

Syllabus

IN THE MATTER OF

PERMANENT STAINLESS STEEL, INC. ET AL.

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

Docket 5936. Complaint, Nov. 20, 1951—Decision, Mar. 6, 1952

Where a corporation and its president, engaged in the interstate sale and distribution of their "High Thermal Permanent Stainless Steel Cookware" principally through agents who solicited the public by demonstrations before groups of prospective purchasers at which pamphlets and charts were exhibited and distributed, accompanied by sales talks taken from sales manuals supplied by them—

- (a) Disparaged competitors' utensils through falsely representing that consumption of food cooked or kept in aluminum utensils would cause cancer; that foods so cooked or kept in aluminum are detrimental and hazardous to health; and that the preparation of food in aluminum utensils causes formation of poisons, and unfavorable chemical reaction;
- (b) Directly and through many of their sales representatives unfairly disparaged and injured a competitor by falsely representing that said competitor was no longer in business or would not be in business much longer, and falsely reflecting upon its solvency and financial responsibility and thereby indicating that said competitor was not in position to fulfill its orders and otherwise comply with its contractual obligations;
- (c) Represented falsely, through charts supplied for use in said cooking demonstrations, that their utensils had been endorsed by health authorities; that use thereof would result in saving money on foods and medicine, would result in less illness, and provided a cooking method especially conducive to health, and that preparation of food therein would aid digestion;
- (d) Represented falsely, through charts which were supplied and used as above described and referred to minerals and vitamin losses in foods caused by boiling and prolonged high temperatures, that ordinary cooking methods with other utensils would result in destruction or loss of minerals and vitamins so as to prevent the consumer from receiving his minimum requirements thereof, and that their utensils would retain the minerals and vitamins of food cooked therein to a greater extent than would those of any competitor;
- (e) Falsely represented and implied that calcium gives vitality; that magnesium prevents and relieves constipation; that iodine keeps cells active; that sulphur purifies and tones the human system; that sodium aids digestion and purifies the blood; that chlorine cleanses, disinfects, and expels waste from the human body; that fluorine has a beneficial effect by strengthening the body and building resistance; that potassium is a liver activator and creates grace and beauty; that silicon nourishes nails, skin and the hair; that manganese increases resistance; and that phosphorus nourishes brain cells;

With capacity and tendency to deceive and mislead a substantial portion of the purchasing public into the erroneous belief that such representations

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were true and thereby induce it to purchase substantial quantities of their products, and thereby unfairly divert trade from their competitors, to their substantial injury:

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

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. R. P. Bellinger for the Commission.

Steptoe & Johnson, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Permanent Stainless Steel, Inc., a corporation, and Bernard L. Marcy, individually and as an officer of said corporation, 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, Permanent Stainless Steel, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 2641 West 51st Street, Chicago, Illinois. The individual respondent, Bernard L. Marcy, is President of the corporate respondent, Permanent Stainless Steel, Inc., and as such formulates, manages and controls the affairs, activities and policies of said corporation, including the acts and practices hereinafter alleged. The individual respondent's address is the same as that shown above for the corporate respondent.

PAR. 2. Respondents are now and for several years last past have been engaged in the sale and distribution in commerce of stainless steel cooking utensils designated as High Thermal Permanent Stainless Steel Cookware. Respondents do a substantial volume of business in said stainless steel cooking utensils and cause and have caused such products when sold to be transported from their said place of business in the State of Illinois to purchasers thereof located in other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business as aforesaid, respondents are now and have been in substantial competition with

other corporations and parties likewise engaged in the business of selling and distributing cooking utensils in commerce between and among the various States of the United States and in the District of Columbia, who truthfully describe and advertise their respective products, and who refrain from unfairly disparaging the product of competitors.

PAR. 4. The advertising and selling of respondents' cooking utensils are conducted principally through the medium of agents, representatives or employees through personal solicitation and contact with the general public. The method chiefly employed by said agents, representatives or employees, at respondents' direction, is the giving of demonstrations of respondents' products before groups of prospective purchasers at which time various pamphlets, leaflets, charts, circulars and other written or printed matter are exhibited and distributed, accompanied by sales talks taken from sales manuals supplied by the respondents all with respect to the characteristics, nature and effectiveness of said products used in the preparation of food.

PAR. 5. At the cooking demonstrations hereinabove referred to, by means of certain so-called tests, including statements made in connection therewith, and otherwise, respondents, through their said agents, representatives or employees, and for the purpose of inducing the purchase of their said products in commerce, have made disparaging statements and representations with respect to utensils sold and distributed in commerce by their competitors. Such disparaging representations and statements were and are to the effect that the consumption of food cooked or kept in aluminum utensils will cause cancer; that foods so prepared or kept in aluminum utensils are detrimental and hazardous to the health of the user; and that the preparation of food in aluminum utensils causes formation of poisons, and an unfavorable chemical reaction occurs.

PAR. 6. Aluminum has been used in the manufacture of cooking utensils for many years. During that period of time, it has been found to be a highly satisfactory material for use in cooking utensils. The consumption of food cooked or kept in aluminum utensils will not cause cancer; foods prepared or kept in aluminum utensils are neither detrimental nor hazardous to the health of the users thereof by reason of the use of aluminum utensils; poisons are not formed from the preparation of foods in aluminum utensils, and no unfavorable chemical reaction occurs therefrom.

PAR. 7. The respondents, directly, and through many of their sales representatives, have unfairly disparaged and dealt injury to the

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business of a competitor by falsely representing that said competitor was no longer in business or would not be in business much longer, and by making other false statements reflecting upon the solvency and financial responsibility of said competitor, thus indicating that said competitor was not in position to fulfill its orders and otherwise comply with its contractual obligations.

PAR. 8. In the course and conduct of their said business, respondents have supplied their sales persons with various printed charts to be displayed during their cooking demonstrations. Among the representations made in such charts are the following:

Permanent Stainless Steel does save money on groceries, fuel and medicine.

Permanent Stainless Steel does have the endorsement of health authorities.

Proper preparation of food aids digestion—The safe way is . . . high thermal permanent stainless steel.

PAR. 9. Through the use of the statements and claims quoted in Paragraph Eight above, respondents have represented directly and by implication that their cooking utensils have been endorsed by health authorities; that the use of their products will result in saving money on foods and medicine, including a reduction in the quantity of needed medicine, and will result in less illness; that the use of said products provides a cooking method especially conducive to good health, and that the preparation of food in respondents' utensils will aid digestion.

PAR. 10. In truth and in fact, respondents' cooking utensils have not been endorsed by any health authority; the use of respondents' products will not effect any monetary saving on food or medicine, will not influence the quantity of medicine needed, and will not result in less illness; the use of respondents' utensils does not provide a cooking method especially conducive to good health, nor any more conducive to health than other methods or other utensils; and the preparation of food in respondents' utensils will not aid digestion any more than preparation in other utensils.

PAR. 11. Among said charts used by respondents in the manner above described is one appearing substantially in the following form, language and symbols:

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These Body Building Elements in Food	Perform the Following in the Body	Water and Temperature are Enemies to Minerals and Vitamins
Calcium * * *	Builds * * * Vitality * * *	* W & T * * *
Magnesium	Prevents and Relieves Con- stipation	* W & T
Iodine	* * * Keeps cells Active	* T
Sulphur	Purifies and Tones System	* T
Sodium	Aids Digestion, Purifies Blood	* W
Chlorine	Cleanses, Expels and Disin- fects	* T
Fluorine	Strengthens and Builds Re- sistance	* T
Potassium	Liver Activator gives grace and beauty	* W
Silicon	Nourishes Nails, Skin—Hair	* W
Manganese	Builds Resistance	* W
Phosphorus	Nourishes Brain Cells	* T

*W Indicates Element Partly Dissolved by Water

*T Indicates Element wholly or Partly injured by Temperature

*W & T Indicates Element Affected by Both Water and Temperature

YOU SHOULD PROTECT
YOURSELF AND RETAIN
THE BODY-BUILDING
ELEMENTS WITH . . .

High Thermal
Permanent
18-8 Stainless Steel

Such chart and others referring to mineral and vitamin losses in foods caused by boiling and prolonging high temperatures serve as representations, either directly or by implication, that ordinary cooking methods with utensils other than those sold by respondents will result in destruction or loss of minerals and vitamins so as to prevent the consumer from receiving his minimum requirements thereof, and that the utensils of respondents will retain the minerals and vitamins of food cooked therein to a greater extent than will the utensils sold by any competitor.

Also, by means of said statements and representations, respondents have represented and implied that calcium gives vitality; that magnesium prevents and relieves constipation; that iodine keeps cells active; that sulphur purifies and tones the human system; that sodium aids digestion and purifies the blood; that chlorine cleanses, disinfects, and expels waste from the human body; that fluorine has a beneficial effect by strengthening the body and building resistance; that potas-

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sium is a liver activator and creates grace and beauty; that silicon nourishes nails, skin and the hair; that manganese increases resistance, and that phosphorus nourishes brain cells.

These representations are grossly exaggerated, misleading and deceptive. Minerals are not appreciably damaged or destroyed by the heat used in any method of cooking. Vitamin C and some elements of the vitamin B complex are destroyed by prolonged high cooking temperatures; other vitamins are not. Depending upon the solubility of the compounds in which they occur in foods, minerals and some vitamins are leached out in boiling water. If the water is not consumed, there is loss of these food elements. This amount of loss depends on the amount in the food before cooking, which in turn depends on the soil in which grown, the varieties of fruits and vegetables, the manner of harvesting and storage, and the exposure to light and air between maturity and preparation. Except for persons already deficient in these food elements or on the borderline or those on restricted diets, the maximum loss from any method of cooking in general use would be insignificant from a nutritional standpoint, and ordinary cooking methods with utensils other than those sold by respondents will not result in destruction or loss of minerals and vitamins so as to prevent the consumer from receiving his minimum requirements thereof. Moreover, there are other cooking utensils and methods of cooking which will retain the various food elements to the same extent or to a greater extent than is retained by the use of the utensils sold by respondents. Also, calcium does not give vitality; magnesium does not prevent, nor as found in food for human consumption, relieve constipation; iodine does not keep cells alive; sulphur does not purify or tone the human system; sodium, as found in food for human consumption, does not aid digestion or purify the blood; chlorine will neither cleanse, disinfect nor expel waste from the human body; fluorine does not strengthen the body or build resistance; potassium is not a liver activator and does not create grace or beauty; silicon does not nourish nails, skin or the hair; manganese does not increase resistance, and phosphorus does not nourish the brain cells.

PAR. 12. The use by respondents and their agents of the above mentioned false, misleading, deceptive and disparaging statements and representations has had and now has the capacity and tendency to deceive and mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and to induce a substantial number of the public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' products. As a result thereof, trade has been unfairly diverted to respondents from their competitors in con-

sequence of which substantial injury has been and is being done by respondents to their competitors in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 13. The methods, acts and practices of respondents, as hereinabove 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.

CONSENT SETTLEMENT¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 20, 1951, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in violation of the provisions of said Act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, and review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint, hereby:

1. Admit all the jurisdictional allegations set forth in the complaint.
2. Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondents, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law, and other than the jurisdictional findings, specifically refrain from admitting or denying any of the other said findings of fact.
3. Agree that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on March 6, 1952, and ordered entered of record as the Commission's findings as to the facts, conclusion and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

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The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondents consent may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Permanent Stainless Steel, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 2641 West 51st Street, Chicago, Illinois. The individual respondent, Bernard L. Marcy, is President of the corporate respondent, Permanent Stainless Steel, Inc., and as such formulates, manages and controls the affairs, activities and policies of said corporation, including the acts and practices hereinafter alleged. The individual respondent's address is the same as that shown above for the corporate respondent.

PAR. 2. Respondents are now and for several years last past have been engaged in the sale and distribution in commerce of stainless steel cooking utensils designated as High Thermal Permanent Stainless Steel Cookware. Respondents do a substantial volume of business in said stainless steel cooking utensils and cause and have caused such products when sold to be transported from their said place of business in the State of Illinois to purchasers thereof located in other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business as aforesaid, respondents are now and have been in substantial competition with other corporations and parties likewise engaged in the business of selling and distributing cooking utensils in commerce between and among the various States of the United States and in the District of Columbia, who truthfully describe and advertise their respective products, and who refrain from unfairly disparaging the product of competitors.

PAR. 4. The advertising and selling of respondents' cooking utensils are conducted principally through the medium of agents, representatives or employees through personal solicitation and contact with the general public. The method chiefly employed by said agents, representatives or employees, at respondents' direction, is the giving of demonstrations of respondents' products before groups of prospective purchasers at which time various pamphlets, leaflets, charts, circulars and other written or printed matter are exhibited and distributed, accompanied by sales talks taken from sales manuals supplied by the

respondents all with respect to the characteristics, nature and effectiveness of said products used in the preparation of food.

PAR. 5. At the cooking demonstrations hereinabove referred to, by means of certain so-called tests, including statements made in connection therewith, and otherwise, respondents, through their said agents, representatives or employees, and for the purpose of inducing the purchase of their said products in commerce, have made disparaging statements and representations with respect to utensils sold and distributed in commerce by their competitors. Such disparaging representations and statements were and are to the effect that the consumption of food cooked or kept in aluminum utensils will cause cancer; that foods so prepared or kept in aluminum utensils are detrimental and hazardous to the health of the user; and that the preparation of food in aluminum utensils causes formation of poisons, and an unfavorable chemical reaction occurs.

PAR. 6. Aluminum has been used in the manufacture of cooking utensils for many years. During that period of time, it has been found to be a highly satisfactory material for use in cooking utensils. The consumption of food cooked or kept in aluminum utensils will not cause cancer; foods prepared or kept in aluminum utensils are neither detrimental nor hazardous to the health of the users thereof by reason of the use of aluminum utensils; poisons are not formed from the preparation of foods in aluminum utensils, and no unfavorable chemical reaction occurs therefrom.

PAR. 7. The respondents, directly, and through many of their sales representatives, have unfairly disparaged and dealt injury to the business of a competitor by falsely representing that said competitor was no longer in business or would not be in business much longer, and by making other false statements reflecting upon the solvency and financial responsibility of said competitor, thus indicating that said competitor was not in position to fulfill its orders and otherwise comply with its contractual obligations.

PAR. 8. In the course and conduct of their said business, respondents have supplied their sales persons with various printed charts to be displayed during their cooking demonstrations. Among the representations made in such charts are the following:

Permanent Stainless Steel does save money on groceries, fuel and medicine.
Permanent Stainless Steel does have the endorsement of health authorities.
Proper preparation of food aids digestion—The safe way is . . . high thermal permanent stainless steel.

PAR. 9. Through the use of the statements and claims quoted in Paragraph Eight above, respondents have represented directly and by implication that their cooking utensils have been endorsed by health

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authorities; that the use of their products will result in saving money on foods and medicine, including a reduction in the quantity of needed medicine, and will result in less illness; that the use of said products provides a cooking method especially conducive to good health, and that the preparation of food in respondents' utensils will aid digestion.

PAR. 10. In truth and in fact, respondents' cooking utensils have not been endorsed by any health authority; the use of respondents' products will not effect any monetary saving on medicine, will not influence the quantity of medicine needed, will not result in less illness, and will not effect any greater monetary saving on food than other similar recognized modern methods of cooking; the use of respondents' utensils does not provide a cooking method especially conducive to good health, nor any more conducive to health than other similar recognized modern cooking utensils or methods of cooking; and the preparation of food in respondents' utensils will not aid digestion any more than preparation in other utensils.

PAR. 11. Among said charts used by respondents in the manner above described is one appearing substantially in the following form, language and symbols:

STOP AND THINK		
These Body Building Elements in Food	Perform the Following in the Body	Water and Temperature are Enemies to Minerals and Vitamins
Calcium * * *	Builds * * * Vitality * * *	* W & T * * *
Magnesium	Prevents and Relieves Constipation	* W & T
Iodine	* * * Keeps cells Active	* T
Sulphur	Purifies and Tones System	* T
Sodium	Aids Digestion, Purifies Blood	* W
Chlorine	Cleanses, Expels and Disinfects	* T
Fluorine	Strengthens and Builds Resistance	* T
Potassium	Liver Activator gives grace and beauty	* W
Silicon	Nourishes Nails, Skin—Hair	* W
Manganese	Builds Resistance	* W
Phosphorus	Nourishes Brain Cells	* T

*W Indicates Element Partly Dissolved by Water

*T Indicates Elements wholly or Partly injured by Temperature

*W & T Indicates Elements Affected by Both Water and Temperature

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a report in writing setting forth in detail the manner and form in which they have complied with this order.

(sgd) STEPTOE & JOHNSON,
By (sgd) I. MARTIN LEAVITT,
Counsel for Respondents.

Date: January 18, 1952.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and entered of record on this the 6th day of March 1952.

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1. That the consumption of food cooked or kept in aluminum utensils will cause cancer, or is in any way detrimental or hazardous to the health of the users.

2. That the preparation of food in aluminum utensils causes the formation of poisons, or that any unfavorable chemical reaction occurs therefrom.

3. That any competitor of respondents is no longer in business, or is of doubtful solvency or financial responsibility, if such statements are untrue.

4. That respondents' cooking utensils have been endorsed by any competent health authorities, if such statements are untrue.

5. That the use of respondents' utensils will effect a saving in medicine, or will result in decreasing the quantity of needed medicine, or in less illness, or will effect any greater monetary saving on food than other similar recognized modern methods of cooking.

6. That the use of respondents' cooking utensils constitutes a cooking method especially conducive to good health, or any more conducive to health than the use of other similar recognized modern methods or utensils.

7. That the preparation of food in respondents' utensils will aid digestion any more than the preparation of food in other utensils.

8. That ordinary cooking methods in utensils other than respondents' will result in destruction or loss of vitamins and minerals so as to prevent the consumer from receiving his minimum requirements.

9. That the use of respondents' cooking utensils will retain the minerals and vitamins of food cooked therein to a greater extent than will utensils sold by respondents' competitors which embrace the use of the similar recognized modern methods of cooking.

10. (a) That calcium gives vitality.

(b) That magnesium will prevent or relieve constipation.

(c) That iodine will keep cells active.

(d) That sulphur purifies or tones the human system.

(e) That sodium aids digestion or purifies the blood.

(f) That chlorine will cleanse, disinfect, or expel waste from the human body.

(g) That fluorine strengthens the body or builds resistance.

(h) That potassium is a liver activator and creates grace and beauty.

(i) That silicon nourishes the nails, skin or hair.

(j) That manganese increases resistance.

(k) That phosphorus nourishes the brain cells.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission

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IN THE MATTER OF
HOUGHTON MIFFLIN COMPANY

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

Docket 5960.¹ Settlement, findings and order, March 6, 1952

Where one of the largest publishers in the United States of "trade" or popular fiction and nonfiction books, which was engaged in the competitive interstate sale and distribution of its said publisher's editions to retail book sellers, and to wholesalers or jobbers for resale thereto, and to others, including public libraries and educational institutions; and which included among its said purchasers many engaged in competition with one another in such wholesaling or retailing—

Long discriminated in price between different purchasers through pricing and selling its said books to some at list prices less discounts which ranged from 40% to 46% for varying quantities, while pricing and selling the same to other jobbers or wholesalers competitively engaged therewith at list prices less discounts ranging from 43% to 48% for the same quantities;

Effect of which discriminations, or any appreciable part thereof, had been or might be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which it and said jobbers or wholesalers were respectively engaged, or to injure, destroy or prevent competition with it or with said jobbers or wholesalers who received the benefit of said discriminations or with customers of either:

Held, That such acts and practices, under the circumstances set forth, were in violation of subsec. (a) of Sec. 2 of the Clayton Act as amended by the Robinson-Patman Act.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Fletcher G. Cohn and *Mr. Paul H. LaRue* for the Commission.
Choate, Hall & Stewart, of Boston, Mass., for respondent.

¹ The instant settlement resulted from a joint motion of counsel for the respondent and counsel in support of the complaint in D. 5899, which requested that count III in said complaint be dismissed without prejudice, as set forth in the Commission's order on page 867 below, following the acceptance of the settlement and the amendment thereto.

As stated in the Commission's release of Apr. 7, 1952, three other similar consent settlements, which similarly originated, were accepted by the Commission in disposition of complaints against Little, Brown and Co., Inc., D. 5961, Random House, Inc., D. 5962, and Simon and Schuster, Inc., D. 5963. Following the acceptance of such consent settlements as reproduced below at pages 869, 878, and 886, count III in the earlier complaints (namely, D. 5900, D. 5901, and D. 5902), were similarly dismissed. See pp. 876, 884, and 892.

As also noted in said release, said complaints, and two others, instituted in 1951 against six book publishers, in addition to the matter embraced in count III as above described, charged said publishers with engaging in unlawful practices which gave book clubs an unfair competitive advantage over retail book stores, and joined as respondents, in addition to the four publishers which agreed to the consent settlements above described, Doubleday & Co., Inc., D. 5897, and Harper & Bros., Docket 5898.

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COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act) (U. S. C. Title 15, Sec. 13), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Houghton Mifflin Company, hereinafter referred to as respondent, has violated the provisions of subsection (a) of section 2 of the Clayton Act as amended hereby issues its complaint stating its charges in these respects as follows:

PARAGRAPH 1. Respondent, Houghton Mifflin Company, is a corporation organized and existing under the laws of the Commonwealth of Massachusetts with its principal office and place of business located at 2 Park Street, Boston, Massachusetts.

PAR. 2. Respondent is now, and for many years last past has been, engaged, directly or indirectly, in the publication, distribution, and sale of popular fiction and nonfiction books, commonly known as trade books, and is one of the largest publishers of said trade books in the United States.

Respondent's corporation was founded by Henry O. Houghton in 1852 as H. O. Houghton & Company, the proprietors of Riverside Press. The firm later became a partnership and finally in 1908 it was changed to a corporation under its present name. The Riverside Press in Cambridge, Massachusetts, is its manufacturing plant.

Respondent sells and distributes its trade books to retail book sellers for resale to the public and to wholesalers or jobbers for resale to retail book stores and others, including public libraries and educational institutions. Editions of said trade books so sold and distributed are known as publisher's editions.

PAR. 3. In the course and conduct of its business for many years last past, respondent has been and is now engaged in commerce, as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act, in that it ships, or causes to be shipped, publisher's editions of said trade books from the States in which said trade books are produced to purchasers thereof located in other States of the United States and in the District of Columbia; and there is, and has been at all times herein mentioned, a continuous current of trade and commerce in said books between and among the several States of the United States and in the District of Columbia.

PAR. 4. Except insofar as it has been affected, as alleged in Paragraph Six hereof, respondent, in the course and conduct of its said business in commerce, has been and is now in competition with persons, firms and other corporations, some of which were and are engaged in similar businesses in commerce.

Also, except insofar as it has been affected, as alleged in Paragraph Six hereof, many of said jobbers or wholesalers were and are in competition, some in commerce, with each other, and many of said retail book sellers were and are in competition, some in commerce, with each other in the retail sale of said trade books.

PAR. 5. Respondent, in the course and conduct of its said business, in commerce, has been for many years last past, and more particularly since June 19, 1936, and is now discriminating in price between different purchasers of its said trade books by selling such books to some purchasers at higher prices than it sells such books of like grade and quality to other purchasers, and some of such other purchasers are engaged in active and open competition with the less favored purchasers in the resale of such books within the United States, except as it has been affected as herein alleged.

Respondent has priced and sold its publisher's editions of trade books at list prices less specific discounts allowed to each class of purchasers among which are jobbers or wholesalers.

Respondent has so discriminated in that it has priced and sold said books to some jobbers or wholesalers at list prices less discounts ranging from 40% to 46% for varying quantities of books while respondent has priced and sold said books to other jobbers or wholesalers, who are in competition in the resale of said books with those jobbers or wholesalers receiving the aforementioned discounts at list prices less discounts ranging from 43% to 48% for the same quantities of books as those sold at the 40% to 46% discounts.

PAR. 6. The effect of the aforesaid discriminations or of any appreciable part thereof has been or may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and said jobbers or wholesalers are respectively engaged, or to injure, destroy or prevent competition with respondent or with said jobbers or wholesalers who receive the benefit of said discriminations or with customers of either of them.

PAR. 7. The acts and practices of respondent as alleged in Paragraph Five hereof are in violation of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13).

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CONSENT SETTLEMENT²

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, on the 12th day of March 1952 issued and subsequently served its complaint on the respondent named in the caption herein, charging it with violation of subsection (a) of Section 2 of the Clayton Act, as amended.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint, hereby:

1. Admits all of the jurisdictional allegations set forth in the complaint.

2. Consents that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusions, and order to cease and desist. It is understood that the respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting or denying that it has engaged in any of the acts or practices stated therein to be in violation of law or that such acts or practices, if engaged in, would be in violation of law.

3. Agrees that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful,

² The Commission's "Notice of Acceptance of Consent Settlement and Order to File Report of Compliance" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was on March 6, 1952, accepted by the Commission, subject only to the condition that the respondent comply with the requirements of the following paragraph with respect to the filing of a report showing the manner and form in which it has complied with the order to cease and desist, and subject to such condition said consent settlement was ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

It is accordingly ordered, That the respondent, Houghton Mifflin Company, a corporation, shall, within sixty (60) days after service upon it of this notice and order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in the consent settlement entered herein.

the conclusion based thereon, and the order to cease and desist, all of which respondent consents may be entered in final disposition of this proceeding, are as follows:

COMMISSION'S FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Houghton Mifflin Company, is a corporation organized and existing under the laws of the Commonwealth of Massachusetts with its principal office and place of business located at 2 Park Street, Boston, Massachusetts.

PAR. 2. Respondent is now, and for many years last past has been, engaged, directly or indirectly, in the publication, distribution, and sale of popular fiction and nonfiction books, commonly known as trade books, and is one of the largest publishers of said trade books in the United States.

Respondent's corporation was founded by Henry O. Houghton in 1852 as H. O. Houghton & Company, the proprietors of Riverside Press. The firm later became a partnership and finally in 1908 it was changed to a corporation under its present name. The Riverside Press in Cambridge, Massachusetts, is its manufacturing plant.

Respondent sells and distributes its trade books to retail book sellers for resale to the public and to wholesalers or jobbers for resale to retail book stores and others, including public libraries and educational institutions. Editions of said trade books so sold and distributed are known as publisher's editions.

PAR. 3. In the course and conduct of its business for many years last past, respondent has been and is now engaged in commerce, as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act, in that it ships, or causes to be shipped, publisher's editions of said trade books from the States in which said trade books are produced to purchasers thereof located in other States of the United States and in the District of Columbia; and there is, and has been at all times herein mentioned, a continuous current of trade and commerce in said books between and among the several States of the United States and in the District of Columbia.

PAR. 4. Except insofar as it is specified to the contrary in Paragraph Six hereof, respondent, in the course and conduct of its said business in commerce, has been and is now in competition with persons, firms and other corporations, some of which were and are engaged in similar businesses in commerce.

Also, except insofar as it is specified to the contrary in Paragraph Six hereof, many of said jobbers or wholesalers were and are in competition, some in commerce, with each other, and many of said retail

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book sellers were and are in competition, some in commerce, with each other in the retail sale of said trade books.

PAR. 5. Respondent, in the course and conduct of its said business, in commerce, has been for many years last past, and more particularly since June 19, 1936, and is now discriminating in price between different purchasers of its said trade books by selling such books to some purchasers at higher prices than it sells such books of like grade and quality to other purchasers, and some of such other purchasers are engaged in active and open competition with the less favored purchasers in the resale of such books within the United States, except as it has been affected as herein set forth.

Respondent has priced and sold its publisher's editions of trade books at list prices less specific discounts allowed to each class of purchasers among which are jobbers or wholesalers.

Respondent has so discriminated in that it has priced and sold said books to some jobbers or wholesalers at list prices less discounts ranging from 40% to 46% for varying quantities of books while respondent has priced and sold said books to other jobbers or wholesalers, who are in competition in the resale of said books with those jobbers or wholesalers receiving the aforementioned discounts at list prices less discounts ranging from 43% to 48% for the same quantities of books as those sold at the 40% to 46% discounts.

PAR. 6. The effect of the aforesaid discriminations or of any appreciable part thereof has been or may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and said jobbers or wholesalers are respectively engaged, or to injure, destroy or prevent competition with respondent or with said jobbers or wholesalers who receive the benefit of said discriminations or with customers of either of them.

PAR. 7. The acts and practices of respondent stated in Paragraph Five hereof are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13).

ORDER TO CEASE AND DESIST

It is ordered, That the respondent, Houghton Mifflin Company, a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device in connection with the sale of trade books in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Directly or indirectly discriminating in price between different purchasers of its trade books by selling such books to any of its pur-

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chasers at higher prices than it sells the same books by whatever titles of like grade and quality to others of its purchasers where such purchasers are in competition with each other in the resale or distribution of said books.

HOUGHTON MIFFLIN COMPANY,
By (sgd) LOVELL THOMPSON,
Vice President.
(Title)

Date:

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record this 6th day of March 1952, subject only to the condition that the respondent shall, within sixty (60) days after service upon it of a copy of this consent settlement, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in said consent settlement.³

NOTE.—Following Commission's acceptance of consent settlement as above set out, the Commission dismissed count III of the complaint in D. 5899, Houghton Mifflin Co., as below set forth.

This matter coming on to be heard by the Commission upon a joint motion of counsel for the respondent and counsel in support of the complaint, requesting that Count III of the complaint in this proceeding be dismissed without prejudice; and

It appearing from said motion and from the record that prior to the commencement of the taking of evidence herein, the respondent, pursuant to the provisions of Rule V of the Commission's Rules of Practice, moved the hearing examiner to suspend proceedings before

³ The consent settlement is published as amended by the following:

AMENDMENT TO CONSENT SETTLEMENT

The Consent Settlement hereinbefore transmitted to the Commission by hearing examiner under date of January 17, 1952, in connection with the stipulation between counsel as to settlement regarding Count III in the complaint in Docket No. 5899, is amended on page 4 thereof as follows:

- (1) Eliminate the heading, including the words thereof, "COMMISSION'S CONCLUSION" as same appear on said page;
- (2) Insert at the beginning of the first line of the paragraph on said page which begins "The acts and practices * * *" the words "PARAGRAPH SEVEN."
- (3) In said first line of said paragraph strike out the word "found" as it appears therein, and insert in lieu thereof the word "stated."

HOUGHTON MIFFLIN COMPANY,
By (sgd) LOVELL THOMPSON,
Vice President.
(Title)

Date: 2/14/52.

The foregoing amendment to the consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record this 6th day of March 1952.

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him to permit negotiations by counsel upon a consent settlement dispositive of the proceeding, which motion was granted by said hearing examiner; and

It further appearing that the proposed consent settlement thereafter agreed upon would have disposed of Count III of the complaint only, and not the entire proceeding as required by said Rule V, whereupon the parties entered into a stipulation under the terms of which it was agreed to request the dismissal of Count III of the complaint and the simultaneous issuance of a new complaint embodying the substance of said Count III, with the understanding that the parties would at the same time submit to the Commission, through the hearing examiner, a proposed consent settlement of the new proceeding, which proposed consent settlement was submitted with the aforesaid joint motion; and

It further appearing to the Commission that Count III of the complaint states a cause of action entirely separate from those stated in Counts I and II of said complaint, and that dismissal of said Count III would not adversely affect this proceeding insofar as Counts I and II are concerned; and

The Commission having considered the proposed consent settlement tendered by the parties, and being of the opinion that said proposal is appropriate in all respects to dispose of the suggested new proceeding and that it should be accepted, subject only to the condition that the respondent shall, within sixty (60) days after service upon it of a notice of such acceptance, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in said consent settlement:

It is ordered, That Count III of the complaint in this proceeding be, and it hereby is, dismissed; it being understood, however, that simultaneously with this action a new complaint will be issued against the respondent embodying all of the allegations of said Count III, the issues raised by which will be disposed of by acceptance of the proposed consent settlement heretofore tendered; and it being further understood that this shall not affect in any way the continuation of this proceeding under Counts I and II of the complaint herein.

Complaint

IN THE MATTER OF

LITTLE, BROWN AND COMPANY, INC.

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

Docket 5961.¹ Settlement, findings and order, March 6, 1952

Where one of the major publishers in the United States of "trade" or popular fiction and nonfiction books, which was engaged in the direct or indirect publication of such books, and in the competitive interstate sale and distribution of its said publisher's edition to retail book sellers, and to wholesalers or jobbers for resale thereto, and to others, including public libraries and educational institutions; and which included among its said purchasers many engaged in competition with one another in such wholesaling or retailing—

Long discriminated in price between different purchasers through pricing and selling its said books to some under a discount schedule which allowed from 40 to 47 percent off list, with the top discount granted on five thousand copies and over, while selling to other purchasers under a different schedule which granted discounts of from 43 to 50 percent, with the latter discount on purchases of twenty-five thousand or more books:

Effect of which discriminations, or any appreciable part thereof, had been or might be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which it and said jobbers or wholesalers were respectively engaged, or to injure, destroy or prevent competition with it or with said jobbers or wholesalers who received the benefit of said discriminations or with customers of either:

Held, That such acts and practices, under the circumstances set forth, were in violation of subsec. (a) of Sec. 2 of the Clayton Act as amended by the Robinson-Patman Act.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Fletcher G. Cohn and *Mr. Paul H. LaRue* for the Commission.

Haussermann, Davidson & Shattuck, of Boston, Mass., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act) (U. S. C. Title 15, Sec. 13), and by virtue of the authority vested in it by said Acts, the Federal Trade Com-

¹ For an explanatory statement setting forth the background of the settlement in question in this and in three other cases against Houghton Mifflin Company, page 861, the instant respondent, Random House, Inc. (see *infra*, at page 878) and Simon and Schuster, Inc. (see *infra*, at page 886), see footnote in the proceeding on page 861.

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mission having reason to believe that Little, Brown and Company, Inc., hereinafter referred to as respondent, has violated the provisions of subsection (a) of Section 2 of the Clayton Act as amended hereby issues its complaint stating its charges in these respects as follows:

PARAGRAPH 1. Respondent, Little, Brown and Company, Inc., is a corporation organized and existing under the laws of the Commonwealth of Massachusetts with its principal office and place of business located at 34 Beacon Street, Boston, Massachusetts.

PAR. 2. Respondent is now, and for many years last past has been, engaged, directly or indirectly, in the publication, sale and distribution of popular fiction and non-fiction books, commonly known as trade books.

Respondent is one of the major book publishers of said trade books in the United States. The name Little, Brown and Company came into being in 1837. At that time it conducted a retail book store and engaged in some publishing. From 1847 on, it engaged primarily in publishing and with the turn of the century, Little, Brown and Company was entrenched as one of the leading publishers in the general field. It does not own its own printing plant and its printing is done by other concerns with whom it enters into contractual relationships.

Respondent sells and distributes its trade books to retail book sellers for resale to the public, and to wholesalers or jobbers for resale to retail book stores and others, including public libraries and educational institutions. Editions of said trade books so sold and distributed are known as publisher's editions.

PAR. 3. In the course and conduct of its business for many years last past, respondent has been, and is now, engaged in commerce, as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act, in that it ships or causes to be shipped publisher's editions of said trade books from the States in which said trade books are produced to purchasers thereof located in other States of the United States and in the District of Columbia; and there is, and has been at all times herein mentioned, a continuous current of trade and commerce in said books between and among the several States of the United States and in the District of Columbia.

PAR. 4. Except insofar as it has been affected, as alleged in Paragraph Six hereof, respondent, in the course and conduct of its said business in commerce, has been and is now in competition with persons, firms and other corporations, some of which were and are engaged in similar businesses in commerce.

Also, except insofar as it has been affected, as alleged in Paragraph Six hereof, many of said jobbers or wholesalers were and are in competition, some in commerce, with each other, and many of said

retail book sellers were and are in competition, some in commerce, with each other in the retail sale of said trade books.

PAR. 5. Respondent, in the course and conduct of its said business, in commerce, has been for many years last past, and more particularly since June 19, 1936, and is now discriminating in price between different purchasers of its said trade books by selling such books to some purchasers at higher prices than it sells such books of like grade and quality to other purchasers, and some of such other purchasers are engaged in active and open competition with the less favored purchasers in the resale of such books within the United States, except as it has been affected as herein alleged.

Respondent has priced and sold its publisher's editions of trade books at list prices less specific discounts allowed to each class of purchasers among which are jobbers or wholesalers.

Respondent has so discriminated in that it has priced and sold said books to some jobbers or wholesalers at one discount scheduled as follows:

<i>Number of Copies Ordered of Same Title</i>	<i>Discount From List Prices (Percent)</i>
1-2-----	40
3-24-----	41
25-49-----	42
50-99-----	43
100-249-----	43½
250-499-----	44
500-999-----	45
1,000-2,499-----	45½
2,500-4,999-----	46½
5,000 and over-----	47

while respondent has priced and sold said books to other jobbers or wholesalers who are in competition in the resale of said books with those jobbers or wholesalers receiving the aforementioned discounts at a different discount schedule as follows:

<i>Number of Copies Ordered of Same Title</i>	<i>Discount From List Prices (Percent)</i>
1-49-----	43
50-99-----	44
100-249-----	44½
250-499-----	45
500-999-----	45½
1,000-2,499-----	46
2,500-4,999-----	47
5,000-9,999-----	48
10,000-24,999-----	49
25,000 and over-----	50

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PAR. 6. The effect of the aforesaid discriminations or of any appreciable part thereof has been or may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and said jobbers or wholesalers are respectively engaged, or to injure, destroy or prevent competition with respondent or with said jobbers or wholesalers who receive the benefit of said discriminations or with customers of either of them.

PAR. 7. The acts and practices of respondent as alleged in Paragraph V hereof are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13).

CONSENT SETTLEMENT²

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, on the 12th day of March 1952 issued and subsequently served its complaint on the respondent named in the caption herein, charging it with violation of subsection (a) of Section 2 of the Clayton Act, as amended.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint, hereby:

1. Admits all of the jurisdictional allegations set forth in the complaint.

2. Consents that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease

² The Commission's "Notice of Acceptance of Consent Settlement and Order to File Report of Compliance" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was on March 6, 1952, accepted by the Commission, subject only to the condition that the respondent comply with the requirements of the following paragraph with respect to the filing of a report showing the manner and form in which it has complied with the order to cease and desist, and subject to such condition said consent settlement was ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

It is accordingly ordered, That the respondent, Little, Brown and Company, Inc., a corporation, shall, within sixty (60) days after service upon it of this notice and order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in the consent settlement entered herein.

and desist. It is understood that the respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting or denying that it has engaged in any of the acts or practices stated therein to be in violation of law or that such acts or practices, if engaged in, would be in violation of law.

3. Agrees that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which respondent consents may be entered in final disposition of this proceeding, are as follows:

COMMISSION'S FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Little, Brown and Company, Inc., is a corporation organized and existing under the laws of the Commonwealth of Massachusetts with its principal office and place of business located at 34 Beacon Street, Boston, Massachusetts.

PAR. 2. Respondent is now, and for many years last past has been, engaged, directly or indirectly, in the publication, sale and distribution of popular fiction and non-fiction books, commonly known as trade books.

Respondent is one of the major book publishers of said trade books in the United States. The name Little, Brown and Company came into being in 1837. At that time it conducted a retail book store and engaged in some publishing. From 1847 on, it engaged primarily in publishing and with the turn of the century, Little, Brown and Company was entrenched as one of the leading publishers in the general field. It does not own its own printing plant and its printing is done by other concerns with whom it enters into contractual relationships.

Respondent sells and distributes its trade books to retail book sellers for resale to the public, and to wholesalers or jobbers for resale to retail book stores and others, including public libraries and educational institutions. Editions of said trade books so sold and distributed are known as publisher's editions.

PAR. 3. In the course and conduct of its business for many years last past, respondent has been, and is now, engaged in commerce, as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act, in that it ships or causes to be shipped publisher's editions of said trade books from the States in which said

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trade books are produced to purchasers thereof located in other States of the United States and in the District of Columbia; and there is, and has been at all times herein mentioned, a continuous current of trade and commerce in said books between and among the several States of the United States and in the District of Columbia.

PAR. 4. Except insofar as it is specified to the contrary in Paragraph Six hereof, respondent, in the course and conduct of its said business in commerce, has been and is now in competition with persons, firms and other corporations, some of which were and are engaged in similar businesses in commerce.

Also, except insofar as it is specified to the contrary in Paragraph Six hereof, many of said jobbers or wholesalers were and are in competition, some in commerce, with each other, and many of said retail book sellers were and are in competition, some in commerce, with each other in the retail sale of said trade books.

PAR. 5. Respondent, in the course and conduct of its said business, in commerce, has been for many years last past, and more particularly since June 19, 1936, and is now discriminating in price between different purchasers of its said trade books by selling such books to some purchasers at higher prices than it sells such books of like grade and quality to other purchasers, and some of such other purchasers are engaged in active and open competition with the less favored purchasers in the resale of such books within the United States, except as it has been affected as herein set forth.

Respondent has priced and sold its publisher's editions of trade books at list prices less specific discounts allowed to each class of purchasers among which are jobbers or wholesalers.

Respondent has so discriminated in that it has priced and sold said books to some jobbers or wholesalers at one discount schedule as follows:

<i>Number of Copies Ordered of Same Title</i>	<i>Discount From List Prices (Percent)</i>
1-2 -----	40
3-24 -----	41
25-49 -----	42
50-99 -----	43
100-249 -----	43½
250-499 -----	44
500-999 -----	45
1,000-2,499 -----	45½
2,500-4,999 -----	46½
5,000 and over -----	47

while respondent has priced and sold said books to other jobbers or wholesalers who are in competition in the resale of said books with

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those jobbers or wholesalers receiving the aforementioned discounts at a different discount schedule as follows:

<i>Number of Copies Ordered of Same Title</i>	<i>Discount From List Prices (Percent)</i>
1-49 -----	43
50-99 -----	44
100-249 -----	44½
250-499 -----	45
500-999 -----	45½
1,000-2,499 -----	46
2,500-4,999 -----	47
5,000-9,999 -----	48
10,000-24,999 -----	49
25,000 and over -----	50

PAR. 6. The effect of the aforesaid discriminations or of any appreciable part thereof has been or may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and said jobbers or wholesalers are respectively engaged or to injure, destroy or prevent competition with respondent or with said jobbers or wholesalers who receive the benefit of said discriminations or with customers of either of them.

PAR. 7. The acts and practices of respondent stated in Paragraph Five hereof are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13).

ORDER TO CEASE AND DESIST

It is ordered, That the respondent Little, Brown and Company, Inc., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device in connection with the sale of trade books in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Directly or indirectly discriminating in price between different purchasers of its trade books by selling such books to any of its purchasers at higher prices than it sells the same books by whatever titles of like grade and quality to others of its purchasers where such purchasers are in competition with each other in the resale or distribution of said books.

LITTLE, BROWN AND COMPANY, INC.,

By (sgd) ARTHUR H. THORNHILL,

President.
(Title)

Date:

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The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record this 6th day of March, 1952, subject only to the condition that the respondent shall, within sixty (60) days after service upon it of a copy of this consent settlement, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in said consent settlement.³

NOTE.—Following the Commission's acceptance of the consent settlement, as reproduced above, the Commission dismissed Count III of the complaint in D. 5900 by the following order:

This matter coming on to be heard by the Commission upon a joint motion of counsel for the respondent and counsel in support of the complaint, requesting that Count III of the complaint in this proceeding be dismissed without prejudice; and

It appearing from said motion and from the record that prior to the commencement of the taking of evidence herein, the respondent, pursuant to the provisions of Rule V of the Commission's Rules of Practice, moved the hearing examiner to suspend proceedings before him to permit negotiations by counsel upon a consent settlement dispositive of the proceeding, which motion was granted by said hearing examiner; and

It further appearing that the proposed consent settlement thereafter agreed upon would have disposed of Count III of the complaint only, and not the entire proceeding as required by said Rule V, whereupon the parties entered into a stipulation under the terms of which it was agreed to request the dismissal of Count III of the complaint and the simultaneous issuance of a new complaint embodying the substance of said Count III with the understanding that the parties

³ The consent settlement is published as amended by the following:

AMENDMENT TO CONSENT SETTLEMENT

The Consent Settlement hereinbefore transmitted to the Commission by hearing examiner under date of January 17, 1952, in connection with the stipulation between counsel as to settlement regarding Count III in the complaint in Docket No. 5900, is amended on page 4 thereof as follows:

- (1) Eliminate the heading, including the words thereof, "COMMISSION'S CONCLUSION" as same appear on said page;
- (2) Insert at the beginning of the first line of the paragraph on said page which begins "The acts and practices * * *" the words "PARAGRAPH SEVEN."
- (3) In said first line of said paragraph strike out the word "found" as it appears therein, and insert in lieu thereof the word "stated."

LITTLE, BROWN AND COMPANY, INC.,
By (sgd) STANLEY SALMEN, *Exec. V. President.*
(Title)

Date:

The foregoing amendment to the consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record this 6th day of March 1952.

would at the same time submit to the Commission, through the hearing examiner, a proposed consent settlement of the new proceeding, which proposed consent settlement was submitted with the aforesaid joint motion; and

It further appearing to the Commission that Count III of the complaint states a cause of action entirely separate from those stated in Counts I and II of said complaint, and that dismissal of said Count III would not adversely affect this proceeding insofar as Counts I and II are concerned; and

The Commission having considered the proposed consent settlement tendered by the parties, and being of the opinion that said proposal is appropriate in all respects to dispose of the suggested new proceeding and that it should be accepted, subject only to the condition that the respondent shall, within sixty (60) days after service upon it of a notice of such acceptance, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in said consent settlement:

It is ordered, That Count III of the complaint in this proceeding be, and it hereby is, dismissed; it being understood, however, that simultaneously with this action a new complaint will be issued against the respondent embodying all of the allegations of said Count III, the issues raised by which will be disposed of by acceptance of the proposed consent settlement heretofore tendered; and it being further understood that this shall not affect in any way the continuation of this proceeding under Counts I and II of the complaint herein.

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IN THE MATTER OF
RANDOM HOUSE, INC.

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

Docket 5962.¹ Settlement, findings and order, March 6, 1952

Where one of the major publishers in the United States of "trade" or popular fiction and nonfiction books, which was engaged in the direct or indirect publication of such books, and in the competitive interstate sale and distribution of its said publisher's editions to retail book sellers, and to wholesalers or jobbers for resale thereto, and to others, including public libraries and educational institutions; and which included among its said purchasers many engaged in competition with one another in such wholesale or retailing—

Long discriminated in price between different purchasers through pricing and selling its said books under a discount schedule pursuant to which it sold to some at list prices less discounts ranging from 49½ per cent on purchases of five thousand or more books to 43 percent on quantities of less than one hundred, while allowing other wholesalers or jobbers who competed with said purchasers only a single discount of 43 per cent irrespective of the quantity purchased:

Effect of which discrimination, or any appreciable part thereof, had been or might be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which it and said jobbers or wholesalers were respectively engaged, or to injure, destroy or prevent competition with it or with said jobbers or wholesalers who received the benefit of said discriminations or with customers of either:

Held, That such acts and practices, under the circumstances set forth, were in violation of subsec. (a) of Sec. 2 of the Clayton Act as amended by the Robinson-Patman Act.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Fletcher G. Cohn and *Mr. Robert F. Quinn* for the Commission.
Weil, Gotshal & Manges, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act) (U. S. C. Title 15, Sec. 13), and by virtue of

¹ For an explanatory statement setting forth the background of the settlement in question in this, and three other cases against Houghton, Mifflin Company, page 861. Little, Brown and Company, page 869, the instant respondent, and Simon and Schuster, Inc., page 886, see footnote in the Houghton Mifflin proceeding on page 861.