

Consent Settlement

IN THE MATTER OF

FRANK M. BUCKLEY TRADING AS FRANK M. BUCKLEY
COMPANY AND AS T. M. BUCKLEY COMPANYCONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE FED-
ERAL TRADE COMMISSION ACT AND THE WOOL PRODUCTS LABELING ACT

Docket 6098. Complaint, May 20, 1953—Decision, Sept. 8, 1953

Where an individual engaged in the manufacture and interstate sale and distribution of wool products as defined in the Wool Products Labeling Act—

- (1) Misbranded certain batts or batting in that they were not stamped, tagged, etc., as required by said Act and the Rules and Regulations promulgated thereunder; and
- (2) Misbranded such products in that they were falsely described and identified in sales invoices, packing slips, and shipping memoranda as "New Wool, 100%" and as "Reused Wool, 100%", when in fact they contained reprocessed and reused wool together with substantial quantities of other fibers:

Held, That such acts and practices were in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. George E. Steinmetz for the Commission.

Mr. Fred L. Hoffstein, of Boston, Mass., for respondent.

CONSENT SETTLEMENT¹

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission, on May 20, 1953 issued and subsequently served its complaint on the respondent named in the caption hereof, charging him with the use of unfair and deceptive acts and practices in violation of the provisions of said Acts.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and con-

¹The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on September 8, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

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ditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of the answer to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement is to be withdrawn from the record, hereby:

1. Admits all the jurisdictional allegations set forth in the complaint.

2. Consents that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting or denying that he has engaged in any of the acts or practices stated therein to be in violation of law.

3. Agrees that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in Paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondent consents may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Frank M. Buckley is an individual, trading and doing business as Frank M. Buckley Company and as T. M. Buckley Company, with his principal place of business in both instances at 8 "B" Street, Hyde Park 36, Massachusetts.

PAR. 2. Subsequent to the effective date of the said Wool Products Labeling Act and more especially since 1950, said respondent has manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce as "commerce" is defined in the Wool Products Labeling Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products described as batts or battings were misbranded, in that they were not stamped, tagged, or labeled as required by the Wool Products Labeling Act of 1939 and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said wool products described as batts or battings were misbranded within the intent and meaning of section 4 (a) (1)

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of said Wool Products Labeling Act and of Rule 30 of the Rules and Regulations promulgated thereunder in that they were falsely and deceptively described and identified in sales invoices, packing slips and shipping memoranda applicable thereto as "New Wool, 100%" and as "Reused Wool, 100%"; whereas, in truth and in fact, said wool products were not 100% New Wool and 100% Reused Wool, as such terms are defined in said Act, but contained reprocessed and reused wool together with substantial quantities of fibers other than wool.

PAR. 5. Certain of said wool products described as batts or battings were misbranded in that they were not stamped, tagged or labeled as required under the provisions of section 4 (a) (2) of the Wool Products Labeling Act of 1939 and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

CONCLUSION

The acts and practices of the respondent, as herein found, were and are in violation of the Wool Products Labeling Act of 1939 and 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.

ORDER TO CEASE AND DESIST

It is ordered, That the respondent, Frank M. Buckley, trading under the names of Frank M. Buckley Company and T. M. Buckley Company, or trading under any other name, and said respondent's 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 Federal Trade Commission Act and in the Wool Products Labeling Act of 1939, of wool batts or battings 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 Act, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein;

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

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(a) The percentage of the total fiber weight of such wool product, 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 percentum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such 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 products or of one or more persons engaged in introducing such wool products into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined 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.

3. *It is further ordered*, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

/s/ Frank M. Buckley
FRANK M. BUCKLEY,
trading and doing
business as Frank M.
Buckley Company
and as T. M. Buck-
ley Company.

Date: July 6th, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 8th day of September, 1953.

Consent Settlement

IN THE MATTER OF

GAYMONT LABORATORIES, INC., ET AL.¹CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6100. Complaint, May 21, 1953—Decision, Sept. 8, 1953*

Where a corporation and its president, engaged in the interstate sale and distribution of their "Dr. Gaymont's Yogurt Culture" and "Dr. Gaymont's Instant Whey Powder", in advertisements in newspapers and magazines of general circulation, and in circulars and leaflets, and otherwise, directly and by implication—

- (a) Represented falsely that their "Dr. Gaymont's Yogurt Culture" was effective in the treatment of stomach ulcers, stomach acidity, colitis, and intestinal disorders, and as an alkalizer and was pain comforting;
- (b) Represented falsely that it was non-fattening and predigested, aided digestion, and provided one with a glowing complexion and a trim figure, and kept one healthy;
- (c) Represented falsely that the yogurt produced thereby became nature's nearly perfect food by reason of having been treated with said "Culture", and that the product was effective in improving the appetite; and
- (d) Represented falsely that their "Dr. Gaymont's Instant Whey Powder" was effective in the treatment of colitis and digestive ailments; insured sound teeth, strong bones, and robust health; and that it was non-fattening, and gave the user a glowing complexion and a trimmer figure:

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

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. Alfred M. Walter, of Chicago, Ill., for respondents.

CONSENT SETTLEMENT ²

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 21, 1953, issued and subsequently served its complaint on the respondents named in the caption hereof charging them with use of unfair and deceptive acts and practices in violation of the provisions of said act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purpose of this proceeding,

¹ By decision effective September 9, 1953, as set forth at p. 224. Complaint was dismissed as to respondent Gaymont in his individual capacity.

² The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on September 8, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

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any review thereof, and the enforcement of the Order consented to, and conditioned upon the Commission's acceptance of the Consent Settlement hereinafter set forth, and in lieu of answer to said complaint, hereby:

1. Admit all the jurisdictional allegations set forth in the complaint.
2. Consent that the Commission may enter the matters hereinafter set forth as its Findings as to the Facts and Conclusion and Order to Cease and Desist. It is understood that the respondents in consenting to the Commission's entry of said Findings as to the Facts, Conclusion and Order to Cease and Desist specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of the law.

3. Agree that the Consent Settlement may be set aside in whole or in part under the conditions and in the manner provided in Paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon and the Order to Cease and Desist, all of which the respondents consent may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

Respondent Gaymont Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 315 North Clark Street, in the city of Chicago, State of Illinois.

Respondent Stephen Gaymont is an individual and president of corporate respondent, Gaymont Laboratories, Inc., and has his office and principal place of business at the same place as corporate respondent.

Respondents are now, and for more than one year last past have been, engaged in the sale and distribution of food products, as "food" is defined in the Federal Trade Commission Act. The products sold by respondents are known as "Dr. Gaymont's Yogurt Culture," and "Dr. Gaymont's Instant Whey Powder."

Respondents cause their said food products, when sold, to be transported from their place of business in Chicago, Illinois, to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said food products in commerce between and among the various States of the United States. Respondents' volume of

business in commerce in said food products is and has been substantial.

In the course and conduct of their aforesaid business, respondents, subsequent to March 31, 1938, have disseminated and are now disseminating, and have caused and are now causing the dissemination of advertisements concerning their said food products by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in newspapers and magazines of general circulation and in circulars and leaflets, for the purpose of inducing and which are and were likely to induce, directly or indirectly, the purchase of said food products; and respondents have also disseminated and are now causing the dissemination of advertisements concerning their said food products by the aforesaid means for the purpose of inducing and which are and were likely to induce, directly or indirectly, the purchase of their said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

Through the use of said advertisements, respondents represented and represent, directly and by implication, that respondent's food product designated "Dr. Gaymont's Yogurt Culture" is effective in the treatment of stomach ulcers, stomach acidity, colitis and intestinal disorders; that it is effective as an alkalizer, is non-fattening, predigested, aids digestion, and provides one with a glowing complexion and trim figure, and keeps one healthy; and that the yogurt produced by respondents' product becomes nature's nearly perfect food by reason of having been treated with respondents' culture and that respondents' product is effective in improving the appetite and is pain comforting.

Through the use of said advertisements, respondents also represented and represent, directly and by implication, that respondent's food product designated "Dr. Gaymont's Instant Whey Powder" is effective in the treatment of colitis, and digestive ailments; insures sound teeth, strong bones and robust health, is non-fattening, and gives the user a glowing complexion and a trimmer figure.

The aforesaid statements and representations are misleading in material respects and constitute false advertisements, as that term is defined in the Federal Trade Commission Act. In truth and in fact, respondents' Yogurt Culture or the yogurt made therefrom is not effective in the treatment of stomach ulcers, stomach acidity, colitis, or intestinal disorders. Its use will not result in the alkalization of the system. The said product contains the calories inherent in milk and is therefore not non-fattening. Respondents' said product is not predigested nor does it aid digestion, although it has been recommended as a dietary supplement for individuals suffering from diges-

tive disturbances. It does not provide one with a glowing complexion or keep the figure trim. The use of respondents' said product alone will not keep one healthy and the yogurt produced from respondents' culture is not nature's nearly perfect food. Respondents' said product will not improve the appetite, nor is it an analgesic.

In truth and in fact, respondents' Instant Whey Powder is not effective in the treatment of colitis or digestive ailments; its use will not insure or assure sound teeth, strong bones nor robust health; nor will its use give the user a glowing complexion or otherwise improve the complexion. It has caloric food value and is therefore not non-fattening and its use will not result in a "trimmer" or slenderer figure unless there is a reduction in the total caloric intake of the user.

The use by respondents of the foregoing false and misleading statements and representations contained in said advertisements has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of said food products because of such erroneous and mistaken belief.

CONCLUSION

The acts and practices of respondents, as herein found, 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.

ORDER TO CEASE AND DESIST

It is ordered that Gaymont Laboratories, Inc., a corporation, its officers, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of Dr. Gaymont's Yogurt Culture and Dr. Gaymont's Instant Whey Powder, or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by inference:

(a) That Dr. Gaymont's Yogurt Culture or yogurt made therefrom:

(1) Is effective in the treatment of stomach ulcers, stomach acidity, colitis or intestinal disorders;

- (2) Is effective as an alkalizer;
- (3) Is non-fattening, or provides one with a trim figure;
- (4) Is predigested, or aids digestion; provided, however, that this shall not be construed as prohibiting the representation that Yogurt has been recommended as a dietary supplement for individuals suffering from digestive disturbances.
- (5) Provides one with a glowing complexion;
- (6) Keeps one healthy;
- (7) Is Nature's nearly perfect food;
- (8) Is effective in improving the appetite;
- (9) Is an analgesic or relieves pain;
- (b) That Dr. Gaymont's Instant Whey Powder:
 - (1) Is effective in the treatment of colitis or digestive ailments;
 - (2) Will insure or assure sound teeth, strong bones, or robust health;
 - (3) Will give the user a glowing complexion or otherwise improve the complexion;
 - (4) Is non-fattening, or that its use will result in a trimmer or more slender figure.

2. Disseminating or causing to be disseminated, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act of said products, any advertisement which contains any of the representations prohibited in Paragraph 1 of this order.

It is further 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.

/s/ *Gaymont Laboratories, Inc.*

Gaymont Laboratories, Inc.

/s/ *Stephen Gaymont, Pres.*

STEPHEN GAYMONT, *President.*

Gaymont Laboratories.

Date:

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and entered of record on this 8th day of September 1953.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, the attached initial decision of the hearing examiner shall, on September 9, 1953, become the decision of the Commission.

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ORDER DISMISSING COMPLAINT AS TO RESPONDENT
STEPHEN GAYMONT, INDIVIDUALLY

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

This proceeding came on to be considered by the above-named hearing examiner, theretofore duly designated by the Commission, upon the complaint of the Commission; a motion filed June 30, 1953, by respondent Stephen Gaymont, that said complaint be dismissed as to him; an affidavit dated June 26, 1953, in support of said motion, showing that Stephen Gaymont never, until recently, took an active interest in the sales, promotional and advertising aspects of the corporate respondent's activities; that he was not consulted about, and had no knowledge of the copy used in the advertisements complained of by the Commission, and that as soon as his attention was directed to said advertisements he ordered their discontinuance; and answer to said motion filed by counsel in support of the complaint, stating that he did not oppose the granting thereof. The hearing examiner, having considered said motion to dismiss in the light of the entire record, finds that there is no available evidence of facts contradictory to the statements set forth in respondent's affidavit; that the record is clear that said respondent was in no way individually responsible for any of the acts or practices charged in the complaint, and that, accordingly, said motion should be granted. Therefore,

It is ordered, That the complaint in the above-entitled proceeding be, and the same hereby is, dismissed as to respondent Stephen Gaymont, individually.

Order

IN THE MATTER OF
WALTER J. BLACK, INC. TRADING AS THE CLASSICS
CLUB AND DETECTIVE BOOK CLUB

*Docket 5571. Complaint, June 30, 1948—Order, opinion and dissenting opinion,
Sept. 11, 1953*

Charge: Advertising falsely or misleadingly and offering deceptive inducements to purchase through representing or offering, falsely or misleadingly, free goods; in connection with the sale of books.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. Jesse D. Kash, for the Commission.

Mr. Loring M. Black, of Washington, D. C., for respondent.

Satterlee, Warfield & Stephens, of New York City, for Doubleday & Co., Inc. et al., and *Wolfson, Caton & Moguel*, of New York City, for Book-of-the-Month Club, Inc., amici curiae.

ORDER DISMISSING COMPLAINT

This matter is before the Commission upon respondent's appeal from the initial decision of the hearing examiner and upon briefs and oral argument of counsel, including oral argument of counsel for Doubleday & Company, Inc., and Book-of-the-Month Club, Inc., as *amici curiae*.

The complaint herein charges the respondent with false, misleading, and deceptive use of the word "free" in connection with the sale and distribution of books. The hearing examiner in his initial decision found that the allegations of the complaint are sustained and his order would prohibit the respondent from "Using the word 'free' or any other word or words of similar import or meaning in advertising to designate or describe any book or other merchandise which is not in truth and in fact a gift or gratuity or is not given to the recipient thereof without requiring the purchase of other merchandise or requiring the performance of some service inuring, directly or indirectly, to the benefit of the respondent." Respondent in its appeal contends generally that the hearing examiner's findings and conclusion are not supported by the evidence and that no order is warranted.

The Commission having duly considered said appeal and the record herein and being of the opinion that, for the reasons set forth in the accompanying opinion of the Commission, the complaint should be dismissed, such disposition making it unnecessary to rule specifically on each of respondent's exceptions to the initial decision of the hearing examiner:

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It is ordered, That the complaint in this matter be, and it hereby is dismissed.

Syllabus: The use of the word "Free," or any other word or words of similar import or meaning, in advertising or in other offers to the public, to designate or describe any article of merchandise sold or distributed in "commerce," as that term is defined in the Federal Trade Commission Act, is considered by the Commission to be an unfair or deceptive act or practice under the following circumstances:

(1) When all of the conditions, obligations, or other prerequisites to the receipt and retention of the "free" article of merchandise are not clearly and conspicuously explained or set forth at the outset so as to leave no reasonable probability that the terms of the advertisement or offer might be misunderstood; or

(2) When, with respect to the article of merchandise required to be purchased in order to obtain the "free" article, the offerer either (1) increases the ordinary and usual price; or (2) reduces the quality; or (3) reduces the quantity or size of such article of merchandise.

OPINION OF THE COMMISSION

BY CARRETTA, COMMISSIONER:

This matter is before the Federal Trade Commission upon an appeal by the respondent corporation from the "Initial Decision" of the Hearing Examiner and from the "Examiner's Rulings on Requested Findings as to the Facts and Conclusions." Briefs were filed by both respondent's counsel and by counsel supporting the complaint. Oral argument upon the appeal was heard by the full Commission under date of June 29, 1953.

There should be no dispute as to the basic facts in this case inasmuch as the only evidence before the Commission is in the nature of a stipulation entered into between respondent's counsel and counsel supporting the complaint. No hearing was held in this matter, and no witnesses were submitted by either side.

The respondent, Walter J. Black, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1 Park Avenue, New York, New York. Said corporate respondent trades and does business as The Classics Club and Detective Book Club.

Respondent is now and for more than two years prior to June 30, 1948, has been engaged in the sale and distribution of books.

In the course and conduct of its business, respondent caused and has caused its said products to be transported from its place of business in the State of New York to purchasers 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 books in commerce among and between the various States of the United States and in the District of Columbia.

Respondent in the course and conduct of its said business and for the purpose of inducing the purchase of its products has made representations and statements concerning its products, said statements and representations have been disseminated by respondent between and among the various States of the United States and in the District of Columbia among respective purchasers by use of the United States mails, by advertisements in newspapers, trade journals and by means of advertising folders, pamphlets, circulars and other advertising media, all of general circulation. Among and typical of such statements and representations, but not all inclusive, are the following:

1. FREE A TRIAL MEMBERSHIP GIFT

WALTER J. BLACK, PRESIDENT OF THE CLASSICS CLUB, INVITES YOU TO ACCEPT FREE THE ILIAD OF HOMER AND THE ODYSSEY OF HOMER

Two beautifully bound volumes. In the famous translations for modern readers by Samuel Butler. Of all the magic of "the glory that was Greece" these two books cast over you the most irresistible spell! Alexander the Great treasured The Iliad so deeply that he carried it into battle with him in a jeweled casket. And The Odyssey is so teeming with unforgettable action and adventure that the very names of its fascinating characters are bywords in our culture today!

Here, in these two books, is the Greece of the gods—the whole gorgeous panorama of mighty deeds, of alluring women and warrior heroes, of tales that have thrilled millions of readers.

No wonder these two immortal books of Homer, "the blind bard," have thundered down through thirty centuries, as fresh as though they had been written only yesterday! And now—as a gift from The Classics Club, for your library of volumes you will cherish forever—you may have them both, FREE!

Why the Classics Club Offers You These Two Books Free

Will you add these two lovely volumes to your home library now—as a membership gift from THE CLASSICS CLUB? You are invited to join today . . . and to receive on approval beautifully bound editions of the world's greatest masterpieces.

At the request of The Classics Club, four authorities formed themselves into a Selection Committee to choose the great books which offer the greatest enjoyment and value to the "pressed for time" men and women of today. And The Classics Club now presents these great books to you.

Why Are Great Books Called "Classics"?

A true "classic" is a living book that will never grow old. For sheer fascination it can rival the most thrilling modern novel. Perhaps you have often wondered

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how these truly great books "got that way". First, because they are so readable. They would not have lived unless they were read, and they would not have been read unless they were interesting and easy to understand. And those are the very qualities which characterize these selections: readability, interest, simplicity.

Only Book Club of Its Kind

The Classics Club is different from all other book clubs in these four ways: 1. Its sole purpose is to distribute to its own members the world's great classics at low prices. 2. Its basic price is lower than that of any other book club. 3. Its members are not obligated to take any specific number of books. 4. All its volumes are bound in attractive, uniform Classics Club bindings.

A Trial Membership Invitation to You

You are invited to accept a Trial Membership in The Classics Club. With your first book will be sent an advance notice about future selections. You may reject any book you do not wish. As a Trial Member, you need not take any specific number of books. No money need be paid in advance, no membership fees. You may cancel membership at any time.

Paper, printing, binding costs are rising. They have already made it imperative that the price of the Club's books be substantially increased beginning January 1st, 1945, to readers who join on and after that date. Therefore, in order to assure yourself of the present low price on your first book and on your future selections—as well as to receive your free copies of THE ILIAD and THE ODYSSEY of HOMER—we suggest that you mail this Invitation Form to us at once. THE CLASSICS CLUB, One Park Avenue, New York 16, N. Y.

Note: The DeLuxe Edition is luxuriously bound in fine buckram (the same material as used in \$5.00 and \$10.00 bindings), is richly stamped in genuine gold, which will retain its original lustre for years, and has tinted page tops. For books which you and your children will read and cherish for many years, the DeLuxe Edition is most desirable.

WALTER J. BLACK, *President*,

The Classics Club,

One Park Avenue, New York 16, N. Y.

Please enroll me as a Trial Member and send me, FREE, the two-volume Classics Club Edition of The Iliad and The Odyssey of Homer, together with the current selection.

I am not obligated to take any specific number of books and I am to receive an advance description of future selections. Also I may reject any volume before or after I receive it, and I may cancel my membership whenever I wish.

For each volume I decide to keep I will send you the correct amount checked below (89c for the Regular Edition or \$1.39 for the DeLuxe Edition) plus a few cents postage.

I prefer (please check) ----- Regular Edition ----- DeLuxe Edition.

Your FREE copies of The Iliad and The Odyssey of Homer will come in whichever edition you check.

Mr. }

Mrs. }

Miss }

City -----

Zone No. if any ----- State -----

2. FREE To New Members—Perry Mason, Nero Wolfe, Agatha Christie

Here is a book—and an offer—to make detective fiction history! A great “three-decker” volume containing the **NEWEST** complete novels of **THREE** of the world’s best modern mystery writers—Earle Stanley Gardner, Rex Stout, and Agatha Christie! **THREE** brand new, complete, cream-of-the-crop mystery best-sellers in **ONE** volume—a \$6 value—**NOW YOURS FREE** as a new-membership gift from the Detective Book Club! Read details below at once. * * *

Mail Coupon Now for Your Free Book By accepting that **FREE** copy of the triple-volume described on this page now as a Charter Membership Gift from the Club, you will not be obligated to take every month’s selection during the next 12 months. You may take as few as four during that time. You may cancel your membership whenever you wish. A description of the next month’s selections will be sent you with each month’s book, and you may reject in advance any volume you do not want.

You need send no money with the Reservation coupon. **ASSURE** yourself of the privilege now being offered to Charter Members. To get this 3-in-1 volume absolutely free—**AND** to receive, in addition, the current triple-volume which also contains three complete new detective books—address the coupon at once to:

DETECTIVE BOOK CLUB
One Park Avenue, New York 16, N. Y.

SEND NO MONEY

WALTER J. BLACK, *President*,
DETECTIVE BOOK CLUB,
One Park Avenue, New York 16, N. Y.

Please enroll me as a member and send me, **FREE**, the gift volume pictured on this page. In addition, send me the current triple-volume of the month, which also contains three complete new detective books.

This does not obligate me to take every monthly triple-volume during the next 12 months. I may take as few as four during this period, if I so wish.

I will receive an advance description of all forthcoming selections and may reject in advance any volume I do not wish to own. I need send no money now, but for each volume I accept I will send only \$1.89, plus a few cents postage, as complete payment, within one week after I receive my book.

Mr. }

Mrs. }

Miss }

Please Print Plainly

Address _____

City _____

Zone No. if any _____

State _____

The advertising matters set out herein with reference to The Classics Club was used in the last half of 1944 and said advertising has not been used since. The Detective Book Club advertisement set out herein was used between November 1944 and August 1951.

Typical of the present advertising with reference to The Classics Club is the following:

1. WALTER J. BLACK, *President*,
THE CLASSICS CLUB,
One Park Avenue, New York 16, N. Y.

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Please enroll me as a Trial Member and send me, FREE, the beautiful two volume DeLuxe Classics Club Edition of THE ILIAD and THE ODYSSEY of Homer, together with the current selection.

I am not obligated to take any specific number of books and I am to receive an advance description of future selections. Also I may reject any volume before or after I receive it, and I may cancel my membership whenever I wish.

For each volume I decide to keep I will send you \$2.89 plus a few cents mailing charges. (Books shipped in U. S. A. only)

(Place for signature and address)

Typical of the present advertising with reference to the Detective Book Club is the following:

2. ALL SIX BOOKS FREE

Send no Money—Just mail Coupon

WALTER J. BLACK, *President*,
Detective Book Club,
One Park Avenue, New York 16, N. Y.

Please enroll me as a member and send me, FREE, in regular publisher's editions, the SIX New full-length mystery novels pictured on this page. In addition, send me the current triple-volume of the month, which contains three complete detective books.

I am not obligated to take any specific number of volumes. I am to receive an advance description of all forthcoming selections and I may reject any book before or after I receive it. I may cancel membership whenever I wish.

I need send no money now, but for each volume I decide to keep I will send you only \$1.89 plus a few cents mailing charges, as complete payment, within one week after I receive it. (Books shipped in U. S. A. only)

(Place for signature and address)

Under date of July 8, 1947, respondent received a letter from the Federal Trade Commission reading as follows:

The Commission has given consideration to the facts developed by a preliminary investigation made pursuant to an application for complaint alleging violation of the Federal Trade Commission Act through the alleged misleading and deceptive use of the term "free" in advertising and sale of books by Walter J. Black, Inc., doing business as The Classics Club and the Detective Book Club, proposed respondent in the above numbered matter.

Inasmuch as it appears from the facts developed by this preliminary investigation that the proposed respondent herein sets forth clearly and conspicuously the terms and conditions of the offer under which the "free" books may be secured; and that the offer is made under conditions and circumstances that do not appear in any other respect to constitute an act, practice, or method of competition calling for corrective action in the public interest, the Commission does not contemplate at this time further proceedings in the matter. You are advised, however, that the Commission may at any time take such further action as the public interest may require.

The Commission is giving you this information in confidence and requests that you so treat it and that it not be used for advertising or publicity purposes.

By direction of the Commission.

Under date of January 30, 1948, respondent received a letter from the Federal Trade Commission reading as follows:

On January 14, 1948, the Commission adopted the following statement of policy with reference to the use of the word "free", and words of similar import, the same to be immediately effective:

The use of the word "free" or words of similar import, in advertising to designate or describe merchandise sold or distributed in interstate commerce, that is not in truth and in fact a gift or gratuity or is not given to the recipient thereof without requiring the purchase of other merchandise or requiring the performance of some service inuring directly or indirectly to the benefit of the advertiser, seller or distributor, is considered by the Commission to be a violation of the Federal Trade Commission Act.

Because of the use in advertising of the word "free", under circumstances requiring the purchase of certain books in order to receive the merchandise referred to as "free", the Commission reconsidered and rescinded its action of May 20, 1947, closing this matter, reopened the case, and directed that an opportunity be extended to execute a stipulation to cease and desist; with the further direction that if a satisfactory stipulation not be tendered, formal complaint issue, in conformity with the statement of policy as above set out.

You are hereby notified that within twenty days after receipt of this letter, you may submit in writing any relevant information, data or other evidence that you may desire to have considered. Or you may apply for an informal conference with the Director of the Division of Stipulations, or his attorney-conferrees, at the office of the Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, D. C., at which time you, your authorized representatives, and any other persons you may deem necessary, may appear, be heard, and submit such data informally.

If you apply for a personal conference kindly suggest one or more convenient dates occurring within thirty days after receipt of this letter, so that we can arrange our calendar accordingly and promptly advise you thereof. If you do not desire a personal conference, any information, data, or evidence which you submit in writing will be given thorough consideration, notwithstanding your nonappearance.

If no reply is received within twenty days, I shall assume that you desire neither to confer nor submit any further evidence for consideration and shall proceed upon the basis of the evidence now contained in the investigational records, including any which you may have heretofore submitted.

The stipulation entered into between the parties to this proceeding also included a statement to the effect that the respondent made no effort to collect for the so-called "free" books or to obtain the return of same when the subscriber failed to carry out the other provisions of his contract.

The Hearing Examiner, in his Initial Decision, made the following finding of fact:

PAR. 8. The use by the respondent of the word "free" is false, misleading and deceptive. In truth and in fact the books designated as "free" are not gifts and gratuities or without cost to the recipient but, on the contrary, the prospective member of The Detective Book Club prior to August 1951, in order to receive the "free" book, was required to purchase "the current selection of the month" and four additional books during the ensuing twelve month period, and subsequent to August 1951, and currently, the enrollee is required to purchase only

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"the current triple-volume of the month" without more. A similar requirement respecting purchase of the "current monthly selection" has obtained since the year 1944 in the matter of The Classics Club. In both instances the purchase of the books under any plan, and the enrollment of prospective club members inures directly to the benefit and profit of the respondent.

With this finding the Commission cannot agree. Reference to the current advertising of The Classics Club and of the Detective Book Club set forth above clearly indicates that the enrollee is not obligated to take any specific number of books and that he may reject any book before or after its receipt. The finding of the Hearing Examiner in this respect is, therefore, clearly in error.

As to the advertising of the respondent prior to August 1951 relative to the Detective Book Club, there is no question that the enrollee, upon accepting the "free" book or books, obligated himself to purchase additional books during the ensuing twelve-month period. There is no evidence in the record to indicate that the respondent ever required enrollees in The Classics Club to purchase any specific number of books in order to obtain a "free" book or books.

The facts in this case very pointedly present to the Commission the following question for its determination:

MAY A BUSINESSMAN DOING BUSINESS IN INTERSTATE COMMERCE BE CHARGED WITH ENGAGING IN UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN VIOLATION OF THE FEDERAL TRADE COMMISSION ACT IF HE USES THE WORD "FREE" IN HIS ADVERTISING TO INDICATE THAT HE IS PREPARED TO GIVE SOMETHING TO A PURCHASER FREE OF CHARGE UPON THE PURCHASE OF SOME OTHER ARTICLE OF MERCHANDISE?

The businessmen of the United States are entitled to a clear and unequivocal answer to this question. The practice in question is by no means new. It has been used by businessmen in the United States for almost 100 years. This continuous use, however, in and of itself, is not reason enough for this Commission to condone the practice if, in fact, the Congress of the United States has enacted any law requiring its discontinuance. Absent such legislation, neither the Federal Trade Commission nor any other administrative agency should take it upon itself to change a business practice which has been so long prevalent among businessmen.

The word "free" is a comparative adjective. It does not have a definite and absolute meaning. In support of this statement we should like to cite the case of *Connery v. Brooke*, decided by the Supreme Court of Pennsylvania on May 17, 1873. (73 Pa. 80.) We have intentionally cited an old case to prove the point that for at least eighty years this word has not had a definite and absolute meaning. *Connery v. Brooke* involved an interpretation of the word "free" as it applied

to the use of a passageway. Land had been converted to the plaintiff "with the free use, right and privilege of a passage-way . . . extending from the . . . turnpike to the hereby granted premises with free ingress and regress at all times hereafter for ever." The defendant owned a lot fronting on a turnpike road; the plaintiff owned a lot directly back of it and adjoining it. A gate had been erected at a point where the front lot led into the turnpike. The plaintiff was of the opinion that this gate did not give him "free" use of the passage guaranteed in the conveyance. The *plaintiff argued*, and this is quoted from page 82 of 73 Pa.:

By the "free use, right and privilege of a passageway," we can only understand a way unimpaired by any means whatever.

However, this argument did not convince the Supreme Court of Pennsylvania in 1873. The Court, in its opinion, stated its decision very clearly in the following language:

Undoubtedly, the plaintiff was entitled to the free use, right and privilege of passageway ten feet in width, with free ingress and egress at all times, for this is the language of the grant. But what is meant by the free use of a passage-way? Does it necessarily mean that there shall be no gate or door hung across it, or if there is, that it shall always be kept open? Has not the owner of a passageway its free use if he hangs a gate across it at its intersection with the street? If I grant the free use, right and privilege of the hall of my house, with free ingress and egress at all times, must I take off the door leading into it, or keep it wide open in order that the grantee may have the free use of it? Or can he not have its free use if he can enter it by opening the door whenever he chooses? Without doubt I cannot unreasonably obstruct his use of it, but if the door amounts practically to little or no inconvenience, it seems to me that it is not necessarily a wrongful obstruction.

The Court continued in its opinion as follows, and we especially would like to emphasize this language:

Free is a relative term when applied to the use of a thing. It does not follow that I have not the free use of a room because I have to open a door in order to get into it; nor does it follow that I have not the free use of an alley because I have to open a gate to go in and out of it. A gate may be so placed as to be a practical and unreasonable obstruction to the free use of a passageway; and it may be so constructed and placed as not to amount to any practical obstruction to its use. Whether the gate in this case amounted to a wrongful obstruction was, therefore, a question of fact for the jury. If it was not a practical hindrance, and, under the circumstances, an unreasonable obstruction to the plaintiff's use of the passageway, then it was not a wrongful or illegal obstruction for which an action will lie.

Hastings Manufacturing Co. v. Automotive Parts Corp., D. C. Mich., 39 F. Supp. 319, decided on May 5, 1941, involved a patent infringement action by the Hastings Manufacturing Company. The patent included the following language:

A piston ring assembly comprising spaced split thin side members disposed to present their edges to a cylinder wall, a vented intermediate member, said members being disposed side by side for free independent radial movement, * * *

In connection with this matter, the Court stated:

It is evident that the term "free movement" is one of degree * * *

In this opinion the Court also referred to the word "free" as a comparative adjective, the interpretations and applications of which may vary substantially.

In disposing of the question raised in this proceeding, we cannot help but rely upon the reasoning contained in a brief filed in behalf of the Federal Trade Commission in September 1937 in the Supreme Court of the United States in the Matter of *Federal Trade Commission v. Standard Education Society*, 302 U. S. 112. That brief was signed by two eminent lawyers who now sit on the Supreme Court of the United States—Mr. Stanley Reed, who was then Solicitor General of the United States, and Mr. Robert H. Jackson, who was then Assistant Attorney General of the United States. The brief, in part, contained the following language:

Genuine offers to give something away free of charge in order to induce a person to buy something else are not unfair. It is a commonplace that persons may be induced to buy if they think they are getting a bargain. An opportunity to receive something free in addition to the article paid for is a powerful incentive to purchase. If a merchant thinks that his business will be benefitted by the distribution of gifts, prizes, or premiums to his customers, that is his affair. His customers may gain by his apparent generosity. They cannot lose, and they are not deceived. They know that the purpose of the gift is to induce them to purchase another article, and they assume that the donor expects ultimately to recover the cost of the gift in increased returns from sales.

In a footnote to this paragraph, the brief contains the following language:

It is true that the cost of the premium is borne by the manufacturer or seller, and that this cost must eventually be recovered in the price of the product sold if the business is to operate at a profit. But if the regular price of the article sold without the premium is the same as the price with the premium the premium does not cost the customer anything. It is FREE TO HIM regardless of whether or not it is ultimately included in the purchase price, and he does not care whether the manufacturer or dealer makes sufficient profit on the sale to cover the cost of the premium, whether the cost is termed as an advertising expense, or whether it causes the manufacturer or dealer to operate at a loss. (Emphasis of words FREE TO HIM was included in footnote of brief.)

The brief also contains the following paragraph:

When such an offer of a gift is made, the customer understands from the use of the word "gift" that an article is to be received without any payment being made for it. If he is told that it is to be received "Free of Charge" if another

article is purchased, the word "free" causes him to understand that he is paying nothing for that article and only the usual price for the other. If this is not the true situation, there is no free offer and a customer is misled by the representation that he is to be given something free of charge.

The arguments presented in the above referred to brief seem to make as good sense today as they must have made in 1937. We see no reason for taking any other view of the use of the word "Free" in advertising. However, in the public interest, and for the advice, guidance and information of businessmen, we want, through this opinion, to make the position of the Commission as clear as possible.

If a businessman desires to use the word "free" in his advertising, he must use it honestly. He may not use the word as a device for deceiving the public. For example, if he normally sells a toothbrush for 49¢, he may not advertise that he will give away "free" a package of toothpaste with the purchase of that same toothbrush at 69¢. In such a case, while the advertiser is holding out to the public that he is giving the toothpaste away "free," he is actually adding 20¢ to the price of the toothbrush which must be purchased in order to obtain the "free" toothpaste. Many examples could be cited, both as to the proper and improper uses of the word "free" in advertising. However, the essence of this opinion is that there must be truth in advertising to support the use of the word "free." If an advertiser either lies as to the facts or tells only part of the truth in his advertising, and such lies or omissions have the tendency or capacity to mislead or deceive the public, this Commission, pursuant to the authority delegated to it by Congress, must inhibit such use of the word "free" in advertising.

For the advice and guidance of the respondent herein, and also for the advice and guidance of the thousands of other advertisers who today are using the word "free" in advertising, we should like to make our position clear. Until such time as either the Congress of the United States amends Section 5 of the Federal Trade Commission Act, or until an appellate court of the United States clearly interprets the existing provisions of Section 5 of the Federal Trade Commission Act to mean otherwise, our position in this matter is as follows:

The use of the word "Free," or any other word or words of similar import or meaning, in advertising or in other offers to the public, to designate or describe any article of merchandise sold or distributed in "commerce," as that term is defined in the Federal Trade Commission Act, is considered by the Commission to be an unfair or deceptive act or practice under the following circumstances:

(1) When all of the conditions, obligations, or other prerequisites to the receipt and retention of the "free" article of merchandise are not clearly and conspicuously explained or set forth at the outset so

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as to leave no reasonable probability that the terms of the advertisement or offer might be misunderstood; or

(2) When, with respect to the article of merchandise required to be purchased in order to obtain the "free" article, the offerer either (1) increases the ordinary and usual price; or (2) reduces the quality; or (3) reduces the quantity or size of such article of merchandise.

In view of the foregoing, the complaint herein is dismissed. By reason of this action, it appears unnecessary for the Commission to pass upon the appeal of respondents from the "Examiner's Rulings on Requested Findings as to the Facts and Conclusions".

* * * * *

Commissioners Mead and Spingarn, while concurring in the result, dissent in part from the views expressed in the majority opinion, and Mr. Mead will file a separate opinion.

DISSENTING OPINION OF COMMISSIONER JAMES M. MEAD

This is a case about "free" books which were not free.

The Commission announced its decision in this case during my absence. The majority of the Commission noted that while I concurred in the result, I dissented in part from the views expressed by the majority. It was stated that I would file a separate opinion. I am taking advantage of that opportunity.

Customers of respondent were required to purchase or to agree to purchase other books as a condition precedent to obtaining the "free" book. The opinion of the Commission states fully the facts which I shall not repeat. The majority opinion: (1) dismisses the complaint (with which action I agree because respondent has apparently discontinued the alleged illegal practice); and (2) publishes a statement "for the advice and guidance of the thousands of other advertisers who today are using the word 'free' in advertising" (with which I disagree).

This "advice and guidance" statement by the present majority of the Commission constitutes a reversal of the policy statement issued by the then Commission majority in 1948.

I was not a member of the Commission when the 1948 policy statement on the use of the word "free" was issued. However, when I was appointed to the Commission, I accepted that policy statement and the cases which had been decided consistent therewith as a part of the established case law of the Commission. The consuming public and the business community are entitled to a substantial degree of consistency in the interpretation of the laws administered by this Commission. I saw no persuasive reason when I was appointed to the Commission and I see no persuasive reason now, either in fact, law or

public interest, to reverse the previous Commission statement of policy or the decided cases.

The law in this subject was fully discussed by me in the then majority Commission opinion in re Book-of-the-Month Club, Inc., F. T. C. Docket No. 5572.

Some persons may ask why the Commission is concerned with the use of the word "free." Every new Commissioner has asked substantially the same question. After a Commissioner has had more experience on the Commission, he learns the answer. It is simply because the word "free" is used so extensively in advertising and selling, that the Commission as a result receives many complaints from consumers and competitors regarding its use. This is particularly true during a buyers market. A city police force must have a balanced law enforcement program. Some citizens after receiving an overtime parking ticket ask the policeman the age old question of why he doesn't spend his time chasing murderers and robbers instead of distributing parking tickets. The answer, of course, is that a city must control automobile traffic in addition to apprehending murderers. The policing of the use of the word "free" and other potential deceptive phrases in advertising is to the Commission much as the policing of overtime parking is to the city police force. Neither is a very heroic endeavor but they must be carried on in order to prevent a substantial public injury.

A brief review of the history of this problem at the Commission may be helpful. There have been changes in Commission policy and these changes are expressed in decisions in various cases, stipulations, etc. The Commission at one time apparently had decided to pursue a rather strict policy as to inhibiting the use of the word "free." Thereafter in the Samuel Stores matter the Commission decided to permit the use of the word "free" to describe merchandise which was not given unconditionally, provided that the terms of the condition were adequately disclosed to the purchasing public. The Commission attempted to live with this so-called "reasonable" policy. But after considerable experience therewith, the majority of the Commission determined that this relaxed enforcement policy was not workable and decided to issue the 1948 policy statement.

The Samuel Stores policy was based on the proposition that the use of the word "free" should not be inhibited unless there was deception in its use. Many advertisers would readily agree not to use the word "free" in a manner to deceive the public. That is, of course, only a general promise and the real enforcement problem was in obtaining compliance with this general promise. The value of the use of the word "free" is that it is a short expressive word which can be used in headlines and in bold print to catch the eye of the reader.

A perusal of the advertisements in any daily paper will reveal the various catch phrases used by advertising specialists to attract the eye of the reader. The unqualified use of the word "free" in advertisements is usually untrue. The problem under the Samuel Stores policy was to persuade the advertiser to place the qualifying words in reasonable connection with the word "free" which latter word was usually placed in the headlines.

By "qualifying words" is meant the reference to the merchandise which must be purchased or the services which must be performed by the customer in order to receive the "free" goods. The qualifying statement should describe fully, conspicuously and clearly the "gimick".

More and more the Commission found that the qualifying language was being placed in smaller and smaller print in less and less connection with the word "free". The qualifying language was treated very much as are poor relations at the family dinner table—who are usually placed at the end of the table in a very inconspicuous place, almost out of the dining room and into the kitchen. From the Samuel Stores policy to the 1948 policy the Commission tried very valiantly to bring the qualifying words from the kitchen into the dining room where they could be seen.

Some advertisers used the asterisk method by which an asterisk was placed near the word "free" and the qualifying language was placed in fine print at the bottom of the page. The asterisk is useful to indicate an omission. But in such use, the asterisk has caused as much, if not more, confusion and misunderstanding than any other symbol used by literate men to convey ideas to each other.

Obtaining compliance with the Samuel Stores policy consisted more of an endurance contest for the Commission because of the various proposals of the advertisers to place the qualifying language here or there or elsewhere in advertisements generally as inconspicuous as possible. After these experiences the majority of the Commission decided that the public interest required the 1948 policy.

The 1948 policy was adopted by a vote of Commissioners Davis, Ayres and Ferguson. The late Commissioner Davis was a distinguished Judge from Tennessee who served for many years in the Congress and was appointed to the Commission in 1933. The late Commissioner Ayres was a distinguished lawyer from Kansas who also served for many years in Congress and was appointed to the Commission in 1934. Commissioner Ferguson is a distinguished lawyer from North Carolina and had served on the Commission since 1927. These gentlemen had had many, many years of experience on the Commission and had finally determined that in order to protect

the public interest the 1948 policy statement was necessary. I am not aware of any compelling reasons to change that policy. The case before the Commission was on a stipulated record and presented no new issue of fact or law.

After I was appointed to the Commission and a number of free goods cases were reviewed by the Commission, I was impressed with the fact that some persons were interpreting the 1948 policy too strictly and not realistically. I collaborated with Commissioner Ayres in his opinion in the Unicorn Press case, Docket 5488 in which the Commissioner stated that the 1948 free goods policy "must be applied realistically, and hypertechnical applications designed to condemn the use of the word 'free' in advertising under all conditions must be avoided." I am of the opinion that the 1948 policy as interpreted by Commissioner Ayres in the Unicorn Press case is sound.

As to the general proposition relative to the use of the word "free," the following is quoted from my opinion in the Book-of-the-Month Club case, Docket 5572.

The enrollment books are either free or they are not free. They cannot be both. The advertisements feature a representation that the books are free. Elsewhere in the advertisements is the statement which indicates that such books are not free. At best, these statements are contradictory. One of the statements must therefore be contrary to fact. This is obviously the statement that the books are free.

The word "free" is one of the those dynamic terms in our language which alerts us and calls to action certain emotions within us. It has both political and monetary connotations. Cynics may say that all of us should know that we cannot get something for nothing, yet the hope of getting something free has the habit of springing eternal in the human breast. Alas, however, on closer inspection there generally are found a few "provided, however", or other conditional strings to the so-called "free" offer. Such is the case here. The customers who did not buy the other books were obliged to pay for the "free" book.

* * * * *

A seller may not make one representation in one part of his advertisement and withdraw it in another part since there is no obligation on the part of the customer to protect himself against such a practice by pursuing an advertisement to the bitter end.

* * * * *

The distribution of books which are in fact free may not be a profitable business endeavor. That decision, however, is for the respondent corporation. If the respondent does not choose to distribute free books, there are sufficient words in the English language available to respondent which will accurately, truthfully and vividly describe the offer of respondent to its prospective purchasers.

The present majority of the Commission has now modified the 1948 policy by in effect allowing a seller to describe a product as "free"

which is not free if the seller will adequately disclose that the product is not free (the seller, of course, may not deceive by a practice of fictitious price markings or reducing quality). The new rule or guidance statement may be referred to as a "Rule of Reason" in regard to free goods offers. This is to be distinguished from the 1948 policy which held it unreasonable and untrue and therefore illegal per se to describe goods as free which were not free. At best, the 1948 policy was definite. The advertiser was specifically informed that he could not describe goods as free unless they were free. Under the new policy the advertiser is allowed to use a literally untrue statement provided he uses it reasonably. The new policy has the virtue of flexibility and the vice of uncertainty.

One or more States have eliminated the speed limits on highways as expressed in specific miles per hour and have substituted a prohibition against driving at an unreasonable rate of speed under the particular circumstances. That is an interesting experiment. You and I, of course, drive reasonably but the other fellow takes too many chances.

What is a reasonable and non-deceptive use of the word "free" to describe goods which are not free? If the word "free" is in bold type headlines (as it usually is), where should the qualifying words appear—also in the headlines?—not if the advertiser can help it because there would then be too many words in the headlines. Would it be sufficient for the words to be placed in the first paragraph or the second or third paragraph of the advertisement, and what should be the size of the type in relation to the type and prominence of the word "free"? Should the qualifying words be repeated each time the word "free" is mentioned in the advertisement? Is our old friend the asterisk method permissible which places the qualifying words at the bottom of the page, practically illegible except with the aid of a microscope?

Not every factual situation coming within the purview of the laws administered by this Commission has been determined by the Congress or adjudged by this Commission and the Courts as being illegal per se. Subject, however, to a finding by this Commission that it is in the public interest to take corrective action, the dissemination of false advertisements of a commodity sold in interstate commerce is illegal per se under the Federal Trade Commission Act.

I do not mean to suggest in this opinion that the foundations of our competitive system will crumble because of the action of the majority of the Commission in this case. I rather think the majority believe that they have made a Solomon decision and have neatly disposed of a vexatious problem. I suggest that their decision has not solved

the problem. It has only postponed a problem which will return in a different but more difficult and virulent form on the question of compliance.

The majority decision, however, does represent a change in Commission policy. I trust that this action by the majority is not a shadow cast by future actions which would result in modifications or revisions of the more basic and important concepts of this Commission. I do not now believe that it portends such future actions. I believe that my colleagues on the Commission will dutifully enforce the law. The Congress writes the law and the Commission enforces it. I do not believe the enforcement of the law should be a matter of partisanship or personalities. Differences of opinion among the Commissioners as to controversies of fact and as to appropriate remedies in individual cases will, of course, arise. Honest and intelligent differences promote the public interest. There should be no differences in enforcement as to the principles formulated by the Congress and interpreted by the courts.

I am for a reasonable enforcement of the laws administered by this Commission, having in mind our limited budget and the avoidance of test or doubtful cases in which there is no substantial public interest. I do not favor any diminution of a vigorous enforcement policy by a process of rationalization which leads to a compromise of principle.

Public law (as distinguished from private law) is more directly and immediately concerned with the general public interest and must therefore reflect the will of the people. I am reminded of the inscription on the Archives Building in Washington which reads "What Is Past Is Prologue." Let us hope that when and if the pendulum swings in the field of the antitrust laws, including the Federal Trade Commission Act, the agencies charged with enforcing those laws will have learned and profited from legal and economic history.

From the standpoint of the public interest a strong and vigorous policy is usually the most reasonable policy both in the antitrust and deceptive practices fields of law enforcement.

I dissent from the opinion of the majority for the reasons above stated.

Decision

50 F. T. C.

IN THE MATTER OF
PERRY HALSETH TRADING AS PERRY SALES COMPANY
DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT

Docket 6009. Complaint, July 16, 1952—Decision, Sept. 14, 1953

Where an individual, engaged in the interstate sale and distribution of cameras, radios, pens, dolls, cutlery, bedspreads, and other articles, with a volume of business in excess of \$1,000,000 a year; in soliciting orders for and in selling and distributing his merchandise—

Made use, among other courses, of a plan of merchandising which involved, or might involve, the operation of games of chance, gift enterprises, or lottery schemes, pursuant to which he sent out in great quantities to members of the public, along with return envelopes, form letters, circulars, order blanks, and "sales" or push cards, for use, in accordance with a scheme, as typical, pursuant to which the customer who selected by chance that one of 39 girls' names displayed on the particular card which corresponded with that concealed under the card's master seal, received as a prize the comforter, bedspread, or other article pictured thereon; those pushing certain discs as disclosed by the numbers concealed thereunder, received certain lesser prizes; amount paid by customer for chance was similarly determined; and prospective customers or operators of the cards received, according to the aforesaid circulars, as a premium or prize for their efforts, in disposing of the merchandise through the use of such cards, a bedspread or other article equal in value to the main item, plus a premium of lesser value if an order was placed with respondent within 15 days following receipt of the offer; and

Thereby supplied to and placed in the hands of others, contrary to an established public policy of the United States Government, the means and instrumentality of conducting games of chance, gift enterprises, or lottery schemes in connection with the sale and distribution of merchandise, in which persons who selected and paid for the lucky or winning name and numbers received the designated articles, without additional expense, at prices which were much less than the normal retail prices thereof; those who did not select such a name or number received nothing for their money other than the privilege of making the push or punch; and whether a purchaser received an article or nothing for the money paid and the amount paid for the merchandise or chance to receive it were determined wholly by lot or chance:

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

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. J. W. Brookfield, Jr. for the Commission.

Wilkenfeld & Harris, of Chicago, Ill., for respondent.

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 July 16, 1952, issued and subse-