

IN THE MATTER OF
THE NEW AMERICAN LIBRARY OF WORLD LITERATURE,
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 5811. Complaint, Sept. 19, 1950—Decision, Sept. 19, 1952

The offering of a book for sale constitutes an implicit representation that the book contains the entire original text and that the title under which it is offered is the original title; and in the absence of a clear and conspicuous disclosure of the fact of abridgment or change of title, the offering of an abridged book or of an old book under a new title unquestionably has the capacity and tendency to deceive and mislead prospective purchasers.

In offering and selling abridgments of previously published books and books previously published under different titles, the use on covers of the phrase "A Special Edition" does not constitute adequate disclosure of the aforesaid facts since "special" is by no means synonymous with "abridged" or "condensed".

In the aforesaid connection two poor disclosures do not add up to one good one, and the fact that in addition to such disclosure as may have been made on the covers of books, there were further disclosures in small type on the copy-right page, the title page, in the introduction, as a publisher's note or elsewhere, did not result in an adequate disclosure.

In the foregoing connection there can be no doubt that to prospective purchasers the titles of books are initially the subjects of greatest interest, and that even if nothing else on the cover is scanned, the title will be.

Where one of the leading corporate publishers of pocket-sized reprints of books, designated as "Signet" and "Mentor" to distinguish fiction and nonfiction, with annual sales of millions of copies, which were frequently published under changed titles, were marketed almost exclusively through a national distributor, and reached the public through bookstores, drugstores, news-stands, in railroad and bus stations, and otherwise; along with two officers thereof—

Failed adequately to disclose the facts concerning the abridgment and change of title of many of their books through such statements on the covers as "A Special Edition", and in small type, far removed from the new title, the words "original title" followed thereby, and through other small type disclosures inside the books;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such abridged books contained the complete original text, and that such newly titled books were new books, separate and different from the original publications from which they were copied:

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

In giving consideration to the places in which disclosures necessary to avoid deception with respect to abridgment and change of title needed to be made in order to be adequate, and at the same time not to impose undue hardship upon respondents, the Commission considered that, while such disclosure, so far as averting deception was concerned, could be adequately made elsewhere than in immediate connection with the title, such a requirement would be at the expense of the respondents in distracting initial attention from the title; and was therefore of the opinion and found that such disclosures, in order to be adequate to avert deception of the public and not unduly burdensome to respondents, must be made on the front cover and on the title page in immediate connection with the title under which the book is offered for sale.

As respects the charge in the complaint that respondents, as alleged, falsely stated upon the covers of certain books that they were "Complete and Unabridged": the single instance thereof, due to accident or inadvertence, shown by the record, was not regarded as sufficient to support the allegation.

With respect to the further charge in the complaint that respondents had represented all their books as complete and unabridged by statements on book covers and on display stands: such representations were voluntarily abandoned by respondents under circumstances of such a nature that there was no present public interest in further considering them.

Before *Mr. William L. Pack*, hearing examiner.

Mr. John M. Russell and *Mr. William L. Pencke* for the Commission.
Freidin & Littauer, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that The New American Library of World Literature, Inc., a corporation, Kurt Enoch, and Victor Weybright, individually and as officers of The New American Library of World Literature, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The New American Library of World Literature, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York and respondents Kurt Enoch and Victor Weybright, individuals, are presi-

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dent and secretary, respectively, thereof. The individual respondents have dominant control of the advertising policies and business activities of the corporate respondent and all of the respondents have cooperated with each other and have acted in concert in doing the acts and things hereinafter alleged. Respondents' office and principal place of business is located at 245 Fifth Avenue, New York 16, New York.

PAR. 2. Respondents are now, and for more than two years last past have been, engaged in the business of selling and distributing books.

Respondents cause their said books when sold to be transported from their place of business in the State of New York to the purchasers thereof located in various States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained a course of trade in their said books in commerce between and among the various States of the United States and in the District of Columbia. Respondents' volume of business in such commerce is substantial.

PAR. 3. Respondents obtain from the publishers or authors of certain published books, the right to sell reprints thereof, and in reprinting or having them reprinted in many cases delete or cause to be deleted substantial portions of the text, so that such reprints are abridged editions. Respondents' said reprints of fiction are designated "Signet" and of nonfiction, "Mentor" books. The books respondents sell are usually condensed from about 90,000 words to about 180,000 words in the originals thereof to about 60,000 to about 120,000 words more or less.

In the course and conduct of their aforesaid business in connection with the sale and distribution of their said books in commerce, and as an inducement for the purchase thereof by members of the purchasing public, respondents cause to be printed on the front covers of certain of their said books, the following phrase or others similar thereto:

Complete and Unabridged

although said books in fact are not complete and unabridged reprints of the original books from which they were copied. Others of respondents' abridged books contain no disclosure that they are abridged; and others thereof have no adequate disclosure that they are abridged although on their copyright or title pages or back covers in small and inconspicuous type appear statements of which the following is typical:

This edition of *Now I Lay Me Down to Sleep* has been abridged with the author's approval to make possible its production in this form.

On the front covers of a number of said books, there is printed the ambiguous and uninformative expressions "A Special Edition," and "The Heart of a Great Novel" which do not indicate or state said books are abridged. Respondents have also published and sold certain books with new titles, without adequately disclosing that said books have been previously published under other titles. Typical of this is their book, the new title of which is "Dark Encounter," which was published originally under the title "Maelstrom." Respondents supply to the sellers of their books in various States of the United States racks and stands for the display of their said books on which the words "Signet Books—Complete and Unabridged—Mentor Nonfiction Books" appear, thereby representing that all of their said books are complete reprints of the original books from which they were copies, whereas certain of them are only abridgements or parts thereof.

Respondents have also recently caused to be printed on the front covers of certain of their Signet Books the statement: "Signet Books Complete and Unabridged," thus representing that all of their said books are unabridged, whereas they are not.

PAR. 4. The said disclosures on the covers and on the copyright or title pages of respondents' said books, that they are abridged and of the titles of the original books from which they were copied, do not constitute adequate notice thereof, as they appear in small, inconspicuous type not noticeable to the average purchaser and, as stated, the original titles on the covers are not printed near the new titles thereof.

PAR. 5. Through the use of the phrase "Complete and Unabridged" on certain of their abridged books, respondents have represented directly and by implication that such books are in fact complete and unabridged. Through the use of the phrases "Signet Books Complete and Unabridged" and "Signet Books—Complete and Unabridged—Mentor Books" respondents have represented directly and by implication that all of their Signet and Mentor books are complete and unabridged. Through the use of new titles in place of the original titles for certain of their reprints, respondents have represented directly and by implication that the said books are separate and different from the books from which they were copied.

PAR. 6. The statements and representations used and disseminated by respondents in the manner above described are false, misleading and deceptive. In truth and in fact, certain of the books upon which the phrase "Complete and Unabridged" appears are not complete and unabridged; all of respondents' Signet and Mentor books are

not complete and unabridged; the books to which respondents have given new titles are not separate and different from the books from which they are copied. The failure of respondents to disclose adequately that certain of their books are abridged has the tendency and capacity to induce the erroneous belief that said books are in fact complete and unabridged.

PAR. 7. The use by the respondent of the aforementioned false, misleading and deceptive statements and representations disseminated as aforesaid and their failure to disclose the true nature of certain of their books as abridgements 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 of said representations are true and that books not stated to be abridgements are complete and induces a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase respondents' abridged books in said commerce.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 19, 1950, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner on the complaint, the answer thereto, testimony and other evidence, oral arguments of counsel and proposed findings as to the facts and conclusions presented by counsel, and said hearing examiner, on April 16, 1951, filed his initial decision.

Within the time permitted by the Commission's Rules of Practice, counsel for respondents filed with the Commission an appeal from said initial decision, and thereafter this proceeding regularly came

on for final consideration by the Commission upon the record herein, including briefs in support of and in opposition to said appeal and oral arguments of counsel; and the Commission, having issued its order granting said appeal in part and denying it in part and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent The New American Library of World Literature, Inc., hereinafter sometimes referred to as the corporate respondent, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with an office and principal place of business located at 501 Madison Avenue, City and State of New York. Respondent Kurt Enoch is president, treasurer and general manager of the said corporation. Respondent Victor Weybright is chairman of the board of directors and secretary of the said corporation and is also its editor-in-chief. The two individual respondents jointly formulate the policies of the corporation and direct and control its operation and practices.

PAR. 2. Respondents are now, and have been for more than two years last past, engaged in the business of publishing and selling small books, commonly referred to as pocket-size books. The said books are printed and warehoused in Chicago, Illinois, and are shipped therefrom to purchasers located in various other states of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in the said books in commerce among and between the various states of the United States and in the District of Columbia. Respondents' volume of business in such commerce is and has been substantial.

PAR. 3. Practically all of respondents' books are reprints of books which have theretofore been published by others, and include both fiction and non-fiction. The books of fiction and non-fiction are designated by respondents as "Signet" and "Mentor," respectively. Respondents obtain from the original publisher the right to reissue the book and then proceed to publish and sell it in a small or pocket-size volume. The books are marketed by respondents almost exclusively through a national distributor and eventually reach the public through book stores, drug stores, newsstands in railroad and bus stations and otherwise. Respondents are one of the leading publishers of pocket-size books, with annual sales of many millions of copies.

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PAR. 4. Since the latter part of 1947 a substantial percentage of the books published by respondents have been abridged. In 1948, 1949 and 1950 the percentages of abridgements were approximately 10%, 22% and 27%, respectively. The extent of the abridgement has varied from "5.5% or less" to 66 $\frac{2}{3}$ %. Out of forty-eight abridgements published by respondents in the years 1947-1950 (both inclusive), thirty-four were abridged from 20% to 66 $\frac{2}{3}$ %.

PAR. 5. While the original titles of the books reprinted by respondents have usually been retained, they have been not infrequently changed by respondents. These changes have been made in cases where respondents felt that the original title was lacking in popular appeal or failed to indicate correctly the type or subject matter of the book.

PAR. 6. The offering of a book for sale constitutes an implicit representation that the book contains the entire original text and that the title under which it is offered is the original title. In the absence of a clear and conspicuous disclosure of the fact of abridgement or change of title, the offering of an abridged book or of an old book under a new title unquestionably has the capacity and tendency to deceive and mislead prospective purchasers.

PAR. 7. In offering for sale and selling books which are in fact abridgements and books which have been previously published under different titles, respondents have in numerous instances failed to disclose adequately the facts of abridgement and change of title. For example, on the covers of many of their abridged books, respondents have placed the words "A Special Edition" which, they claim, was intended to signal to the reader that the book was unique in some way and that further information was contained inside the book. "Special" is by no means synonymous with "abridged" or "condensed."

In other instances, the respondents' efforts have been somewhat more frank. For example, a statement "Original Title: Horseshoe Combine" appeared on the cover of one of the exhibits on a narrow stripe of contrasting color. This statement was, however, removed about as far as possible from the new title "Gunsmoke," and in much smaller type. In immediate connection with the title on a broader stripe of the same contrasting color appeared the words "Six-Guns Settle a Range War."

In addition to such disclosure as was made on the covers of respondents' books, there was almost without exception a further disclosure inside the books on the copyright page, the title page, in the introduction, as a publisher's note or elsewhere, in small type. Such a disclosure was wholly inadequate by itself and its combination with another inadequate disclosure on the cover did not result in an

adequate disclosure; two poor disclosures do not add up to one good one.

It is apparent that the most conspicuous words on the covers of respondents' books are the titles. The titles are plainly intended to catch the eye, and there can be no doubt that to prospective purchasers they are initially the subjects of the greatest interest; even if nothing else on the cover is scanned, the title will be.

The Commission is of the opinion, and finds, that respondents have not disclosed adequately the facts concerning the abridgement and change of title of many of their books, and that the offering of said books for sale has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such abridged books contained the complete original text, and that such newly titled books were new books, separate and different from the original publications from which they were copied.

PAR. 8. The Commission has given consideration to the places in which the disclosures necessary to avoid deception with respect to abridgement and change of title must be made in order to be adequate, and at the same time not to impose undue hardship upon respondents. It may be that those disclosures could be made adequately, so far as averting deception is concerned, elsewhere than in immediate connection with the title, but this would be at the expense of the respondents in distracting initial attention from the title. Therefore, the Commission is of the opinion, and finds, that these disclosures, in order to be adequate to avert deception of the public and not unduly burdensome to respondents, must be made on the front cover and on the title page in immediate connection with the title under which the book is offered for sale.

CONCLUSION

(a) The acts and practices of respondents, as hereinabove found, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

(b) The complaint alleged that respondents had falsely stated upon the covers of certain books that such books were "Complete and Unabridged." The single instance of this, due to accident or inadvertence, which was shown by the record, is not regarded as sufficient to support this allegation.

(c) The complaint further alleged that respondents had represented all their books to be complete and unabridged by statements on book covers and on display stands. The representations in question were

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voluntarily abandoned by respondents under circumstances of such a nature that there is no present public interest in further considering them.

ORDER

It is ordered, That the respondent, The New American Library of World Literature, Inc., a corporation, and its officers, and the respondents, Kurt Enoch and Victor Weybright, individually and as officers of said corporation, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of books in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling any abridged copy of a book unless one of the following words, namely: "abridged," "abridgement," "condensed" or "condensation" appears upon the front cover and upon the title page thereof in immediate connection with the title and in clear, conspicuous type.

2. Using or substituting a new title for, or in place of, the original title of a reprinted book unless, upon the front cover and upon the title page thereof, such substitute title is immediately accompanied, in clear, conspicuous type, by a statement which reveals the original title of the book and that it has been published previously thereunder.

It is further ordered, That the charges of the complaint hereinbefore referred to and considered in paragraphs (b) and (c) of the Conclusion be, and the same hereby are, dismissed without prejudice to the right of the Commission to take such further or other action in the future as may be warranted by the then existing circumstances.

It is further ordered, That the respondents, The New American Library of World Literature, Inc., Kurt Enoch and Victor Weybright, 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 this order.

Commissioner Carretta not participating for the reason that oral argument on respondents' appeal from the initial decision of the hearing examiner was heard prior to his appointment to the Commission.

Syllabus

IN THE MATTER OF
NUCLEAR PRODUCTS COMPANY

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

Docket 5949. Complaint, Jan. 24, 1952—Decision, Sept. 20, 1952

It is essential, in connection with the offer and sale of devices which contain a potentially dangerous radioactive ingredient, and which are not only useful to adults but interesting and attractive to children, and the dismantling or careless use of which might result in serious injury, that such devices carry a conspicuous and adequate warning notice.

Where a corporation engaged in the manufacture and interstate sale and distribution of two devices which contained radioactive polonium, its "Static-Master" brushes for the removal of static electricity, dust and lint from photographic film and other appliances and its "Static-Master" wands or probes, for use in connection with the teaching of physics and chemistry and in industry for the elimination of static and dust from instruments—

- (a) Represented that polonium was harmless and that its devices could be used safely without any danger of harmful effects upon those who might use or handle them, through such typical statements in periodicals, circulars, and folders as "Static-Master instantly destroys static-surface attraction with polonium, a harmless by-product of the Uranium-Radium series";

The facts being that polonium is extremely dangerous if inhaled into the lungs or ingested, and the mere touching of polonium by the hands can result in contamination and spreading it into the lungs or digestive tract, where tobacco smoked or food eaten has been in contact with the hands;

- (b) Failed to give adequate warning as to the harmful effects which might follow the use or handling of the polonium elements contained in its brushes, and as to the conditions under which they might be safely used, through a difficult-to-read cautionary statement attached to the brush, or through certain matter set forth on the reverse side of a "Certificate" enclosed in the shipping carton in which the possibility of poisoning by ingestion or inhalation of said substance was indicated and warnings as to children and otherwise were included; and

- (c) Similarly failed to give such warning, as respects its said probe or wand upon which there was no label, legend, or designation of any kind, through the inclusion of a cautionary label, similar to that attached to the bottom of the brush, upon the inside of the bottom of the plastic container, or, since issuance of the complaint, through the inclusion of a cautionary statement in the pasteboard carton in which the probe was shipped, containing warnings as to the danger of radiation from polonium through ingestion or inhalation and measures to be taken if accidentally touched or handled, and as to keeping the device away from children;

With tendency and capacity to mislead and deceive members of the purchasing public into the erroneous belief that said devices were safe or would not