Syllabus

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.

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[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.

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).

CONSENT SETTLEMENT [2]

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,

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[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

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-

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.

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.

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.

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:

Number of Copies Ordered of Same Title	*Discount From List Prices (Percent)*
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:

Number of Copies Ordered of Same Title	*Discount From List Prices (Percent)*
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 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 SETTLEMENT [2]

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

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:

Number of Copies Ordered of Same Title	*Discount From List Prices (Percent)*
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:

Number of Copies Ordered of Same Title	*Discount From List Prices (Percent)*
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:

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

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[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.

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

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[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.