

IN THE MATTER OF
ENCYCLOPAEDIA BRITANNICA, INC.

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

Docket 5384. Complaint, Sept. 28, 1945—Decision, June 12, 1952

Where a corporation engaged in the interstate sale and distribution of its "Britannica Junior" encyclopedia under its "15 for 1" plan, pursuant to which its sales agents contacted the superintendent or principal of a school to obtain the names of pupils and their parents and called upon the latter to sell them the books, and the school received a set of said encyclopedia for each fifteen sets sold, or proportionate credit or some other book such as an atlas or dictionary if fewer than fifteen were sold—

- (a) Erroneously and misleadingly represented through the use of the expression "School Advancement Program", that the plan was designed primarily for the benefit and improvement of the school; the facts being that while the schools derived incidental benefit through obtaining the books, the program was essentially a sales plan or campaign for the sale of books to the public;
- (b) Unwarrantedly and misleadingly represented in a substantial number of instances, through statements of its sales agents, that the local school or the superintendent or some other official was sponsoring the sale of the books; when the school's only connection with the matter was that it had supplied the names and addresses of the pupils and parents;
- (c) Erroneously and misleadingly represented through its agents that the books were essential or indispensable to the proper preparation by pupils of their homework; and
- (d) Erroneously and misleadingly represented, as aforesaid, that the price at which the books were offered under said sales plan were special or reduced, applicable for a limited time only; when in fact they were the regular prices;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their books, and thereby induce its purchase thereof:

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

As respects interlocutory orders of the Commission, no requirement exists that hearing examiners subsequently adopt, verbatim, in the preparation of initial decisions, such language relevant to the matters to be stated as may have appeared in the Commission's own orders.

As respects exceptions by counsel supporting the complaint in the aforesaid matter, which challenged, among other things, the hearing examiner's use of various words and terms such as "erroneous", "inherently erroneous and misleading", and "unwarranted and misleading", to characterize certain of the representations which occurred during respondent's house-to-house sales presentations to the public, counsel urging that they should instead be characterized as false, so that any findings which might issue would not be susceptible to an interpretation that there were but a few misrepresen-

tations, or that they represented inadvertent, unintentional mistakes on the part of respondent and its representatives:

The Commission was of the opinion that no error was presented through use of the expressions in question in the particular contexts in which they occurred or by reason of the examiner's failure to additionally characterize respondent's misrepresentations as false.

Certain other exceptions also rejected were directed to use of the word "unquestionable" in connection with the value of the program to the schools; to use of the word "already" in noting the discontinuance of the designation "School Advancement Program"; to the omission from the initial decision of a detailed narration of the statements made by respondent's salesmen; to the grouping of three of the charges of the complaint, for lack of proper emphasis; and to the examiner's failure to find certain specific misrepresentation of alleged savings growing out of the price misrepresentation;

The Commission, among other things, holding the use of said words neither inappropriate, nor unwarranted; and noting, as respects salesmen's statements, that neither the conclusions characterizing such representations were challenged as erroneous nor the prohibitions inadequate; and, as respects said last exception, the absence of any indication of resulting error in the findings, substantively; or deficiency in the order.

Before *Mr. Arthur F. Thomas* and *Mr. William L. Pack*, hearing examiners.

Mr. John M. Russell and *Mr. William L. Pencke* for the Commission.

Mr. H. J. Joy, of Chicago, Ill., and *Davies, Richberg, Tydings, Beebe & Landa* and *Mr. L. A. Scholl*, of Washington, D. C., for respondent.

Mr. Otto T. Englehart, of Washington, D. C., and *Mr. Lorentz B. Knouff*, of Chicago, Ill., for F. E. Compton & Co., intervenor.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Encyclopaedia Britannica, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, Encyclopaedia Britannica, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent's office and principal place of business is located at 20 North Wacker Drive, Chicago, Illinois.

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PAR. 2. Respondent Encyclopaedia Britannica, Inc., now is, and for over two years last past has been, engaged in the business of publishing and of selling and distributing books, including encyclopaedia sets called Britannica Junior. Respondent causes its Britannica Junior sets, when sold, to be transported from its said place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said encyclopaedia sets in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business in connection with the sale and distribution of its Britannica Junior encyclopaedia sets and as an inducement for the purchase thereof by members of the purchasing public, respondent adopted in or about the fall of 1941, a so-called "15 for 1 Plan" for selling its said sets and thereafter used such plan, representing that it is a "Britannica Junior School Advancement Program" plan, especially designed for those neighborhoods where a school or library is unable to buy an initial or additional set or sets of Britannica Junior for the use of the children in the school. The said plan operates as follows:

One of the respondent's representatives calls on the superintendent or other official of the school and explains that the Encyclopaedia Britannica, Inc., desires to initiate a "School Advancement Program" in their community which affords the school an opportunity to receive a set of Britannica Junior "free" providing the school official furnishes the representative with a card stating the name, age, and grade of each pupil, the teacher's name and the name and address and occupation of the pupil's parents thereon; that the requirement of a letter of endorsement or approval of the Britannica set by such school official is optional; and provided further that the sale of fifteen similar sets of said encyclopaedia is effected by said representative of Encyclopaedia Britannica, Inc., among the parents having children attending the school. Assurance is given that the names of the "loyal parents of 15 of your students" who purchase the sets will appear on a presentation page attached to the inside front cover of Volume I of the set of Britannica Junior they "wish to give to the school."

Respondent's representative thereafter contacts the parents or parent of the children of the school and represents:

That he is working through or cooperating with the school on a "School Advancement Program" whereby the school will receive a set of Britannica Junior free if and when he sells 15 similar sets to the parents having children attending said school;

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That the school superintendent or other official has furnished him with the parents' names and the said information concerning their child or children and their teacher, in order that they could be afforded an opportunity to participate in the School Advancement Program by buying a set of Britannica Junior encyclopaedia for their child or children;

That the school is sponsoring the program and its superintendent or other person in authority is recommending that the parents buy the books;

That the parents by buying the set through the school receive a special price because the company is very desirous of having these books in their community;

That the school superintendent or other official highly recommended these sets for use by the children in preparing their work for school;

That people in that community were offered an opportunity to buy a set of Britannica Junior at a reduced cost because of the "School Advancement Program" his company is backing;

That a special price was being quoted but that this would be for only a limited time;

That the children of parents who bought the books would have a definite advantage over the other children who did not have a set of these books to be used in connection with their school work;

That the superintendent or other official of the school personally endorsed these books and was recommending them to the parents as being indispensable for use by their children;

That if the parents purchased this set of books they would not have to buy any other books because the information contained in Britannica Junior was full and complete;

That the school endorsed the books and was recommending them to the parents as being indispensable for their children in preparing their school work;

That the books were being sold through the school;

That the school superintendent or other official was desirous of having the children in the school own a set of Britannica Junior in order that they could do their home work;

That he lacked only one set of having sold the required number for the school to receive a free set;

That he was selling only a limited number of these books in the vicinity;

That the parents he is calling on had been selected to participate in the School Advancement Program;

That he was working through the school which was sponsoring the program and recommending that the parents buy the set of Britannica Junior;

That the parents would be saving \$120.00 by purchasing the Britannica Junior set through the school;

That the superintendent or other official of the school has furnished him with her name, together with the names of her children in order that she could be given an opportunity to purchase a set of these books to be used by her children in preparing their school home work;

That only the people recommended by the superintendent or other official of the school would have an opportunity to purchase a set;

That the parents by buying the books through the "School Advancement Program" sale would receive a yearbook free for ten years.

PAR. 4. Through the use of the expression "School Advancement Program" and the aforesaid statements and others similar thereto

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not specifically set out herein, in connection with the offering for sale and sale of their Britannica Junior encyclopaedia under said so-called "School Advancement Program" or "15 for 1 Plan" respondent directly or by implication represents to the parents of the children in a school that the "School Advancement Program" is designed for the benefit and improvement of the school; that its Britannica Junior encyclopaedia has been adopted by the school authorities for study or reference as part of the school curriculum; that the superintendent or other school authorities are sponsoring the sale of Britannica Junior to the parents; that by purchasing through the school the parents would be securing said books at a special or reduced price; that he could only sell the set at that price for a limited time; that all, or practically all, of the school work is, or would be, taken therefrom or based on the material contained in said books; that the school and its superintendent or other official have endorsed Britannica Junior and are recommending that the parents buy a set as being indispensable to their children in doing their school work; that it is essential to their children's home library in order for them to prepare their school home work; that it is so full and complete as to make the parents' further purchase of school books unnecessary; that respondent's representative is only allowed to sell a limited number of sets of these books through the school or in their community; that he could only sell a set to those parents whom the superintendent or other school authorities had recommended be offered the privilege or opportunity of purchasing same; that the parents would be saving \$120.00 by purchasing the set through the school; that if the parents purchase a set through the school they would receive a yearbook free for ten years.

Respondent's representative further states to the parents in selling its Britannica Junior encyclopedia that he only lacks one set of having sold the required number for the school to receive a free set, when this is not a fact; that the school is sponsoring the "Britannica Junior School Advancement Program" sale and its superintendent or other official has recommended that the parents buy a set, when he has expressly requested respondent's representative not to mention the school or his name in selling said sets and respondent's representative has assured him that he would not do so.

PAR. 5. The statements and representations used and disseminated by the respondent in the manner above described are deceptive, false and misleading. Respondent's so-called "School Advancement Program" is not designed for the benefit or improvement of the school, but only for the sale of its Britannica Junior sets; the Britannica Junior encyclopedia has not been adopted for study or reference as a part of the school curriculum; none of the school authorities are

sponsoring said alleged "Britannica Junior School Advancement Program" sale; by purchasing said set of books from respondent's representative the parents would not be securing it through the school or at a special or reduced price, but only at its usual retail price; the time of respondent's representative is not limited to sell said sets at that price; the school work is not and will not be based on or taken from the material contained in said set of books; none of the school authorities has endorsed or is recommending that the parents buy Britannica Junior as being indispensable to their children in doing their school work; it is not essential to their children in preparing their school home work; it is not so full or complete as to make the parents' further purchase of school books unnecessary; respondent's representative is allowed to sell as many of said sets as he is able to, to anyone, and anywhere at the price he is offering a set to the parents; by purchasing a Britannica Junior set in this so-called "School Advancement Program" sale, the parents will not receive any yearbook free.

PAR. 6. In truth and in fact, respondent's so-called "School Advancement Program" or "15 to 1 Plan" is not a plan for the advancement of the school, but only a clever scheme through which the respondent's representative obtains entry into the homes of the parents of the children in a school to sell respondent's books by stating that the parents have been selected by the superintendent or other authorities of the school to be given the opportunity or privilege of buying a Britannica Junior encyclopedia, which the school has adopted for study or reference as part of the school curriculum and is recommending that the parents buy. Thereafter, by making said further false and misleading statements and representations, and others similar thereto, respondent's representative brings great pressure to bear on the parents to buy said set of books, giving them the impression that their children must have same in order to complete their school courses. Many of the parents buy said books who cannot afford to and would not do so except for being deceived and misled by respondent's representative as aforesaid, especially since, as respondent states, it only uses said plan in selling its Britannica Junior encyclopedia in communities where the school or library is unable to purchase a set or a further set or sets thereof.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements and representations, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations are true, and induces a substantial portion of the purchasing public to purchase respondent's Britannica Junior sets

because of such erroneous and mistaken belief, engendered as above set forth, thereby unfairly diverting trade to the respondent from its competitors in said commerce who truthfully represent their products.

PAR. 8. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public, and of respondent's competitors, and constitute unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDERS AND DECISION OF THE COMMISSION

Order denying appeal of counsel supporting complaint from initial decision of the hearing examiner and decision of the Commission and order to file report of compliance, Docket 5384, June 12, 1952, follows:

This matter came on to be heard by the Commission upon the appeal of counsel supporting the complaint from the initial decision of the hearing examiner herein and upon the briefs submitted in support of and in opposition to said appeal.

Counsel supporting the complaint under the first, third, fourth and fifth of his exceptions challenges, among other things, the hearing examiner's use of various words and terms such as "erroneous", "inherently erroneous and misleading", and "unwarranted and misleading" to characterize certain of the representations occurring during respondent's house-to-house sales presentations to the public and, in urging that they instead should be characterized as false, contends, in effect, that this is necessary and proper in order that any findings as to the facts issuing herein be not susceptible to an interpretation that the instances of misrepresentation disclosed by the record are but few in number or that they represent inadvertent, unintentional mistakes on the part of respondent and its representatives. Counsel asserts also that supporting his contentions of error in this respect is the fact that the order of the Commission, dated April 25, 1951, ruling upon respondent's previously filed motion to dismiss contained recitations in detail of various representations and statements which the testimony indicated had been used by salesmen in respondent's sales presentations.

With respect to the circumstance last referred to, namely, the wording of the order of April 25, 1951, no requirement exists that hearing examiners subsequently adopt, verbatim, in the preparation of initial decisions such language relevant to the matters to be stated as may have appeared in the Commission's own interlocutory orders. The Commission, moreover, does not share the view that the state-

ments to which counsel's objections are interposed may be interpreted reasonably as an expression that the misrepresentation heretofore engaged in has occurred only in isolated instances or is attributable to inadvertent or unintentional error. The Commission is of the opinion that no error is presented by reason of the hearing examiner's use of the expressions excepted to in the particular contexts in which they occur or by reason of his failure, in such connection, to additionally characterize respondent's misrepresentations as false.

Under counsel's third exception, additional objection is directed to the words "unquestionably" and "already" appearing in Paragraph Four of the initial decision, counsel alleging in such connection that they have "significantly enthusiastic and complimentary implications." This position is untenable and it is deemed appropriate by the Commission for a hearing examiner to make reference to the circumstance that a party to a proceeding previously or already has discontinued a practice as the hearing examiner has done in the instant case in reference to respondent's former use of the term "School Advancement Program" to designate its sales plan, and it is noted in passing, in this connection also, that he properly concluded, in effect, that the public interest now requires a prohibition against any resumption of its use. In reference to the objection interposed to the word "unquestionably", counsel has advanced no reason why the value of reference books, as distinguished from their essentiality, in the preparation of student home work, should be regarded as questionable.

Counsel interposes objection in his second exception to the omission from the initial decision of a detailed narration of the statements made by respondent's salesmen in the course of those sales presentations which the hearing examiner deems to have been misrepresentative. Counsel does not urge, however, that the conclusions appearing in the initial decision characterizing the representations made by respondent as deceptive in import are erroneous conclusions nor does he contend that the prohibitions contained in the order are inadequate or not responsive to the record, and this exception clearly is without merit.

As a sixth ground for appeal, counsel supporting the complaint objects to the form of Paragraph Six of the hearing examiner's findings and, among other things, contends that, by there grouping together for discussion three of the charges of the complaint, the greater relative gravity which counsel feels adheres in one of such charges becomes obscured. It does not appear to the Commission that the recitations of this paragraph are characterized by a lack of proper emphasis or are erroneous otherwise, and this exception is not being granted.

The hearing examiner found that respondent has represented, contrary to fact, that its customary and usual prices were special or reduced prices and applicable only for a limited period of time, and the last of counsel's exceptions expresses objection to the hearing examiner's failure to find that sales agents falsely represented that savings of \$120.00, in one instance, and of \$60.00, in another instance, would be afforded to purchasers buying these reference books under the sales promotion being conducted locally. It does not appear that the hearing examiner failed to give consideration to the testimony to which this exception relates nor are any reasons advanced as bases for concluding that the omission of these matters from the findings as to the facts renders them erroneous substantively or that the order contained in the initial decision is deficient, and this exception is accordingly rejected.

The Commission, therefore, being of the opinion that counsel's appeal is without merit and that the initial decision of the hearing examiner constitutes an adequate and appropriate disposition of this proceeding:

It is ordered, That the aforesaid appeal from the initial decision of the hearing examiner be, and it hereby is, denied.

It is further ordered, That the initial decision of the hearing examiner, a copy of which is attached, shall, on the 12th day of June, 1952, become the decision of the Commission.

It is further ordered, That the respondent shall, within sixty (60) days after service upon it of this 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.

Said initial decision, thus adopted by the Commission as its decision, follows:

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 28, 1945, issued and subsequently served its complaint in this proceeding upon the respondent, Encyclopaedia Britannica, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing by respondent of its answer to the complaint, hearings were held at which testimony and other evidence in support of the allegations of the complaint were introduced before the above named hearing examiner, theretofore duly designated by the Commission, and such testimony and other evidence were duly recorded and filed in the office of the Commission. At the conclusion of the reception of such evidence in

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support of the complaint, counsel for respondent filed with the Commission a motion to dismiss the complaint for failure of proof. Such motion was granted by the Commission as to certain charges in the complaint but denied as to certain other charges. Counsel for respondent elected to introduce no evidence in opposition to the charges remaining in the complaint, and the proceeding was thereupon closed by the hearing examiner insofar as the reception of evidence was concerned. Subsequently, the proceeding regularly came on for final consideration by the hearing examiner on the complaint, answer, testimony and other evidence with respect to those charges remaining in the complaint, and proposed findings and conclusions submitted by counsel supporting the complaint (counsel for respondent having elected not to submit such proposals, and oral argument not having been requested), and the hearing examiner, having duly considered the matter, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Encyclopaedia Britannica, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 20 North Wacker Drive, Chicago, Illinois. Respondent is now, and for a number of years last past has been, engaged in the business of publishing and selling books, including an encyclopaedia designated by respondent as Britannica Junior.

PAR. 2. Respondent causes its Britannica Junior encyclopaedias, when sold, to be transported from its place of business in the State of Illinois to purchasers located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in such encyclopaedias in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. This proceeding involves certain representations alleged to have been made by respondent in connection with sales of its Britannica Junior encyclopaedia under a certain sales plan designated by respondent as its "15 for 1" plan. Under this plan respondent's sales agents contact the superintendent or principal of a school and seek to obtain the names of the pupils in the school, together with the names and addresses of the parents. Upon obtaining such names and addresses, the agent proceeds to call upon the parents and to undertake to sell them the books. For its assistance in supplying the names and addresses, the school receives without cost a set of Britannica Junior

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for each fifteen sets sold to the patrons of the school. While a letter recommending the books is desired from the school official, this is not required. If fewer than fifteen sets are sold, the school receives a proportionate credit on the purchase of a set of the books or it receives some other book, such as an atlas or dictionary.

PAR. 4. In addition to the term "15 for 1," respondent has also used the expression "School Advancement Program" to designate this sales plan, and the first issue raised by the complaint concerns the use of this expression. The expression as used by respondent is inherently erroneous and misleading, in that it constitutes a representation that the sales plan is designed primarily for the benefit and improvement of the school. While the schools do unquestionably derive benefit from the sales program through the obtaining of the books, such benefit is incidental. The program is essentially a sales plan or campaign which has as its primary purpose the sale of books to the public. The use of the designation in question has already been discontinued by respondent.

PAR. 5. Respondent's sales agents have in a substantial number of instances represented to prospective purchasers that the local school or the superintendent or some other official of the school was sponsoring the sale of the books, when in fact the only connection which the school had with the matter was that it had supplied the names and addresses of the pupils and parents. This representation was made in various ways, including statements to the effect that the books were being sold through the school, that the school was working with the agent in the sale of the books, that the agent had been sent by the school or principal to see the parent, and that the agent was running a school program or a program through the school. The mere fact that the school had supplied the names and addresses of prospective purchasers did not constitute sponsorship of the sale of the books, and it is therefore concluded and found that these representations were unwarranted and misleading.

PAR. 6. Other representations made by respondent's sales agents to prospective purchasers were that the books were essential or indispensable to the proper preparation by pupils of their school homework, and that the prices at which the books were offered under this particular sales plan were special or reduced prices, applicable for a limited time only. These representations were likewise erroneous and misleading. While a set of reference books may be very helpful to a pupil in the preparation of his school homework, such books cannot be regarded as essential or indispensable. The prices at which the books were offered were not special or reduced prices nor were they applicable for a limited time only, but were in fact the customary

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and usual prices at which such books were sold by respondent in regular and normal course of business.

PAR. 7. The acts and practices of respondent as set forth above have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's books, and the tendency and capacity to cause such portion of the public to purchase such books as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of respondent as hereinabove set out are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent, Encyclopaedia Britannica, Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's books designated Britannica Junior, or any substantially similar books, by whatever name designated, do forthwith cease and desist from:

1. Using the words "School Advancement Program" or any words of similar import to designate, describe or refer to respondent's sales plan known as the "15 for 1" plan, or any substantially similar plan; or otherwise representing, directly or by implication, that any such sales plan is designed primarily for the benefit or improvement of schools or of any particular school.

2. Representing, directly or by implication, that the sale of books under respondent's sales plan known as the "15 for 1" plan, or under any substantially similar plan, is being sponsored by any school or school official, unless the school or official referred to is in fact sponsoring such sale.

3. Representing, directly or by implication, that the prices at which said books are offered for sale are special or reduced prices or are applicable for a limited time only, when such prices are in fact the customary and usual prices at which said books are sold by respondent in its regular and normal course of business.

4. Representing, directly or by implication, that said books are essential or indispensable to the proper preparation by pupils of their school homework.

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ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That the respondent shall, within sixty (60) days after service upon it of this 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 [as required by aforesaid order and decision of the Commission].

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IN THE MATTER OF

BERZEE SPORTSWEAR, INC. ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5856. Complaint, Mar. 5, 1951—Decision, June 12, 1952

Where a corporation and its two officers, engaged in the manufacture and interstate sale and distribution of sportswear made from cloth labeled as 100% wool when purchased, but stated by the vendor actually to contain 45% wool and 55% rayon; in violation of the Wool Products Labeling Act and Rules and Regulations promulgated thereunder—

- (a) Misbranded said sportswear in that they labeled it in accordance with the aforesaid advice, when the cloth composing it did not in fact contain 45% wool and 55% rayon, but was composed of about 38% wool, in large part reprocessed, and rayon, nylon and other fibers;
- (b) Further misbranded said products in that the constituent fibers and percentages thereof were not shown on the tags and labels, as required by said Act and Rules and Regulations; and
- (c) Further misbranded certain of said products in that the legal name of the manufacturer or other person authorized by said Act to affix stamps, etc., was not shown on the attached labels, or, in lieu thereof, a registered identification number, as permitted by said Rules and Regulations:

Held, That such acts, practices and methods, under the circumstances set forth, were in violation of Secs. 3 and 4 of said Wool Products Labeling Act, and of Rule 3 of the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce.

As respects respondents' mislabeling of their products as a result of their reliance upon oral information from the vendor, as set out above: the assurance received by them from said vendor as to fiber content of the cloth from which they made their misbranded sportswear, did not comply with the exculpatory provisions of Sec. 9 of the Wool Products Labeling Act, it appearing that they neither demanded nor received from said vendor any written guaranty, specific or continuing, that said cloth was not misbranded under the provisions of the Wool Products Labeling Act, or any written guaranty as to its fiber content.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Jesse D. Kash for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Berzee Sportswear, Inc., a corporation, and Harry Zimmerman and Walter Bernstein, individually and as

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officers of said corporation, have violated the provisions of said Act and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, 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 Berzee Sportswear, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal place of business located at 261 West 35th Street, New York, N. Y.

Respondents Harry Zimmerman and Walter Bernstein are President and Secretary-Treasurer respectively of corporate respondent and in such capacities they formulate and execute its policies and practices. Their business address is the same as that of corporate respondent.

PAR. 2. Subsequent to July 15, 1941 respondents have introduced into commerce, manufactured for introduction and offered for sale, sold and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of said Act and Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled 45% wool and 55% rayon, whereas in truth and in fact said products did not contain 45% wool and 55% rayon but contained approximately 38% woolen fibers, the large proportion of which was reprocessed wool, and the balance rayon fiber and other fibers. The said wool products so labeled were further misbranded in that the constituent fibers and the percentages thereof were not shown on the tags or labels as required by said Act, in the manner and form as required by the said Rules and Regulations.

Certain of the wool products were misbranded in that the legal name of the manufacturer thereof or of a person required or authorized by said Acts to affix stamps, tags, or labels or other means of identification thereto, was not shown on the labels attached to their products as required by said Act and in the manner and form required by said Rules and Regulations nor was there so shown in lieu thereof a registered identification number as permitted by said Rules and Regulations.

PAR. 4. The aforesaid acts and practices and methods of respondents as alleged were and are in violation of sections 3 and 4 of the Wool Products Labeling Act of 1939 and Rule 3 of the Rules and Regulations promulgated thereunder and constitute unfair and deceptive

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acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated June 12, 1952, the initial decision in the instant matter of trial examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission on March 5, 1951, issued and subsequently served its complaint in this proceeding upon the respondents, Berzee Sportswear, Inc., a corporation, and Harry Zimmerman and Walter Bernstein, individually and as officers of such corporation, charging said respondents, with the use of unfair and deceptive acts and practices in commerce, in violation of those Acts. No answer to the complaint was filed by respondents and no appearance of counsel for them was made. Thereafter, a hearing was held at which respondents were present and testimony and other evidence in support of and in opposition to the complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the complaint, testimony and other evidence and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Berzee Sportswear, Inc., is a corporation organized in April 1950, and since then existing and doing business under and by virtue of the laws of the State of New York with its principal place of business located at 261 West 35th Street, New York, N. Y.

Respondent Harry Zimmerman has been and is President of corporate respondent and since February 15, 1951, has been its sole stockholder and in sole charge of its operations.

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Respondent Walter Bernstein from April 1950 until February 15, 1951, was Secretary-Treasurer of Berzee Sportswear, Inc., and together with respondent Harry Zimmerman formulated and executed its policies and practices during that period. On February 15, 1951, respondent Walter Bernstein sold all his interest in and severed all connections with the corporate respondent, and since that date has had no connection therewith.

PAR. 2. Since April 1950, respondents have introduced into commerce, manufactured for introduction into commerce, and offered for sale, sold and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act, wool products, as "wool products" are defined in said Wool Products Labeling Act.

PAR. 3. Some of said wool products were misbranded within the intent and meaning of said Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled 45% wool and 55% rayon, whereas in truth and in fact said products did not contain 45% wool and 55% rayon but contained instead approximately 38% woolen fibers, the large part of which was reprocessed wool and the remainder rayon, nylon and other fibers.

PAR. 4. Said products so labeled were further misbranded in that the constituent fibers and the percentages thereof were not shown on the tags and labels, as required by said Wool Products Labeling Act, in the manner and form as required by the said Rules and Regulations.

PAR. 5. Some of respondents' products were misbranded in that the legal name of the manufacturer thereof, or of a person required or authorized by said Wool Products Labeling Act to affix stamps, tags or labels or other means of identification thereto, was not shown on the labels attached to such products as required by said Wool Products Labeling Act, and in the manner and form required by said Rules and Regulations, nor was there so shown in lieu thereof a registered identification number as permitted by said Rules and Regulations.

PAR. 6. Respondents purchased the cloth from which they made the sportswear, misbranded as found in Paragraphs Three, Four and Five above, from the Strand Woolen Company, 251 West 39th Street, New York, N. Y., which cloth was labeled when purchased as 100% wool. Because the price paid was too low for an all-wool cloth, respondents believed the labeling erroneous and contacted the Strand Woolen Company to check its accuracy. The latter informed respondent that the cloth was 45% wool, 55% rayon and respondents, relying on such advice, labeled their products, made from that cloth,

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45% wool, 55% rayon. The invoices from Strand Woolen Company covering the sale of such cloth to respondents contain no statement of fiber content and respondents neither demanded nor received from Strand Woolen Company any written guaranty, specific or continuing, that said cloth was not misbranded under the provisions of the said Wool Products Labeling Act, nor any written guaranty as to the fiber content of the cloth purchased, other than the oral assurance that it contained 45% wool, 55% rayon.

CONCLUSIONS

1. The assurance as to fiber content of the cloth from which respondents made their sportswear, herein found to be misbranded, received by them from their vendor, does not comply with the exculpatory provisions of section 9 of the Wool Products Labeling Act of 1939.
2. The acts, practices and methods of respondents, as herein found, were in violation of sections 3 and 4 of the Wool Products Labeling Act of 1939 and of Rule 3 of the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.
3. The acts, practices and methods of respondents, herein found to be violations of law, took place during the time when respondent Walter Bernstein was a stockholder, Secretary-Treasurer and active in the management of the corporate respondent and before he severed all his connections therewith, hence he is legally responsible therefor.

ORDER

It is ordered, That respondents Berzee Sportswear, Inc., a corporation, its officers, and Harry Zimmerman and Walter Bernstein, individually and as officers of said corporation, their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the aforesaid Acts, of wool sportswear or other wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing, "wool," "reprocessed wool," or "reused wool," as those terms are defined in said Wool Products Labeling Act, do forthwith cease and desist from misbranding such sportswear or other wool products:

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1. By falsely or deceptively stamping, tagging, labeling or otherwise identifying such products;

2. By failing to securely affix to or place on such products a stamp, tag, label, or other means of identification, showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool products, exclusive of ornamentation not exceeding five percentum of said total fiber weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five per centum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of the wool product, of any non-fibrous loading, filling, or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939;

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939; and

Provided further, That nothing contained in this order shall be construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of June 12, 1952].

Syllabus

IN THE MATTER OF
STANDARD DISTRIBUTORS, INC. ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5580. Complaint, Aug. 30, 1948—Decision, June 13, 1952*

As respects the offer and sale by a seller of its product through salesmen who made oral representations in conflict with those in the contract to purchasers who frequently did not read it and whose intelligent reading thereof, at least on occasion, was hindered by the salesmen: the Commission is of the opinion that if misrepresentations are made by a seller, he must himself remove their effect, and he may not assume to place upon the buyer the obligation of discovering them, even though he furnished the buyer with something from which such misrepresentations could be discovered.

Those who sell in interstate commerce by oral persuasion of their agents have an unavoidable obligation to see that such agents do not deceive the public, and an employer's unsuccessful attempt to meet the obligation does not absolve him from violation of the statutory prohibition against the use of unfair and deceptive acts and practices in commerce, or immunize him against corrective action by the Commission, his amenability thereto being determined by what the agents actually do and not necessarily by what he wants them to do.

Where a corporation and its president, engaged in the interstate sale and distribution of the "New Standard Encyclopedia" and the "Quarterly Loose Leaf Extension Service Supplement"; by means of its book agents, in a substantial number of instances—

- (a) Represented falsely that said New Standard Encyclopedia was an entirely new encyclopedia not yet on the market; when in fact it had been republished yearly and sold for several decades;
- (b) Represented falsely that the person approached had been selected to receive a ten volume set of the encyclopedia free, or at a nominal price, before it was offered to the public, on the sole condition that within a specified time after receiving the set, he would furnish the corporation with a letter of recommendation or his opinion thereof; and
- (c) Represented falsely that in order to receive the encyclopedia free, the prospect would have to purchase the supplement for ten years at a price varying with the binding, and that he was buying and paying only for the supplement;

The facts being that prospects received nothing free but paid for everything secured, including the encyclopedia and all the books enumerated in the purchase contract; and while said oral representations were in conflict with the terms of the contract, said purchasers frequently did not read the contract and intelligent reading thereof was, on occasion, hindered by the salesman;

- (d) Represented that the encyclopedia was composed of paper, printed illustrations and binding the same as or equal to that of the prospectus exhibited; when in a number of instances, purchasers received encyclopedias, the paper, printing and bindings of which were inferior to those in the prospectus; and