbefore alleged by: approving respondent New Standard's various types of deceptive contracts for use between it and its customers in the sale of respondent Doubleday-Doran's Encyclopedia; becoming a joint participant with respondent New Standard insofar as the terms of said contract heretofore referred to deal with the purchase of the annual supplement or yearbook for use in connection with Doubleday's Encyclopedia; permitting the respondent New Standard to prominently display the name "Doubleday-Doran" on its contracts in such a manner as to lead one to believe that he was entering into a contract with respondent Doubleday-Doran instead of respondent New Standard; continuing its agreement to sell respondent New Standard sets of its encyclopedia for resale to the general public after numerous complaints received by it over a long period of time of the unfair and deceptive acts and practices of respondent New Standard in connection with the sale of Doubleday's Encyclopedia; making laudable representations of the business integrity of respondent Julius B. Lewis to persons complaining directly to it of the misrepresentations made to them by salesmen of respondent New Standard, and assuring such complainants that their complaints would be equitably adjusted by taking such matters up with respondent New Standard even though it had repeatedly called the attention of respondent Julius R. Lewis to the manner in which he was conducting his business in connection with the sale of Doubleday-Doran's Encyclopedia and his failure to make equitable adjustments with his customers who had been induced by false and misleading representations to enter into said contracts for the purchase of said Doubleday's Encyclopedia; collaborating with the respondent Julius B. Lewis as to the type of

reply letters he should send to some of his customers who registered complaints, either with respondent New Standard or respondent Doubleday-Doran; returning monies, given to it by respondent New Standard for that purpose, to persons who had paid said money to respondent New Standard as a result of the false and misleading representations used by salesmen of the respondent New Standard; and by many other means and methods not herein specifically alleged.

PAR. 14. The use by the respondents of the aforesaid acts, practices and methods, in connection with the offering for sale, sale and distribution of said products in commerce as aforesaid, has had and now has the tendency and capacity to, and does, mislead and deceive the purchasing public into the erroneous and mistaken belief that the representations and implications so made and used by the respondents are true. As a result of this erroneous and mistaken belief, engendered as aforesaid, many members of the purchasing public have been and are induced to buy respondents' said products in said commerce.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute 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 February 4, 1942, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were taken before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission upon the complaint, answers thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions thereto filed by counsel for certain of the respondents, and briefs and oral argument of counsel; and the Commission, having duly considered the matter, including the exceptions to the report of the trial examiner upon the evidence, and being now fully advised in the premises, finds

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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. Respondent New Standard Publishing Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located in the Broad Grace Arcade Building, Grace Street, Richmond, Va. Said corporate respondent, in accordance with the laws of the State of Virginia, filed a certificate to do business under the trade names of "Publishers Guild," "Foundation Press," "Geographical Publishing Company," and "Commercial Finance," and business was actually done under the trade names of "Foundation Press" and "Commercial Finance." The names "National Research Bureau" and "Standard Research Bureau" were also used in connection with certain phases of said corporate respondent's business. Respondent New Standard Publishing Co., Inc., is hereinafter sometimes referred to as "New Standard."

PAR. 2. Respondent Julius B. Lewis, also known as Jack Lewis, is an individual and is president of respondent New Standard Publishing Co., Inc. His business address is Broad Grace Arcade Building, Grace Street, Richmond, Va. Said respondent is the principal stockholder of respondent New Standard Publishing Co., Inc., and he directs and controls the business policies and activities of said corporation in carrying out the acts and practices hereinafter described, whether said corporate respondent is doing business under its legal corporate name or under any of the fictitious or trade names heretofore mentioned.

PAR. 3. Respondent Doubleday-Doran & Co., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at Garden City, Long Island, N. Y. Prior to the issuance of the complaint herein said respondent Doubleday-Doran & Company sold all of its rights to publish the Doubleday's Encyclopedia to another firm, with whom it has no connection whatsoever, and said encyclopedia is presently being published and sold under a different name by another company. Since the sale of said encyclopedia, Doubleday-Doran & Company has had no connection or dealing with the other respondents herein in connection with the sale of encyclopedias, and the officials of Doubleday-Doran & Co. who were formerly in charge of the sale and distribution of said encyclopedia have left the employ of Double-

day-Doran & Company. The Commission has heretofore entered its order dismissing the complaint as to Doubleday-Doran & Company. As hereinafter used, the term "respondents" does not include Doubleday-Doran & Company.

PAR. 4. Respondent New Standard Publishing Company, Inc., entered into an agreement with Doubleday-Doran & Co. whereby it was to purchase from Doubleday-Doran & Company and to sell sets of an encyclopedia published by Doubleday-Doran & Company and known as Doubleday's Encyclopedia. At the time of entering into said agreement, respondent New Standard was also selling an encyclopedia published by Standard Education Society of Chicago, Ill. For the purpose of separating the business done by it in the sale of the Standard Education Society's publication and that in the sale of Doubleday-Doran & Company's publication, respondent adopted the trade name "Foundation Press," under which name Doubleday's Encyclopedia was sold.

PAR. 5. Respondent New Standard, acting under the direction and control of respondent Julius B. Lewis, as aforesaid, in the course and conduct of its business caused sets of Doubleday's Encyclopedia and other books and material to be shipped or transported from its place of business in Richmond, Va., or from the place of business of Doubleday-Doran & Co., in the State of New York, to customers located in various other States of the United States and in the District of Columbia, and at all times mentioned herein maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. Respondent New Standard Publishing Co., Inc., in the course and conduct of its business employed various salesmen on a commission basis to sell Doubleday's Encyclopedia and annual supplements or yearbooks.

Advertising literature furnished by the publisher of the encyclopedia, Doubleday-Doran & Co., and contract forms and other material furnished by respondent New Standard were provided each salesman. In addition to Doubleday's Encyclopedia and the annual supplement or yearbooks, respondent New Standard also sold certain other publications, such as The New Century Dictionary, Funk & Wagnalls Practical Standard Dictionary, The Nature Library, and sets of classics, and in some instances other items such as bookcases and pencils. Orders taken by salesmen were forwarded to respondent New Standard in Richmond, Va., and delivery was made either from that office or from the office of Doubleday-Doran & Co. in Garden City, Long Island, N. Y.

The contract forms provided the salesmen by respondent New Standard generally had printed thereon the price which the purchaser was to pay for the encyclopedia and any other items included therewith, which price was either \$59.50, \$69.50, or \$79.50. The contracts entered into with purchasers included an order for the annual supplement or yearbooks. However, the total price printed on the contracts did not include the price to be paid by the purchasers for the annual supplement or yearbooks. The fact that the purchaser was obligated to pay a sum in addition to the amount printed on the contract was indicated on the contract by the words "As provided in certificate" or "As provided below," which were printed in small type beneath the words "Bound Annual Yearbooks."

PAR. 7. Respondent New Standard Publishing Co., Inc., in the course and conduct of its business as aforesaid, for the purpose of inducing customers and prospective customers to sign a contract for the purchase of said encyclopedia and other publications and other items, has, directly and indirectly, made many false and misleading statements and representations regarding said encyclopedia and the nature and terms of said contract. Typical of such false and misleading statements and representations are the following:

That the books were offered at a special low price, which price would be in effect for a limited time only—after which time the books would be sold for an amount considerably higher than that at which they were offered; that the books were offered to a limited number of persons who were selected because of said persons' prominence and standing in the community; that the books were given away as an advertising plan, and the only return requested of the prospective purchaser was a recommendation which could be shown to other prospective customers at some time in the future; that Doubleday's Encyclopedia was free, but that there was a charge of \$5.95 each for the 10 annual yearbooks; that the price of said books as shown in the body of the contract was the total price to be paid by the purchaser, including the cost of the annual supplement or yearbooks; that transportation charges would be paid by respondent New Standard and that the sum of \$1.85 or \$1.95 to be paid yearly for the annual supplement or yearbooks was a handling charge only; that salesmen of respondent New Standard were salesmen of Doubleday-Doran & Co., and that respondent New Standard was a subsidiary organization of Doubleday-Doran & Co., for distribution of encyclopedias in the southern States; that Doubleday's Encyclopedia had been approved by State educational authorities of the State in which the prospective customers to whom such representation was made were located, and that said encyclopedia

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was on the list of recommended reference books of such State; that sets of said encyclopedia had been sold to and were recommended by superior officers, fellow workers, persons in authority, school superintendents, and college professors; that testimonials and letters of recommendation concerning said encyclopedia were unsolicited and genuine; that pencils to be supplied with sets of the encyclopedia sold to school authorities were of a 5-cent value and could be sold to students at that price, that said pencils to be supplied were exactly the same as the sample exhibited to the customer at the time the contract was signed, and that the books so ordered by said customer could be paid for as the pencils were sold by said customer.

PAR. 8. In truth and in fact, the said books were not offered at a special low price for a limited time only, but were offered and sold to all customers at all times for \$59.50, \$69.50, or \$79.50, depending upon the other publications or items which were included in the contract in addition to the encyclopedia. The books were not offered to a limited number of persons selected because of their prominence and standing in the community, but were sold to any and all persons who could be persuaded to buy them. The books were not given to members of the public in return for a recommendation which could be displayed to prospective customers at some future time, but each customer was obligated to pay for said books as provided in the contract between said customer and respondent New Standard. Said encyclopedia was not given free in connection with the purpose of 10 year-books at \$5.95 each, but was part of a combination sale consisting of the encyclopedia, the yearbooks, and such other books or materials as might be included. The total price of \$59.50, represented as being the price of the yearbooks alone, was one of the prices at which a combination, consisting of the encyclopedia and certain other books or materials, was regularly offered for sale and sold. The price of the books as shown in the body of the contract was not the total price to be paid by the purchaser, including the cost of the annual supplement or yearbooks. In addition to the price shown in the body of the contract, the customer was required to pay \$1.85 or \$1.95 for each annual supplement or yearbook furnished. Prospective customers were not advised that they would have to pay \$1.85 or \$1.95 plus mailing charges for each annual supplement or yearbook. Certificates which were to be signed by the purchaser and forwarded to Doubleday-Doran & Co. with \$1.85 or \$1.95 in order to receive the annual supplement or yearbook were not provided the customer until after the contract had been signed. The sum of \$1.85 or \$1.95 which a customer was required to pay for each annual supplement or yearbook was not a handling charge

as represented in the contract, but was the amount to be paid yearly for such annual supplement or yearbook. The salesmen employed by respondent New Standard were not representatives or agents of Doubleday-Doran & Co., and respondent New Standard was not a subsidiary of Doubleday-Doran & Co. Doubleday's Encyclopedia was not approved by the educational authorities of the State in which prospective customers to whom such a representation was made resided, and said encyclopedia was not on the list of recommended reference books of such State. Said encyclopedia had not been sold to or recommended by the superior officers of, fellow workers of, or persons in authority over, the prospective purchasers as represented, and had not been sold to school superintendents, boards of education, and college professors within the locality in which said prospective purchasers resided. Some of the testimonials and letters recommending said encyclopedia were not unsolicited and were not genuine. In at least one instance, one of respondents' salesmen, in attempting to sell a set of said encyclopedia to the principal of a school, exhibited to said principal a letter purportedly written by the county superintendent, to the effect that said salesman, a representative of Doubleday-Doran & Co., had been given permission to visit the school and present the encyclopedia and school service. The county superintendent whose name appeared on said letter had never given any such permission to said salesman or to anyone else. The pencils supplied with the sets of encyclopedias sold to school authorities and school teachers were not of a 5-cent value and were not the same as the samples exhibited at the time the contract was signed. Said pencils were of an inferior quality and could not be sold to students or others for 5 cents each, and the books purchased could not be paid for as the pencils were sold, but the customers were required to make payments according to the terms set forth in the contracts signed by them.

PAR. 9. For the purpose of enforcing payment under the contracts executed by the purchasers of said encyclopedia and other books and materials, which contracts were signed as a result of the false and misleading representations hereinabove described, respondent New Standard Publishing Co., Inc., adopted the name "Commercial Finance" to induce its customers to make payments according to the terms of the contract by means of threats, intimidation, and deceptive practices. Respondents falsely represented that "Commercial Finance" was a bona fide collection agency, in no way connected with respondent New Standard Publishing Co., Inc., and that customers' contracts had been assigned to it for collection; that customers' contracts had been discounted with "Commercial Finance"; and that said

"Commercial Finance" was the holder in due course and for value of the contracts signed by the customers; that "Commercial Finance" does a nation-wide business from its main office at 103 North Wells Street, Chicago, Ill., and that an office in Richmond, Va., is a branch office of said "Commercial Finance."

In truth and in fact, "Commercial Finance" was not a company independent and apart from respondent New Standard, but was a trade name under which respondents did business for the purpose hereinabove set forth. "Commercial Finance" was not a holder in due course and for value of the customers' contracts, and there could be no real transfer or assignment of said contracts to it by respondent New Standard for the purpose of making collections. The trade name "Commercial Finance" was used by respondent for the purpose of securing credit information concerning its customers and prospective customers, which information was furnished in the belief that said "Commercial Finance" was in fact a legitimate collection agency. "Commercial Finance" does not have a main office in Chicago, Ill., and the address given on its letterheads is the office of the Standard Education Society, whose encyclopedia, as heretofore stated, was also sold by respondent New Standard. By agreement with said Standard Education Society, all correspondence addressed to "Commercial Finance" at the Chicago, Ill., address was forwarded to the respondent New Standard at Richmond, Va.

Respondent New Standard, through the use of said trade name "Commercial Finance" and through the practice aforesaid, misled and deceived purchasers of said books and thereby intimidated and harassed such purchasers into the payment to said "Commercial Finance" of sums of money which such purchasers may not have been legally obligated to pay.

PAR. 10. Through the use of the various fictitious and trade names referred to hereinabove and by the use of numerous fictitious names and titles of pseudo-employees, respondent New Standard Publishing Co., Inc., acting under the direction and control of respondent Julius B. Lewis, falsely represented that it was a large concern with numerous employees, and thus misled and deceived purchasers and prospective purchasers as to its size and standing in the publishing business.

In truth and in fact respondent New Standard was a comparatively small organization with an office force consisting of the manager and six or seven other employees whose duties consisted mainly of file work and typing numerous letters written by the organization. The office was housed in a small room only sufficiently large to accommodate the desks of the employees. Respondent Julius B. Lewis occupied

a small office partitioned off from the room occupied by the employees, and in addition there was a small storeroom in the rear, wherein office supplies were stored. The names "J. Simon," "C. A. Black," and "C. L. Brooks" were fictitious names used by respondent Lewis and certain employees in signing letters to customers.

PAR. 11. The use by the respondents New Standard Publishing Co., Inc., and Julius B. Lewis of the aforesaid acts, practices, and methods in connection with the offering for sale, sale, and distribution of said products in commerce as aforesaid had the tendency and capacity to, and did, mislead and deceive the purchasing public into the erroneous and mistaken belief that the representations and implications so made and used by said respondents were true. As a result of this erroneous and mistaken belief engendered as aforesaid, many members of the purchasing public were induced to buy said products in commerce as aforesaid.

PAR. 12. While the complaint herein contained certain charges in addition to those hereinabove mentioned, the Commission is of the opinion, and finds, that such charges are not sustained by the evidence.

CONCLUSION

The acts and practices of respondents New Standard Publishing Co., Inc., and Julius B. Lewis, as hereinabove found, are all to the prejudice and injury of the public and constitute 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, respondents' answers thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions thereto filed by counsel for certain of the respondents, and briefs an oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondents New Standard Publishing Co., Inc., and Julius B. Lewis have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent New Standard Publishing Co., Inc., a corporation, its officers, and respondent Julius B. Lewis, individually, and their respective representatives, agents, and employees,

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Order

directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of encyclopedias or any other publications, cease and desist from representing, directly or by implication :

1. That the usual or customary price at which said publications are offered for sale is a special low price; or that any offer is for a limited time only when such offer is made continuously in the regular course of business.

2. That said publications are available only to selected individuals.

3. That said publications are given to purchasers as an advertising plan, or otherwise, in return for endorsements from such purchasers, when such is not a fact.

4. That said publications are free or in any sense a gratuity, when in fact payment therefor is included in the total price to be paid by the purchaser or when the purchaser is required to purchase another publication or publications or some other merchandise as a condition to the receipt of said publications.

5. That the total price which a purchaser is obligated to pay covers any publication, or other items, for which an additional charge is made.

6. That the amount which a purchaser is required to pay in order to receive any publication is a handling charge only, when such is not a fact.

7. That salesmen employed by said respondents to sell encyclopedias or other publications are representatives of the publishers of said encyclopedias or other publications.

8. That respondent New Standard Publishing Co., Inc., is a subsidiary of the publisher of the encyclopedias which it sells, or that its relationship with said publisher is anything other than what it is in fact.

9. That said publications are approved by the State educational authorities, or are on the list of recommended reference books, of a particular State, unless said publications have in fact been so approved and listed.

10. That said publications have been sold to or recommended by any given person or persons, when such is not a fact.

11. That testimonials or recommendations are unsolicited and genuine, when such is not a fact.

12. That pencils or any other merchandise supplied with said publications are of a greater value than they are in fact; or that said pencils or other merchandise will be the same as samples exhibited to purchasers, when such is not a fact.

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13. That purchasers of said publications will not be required to make payments in accordance with the terms of the contracts signed by them, when such is not a fact.

14. That "Commercial Finance," or any other trade or fictitious name under which business is done by respondents, is a bona fide collection agency not connected with respondent New Standard Publishing Co., Inc.

15. That any purchaser's contract has been assigned to or discounted with a bona fide collection agency, when such is not a fact.

16. That respondent New Standard Publishing Co., Inc., is a large concern with numerous employees, through the use of fictitious names and titles of pseudo-employees or otherwise.

It is further ordered, That respondents New Standard Publishing Co., Inc., and Julius B. Lewis 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.

Commissioner Mason not participating.

Complaint

IN THE MATTER OF

APPLETON-CENTURY-CROFTS, INC.

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

Docket 5773. Complaint, May 3, 1950—Decision, June 13, 1951

Where a corporation engaged in the publication of educational books for text and general reference use, and in the interstate sale and distribution thereof to purchasers competitively engaged in their resale to students and others for use during particular school terms or semesters, including some who owned or operated two or more places of business, engaged in varying degrees in buying second-hand educational books from, and selling them to, retail book stores or students and of whom (with the exception of those purchasing from and selling to students in their respective localities) it characterized some as handling, as a substantial part of their activities, second-hand books through multiple outlets, or as wholesaling second-hand books—

Discriminated in favor of some and against other purchasers of its books bought for resale, by contracting to furnish or furnishing or by contributing to the furnishing of services or facilities connected with the handling, sale, or offering for sale of said books upon terms not accorded to all competing purchasers on proportionally equal terms, in that it denied to those competing purchasers characterized by it as handling, as a substantial part of their activities, second-hand books through multiple outlets, or as wholesalers of second-hand books, the privilege of returning unsold copies of its educational books for credit, subject to the conditions announced in its "credit for return policy," as published in its catalogs and price lists and otherwise, and which it accorded to all others of its competing purchasers:

Held, That such acts and practices, under the circumstances set forth, violated subsection (e) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Before *Mr. Frank Hier*, trial examiner.

Mr. Austin H. Forkner for the Commission.

Sullivan & Cromwell, of New York City, for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (e) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges in that respect as follows: