

IN THE MATTER OF
HILLMAN PERIODICALS, INC.

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6033. Complaint, Aug. 22, 1952—Decision, July 22, 1954

Where a corporate publisher of magazines and books, including its "Confessions" magazine, the contents of which consisted almost exclusively of stories and features which had been previously published in other of its magazines—
Failed adequately to disclose that the contents of its said magazine consisted of reprinted stories and articles, through a statement in small type (later enlarged, following conferences with Commission representatives) below the table of contents on the masthead "All stories reprinted by request from Real Story and Real Romances Magazines", and the added statement, at or near the beginning of each story and frequently in connection with the use of a picture illustration, as "Copyrighted 1943 by Real Story, Inc.":
Held, That such acts and practices were to the prejudice and injury of the public and constituted unfair and deceptive acts and practices.

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

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

Mr. Henry E. Schultz, of New York City, for respondent.

ORDERS AND DECISION OF THE COMMISSION

Order denying respondent's appeal from initial decision of hearing examiner and decision of the Commission and order to file report of compliance, Docket 6033, July 22, 1954, follows:

This matter having come on to be heard by the Commission upon respondent's appeal from the initial decision of the hearing examiner and briefs of counsel in support of and in opposition thereto, oral argument not having been requested; and

The Commission having duly considered said appeal and the record herein and being of the opinion, for the reasons appearing in the accompanying opinion of the Commission, that the appeal should be denied and that the said initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered that respondent's appeal from the initial decision of the hearing examiner be, and it hereby is, denied.

It is further ordered that the attached initial decision of the hearing examiner shall, on the 22d day of July 1954, become the decision of the Commission.

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

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

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 22, 1952, issued and subsequently served its complaint in this proceeding upon the respondent Hillman Periodicals, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondent's answer thereto, a hearing was held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named hearing examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the hearing examiner filed his Initial Decision from which the respondent appealed, and after due consideration thereof the Commission, on June 17, 1953, entered its order vacating and setting aside the Initial Decision and remanding the case to the hearing examiner for the purpose of taking additional evidence on the issues raised by the pleadings. Thereafter a further hearing was held at which additional testimony and evidence were received in support of and in opposition to the allegations of the complaint, and said additional testimony and evidence were duly recorded and filed in the office of the Commission. The proceeding then regularly came on for final consideration by said hearing examiner on the complaint, the answer thereto, the testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel, and said hearing examiner, having duly considered the entire record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom, and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Hillman Periodicals, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and place of business located at 535 Fifth Avenue in the City of New York.

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PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the business of publishing, selling and distributing magazines and books. Respondent causes its said products, when sold, to be transported from its place of business in New York or from the printing plant in New Jersey where its magazines are printed to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce between and among the various States of the United States and the District of Columbia. Its volume of trade in said commerce has been and is now substantial.

PAR. 3. In the course and conduct of its business, respondent since August 1950 has published, sold and distributed as aforesaid a magazine designated "Confessions". The contents of said magazine consist almost exclusively of stories and features which have been previously published in other of respondent's magazines. On the front cover of the magazine, in addition to the title "Confessions" and the date of issue, there is printed one or more story titles and the words "Complete Novels Plus Short Stories and Features".

In the early issues of the magazines the only disclosure of the fact that the stories and features contained in it were reprints was a statement in small type below the table of contents on the masthead page, usually page 4, "All stories reprinted by request from Real Story and Real Romances Magazines." Following conferences with representatives of the Federal Trade Commission, respondent has increased the size of the type in which the last above-quoted statement is printed and at or near the beginning of each story, frequently in connection with the use of a picture or illustration, has added a statement as to copyright of which the following are typical: "Copyrighted 1943 by Real Story, Inc." and "Copyrighted 1949 by Real Romances, Inc."

PAR. 4. In the original initial decision in this proceeding the conclusion was reached that the disclosure made on the masthead page and at the beginning of each story is inadequate to inform the purchasing public that the contents of the magazine consist chiefly of stories and articles previously published and an order was issued requiring that such disclosure be made also on the front cover of the magazine. This part of the order was contested, the respondent stating in oral argument, "The sole point of contention, therefore, before this Commission is whether any disclosure should be made on the cover of the magazine." The Commission found that there was insufficient evidence in the record upon which to base an informed decision as to the merits of respondent's appeal and remanded the case "for the pur-

pose of taking additional evidence on the issues raised by the pleadings."

Thereafter, counsel in support of the complaint presented evidence consisting of the testimony of nine magazine vendors, some of whom had observed the habits of their customers and testified that purchasers of confession type magazines are predominantly female; that sometimes they look only at the cover, sometimes at the table of contents, sometimes glance through the entire magazine, some seem to know what they want in advance, others buy every available magazine of this type.

During the hearing respondent offered to take the statement now appearing at the bottom of the contents page which states, "All stories reprinted by request from Real Story and Real Romances Magazines" and place it at the top of the contents page under the title of the magazine in conspicuous bold type. This, the respondent urged would be adequate disclosure.

PAR. 5. The offering for sale of a magazine, such as "Confessions," constitutes an implicit representation, in the absence of an obvious disclosure to the contrary, that the magazine contains new stories and new articles, not reprints of stories and articles previously published and circulated in other magazines.

In the Matter of *The New American Library of World Literature, Inc.*, Docket No. 5811, the Commission in its decree of January 6, 1953, found that:

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

The Commission found further in that case that, although on the covers of many of their abridged books respondents had placed the words "A Special Edition" or in small type words such as "Original Title: Horseshoe Combine," there was still inadequate disclosure by respondents of the fact concerning the abridgement and change of title of many of their books, even though "there was almost without exception a further disclosure inside the books on the copyright page, the title page, in the introduction, as a publisher's note or elsewhere, in small type." The Commission added that "two poor disclosures do not add up to one good one," and ordered that disclosure be made "upon the front cover and upon the title page * * * in clear, conspicuous type."

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The New American Library case is not on all fours with the instant proceeding but the facts are so similar that the principles therein enunciated are clearly applicable.

Upon the basis of all the facts in the instant proceeding, the statement that all stories are reprinted from other magazines, whether made at the bottom or the top of the masthead page even in reasonably conspicuous type, does not constitute adequate disclosure of the fact that the contents of respondent's magazine "Confessions" consist of reprinted stories and articles, and such statement even in conjunction with the copyright notice at the beginning of each story or article is still inadequate. The offering for sale of respondent's magazine with such inadequate disclosure has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such magazine contains new stories and new articles, not reprints and to induce the purchase of said magazine by the public because of such erroneous and mistaken belief.

There can be no doubt that purchasers are first attracted to a magazine by its cover and title. Such further examination as is made varies widely. Some purchasers examine the table of contents, others look through the entire magazine. Hence, any disclosure to be adequate to avert deception of the public must be made on the front cover of respondent's magazine, on the table of contents or masthead page and at the beginning of each article.

CONCLUSION

The acts and practices of respondent as hereinabove found were and are 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 respondent, Hillman Periodicals, Inc., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of its magazine "Confessions" or any other publication or periodical consisting entirely or substantially of reprints of previously published stories, articles or other materials do forthwith cease and desist from offering for sale, selling or distributing such magazine or other publication, unless the fact that the stories, articles or other materials contained therein are reprints is clearly disclosed on the front cover and on the masthead page thereof and at the beginning of each reprinted story, article, or other material.

OPINION OF THE COMMISSION BY MEAD, COMMISSIONER

This matter is before the Commission upon respondent's appeal from the hearing examiner's initial decision. Oral argument on the appeal was not requested.

Respondent publishes and sells magazines, including a magazine designated "Confession." The stories and features which appear in respondent's "Confession" magazine are reprints of stories and features which previously have been published in other of respondent's magazines. Formerly, the only disclosure of the fact that the stories and features in the magazine were reprints was a statement in small type below the table of contents on the masthead page that "All stories reprinted by request from Real Story and Real Romances Magazines." After conferences with representatives of the Commission, respondent enlarged the size of the type in which the quoted statement is printed on the masthead page, and in addition, at or near the beginning of each story, frequently in connection with the use of a picture or illustration, added a statement such as "Copyrighted 1943 by Real Story, Inc." or "Copyrighted 1949 by Real Romances, Inc."

The hearing examiner found that respondent does not disclose adequately the fact that the stories and articles in the magazine are reprints and his order would require that this fact be clearly disclosed on the front cover, on the masthead page, and at the beginning of each story, article or other material.

Respondent contended before the hearing examiner that the evidence does not support a finding that respondent's present disclosures are inadequate, and that, therefore, an order requiring further disclosure is not warranted. Respondent has requested that its memorandum filed with the hearing examiner in support of its proposed findings, conclusion and order be considered as its appeal brief, and it has been so considered.

There is no contention that there should be no disclosure made of the fact that the stories and articles appearing in respondent's "Confession" magazine are reprints. As already indicated, respondent has always made some disclosure. Our problem is to determine whether respondent's present disclosure is adequate and, if not, what disclosure should be made.

The record contains the testimony of a number of magazine vendors, some of whom had observed the buying habits of their customers. It appears from this testimony that many purchasers of the type of magazine here involved look only at the cover of the magazine. Others examine the table of contents or glance through the entire magazine. The hearing examiner correctly found that the offering for sale of a

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magazine, such as respondent's "Confession" magazine, constitutes an implicit representation, in the absence of obvious disclosure to the contrary, that the stories and articles in the magazine are new, not reprints of stories and articles previously published in other magazines. Clearly, any disclosure, to prevent such representation, must be made at a place where it is likely to be seen. In the case of a purchaser who looks only at the cover, this would be on the cover itself. Any disclosure, no matter how clearly stated, made only on the inside of the magazine would be wholly ineffective.

It is immaterial that the record contains no evidence that any individual has actually purchased one of the magazines believing that it contained new stories and articles rather than reprints of stories and articles previously published in other magazines. It is sufficient that there is evidence to support a finding that there is a fair probability that the purchasers of respondent's magazine may be misled and deceived into the erroneous belief that the stories and articles appearing therein are new and not reprints. (*Charles of the Ritz Dist. Corp. v. F. T. C.*, 143 F. 2d 676 1944; *Herzfeld, et al. v. F. T. C.*, 140 F. 2d 207 1944.)

Respondent vigorously contended before the hearing examiner that an order which would require it to make disclosure on the outside cover of its magazine that the stories and articles therein are reprints should not be entered. Among other arguments, respondent said that the cover of the magazine is the only place a publisher has to advertise his product and that to impose the obligation that there be an explanatory statement on the cover to the effect that the stories and articles therein are reprints would be an unnecessary and burdensome restriction.

The hearing examiner was not persuaded by respondent's arguments and neither are we. As we have already said, the evidence clearly shows that many purchasers and prospective purchasers look only at the cover of the magazine. They make their decision on whether or not to purchase the magazine on the basis of the information and pictures appearing on the cover. We agree with the hearing examiner that any disclosure to be adequate to avert deception of the purchasing public must be made on the front cover of the magazine as well as on the masthead page and at the beginning of each story or article.

We are of the opinion that the hearing examiner's initial decision is adequate and appropriate in all respects to dispose of this proceeding and that respondent's appeal should be denied.

Decision

IN THE MATTER OF
BELL DIRECTORY PUBLISHERS, INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT*Docket 5986. Complaint, May 12, 1952—Decision, July 27, 1954*

Where a corporation and its responsible officers, engaged in the sale of advertising space in their business directories or buyers' guides, which contained names of manufacturers and dealers listed under headings denoting products handled, and which were distributed to purchasers of advertising space and prospective buyers of the products listed—

Pasted or otherwise attached to their own contract order forms, advertisements clipped from other directories, particularly classified telephone directories published by the Bell Telephone System, which they then mailed or presented by their sales agents to prospective purchasers whose names appeared in the clippings, thereby creating the impression that the contract represented nothing more than a renewal of the advertisement in the local telephone directory:

Held, That such practice constituted an unfair and deceptive act and practice and an unfair method of competition in commerce.

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

Mr. Jesse D. Kash for the Commission.

Perlmutter & Reich, of New York City, for respondents.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated July 27, 1954, the initial decision in the instant matter of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The complaint in this matter charges respondents, who are engaged in the publishing of business directories and in the sale of advertising space therein, with the use of certain unfair and deceptive practices in connection with the sale of such advertising. After the filing of respondents' answer to the complaint, hearings were held at which evidence both in support of and in opposition to the charges in the complaint was received, such evidence being duly recorded and filed in the office of the Commission. Proposed findings and con-