

## 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:

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PARAGRAPH 1. Respondent, Appleton-Century-Crofts, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 35 West Thirty-second Street, New York, N. Y.

PAR. 2. Respondent is now, and during more than 2 years last past has been, engaged in the business of publishing books, including educational books for text and general reference use, and of selling said books to purchasers with places of business located in many States of the United States and in the District of Columbia for resale within the United States. In the course and conduct of said business, respondent caused said books so sold to be transported from one or more States to said purchasers located in other States and in the District of Columbia.

PAR. 3. In the course of its said business in commerce, respondent discriminated in favor of some and against others of said purchasers of said 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 so purchased upon terms not accorded to all competing purchasers on proportionally equal terms.

Among such services or facilities was that of accepting the return for credit of unsold copies of said books, including, as alleged in paragraph 4, unsold copies of said educational books.

PAR. 4. In the course and conduct of its said business in commerce, respondent sold said educational books to purchasers who bought them for and were competitively engaged in their resale at retail to students and others for use in connection with classes during particular school terms or semesters.

Some of said purchasers, including some who owned or operated two or more places of business, also engaged, in varying degrees, in the business of buying second-hand educational books from, and selling them to, retail book stores and/or students; and, of those purchasers so engaged in the second-hand book business, except those purchasing from and selling to students in their respective localities, respondent characterized some as handling as a substantial part of their activities second-hand books through multiple outlets, or as wholesaling second-hand books.

In connection with the handling, offering for sale, or sale by said competing purchasers of said books so purchased from it, respondent had and published, or caused to be published, in its catalogs and price lists of said books, and otherwise, a return for credit policy. Said policy specified the terms upon which respondent undertook to fur-

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## Decisions

nish or accord the service or facility of accepting the return for credit of unsold copies of said books. Illustrative of said policy is the following, which appeared in respondent's catalog and price list of said books dated April 1, 1949:

**RETURN FOR CREDIT POLICY.** Our policy governing the acceptance for credit of unsold copies of our own publications ordered for class use is as follows:

We will accept for full credit up to 33 $\frac{1}{3}$ % of the number of copies of any title listed in this catalog which has been ordered directly from us providing that the books are returned in a perfectly fresh and saleable condition within 60 days after the opening date of the term or semester for which they were ordered, all transportation and carriage charges prepaid. Shipments should be addressed to our wareroom: 726 Broadway, New York 3, N. Y. Exceptions to the above policy are the volumes in the Crofts Classics series and in the Classiques Larousse series, of which no returns are accepted.

We reserve the right to reship to the sender, without notification, transportation charges collect, any returns not in accordance with the above.

Respondent furnished or accorded said service or facility upon the terms specified in said policy to all of said competing purchasers except those characterized by respondent as handling as a substantial part of their activities second-hand books through multiple outlets or as wholesalers of second-hand books.

Respondent failed or refused to furnish or accord said service or facility to those of said competing purchasers so characterized for the reason that they were so characterized.

**PAR. 5.** The acts and practices of respondent as above alleged violate subsection (e) of section 2 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C., title 15, sec. 13).

**DECISION OF THE COMMISSION**

Pursuant to rule XXII of the Commission's rules of practice, and as set forth in the Commission's Decision of the Commission and Order to File Report of Compliance, dated June 13, 1951, the initial decision in the instant matter of trial examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

**INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER**

Pursuant to the provisions of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13), the Federal Trade Commission on May 3, 1950, issued and subsequently served its complaint in this proceeding upon Appleton-

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Century-Crofts, Inc., a corporation, charging it with violation of subsection (e) of section 2 of said act as amended. On June 21, 1950, respondent filed its answer. At the initial hearing on October 16, 1950, for the taking of testimony and receipt of other evidence, respondent moved to withdraw its answer theretofore filed and for leave to file substitute answer, which latter answer "agreed that the facts stated in the complaint might be deemed admitted." This substitute answer was rejected by the trial examiner for the reason that it did not constitute an outright admission of the facts. Respondent's motion to substitute was therefore denied. Respondent's counsel stated his desire to appeal this ruling to the Commission and further stated that if the appeal were denied by the Commission respondent would file a substitute answer admitting outright all the material allegations of fact set out in the complaint. In view of this professional undertaking, the trial examiner thereupon canceled further hearings and closed the proceeding for the purpose of taking evidence. Permission to appeal under rule XX of the Commission's rules of practice was requested by the respondent on October 30, 1950, accompanied by a brief. On February 5, 1951, the Commission refused to entertain the appeal, and thereafter on February 21, 1951, respondent filed answer admitting all material allegations of fact set forth in the complaint, waiving hearing as to facts and refraining from contesting the proceeding, such admissions being qualified only to the extent that they were made for the purpose of this proceeding solely and reserving the right to submit proposed findings and conclusions of fact or of law. No proposed findings or conclusions were submitted by counsel on either side. Thereafter, this proceeding regularly came on for final consideration by said trial examiner upon the complaint and substitute answer filed February 21, 1951, and the trial examiner, after consideration of the record herein, makes the following findings as to the facts, conclusion drawn therefrom, and order:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Appleton-Century-Crofts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 35 West Thirty-second Street, New York, N. Y.

PAR. 2. Respondent is now, and during more than 2 years last past has been, engaged in the business of publishing books, including educational books for text and general reference use, and of selling said books to purchasers with places of business located in many States of the

United States and in the District of Columbia for resale within the United States. In the course and conduct of said business, respondent caused said books so sold to be transported from one or more States to said purchasers located in other States and in the District of Columbia.

PAR. 3. In the course of its said business in commerce, respondent has discriminated in favor of some and against others of said purchasers of said 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 so purchased, upon terms not accorded to all competing purchasers on proportionally equal terms.

Among such services or facilities was that of accepting the return for credit of unsold copies of said books, including, as found in paragraph 4, unsold copies of said educational books.

PAR. 4. In the course and conduct of its said business in commerce, respondent sold said educational books to purchasers who bought them for, and were competitively engaged in, their resale at retail to students and others for use in connection with classes during particular school terms or semesters.

Some of said purchasers, including some who owned or operated two or more places of business, also engaged, in varying degrees, in the business of buying second-hand educational books from, and selling them to, retail book stores and/or students; and, of those purchasers so engaged in the second-hand book business, except those purchasing from and selling to students in their respective localities, respondent characterized some as handling, as a substantial part of their activities, second-hand books through multiple outlets, or as wholesaling second-hand books.

PAR. 5. In connection with the handling, offering for sale, or sale by said competing purchasers of said books so purchased from it, respondent had and published, or caused to be published, in its catalogs and price lists of said books, and otherwise, a return for credit policy. Said policy specified the terms upon which respondent undertook to furnish or accord the service or facility of accepting the return for credit of unsold copies of said books. Illustrative of said policy is the following, which appeared in respondent's catalog and price list of said books dated April 1, 1949:

**RETURN FOR CREDIT POLICY.** Our policy governing the acceptance for credit of unsold copies of our own publications ordered for class use is as follows:

We will accept for full credit up to 33⅓% of the number of copies of any title listed in this catalog which has been ordered directly from us

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providing that the books are returned in a perfectly fresh and saleable condition within 60 days after the opening date of the term or semester for which they were ordered, all transportation and carriage charges prepaid. Shipments should be addressed to our wareroom: 726 Broadway, New York 3, N. Y. Exceptions to the above policy are the volumes in the Crofts Classics series and in the Classiques Larousse series, of which no returns are accepted.

We reserve the right to reship to the sender, without notification, transportation charges collect, any returns not in accordance with the above.

Respondent furnished or accorded said service or facility upon the terms specified in said policy to all of said competing purchasers except those characterized by respondent as handling, as a substantial part of their activities, second-hand books through multiple outlets or as wholesalers of second-hand books.

Respondent failed or refused to furnish or accord said service or facility to those of said competing purchasers so characterized for the reason that they were so characterized.

## CONCLUSION

The acts and practices of respondent, as above found, violate subsection (e) of section 2 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C., title 15, sec. 13).

## ORDER

*It is ordered*, That Appleton-Century-Crofts, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in or in connection with the sale of books in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, among competing purchasers of such books bought for resale,

1. By furnishing, or contributing to the furnishing, of the service or facility of accepting the return for credit of unsold copies of such books, to any purchaser of such books, when such service or facility is not accorded on proportionally equal terms to other purchasers of such books, who compete in the resale thereof with purchasers who receive such service or facility.

2. By furnishing, or contributing to the furnishing, of any services or facilities connected with the handling, sale, or offering for sale of books purchased from respondent, to any purchaser thereof upon terms not accorded to all competing purchasers on proportionally equal terms.

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Order

ORDER TO FILE REPORT OF COMPLIANCE

*It is ordered*, That the respondent herein 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 the order to cease and desist [as required by said declaratory decision and order of June 13, 1951].

IN THE MATTER OF  
LOUIS GORDON AND BEN GORDON TRADING AS BENGOR  
PRODUCTS CO.

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

*Docket 4420. Complaint, Dec. 16, 1940—Decision, June 20, 1951*

Where two partners engaged in the interstate sale and distribution of miscellaneous merchandise including cosmetics, perfumes, shaving and dental cream, soap, drug and household sundries, handkerchiefs, ladies' hose, pajamas, pocketbooks, punchboards, push cards, novelties, and household notions; in advertising their merchandise in trade magazines and newspapers, and in catalogs and advertising circulars distributed through the mail and otherwise to wholesale purchasers—

- (a) Represented that various products were ordinarily and customarily sold to consumers at a stated price through such typical statements as "Dr. Sachs Dental Cream 35¢ size tube Dozen 45¢ 60¢ size tube Dozen 65¢," "Royal Blue Dental Cream \* \* \* 35¢ size tube Dozen 45¢ 60¢ size tube Dozen 65¢," and "Powder & Perfume Combination \* \* \* a real Flash. Is packed 12 deals to a box. Retail for 25¢ each. Priced to Beat All Competition. Dozen 65¢ gross \$7.20 \* \* \* Sun Glo Roses Annette price \$1.00";

When in fact the aforesaid and other products offered and sold by them were ordinarily sold to consumers at prices considerably lower than those so represented as consumer prices;

With the result of placing in the hands of retailers buying such products for resale an instrumentality whereby they might deceive the purchasing public by offering said products at purported discounts from the factitious retail price;

- (b) Falsely represented that certain of their products were made in accordance with the formula and under the supervision of a member of the medical or dental profession through such statements as "Dr. Dade's Skin Soap," etc.;
- (c) Falsely represented that certain of their domestic perfumes were manufactured in France and imported into the United States through the use of the term "Parfums Jockey Club de Paris"; and,
- (d) Falsely represented that certain rayon products were composed wholly of silk and that others were composed of silk in combination with rayon, through such statements as "Ladies' Silk Rayon Hose," "Ladies Hose Rayon Silk Ringless," "A dainty and distinctive handkerchief of rayon silk \* \* \*" "Men's Pure Silk Handkerchiefs," and "Men's Silk Pajamas Manufactured from Rayon Silk";

With effect of misleading and deceiving the purchasing public and retailers into the erroneous belief that such false representations were true, and with capacity and tendency so to do and thereby induce purchase of their said products; and,

Where said partners, engaged in the interstate sale and distribution of push cards and punchboards which, bearing explanatory legends or blank spaces