

Complaint

IN THE MATTER OF
ALL AMERICAN SPORTSWEAR COMPANY, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6218. Complaint, June 23, 1954—Decision, Nov. 9, 1954*

Consent order requiring a manufacturer in New York City to cease representing that its Armed Services-type jackets and parkas were manufactured for the U. S. Armed Forces and in accordance with specifications thereof.

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

Mr. Harold A. Kennedy and *Mr. Terral A. Jordan* for the Commission.

Lane & Winard, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that All American Sportswear Co., Inc., a corporation, and Samuel Werber and Nathan Klimerman, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent All American Sportswear Co., 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 principal place of business located at 745 Broadway, New York, New York. Respondents Samuel Werber and Nathan Klimerman are respectively president and treasurer of corporate respondent. The individual respondents, acting in cooperation with each other, formulate, direct and control all of the policies, acts and practices of said corporation. The address of said individual respondents is the same as that of said corporate respondent.

PAR. 2. Respondents are now, and have been for more than one year last past, engaged in the manufacture, sale and distribution of heavy outerwear, including imitation Armed Services type jackets and parkas, in commerce, among and between the various States of the United States and in the District of Columbia. Respondents

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maintain and at all times mentioned herein have maintained, a substantial course of trade in said garments, in commerce, among and between the various States of the United States.

PAR. 3. The garments manufactured, sold and distributed by respondents in the course and conduct of their business as aforesaid closely resemble the jackets and outer garments issued and furnished to members of the United States Armed Forces in color, pattern and style. Respondents also caused to be affixed to said garments certain markings, insignia, labels and tags which purport to designate the branch of service, model, contract number, specification number, stock number and directions as to the manner of use in substantially the same form, kind and manner as the markings, insignia, labels and tags prescribed and used by the United States Armed Forces on similar and like garments. Typical of the words and terms appearing on the markings, labels and tags, are as follows:

JACKET, INTERMEDIATE, FLYING

TYPE B-15

SPECIFICATION NO. 1872FS

STOCK NO. 754-28937

ORDER NO. 55-7283

ARMY AIR FORCES TYPE.

B-29

SPEC. NO. 2078—

STOCK NO. 30202-160

TYPE U. S. ARMY.

TANKER JACKET

SPECIFICATION NO. 1872FS

STOCK NO. 754-28937

ORDER NO. 55-7283

ARMY AIR FORCES TYPE.

ARMY AIR FORCE STYLE

B-9 PARKA

CONTRACT MFR. 6475

SIZE.

Typical of insignia used on certain of said garments is that of the Air Forces, consisting of a five point star with two wings enclosed in a circle, with the words "U. S. Air Force" appearing immediately below.

PAR. 4. Through the use of said colors, patterns and styles and the markings, insignia, labels and tags, as described in Paragraph Three hereof, respondents have represented and implied and do represent and imply that said jackets and outer garments, manufactured, sold and distributed by them in commerce were manufactured for the United States Armed Forces and in accordance with specifications of said Armed Forces.

PAR. 5. Said representations and implications are false, misleading and deceptive. In truth and in fact, respondents' said garments were neither manufactured for the United States Armed Forces nor in accordance with specifications of said Armed Forces.

PAR. 6. By selling and distributing to wholesalers and dealers said products manufactured as aforesaid and having affixed to them the markings, insigna, tags and labels hereinabove described, respondents furnish to such wholesalers and dealers the means and instrumentalities through and by which they may mislead and deceive the purchasing public as to the origin, kind, type, and style of their said jackets and outer garments.

PAR. 7. In the course and conduct of their business respondents are in direct and substantial competition with other corporations and firms and individuals engaged in the sale in commerce of jackets and outer garments.

PAR. 8. The sale and distribution in commerce of said garments in the color, style, design and with markings, as hereinabove alleged, has had and now has the tendency and capacity to and does mislead a substantial portion of the purchasing public into the belief that said garments were manufactured for the United States Armed Forces and in accordance with specifications of said Armed Forces. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

PAR. 9. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

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 November 9, 1954, the initial decision in the instant matter of hearing examiner J. Earl Cox, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint in this proceeding charges that respondent All American Sportswear Company, Inc., a corporation, and respondents

Samuel Werber and Nathan Klimerman, President and Treasurer, respectively, of the corporate respondent, individually and as officers of said corporation (all of 745 Broadway, New York, New York), have engaged in unfair and deceptive acts and practices and in unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act. Specifically, respondents are charged with having represented, directly or by implication and contrary to fact, that certain heavy outerwear, including jackets and parkas, which they manufactured, sold and distributed in commerce, were manufactured for the United States Armed Forces and in accordance with the specifications of said armed forces.

After the issuance and service of the complaint, a stipulation was entered into by respondents and counsel supporting the complaint, in which respondents admit all the jurisdictional allegations set forth in the complaint and agree that the order set forth in the stipulation shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waive any and all right, power or privilege to challenge or contest the validity of the order entered in accordance with the stipulation.

The stipulation also provides, among other things, that all the parties waive the filing of answer, a hearing before a hearing examiner of the Commission, the making of findings of fact or conclusions of law, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which respondents may be entitled under the Federal Trade Commission Act as amended, or the Rules of Practice of the Commission. All parties agree that the stipulation, together with the complaint, shall constitute the entire record herein; that the order hereinafter set forth may be entered in disposition of this proceeding without further notice; that the complaint herein may be used in construing the terms of said order which may be altered, modified or set aside in the manner provided by the statute for the orders of the Commission, and that the signing of the stipulation is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The stipulation is made a part of the record herein; this proceeding is found to be in the public interest; and, in conformity with the terms of the stipulation, the following order is issued:

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It is ordered, That respondents All American Sportswear Company, Inc., a corporation, and Samuel Werber and Nathan Klimerman, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of jackets, parkas, or other wearing apparel, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by marking, branding, labeling, tagging, or in any other manner, contrary to fact, that such merchandise was manufactured for the Armed Forces of the United States or in accordance with specifications of said Armed Forces.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That respondents All American Sportswear Company, Inc., a corporation, and Samuel Werber and Nathan Klimerman, individually and as officers of said corporation, 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 [as required by said declaratory decision and order of November 9, 1954].

IN THE MATTER OF
UNIVERSAL EDUCATIONAL GUILD, INC., ET AL.
ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT

Docket 5938. Complaint, Nov. 21, 1951—Decision, Nov. 20, 1954

Order requiring the publisher and six regional distributing corporations of the "World Scope Encyclopedia" to cease the use by their door-to-door salesmen, as a pretext to secure admission to homes, of representations that they were taking a radio or television poll or survey, and to cease representing falsely through said salesmen that their encyclopedia was offered at a reduced price and to selected homes only.

Before *Mr. J. Earl Cox* and *Mr. Webster Ballinger*, hearing examiners.

Mr. G. M. Martin, *Mr. J. Doukas* and *Mr. Charles S. Cox* for the Commission.

Harris, Corwin & Post, 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 November 20, 1954, the initial decision in the instant matter of hearing examiner Webster Ballinger, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WEBSTER BALLINGER, HEARING EXAMINER

The Pleadings and Preliminary Procedural Steps

November 21, 1951, the Federal Trade Commission issued its complaint in this proceeding naming the corporations and individuals listed in the caption hereof as respondents and charging them, and each of them, with certain acts and practices, hereinafter set forth, in the sale of the World Scope Encyclopedia, alleged to constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. Service being made, respondents answered denying the charges and also pleading *res judicata* predicated upon a prior order of the Commission dated June 12, 1951, entered in Docket No. 5718, dismissing the complaint, wherein the

parties named in this proceeding were therein named as respondents and charged with substantially the same offenses charged in this proceeding, the dismissal being "without prejudice to the right of the Commission to institute further proceedings, should further facts warrant."

Issues joined, the matter was referred to J. Earl Cox, a duly commissioned Hearing Examiner, for hearing. The plea of *res judicata* was not expressly ruled on, but the Examiner, upon consideration of the prior decision of the Commission in Docket No. 5718, by order dated May 14, 1952, limited the scope of the inquiry to methods, acts and practices of the respondents subsequent to the year 1948. Hearings were thereafter held in New York, New York, and Boston, Massachusetts, at which all parties to the proceeding were represented by counsel and 644 pages of testimony taken by counsel for the complaint and documentary evidence introduced by counsel for the complaint and by counsel for the respondents. Thereupon by order of the Commission J. Earl Cox was permitted to withdraw as Hearing Examiner and Webster Ballinger was later substituted. A trial *de novo* was demanded by respondents and denied by the Commission. Thereafter, hearings were held before the substitute Examiner at which all parties to the proceeding were represented by counsel and further evidence offered and received in support of the allegations of the complaint. Counsel for the complaint then rested the Commission's case in chief. Thereupon counsel for respondents moved to dismiss the complaint against all respondents on the ground that the evidence failed to make out a prima facie case against any of the respondents, which motion was overruled.

To conserve time and expense, a stipulation as to the facts relating to all issuable matters as disclosed by the record was thereafter prepared and executed by counsel for the complaint and counsel for the respondents, approved by the Acting Chief, Division of Investigation and Litigation, Bureau of Antideceptive Practices, and by the Hearing Examiner. The stipulation (Par. 15) also includes a form of order disposing of all factual matters, with one exception, wherein the facts are stipulated and decision reserved to the Hearing Examiner and the Commission. The stipulation further provides that if it is not accepted by the Commission and the form of order therein set forth, with the addition only of any order that may be entered on the question reserved to the Hearing Examiner and the Commission for decision, "This stipulation shall be null and void and the respondents shall be in the same status quo position in which they were prior to entering into this stipulation."

FINDINGS AS TO THE FACTS

I. Corporate Respondents and Their Officers

(a) Respondent Universal Educational Guild, 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 principal place of business at 17 Smith Street, Brooklyn, New York. The principal officers of the corporate respondent at the time of the issuance of the complaint herein and for more than two years prior thereto were the following named respondents: Abe Halperin, Myron C. Gelrod and S. Leslie Schwartz. The aforesaid individual respondents during said time had their office and principal place of business, as officers of the corporation, at the same address as the corporate respondent.

(b) Respondent Book Distributors, 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 principal place of business at 17 Smith Street, Brooklyn, New York. Said corporate respondent at the time of the issuance of the complaint herein and for more than two years prior thereto was an affiliate of respondent Universal Educational Guild, Inc., and shared the same office. The principal officers of said corporate respondent Book Distributors, Inc., at the time of the issuance of the complaint herein and for more than two years prior thereto were the following named respondents: Abe Halperin, Mac Gache, Isidore J. Halperin and Myron C. Gelrod. The aforesaid individual respondents during said period had their office and principal place of business, as officers of the corporation, at the same address as the corporate respondent.

(c) Respondent Public Distributors, 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 principal place of business at 17 Smith Street, Brooklyn, New York. Said corporate respondent at the time of the issuance of the complaint herein and for more than two years prior thereto was an affiliate of respondent Universal Educational Guild, Inc., and respondent Book Distributors, Inc. The principal officers of said corporate respondent at the time of the issuance of the complaint herein and for more than two years prior thereto were the following named respondents: Abe Halperin, Myron C. Gelrod and S. Leslie Schwartz, who during this period had their office and principal place of business, as officers of the corporation, at the same address as the corporate respondent.

(d) Respondent New England Home Educators, Inc., is a corporation organized, existing and doing business under and by virtue

of the laws of the State of Massachusetts with its office and principal place of business at 739 Boylston Street, Boston, Massachusetts. The principal officers of said corporate respondent at the time of the issuance of the complaint herein and for more than two years prior thereto were the following named respondents: Samuel Holtz and Morris Rubin, who, during said time, had their office and principal place of business, as officers of the corporation, at the same address as the corporate respondent.

(e) Respondent Eastern Guild, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business at 1649 North Broad Street, Philadelphia, Pennsylvania. The principal officers of said corporate respondent at the time of the issuance of the complaint herein and for more than two years prior thereto were the following named respondents: Jack Weinstock, Robert K. Bertin, Nat Leroy, Jack Gerstel and Louis Tafler, who, during said time, had their office and place of business, as officers of the corporation, at the same address as the corporate respondent.

(f) Respondent Capitol Guild, Inc., was incorporated under the laws of the State of Maryland and had and maintained its principal office and place of business at 200 West Saratoga Street, Baltimore, Maryland. At the time of the issuance of the complaint, said corporation had ceased doing business and was in process of liquidation, but not formally dissolved.

(g) Respondent Keystone Guild, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business at 336 Fourth Avenue, Pittsburgh, Pennsylvania. Its principal officers at the time of the issuance of the complaint herein and for more than two years theretofore were the following named respondents: Charles Lester and Ned Leroy, who during said period had their office and place of business, as officers of the corporation, at the same address as the corporate respondent.

(h) Respondents National Distributors, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Michigan with its office and principal place of business at Room 1307, Industrial Bank Building, Detroit, Michigan. Its principal officers at the time of the issuance of the complaint and for more than two years theretofore were the following named respondents: M. Marcus, Jack Marcus and L. Tiger who, during said period, had their office and place of business, as officers of the corporation, at the same address as the corporate respondent.

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Where the name of an individual respondent appears as an officer of more than one of the corporate respondents hereinabove referred to, that name applies to the same person. Acting individually and in their official capacities at the time of the issuance of the complaint herein and for more than two years prior thereto, the aforesaid individual respondents directed and controlled the policies, acts, practices and business affairs of each of the corporate respondents of which they were an officer or officers.

(2) The respondents World Surveys, Inc., and Pacific Guild, Inc., and their officers named in the complaint were dismissed as respondents in this proceeding by the Examiner's decision dated June 17, 1953, which became final.

II. Publication, Distribution and Sale of Encyclopedia by Door-to-Door Salesmen

Respondent, Universal Education Guild, Inc., is the owner of the copyright on a set of books known as the World Scope Encyclopedia and, at the time of the issuance of the complaint and for more than two years prior thereto, respondent was and is now the publisher of said encyclopedia. During said period, the corporate respondent has also compiled, copyrighted and published "sale kits," consisting of many leaflets upon each of which appear printed and pictorial matter, for use by salesmen and designed to aid them in obtaining subscriptions to the encyclopedia.

Respondent Book Distributors, Inc., is a distributor of the World Scope Encyclopedia which it purchases from respondent Universal Educational Guild, Inc. In the course and conduct of its business, respondent Book Distributors, Inc., entered into franchise agreements with respondents Eastern Guild, Inc., Capitol Guild, Inc., Keystone Guild, Inc., National Distributors, Inc., and New England Home Educators, Inc., hereinafter referred to as "franchise distributors," by the terms of which said franchise distributors agreed to buy from respondent Book Distributors, Inc., and to resell to the public by means of door-to-door salesmen the World Scope Encyclopedia in certain designated territory allotted each of them.

Respondent Public Distributors, Inc., purchases the aforesaid encyclopedia directly from respondent Universal Educational Guild, Inc., and resells said encyclopedia by means of door-to-door salesmen.

Respondent Book Distributors, Inc., purchases the "sale kits" from respondent Universal Educational Guild, Inc., and resells them in whole or in part to its franchise distributors and to Public Distributors,

Inc., for use by their door-to-door salesmen in soliciting subscriptions for the encyclopedia.

III. Interstate Commerce and Competition

Interstate Commerce.—All of the respondents are now, and for more than two years last past have been, engaged in the sale of the aforesaid World Scope Encyclopedia in commerce between and among the various States of the United States and have caused said World Scope Encyclopedia, when sold, to be transported from their respective places of business to the 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 World Scope Encyclopedia in commerce among and between various States of the United States, with the exception of respondent Capitol Guild, Inc., which has ceased doing business prior to the issuance of the complaint.

Competition.—In the course and conduct of their business of selling said encyclopedia, all of the respondents are now, and for more than two years last past have been in substantial competition in commerce with individuals, firms, partnerships and corporations engaged in the sale in commerce of encyclopedias and other books of similar nature, with the exception of respondent Capitol Guild, Inc., which had ceased doing business when the complaint issued.

IV. Survey to Determine Public Preference for Radio and Television Programs to be Taken by the Door-to-Door Salesmen of the Corporate Distributors While Soliciting Subscriptions to the Encyclopedia

In August 1948, Universal Educational Guild, Inc., entered into a contract with Radio Best, Inc., publisher of "Radio Best Magazine" later known as "Radio Best and Television Magazine" and "TV Screen," which remained in force until on or about October 15, 1951, by the terms of which Universal Educational Guild, Inc., agreed to have "our salesmen" solicit three-month subscriptions to Radio Best Magazine at the special price of \$.50 per subscription, the three-month subscription to be offered to every subscriber of World Scope Encyclopedia, and in the event subscribers desired to renew their subscriptions for one or more years to pay Radio Best Magazine 37½¢ for each one-year renewal; 50¢ for each two-year renewal; and 60¢ for each three-year renewal. The radio survey was to be conducted "by World Scope salesmen in accordance with questions prepared and submitted by Radio Best Magazine," the results to be published

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monthly in Radio Best Magazine under the name of WORLD-SCOPE-RADIO-BEST-SURVEY-PANEL. For said services, Radio Best Magazine agreed to pay respondent Universal Educational Guild \$500.00 per month and for the sale of each three-month "introductory subscription," 12½¢.

On October 15, 1951, the contract with Radio Best Magazine was terminated and respondent Universal Educational Guild, Inc., entered into a contract with Academy Magazine, similar, but not identical with, the previous contract with Radio Best Magazine, the principal difference being that under the new contract only subscriptions to Academy Magazine for a three-month period were solicited at the price of 37½¢.

Following each of the aforesaid agreements, respondent Universal Educational Guild, Inc., entered into agreements whereby each of the six corporate respondents, selling direct to the public, agreed to conduct the radio and television survey through their door-to-door salesmen. A printed form was prepared by Radio Best Magazine and copies thereof furnished the door-to-door salesmen for use in ascertaining and recording the preference of each individual for radio and television stars and programs.

V. Use of Radio and Television Poll by Salesmen to Obtain Entrance to Homes and Inducement to Subscribe to Encyclopedia

Following the execution of the agreements referred to in Parts II and IV, *supra*, the sales representatives of the corporate respondents then selling direct to the public, called upon householders, many of whom were housewives. The salesmen generally first informed the occupant of the home that they were conducting a radio or television survey or poll for one of the radio or television magazines for whom the survey or poll was being taken. Many of the householders were interested in the quality and nature of radio and television programs and readily admitted the salesmen into their homes in a desire to participate in the survey or poll and register their preference for radio and television stars and programs. Upon securing admission the salesmen obtained and noted on a form provided for listing the householder's preference for radio and television stars and programs. The salesmen then made known that they were also soliciting subscriptions to the World Scope Encyclopedia, and offered a three-month subscription to Radio Best Magazine or (after October 15, 1951) to Academy Magazine, "free" or "without charge" therefor, if the householder would subscribe to the encyclopedia. Some of the householders testified that had they first been informed that the sales-

men were soliciting subscriptions to an encyclopedia, they would not have admitted them to their homes, while others testified they had no objection to such salesmen. The only compensation the door-to-door salesmen received was for subscriptions to the encyclopedia. The complaint alleges that respondents' door-to-door salesmen, by first announcing to persons solicited to purchase the encyclopedia that they were taking a radio or television poll or survey, used said representation as a pretext to secure admission to homes.

The stipulation contains a provision in the order to be entered prohibiting respondents' door-to-door salesmen, in soliciting subscriptions for or making sales of World Scope Encyclopedia, from announcing to the person solicited that they are conducting a poll or survey for any purpose, unless they *first* inform such person that they are representing World Scope Encyclopedia, or such other organization as the case may be

VI. Representations made by Respondents' Salesmen Alleged to be False, Misleading and Deceptive

The complaint (Comp. Par. 14) sets forth two and a half pages of extracts from leaflets appearing in sale kits used by respondents' door-to-door salesmen offering the World Scope Encyclopedia for sale. It is then alleged (Comp. Par. 15) that said advertising matter imported to the public that—

“(1) the hereinbefore referred to opinion poll or survey is conducted by the sales representatives for and on behalf of radio or television program sponsors, or both;

“(2) because of the cooperation of the purchasers of the World Scope Encyclopedia in participating in the survey or poll and in sending in the answers to the questionnaire that is part of the installment payment booklet, radio and television sponsors of such poll or survey, by subsidization make it possible for the World Scope Encyclopedia to be purchased at a lesser price than would be possible except for such subsidization with the result that substantial savings are afforded purchasers who participate in the poll or survey;

“(3) the World Scope Encyclopedia is offered at a reduced price;

“(4) the World Scope Encyclopedia is offered to selected homes only;

“(5) the World Scope Encyclopedia is approved, endorsed, or recommended by Boards of Education;

“(6) the Ten Year Consultation Service is ‘free’ and ‘without charge’.”

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It is then alleged (Comp. Par. 16) that all of said statements were false, misleading and deceptive. Respondents admit that the advertising matter set forth in Paragraph Fourteen of the complaint did in fact appear on leaflets in sale kits used by their salesmen in offering the encyclopedia for sale, and with the exception of the statement "(4) the World Scope Encyclopedia is offered to selected homes only," (Comp. Par. 15) did import the meaning attributed to them (Comp. Par. 16). Respondents further admit that representations (1), (2), (3) and (5) were misleading. It is stipulated (Stip. Par. 16) that the representation (6), "the Ten Year Consultation Service is 'free' and 'without charge'", was not deceptive, the stipulation reciting—

"The statements appearing in leaflets in the sales kits wherein the words 'free' and 'without charge' appeared, as set forth in Paragraph Fourteen, were not false, misleading and deceptive as there was no extra charge to subscribers to the World Scope Encyclopedia for the 'ten year information service,' nor was the price increased or the quality or size of the encyclopedia decreased, and the conditions and obligations relative to the receipt and retention of the 'information service' were clearly and conspicuously set out in conjunction with the offer."

In December 1950, respondent Educational Guild, Inc., revised the sale kits and, with the exception of the leaflets, containing the statements relating to the words "free" and "without charge," eliminated therefrom all leaflets containing any of the statements set forth in Paragraph Fourteen and alleged to be false, misleading and deceptive in Paragraph Sixteen of the complaint.

A prior complaint issued December 5, 1949, in Docket No. 5718, wherein the same respondents named in this proceeding were therein named and charged with substantially the same offenses, was dismissed without prejudice June 12, 1951. Since that date, none of the representations made by respondents' salesmen and alleged in the complaint to be false, misleading and deceptive were repeated with the following two and possibly three exceptions:

1. "(6) the Ten Year Consultation Service is 'free' and 'without charge'." It is stipulated (Stip. Par. 16) that the above statement was not false, misleading and deceptive.

2. "(3) the World Scope Encyclopedia is offered at a reduced price." It is stipulated (Stip. Par. 14) that the above representation was untrue as the encyclopedia has never been offered at a reduced price and a provision appears in the order prohibiting any repetition of this statement.

3. "(4) the World Scope Encyclopedia is offered to selected homes only." It is stipulated that in fact the sale of the encyclopedia was never limited to selected homes. Counsel for the complaint contended that the above-quoted representation was inferentially repeated by salesmen to householders on three occasions subsequent to June 12, 1951, the statements made by salesmen and relied upon by counsel for the complaint being stipulated as follows:

"They said that they had picked several people out in each neighborhood and they were going around just to those people to make the survey.

"And then he went to the encyclopedia, they were only allowing ten families the privilege of buying them just a little above cost, they were introducing them in the area, it would give us all a chance at such a good book at a low price.

"* * * and he said 'We are not going to every person in the neighborhood, we are only taking a few, and each person is going to get a set of encyclopedias for answering the questions.'"

The contention of counsel for the complaint is opposed by counsel for respondents and it is stipulated (Stip. Par. 14, p. 9) that this question may be determined by the Hearing Examiner and the Commission and that its determination by them shall be final. The Hearing Examiner accordingly finds that the first and third statements of the salesmen above set out did import to the householders that the encyclopedia was not being offered generally to the public but to a selected group, which was the same as representing that they were being offered to selected homes only.

VII. The word "Guild" appearing in the Corporate Name

It is alleged in the complaint that by the use of the word "Guild" in the corporate names of four of the respondents and on their letterheads and stationery the respondents have represented that their "business is an association of educators formed for the mutual aid and protection of its members and the prosecution of their common interests." It is stipulated (Stip. Par. 15) that this charge is not sustained by the evidence.

CONCLUSION

Respondents interposed a plea of *res judicata* which was not expressly ruled on. The plea is pivoted upon the dismissal of a prior proceeding before the Commission wherein a complaint issued December 5, 1949, in Docket No. 5718, named as respondents substantially all of the corporations and individuals named as respondents in this

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proceeding and charging them with substantially the same acts and practices charged in the complaint in this proceeding. The dismissal of the prior complaint was "*without prejudice to the right of the Commission to institute further proceedings, should future facts warrant.*" There was, therefore, no final determination of all issuable matters in the prior proceeding, in the absence of which, as here, the plea of *res judicata* has no application and is overruled.

The acts and practices of the respondents' door-to-door salesmen in first announcing to householders that they were taking a radio and television poll or survey, as set forth in Part V; in representing that the World Scope Encyclopedia was being offered at a reduced price, as set forth in Part VI; and in representing inferentially that the World Scope Encyclopedia was offered for sale to selected homes only, as set forth in Part VI of the findings were all to the prejudice and injury of the public, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

The evidence fails to sustain all other charges in the complaint.

The evidence establishes that the complaint should be dismissed as to the following corporation and individuals:

Capitol Guild, Inc., and Robert K. Bertin, individually and as an officer of the corporation. The corporate respondent had ceased doing business when the complaint issued and was in process of liquidation, but not formally dissolved.

Robert K. Bertin, named individually and as an officer of respondent Keystone Guild, Inc., in the complaint, was never an officer of said corporation or connected therewith.

Seymour Schwartz, named in the complaint as an officer of respondent National Distributors, Inc., was not an officer of said corporation when the complaint issued, and was not connected with said corporation subsequent to May 18, 1950.

ORDER

It is ordered, That Universal Educational Guild, Inc., a corporation, and its officers, and Abe Halperin, Myron C. Gelrod and S. Leslie Schwartz, individually and as officers of said corporation; Book Distributors, Inc., a corporation, and its officers, and Abe Halperin, Mac Gache, Isidore J. Halperin and Myron C. Gelrod, individually and as officers of said corporation; Public Distributors, Inc., a corporation, and its officers, and Abe Halperin, Myron C. Gelrod and S. Leslie Schwartz, individually and as officers of said corporation; New

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Order

England Home Educators, Inc., a corporation, and its officers, and Samuel Holtz and Morris Rubin, individually and as officers of said corporation; Eastern Guild, Inc., a corporation, and its officers, and Jack Weinstock, Robert K. Bertin, Nat Leroy, Jack Gerstel and Louis Tafler, individually and as officers of said corporation; Keystone Guild, Inc., a corporation, and its officers, and Charles Lester and Ned Leroy, individually and as officers of said corporation; and National Distributors, Inc., a corporation, and its officers, and M. Marcus, Jack Marcus, and L. Tiger, individually and as officers of said corporation; and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the World Scope Encyclopedia, or other merchandise, do forthwith cease and desist from:

1. Representing directly or by implication, that the sales representative is conducting a poll or survey for any purpose, unless the sales representative making such representation first informs the person to whom such representation is made that he is a representative of World Scope Encyclopedia, or such other organization as the case may be.

2. Representing, directly or by implication, that the World Scope Encyclopedia is offered at a reduced price, unless such is a fact.

3. Representing directly or inferentially that the World Scope Encyclopedia is being offered for sale to selected homes only, unless such is a fact.

It is further ordered, That the complaint be, and it is hereby, dismissed as to Robert K. Bertin as an officer of respondent Keystone Guild, Inc., as to Seymour Schwartz, individually and as an officer of National Distributors, Inc.; and as to respondent Capitol Guild, Inc., and its officer Robert K. Bertin.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That respondents Universal Educational Guild, Inc., a corporation, and Abe Halperin, Myron C. Gelrod and S. Leslie Schwartz, individually and as officers of said corporation; Book Distributors, Inc., a corporation, and Abe Halperin, Mac Gache, Isidore J. Halperin and Myron C. Gelrod, individually and as officers of said corporation; Public Distributors, Inc., a corporation, and Abe Halperin, Myron C. Gelrod and S. Leslie Schwartz, individually and as officers of said corporation; New England Home Educators, Inc., a corporation, and Samuel Holtz and Morris Rubin, individually and

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as officers of said corporation; Eastern Guild, Inc., a corporation, and Jack Weinstock, Robert K. Bertin, Nat Leroy, Jack Gerstel and Louis Tafler, individually and as officers of said corporation; Keystone Guild, Inc., a corporation, and Charles Lester and Ned Leroy, individually and as officers of said corporation; and National Distributors, Inc., a corporation, and M. Marcus, Jack Marcus, and L. Tiger, individually and as officers of said corporation, 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 [as required by said declaratory decision and order of November 20, 1954].

The Commission adopted an earlier initial decision dismissing complaint as to certain respondents, as follows:

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 July 30, 1953, become the decision of the Commission.

INITIAL DECISION BY WEBSTER BALLINGER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 21st day of November, 1951, issued and subsequently served its complaint in this proceeding upon each of the corporations and individuals named and referred to in the caption hereof, acting in the respective capacities set forth and described in said caption, charging them and each of them with unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act. Respondents answered and, after seasonable notice, hearings were held by the undersigned duly commissioned Hearing Examiner, at which testimony and documents were offered by counsel for the complaint and received in evidence, which evidence, reduced to writing, and documents have been duly filed and recorded in the office of the Commission. Counsel for the complaint then rested the Commission's case in chief.

Thereupon counsel for respondents moved to dismiss the complaint in so far as it related to respondents World Surveys, Inc., Murray Moss, individually and as an officer of World Surveys, Inc., and respondents Pacific Guild, Inc., and Murray Moss, individually and as an officer of Pacific Guild, Inc., on the stated ground that there was no evidence tending to show any violation of law by any of said

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named respondents, to the granting of which counsel for the complaint made no objection.

There being no evidence in the record tending to show a violation of the Federal Trade Commission Act by any of said respondents, it is this 17th day of June, 1953,

Ordered, That the complaint be, and it is hereby, dismissed against respondents World Surveys, Inc., Pacific Guild, Inc., and Murray Moss, individually and as an officer of either of said corporate respondents; said dismissal being without prejudice to the institution of further proceedings against said respondents, should circumstances warrant.

IN THE MATTER OF
REVILON PRODUCTS CORPORATION¹

Docket 5685. Complaint, Aug. 1, 1949—Order, Nov. 22, 1954

Order denying respondent's motion to reopen proceedings for new evidence that respondent's exclusive-dealing agreements did not stop a competitor from emerging as one of the leaders in the field, since even if this were proven, respondent's contracts still had the requisite likelihood of adversely affecting the power of smaller cosmetic companies to compete; and denying as not in the public interest respondent's alternative motion for reargument because of a change in membership of the Commission.

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

Mr. William C. Kern and *Mr. Andrew C. Goodhope* for the Commission.

Blumberg, Singer, Heppen & Blumenthal, of New York City, and *Davies, Richberg, Tydings, Beebe & Landa*, of Washington, D. C., for respondent.

OPINION OF THE COMMISSION

By GWYNNE, Commissioner:

This opinion relates to respondent's motion to reopen this proceeding for the reception of further evidence or in the alternative to grant reargument before the Commission. It was filed after the Commission's decision denying respondent's appeal from the hearing examiner's decision holding that respondent had violated section 3 of the Clayton Act, but prior to receipt of the decision by respondent. By a supplementary memorandum filed after its receipt of the Commission's decision, respondent urges that its motion be granted to admit newly discovered and additional evidence relating to the effect of its exclusive dealing agreements on competition. Counsel supporting the complaint opposes this motion in its entirety.

Respondent's motion for reargument points out, among other considerations, that there has been a change in the membership of the Commission since the oral argument in this matter. It notes that Commissioners Howrey and Gwynne have succeeded Commissioners Carson and Spingarn and that Commissioner Carretta was being succeeded by Commissioner Secrest on September 27, 1954.

In fact, this matter was decided unanimously on September 23, 1954, by Commissioners Mason, Mead and Carretta, each of whom heard oral argument. Respondent's appeal from the initial decision

¹ Order to cease and desist, *supra*, p. 260.