

IN THE MATTER OF
THE NEW AMERICAN LIBRARY OF WORLD
LITERATURE, INC. ET AL.

COMPLAINT, MODIFIED DECISION, 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, Jan. 6, 1953

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 copyright 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, newsstands, 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 commerce.

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

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president 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 Non-fiction 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 abridgments 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 abridgments 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 abridgments 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.

MODIFIED 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 fully advised in the premises, found that this proceeding was in the interest of the public and on September 19, 1952, made 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.

Thereafter on November 21, 1952, respondents filed with the Commission a motion to modify its decision of September 19, 1952, with respect to the provisions of the order to cease and desist included therein, and the Commission, having duly considered the matter and entered its order granting the said motion in part and denying it in all other respects, makes this its findings as to the facts and its conclusion drawn therefrom and order, the same to be in lieu of its decision herein issued on September 19, 1952.¹

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 nonfiction. The books of fiction and nonfiction are designated by respondent as "Signet" and "Mentor," respectively. Respondents obtain from the original publisher the right to reissue the

¹ See ante, p. 220.

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.

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 abridgments were approximately 10, 22 and 27 percent, respectively. The extent of the abridgment has varied from "5.5 percent or less" to 66 $\frac{2}{3}$ percent. Out of forty-eight abridgments published by respondents in the years 1947-50 (both inclusive), thirty-four were abridged from 20 to 66 $\frac{2}{3}$ percent.

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 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.

PAR. 7. In offering for sale and selling books which are in fact abridgments and books which have been previously published under different titles, respondents have in numerous instances failed to disclose adequately the facts of abridgment 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 the 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 abridgment 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

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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 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," "abridgment," "condensed" or "condensation," or any other word or phrase stating with equal clarity that said book is abridged, 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

NASH & KINSELLA LABORATORIES, INC. ET AL.

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

Docket 6034. Complaint, Aug. 26, 1952—Decision, Jan. 6, 1953

Where a corporation and its three officers, engaged in the competitive interstate sale and distribution of an insecticide designated "2-Way Roach and Insect Spray"; in advertising in circulars sent to dealers for distribution to the purchasing public, directly or by implication—

- (a) Falsely represented that said product, when used as directed, would kill or control insects that normally infest food or feeds, including moths, mites, flour beetles and cadelles, without rendering such food or feeds unfit for consumption, and would control lice or mites on poultry, and could be wiped on the hair of dogs, cats or other animals in a sufficient amount to kill or repel lice or fleas without being injurious to such animals;
- (b) Falsely represented that fleas were flying insects and could be killed by their said product sprayed into the air;
- (c) Falsely represented that their said product, when used as directed and sprayed on doorways, screen doors, light bulbs or other surfaces, would kill or repel insects that gather outside such doorways and screen doors at night under light, and would kill all insects that walk on such sprayed surfaces;
- (d) Represented that, used as a spray, said product would kill termites, either inside or outside of buildings, and was of practical value in control thereof; the facts being that while it would kill termites in the flying stage, it would be of no practical value in the control of termites within such structures, and it could not be expected to kill any significant number of them outside a structure when used as a spray;
- (e) Falsely represented that it was absolutely harmless and nonpoisonous, and that children suffered no harm from it;
- (f) Represented that it was "28 times more potent" against all insects than 25 percent D.D.T.; the facts being that its comparative effectiveness depended upon the type of insect and that as to certain insects, D.D.T. was more effective;
- (g) Represented that the active ingredients in aerosol bombs were ordinarily 3 percent active and that a quart container of its spray contained 66 times more insecticide than a 1-pound bomb; the facts being that such ingredients constituted not 3 percent but 15 percent of the volume in such a bomb, and while a quart container of their product contained more insecticide than the average bomb, it did not contain 66 times more; and
- (h) Represented falsely that said spray was effective in killing flies or insects within a 25,000 cu. ft. area when the amount expelled from the container by a few strokes of the hydraulic sprayer was sprayed into an electric fan;