

IN THE MATTER OF
NATIONAL EDUCATORS, INC. ET AL.

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

Docket 5975. Complaint, Mar. 27, 1952—Decision, May 5, 1953

Where a corporation and its controlling officer, engaged in the interstate sale and distribution of a combination offer of a 10-volume set of the New Standard Encyclopedia and Quarterly Loose-Leaf Extension Service supplements thereto, published under the name of "World Progress"; in selling said combination under a plan or scheme in accordance with which their agents, calling upon doctors, nurses, and other professional persons in hospitals and elsewhere—

- (a) Represented falsely to such prospects that they were being offered a 10-volume set of the encyclopedia free because of their professional standing, thus indicating that such offer was made only to selected individuals;
- (b) Represented falsely that such offer was made solely for advertising purposes or that those solicited would receive the encyclopedia free if within 30 days they would furnish a letter recommending it or giving their opinion on it;
- (c) Represented that the prospects would obtain a set of the encyclopedia free if they purchased the Quarterly Extension Service Supplement for 10 years at \$9.95 or some approximate amount per year; and
- (d) Represented that only the supplement was being sold and the encyclopedia was free and that the sum of \$99.50 was the total amount required to be paid;

The facts being they furnished no encyclopedia free and the aforesaid amount was the regular price charged for the combination of encyclopedia and supplements; the offer was available to anyone willing to pay said regular price; and they failed to make known to purchasers that, in addition to the amount charged and represented as the total required to be paid, an additional charge of \$1.85 per year was made, allegedly to cover mailing expenses; and

- (e) In some instances sent sets of their encyclopedia to persons who had not contracted to buy them and then endeavored to enforce payment by stating that such consignees were legally or otherwise obligated to pay therefor;
- With capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that such representations were true, and with effect of thereby inducing purchase of said encyclopedia and supplement:

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

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Complaint

Before *Mr. John Lewis*, hearing examiner.

Mr. William L. Pencke for the Commission.

Mr. Matthew C. Cary, of Scranton, Pa., 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 National Educators, Inc., a corporation, and Leonard Melley and Lawrence Melley, individually and as officers of National Educators, 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, National Educators, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania. Respondents, Leonard Melley and Lawrence Melley, are President and Treasurer, and Secretary, respectively, thereof. The individual respondents have dominant control of the advertising policies and business practices and activities of said corporate respondent and all of said respondents have cooperated with each other and have acted in concert in doing the acts and practices hereinafter alleged. Respondents' principal office and place of business is located at 229 North Washington Avenue, Scranton 3, Pennsylvania.

PAR. 2. Respondents are now, and have been for more than two years last past, engaged in the sale and distribution of a combination offer of a 10-volume set of the New Standard Encyclopedia and the Quarterly Loose Leaf Extension Service supplements thereto, published under the name of World Progress. Respondents cause said Encyclopedia and Supplements, when sold, to be shipped from the place where the former are printed in Columbia, Missouri, or from Chicago, Illinois, the place of business of Standard Education Society, their publisher, to the purchasers thereof at their respective residences located in States other than those in which such shipments are made.

There is now, and at all times mentioned herein has been, a constant course of trade in said books sold by respondents between and among the various States of the United States. Respondents' volume of business in said commerce is and has been substantial.

PAR. 3. In connection with the sale and distribution of the said encyclopedia and supplements thereto, and as an inducement for the purchase thereof by members of the public, the respondents, for several

years last past, have been using a plan or scheme for selling the same substantially as follows: Respondents' agents call upon doctors, nurses and other professional persons in hospitals and elsewhere stating and representing that because of their professional standing they are being offered a 10-volume set of the New Standard Encyclopedia free, thus indicating that said offer was made only to selected individuals; that said offer was made solely for advertising purposes; or that they will receive the encyclopedia free if within 30 days or within some other specified time, they will furnish a letter recommending said encyclopedia or giving their opinion thereof; or that they may obtain a set of said encyclopedia free if they purchase the Quarterly Loose Leaf Extension Service Supplement thereto for 10 years at \$9.95 or some approximate amount per year; that only the supplement is being sold and the encyclopedia is free and that the sum of \$99.50 is the total amount required to be paid.

Respondents in some instances send sets of their encyclopedia to persons who have not contracted to buy same and then endeavor to enforce payment for them by stating that they are legally obligated to pay therefor, or otherwise.

PAR. 4. The aforesaid statements and representations were and are false, deceptive and misleading. In truth and in fact, respondents do not furnish a set of the encyclopedia free to anyone for advertising purposes for a letter of recommendation thereof or an expression of opinion with respect thereto, or for any other reason. Neither is the encyclopedia furnished free when the supplement is purchased for \$99.50 or any other amount since such amount is the regular price charged for the combination of the encyclopedia and the supplement and the price for the encyclopedia is included in the price charged for said combination. The offer is not limited to any particular persons or group of persons but said combination is available for purchase by any person who is willing to pay the regular price therefor. The \$99.50, or approximate amount, charged for the combination of the encyclopedia and supplement is not the total amount required to be paid. In addition, the amount of \$1.85 per year for 10 years is charged, allegedly for mailing expense of the supplement, which fact is not made known to purchasers prior to the time the sale is consummated.

PAR. 5. The use by the respondents 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 pur-

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Decision

chasing public to purchase said New Standard Encyclopedia and supplements because of such erroneous and mistaken belief.

PAR. 6. The aforesaid acts and practices of the 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 March 27, 1952, 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. Respondents defaulted in filing answer to the complaint and thereafter informed the hearing examiner, theretofore designated by the Commission to act in this proceeding, that they did not desire to appear for hearing in this matter, a time and place for which had been duly designated in the "Notice" portion of said complaint. Subsequently a hearing was held at which time respondents' aforesaid default in the filing of answers was noted of record, counsel supporting the complaint moved for the entry of an order to cease and desist, and the hearing examiner thereupon closed the case for the reception of evidence. Thereafter, respondents appeared by counsel and, with counsel supporting the complaint, entered into a stipulation as to the facts which provided that the statement as to the facts contained in such stipulation should be deemed to be the facts in this proceeding and, under which stipulation, counsel for respondents waived all further proceedings and consented to issuance forthwith of an initial decision. Such stipulation was approved by the hearing examiner and received into the record and on August 26, 1952, the hearing examiner filed his initial decision.

The Commission, having reason to believe that the initial decision did not constitute an appropriate disposition of the proceeding, placed this case on the Commission's own docket for review and on March 2, 1953, it issued and thereafter served upon the respondents its order affording the respondents an opportunity to file with the Commission an appropriate memorandum or brief setting forth any objections they might have to altering the initial decision in the manner and to the extent shown in the tentative decision attached to said order. No memorandum or brief having been filed by or on behalf of respondents pursuant to such leave, this proceeding regularly came on for final consideration by the Commission upon the record herein on review; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the inter-

est of the public and makes the following findings as to the facts, 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 National Educators, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania. Respondents Leonard Melley and Lawrence Melley are President and Treasurer, and Secretary, respectively, thereof. Respondent Leonard Melley has dominant control of the advertising policies and business practices and activities of said corporate respondent. Respondents' principal office and place of business is located at 229 North Washington Avenue, Scranton 3, Pennsylvania.

Respondent Lawrence Melley did not participate in the formulation of the policies of said business and exercised no control over the management or conduct thereof, his activities being confined to general clerical and office work. The complaint will therefore be dismissed as to him in his individual capacity, and the term "respondents," as used hereinafter, does not include him in such individual capacity.

PAR. 2. For more than two years prior to June, 1952, respondents were engaged in the sale and distribution of a combination offer of a 10-volume set of the New Standard Encyclopedia and the Quarterly Loose Leaf Extension Service supplements thereto, published under the name of "World Progress." Respondents caused said encyclopedia and supplements, when sold, to be shipped from Columbia, Missouri, the place of printing of the former, or from Chicago, Illinois, the place of business of Standard Education Society, their publisher, to the purchasers thereof at their respective residences located in States other than those from which such shipments were made. Respondents ceased operating said business sometime in June, 1952, and have not engaged in any of the practices herein set forth since that time.

There was, at all times during the period mentioned above, a constant course of trade in said books sold by respondents between and among the various States of the United States. Respondents' volume of business in said commerce has been substantial.

PAR. 3. In connection with the sale and distribution of the said encyclopedia and supplements thereto, and as an inducement for the purchase thereof by members of the public, the respondents, for several years prior to the discontinuance of business, as aforesaid, were using a plan or scheme for selling their encyclopedia and supplements substantially as follows:

Respondents' agents called upon doctors, nurses, and other professional persons in hospitals and elsewhere stating and representing that, because of their professional standing, they were being offered a 10-volume set of the New Standard Encyclopedia free, thus indicating that said offer was made only to selected individuals; that said offer was made solely for advertising purposes; or that they would receive the encyclopedia free if, within thirty (30) days or within some other specified time, they were to furnish a letter recommending said encyclopedia or giving their opinion thereof; or that they would obtain a set of said encyclopedia free if they purchased the Quarterly Loose Leaf Extension Service Supplement thereto for 10 years at \$9.95 or some approximate amount per year; that only the supplement was being sold and that the encyclopedia was free and that the sum of \$99.50 was the total amount required to be paid.

Respondents, in some instances, sent sets of their encyclopedia to persons who had not contracted to buy same and then endeavored to enforce payment for them by stating that they were legally obligated to pay therefor, or otherwise.

PAR. 4. Respondents' aforesaid statements have been false, deceptive and misleading. In truth and in fact, respondents did not furnish a set of the encyclopedia free to anyone for advertising purposes, for a letter of recommendation thereof or an expression of opinion with respect thereto, or for any other reason. Neither was the encyclopedia furnished free when the supplement was purchased for \$99.50 or any other amount since such amount was the regular price charged for the combination of the encyclopedia and the supplement and the price for the encyclopedia was included in the price charged for said combination. The offer was not limited to any particular persons or group of persons, but said combination was available for purchase by any person who was willing to pay the regular price therefor. The \$99.50, or approximate amount, charged for the combination of the encyclopedia and supplement was not the total amount required to be paid. In addition, the amount of \$1.85 per year for 10 years was charged allegedly for mailing expense of the supplement, which fact was not made known to purchasers prior to the time the sale was consummated.

PAR. 5. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations disseminated, as aforesaid, has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations were true and has induced a substantial portion of the purchasing public to purchase said New Standard Encyclopedia and supplements because of such erroneous and mistaken belief.

Order

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CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, have been 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.

ORDER

It is ordered, That the respondent National Educators, Inc., a corporation, its officers, and respondent Leonard Melley, individually and as an officer of said corporation, and respondents' respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of encyclopedias, or any other publications, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(1) That any of said publications are free or in any sense a gratuity when in fact payment therefor is included in the total price to be paid by the purchaser.

(2) That any of said publications are given to purchasers as an advertising plan or otherwise, in return for endorsements from such purchasers, when such is not a fact.

(3) That any offer is made only to selected individuals.

(4) That a certain sum is the entire cost of said publications, when any additional amount is required to be paid.

It is further ordered, That the respondent National Educators, Inc., a corporation, its officers, and respondent Leonard Melley, individually and as an officer of said corporation, and respondents' respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of encyclopedias, or any other publications, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from attempting to enforce payment for their publications when no agreement has been made to purchase them.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to the respondent, Lawrence Melley, in his individual capacity.

It is further ordered, That respondents, National Educators, Inc., and Leonard Melley, shall, within sixty (60) days after service 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 terms of this order.

Syllabus

IN THE MATTER OF
PRUVO PHARMACAL COMPANY ET AL.

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

Docket 5778. Complaint, May 19, 1950—Decision, May 15, 1953

The terms "arthritis" and "rheumatism" are general terms, sometimes used interchangeably, which refer to any of a number of diseases or pathological conditions including, among others, neuritis, sciatics, neuralgia, gout, fibrositis, bursitis, rheumatoid arthritis, osteoarthritis, rheumatic fever and infectious arthritis, all of which are characterized by one or more of such symptoms or manifestations as pain, stiffness, and inflammatory and destructive changes in the joints and tissues of the body.

The various pathological conditions generally referred to as "arthritis" and "rheumatism" progress and develop differently. Likewise, they require different treatment, which will vary not only between different types of such ailments, but between different stages in the progress thereof. An adequate, effective, or reliable treatment for any kind of "arthritis" or "rheumatism" must, therefore, be predicated upon individual diagnosis, in order to determine whether the patient has arthritis or rheumatism, the particular kind of such ailment present, and whether it arose from a known or an unknown cause.

An adequate, effective, or reliable treatment for any of the various types of ailments included in the general terms "arthritis" and "rheumatism" may involve application of various therapeutic measures, including diet, rest or change of occupation, various types of physiotherapy such as orthopedic or thermal procedures, surgery, and medication; and delay of needed treatment may result in irreparable crippling, especially in those forms of arthritis and rheumatism known to be caused by specific infections.

There is no drug, or combination of drugs, regardless of how administered, which will constitute an adequate, effective, or reliable treatment for any of the various forms of arthritis or rheumatism, nor is there any drug or combination of drugs which can restore to normal the pathological changes which result from any arthritic or rheumatic ailment.

Where a corporation and the three individuals controlling it, engaged in the interstate sale and distribution of their medicinal preparation "Pruvo," the only therapeutic, operative ingredient of which was acetylsalicylic acid, commonly known as aspirin; in advertising in newspapers and otherwise—

- (a) Represented falsely, directly and by implication, that said Pruvo, taken as directed by those suffering from all kinds of arthritis, rheumatism, and neuritis, would result in benefits in excess of those afforded by an analgesic and antipyretic, including reduction of swelling and freeing joints of stiffness; would quickly and completely relieve all pains of arthritis, rheumatism, and neuritis; and was a remarkable new medical discovery;