

Decision

IN THE MATTER OF
UNION CIRCULATION CO., INC., ET AL.

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

Docket 5978. Complaint, Apr. 15, 1952—Decision, Jan. 25, 1955

Order requiring four corporations and a partnership, located in three States, engaged in obtaining magazine subscriptions through door-to-door solicitation pursuant to authority granted them by publishers, doing a combined business of some \$15 million annually and constituting a substantial portion of the industry in the United States, to cease cooperating in a "no-switching" agreement under which they agreed not to employ parties who had previously been actively engaged for themselves or others in soliciting magazine subscriptions, and ceased and limited their efforts to obtain magazine subscriptions for publishers unless the publishers refused or discontinued authority to solicit subscriptions for their magazines to agencies employing sales representatives formerly connected with other subscription agencies.

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

Mr. Lynn C. Paulson and *Mr. T. Harold Scott* for the Commission.

Mr. Benjamin Kirschstein and *Mr. Gilbert H. Weil*, of New York City, for Union Circulation Co., Inc., and along with—

Mr. Mortimer M. Lerner, of New York City, for National Circulation Co., Inc., and Periodical Sales Co., Inc.;

Mr. William N. Kenefick, of Michigan City, Ind., and *Mr. F. Kenneth Dempsey*, of South Bend, Ind., for Publishers Continental Sales Corp.;

Mr. A. Walter Socolow, of New York City, for Leo E. Light and Roy C. Hodge.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The complaint in this matter charges respondents, all of whom are engaged in the door-to-door solicitation of magazine subscriptions, with violation of the Federal Trade Commission Act through the making of agreements that they will not employ as sales representatives persons who during the previous year have been connected in a similar capacity with other subscription agencies. Certain other related practices are also attacked in the complaint. After answers had been filed by respondents, extended 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. Upon conclusion of the reception of

evidence, briefs were filed and the matter argued orally by counsel, the filing of proposed findings and conclusions being waived. The matter is now presented for final consideration on the merits.

2. (a) Respondent Union Circulation Company, Inc. (hereinafter frequently referred to as Union), is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 5 Columbus Circle, New York, New York.

(b) Respondent National Circulating Company, Inc. (hereinafter frequently referred to as National), is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 1270 Sixth Avenue, New York, New York.

(c) Respondent Periodical Sales Company, Inc. (hereinafter frequently referred to as Periodical), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 1104 South Wabash Avenue, Chicago, Illinois. This company is in practical effect a subsidiary of respondent National, its controlling stock interest being owned by the principal stockholders of the latter corporation.

(d) Respondent Publishers Continental Sales Corporation (hereinafter frequently referred to as Continental), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business at 413 Franklin Street, Michigan City, Indiana.

(e) Respondents Leo E. Light and Roy C. Hodge are individuals doing business as copartners under the trade name National Literary Association, with their principal office and place of business at 14 Deming Street, Terre Haute, Indiana.

3. As heretofore indicated, respondents are engaged in the business of selling subscriptions for magazines. Upon obtaining authorization from publishers to solicit subscriptions for their magazines, respondents send their own sales agents into the field and solicit subscriptions for such magazines by means of door-to-door calls upon members of the public located in many different cities and towns throughout the United States. The subscriptions thus obtained, together with the amounts of money paid therefor, are transmitted to respondents by their respective agents and are in turn transmitted by respondents from their respective places of business to the publishers of the various magazines, many of whom are located in States of the United States other than that in which the respondent obtaining the subscription

is located. Respondents are thus engaged in commerce as that term is defined in the Federal Trade Commission Act.

4. In the course and conduct of their respective businesses, respondents are in competition with one another and with others engaged in the sale and transmitting of magazine subscriptions in commerce as defined above.

5. (a) The field selling of magazine subscriptions; that is, sales made by door-to-door solicitation, accounts for the second largest block of subscriptions obtained by magazine publishers, being exceeded only by the sales made by the publishers themselves by means of direct mail advertising and through department stores. Field selling is the source of millions of magazine subscriptions annually, the amounts paid by the public for the subscriptions running into many millions of dollars. Respondents are among the leaders in this field and constitute a very substantial and influential segment of the industry.

(b) Like magazine field selling agencies generally, respondents operate through crews of solicitors, each crew being headed and supervised by a "crew manager" or "crew operator." The crew managers frequently recruit their own crews of solicitors. While the crew manager himself may occasionally solicit subscriptions through door-to-door calls upon the public, most of this work is done by the crew members or solicitors. At the close of each day the solicitor turns in his subscriptions and the money collected therefor to the crew manager, who transmits the subscriptions and money to the agency. The crews range in size from a few solicitors to as many as forty or even more. A large agency may have as many as 100 crews in operation at the same time. The agencies, crew managers and solicitors are all compensated on a commission basis, the magazine publisher paying the agency a commission on each subscription obtained and the agency in turn settling with the crew managers and solicitors on the basis of the number of subscriptions turned in by them.

6. (a) One of the most serious problems which has plagued the magazine field selling industry from its inception has been that of improper selling practices on the part of solicitors. These practices have included, among others, fake sympathy appeals, as, for example, that the solicitor is a disabled war veteran; misrepresentations as to the magazines or its subscription price; high pressure and even offensive and abusive sales methods; and failure to turn in subscriptions obtained and embezzling of money paid by subscribers. Frequently, crew managers have also been at serious fault, not only in the use themselves of objectionable sales methods but also in encouraging the use of such methods by their crews, in failing to exercise proper super-

vision and discipline over their solicitors, and in failing to remit to the agency subscription moneys turned over to them by solicitors. These improper practices have at times become so flagrant that numerous cities and towns have adopted ordinances either prohibiting entirely or drastically restricting door-to-door selling in their respective communities.

(b) These conditions have been of serious concern not only to magazine field selling agencies but to publishers as well. For when field selling of magazines falls into disrepute the publisher suffers not only loss of subscriptions but also serious damage to the reputation of his publication. A member of the public who has been a victim of objectionable sales practices by a magazine salesman is likely to lay the blame squarely at the door of the magazine itself.

(c) By 1940 the situation had become so serious that the publishers decided to undertake corrective measures. Through the Magazine Publishers Association (formerly the National Association of Magazine Publishers), an organization comprising the leading publishers of magazines in the United States, the publishers, with the cooperation of the subscription agencies, set up what is known as the Central Registry of Magazine Subscription Solicitors, usually referred to simply as Central Registry. As implied by its name, one of the principal purposes of Central Registry was to provide an instrumentality for identifying and registering persons engaged in the field selling of magazine subscriptions. The affairs of the Registry are managed by a board known as the Central Registry Board, which is composed of ten members, five of whom represent the publishers and five the subscription agencies. Articles of agreement, including standards of fair selling practices, were adopted. Each subscription agency participating in the plan files with the Registry, cards showing the name and distinguishing characteristics of each of its solicitors. These cards are signed by the solicitors themselves and include a statement to the effect that the solicitor will abide by Central Registry's standards of fair selling practices.

(d) Subscription agency members of the Registry also agree to be bound by the standards of fair practices, and each obligates itself to make good any misappropriation of subscription money paid by a member of the public to any of its solicitors and not turned in by the solicitor. That is, the agency remits to the publisher the amount paid by the subscriber, regardless of whether the agency is able to collect from the solicitor. A cash deposit or surety bond is posted by each agency to guarantee the fulfillment of this obligation. All of the respondents have been members of Central Registry for many years.

and representatives of one or more of the respondents have at all times been members of Central Registry Board.

(e) There is close cooperation by Central Registry with the National Better Business Bureau, as well as with local Better Business Bureaus, Chambers of Commerce, municipal officers and police departments. Under the plan of operation, when a crew manager takes his crew to a town to solicit subscriptions, he first contacts the local Better Business Bureau and probably some of the other organizations and officers and identifies himself and his crew. Complaints received by local Better Business Bureaus from members of the public in connection with magazine subscription selling are forwarded to the National Better Business Bureau in New York City, which in turn transmits them to Central Registry. If it is found that the subscription agency involved is a member of the Registry and that the complaint is well founded, disciplinary action is taken by the Registry against the agency. Such action may range from an admonition or reprimand to the imposition of a substantial monetary penalty.

7. Closely related to the problem of objectionable sales practices is that of the changing or shifting by solicitors and crew managers from one subscription agency to another, commonly known in the trade as "switching." There appear to be two principal reasons for this relationship. First, because the "switcher," the crew manager or solicitor who changes frequently from one subscription agency to another, is usually the transient, drifter type of individual, less stable and less responsible than the crew manager or solicitor who is content to remain with one agency. Second, because the switcher is almost invariably less amenable to supervision and discipline on the part of his agency. If a crew manager or solicitor feels that he can with little or no difficulty switch to another agency any time he wishes, he is likely to regard with indifference efforts by his agency to bring him to task for improper selling practices. Experience has also shown that the switcher is almost invariably short in his accounts with his agency (for subscription moneys collected by him but not turned in). While usually in cases of switching, the initiative is taken by the crew manager or solicitor, not infrequently instances occur in which a subscription agency will itself approach a crew manager or solicitor of another agency and undertake to get him to switch his employment.

8. (a) As far back as 1934, concerted efforts were being made by subscription agencies to deal with the matter of switching. At that time eight agencies, including respondents National, Periodical and Union, entered into written "standards of practice," one of the primary purposes of which was:

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To prevent the switching of representatives of one two-pay agency to another two-pay agency when the means and methods used by any two-pay agency and/or representative would constitute unfair practice or unfair competition against any other two-pay agency and /or where the switching of such representative from one two-pay agency to another two-pay agency would violate or tend to violate any of the purposes and provisions of this Standards of Practice or would prevent or tend to prevent the enforcing and carrying out of any of the purposes and provisions of this Standards of practice. (Com. Ex. 21-B).

(The expression "two-pay agency" refers to the method of payment. Under this method the subscriber pays to the solicitor only a part, usually one-half, of the subscription price, the remainder being subsequently remitted by the subscriber to the agency. Originally, all of the respondents were two-pay agencies but during recent years all have tended toward the "one-pay" plan, under which the full subscription price of the magazine is collected by the solicitor at the time the subscription is obtained."

(b) Next came the formation in 1940 of Central Registry, which has already been described. While some of the subscription agency members of Central Registry, including respondents, have at times sought to induce it to take action with respect to the switching problem, Central Registry has consistently declined to do so, taking the position that this was a matter for the agencies to handle among themselves.

(c) In December 1947 there was organized what was known as the National Association of Subscription Agencies, Inc., a New York membership corporation. All of the respondents were members of the Association. The evidence is inconclusive as to whether any standards of practice were actually adopted. While a draft purporting to represent standards of practice was received in evidence, it appears very doubtful in the light of subsequent testimony that the draft is authentic. The testimony does show, however, that more than one draft was prepared and that all of them contained provisions relating to switching, although the exact nature of the provisions is undisclosed. It appears that the principal interests of the Association lay in other directions (such as the combating of municipal ordinances prohibiting or restricting door-to-door selling), the switching problem not being so acute at that particular time. In any event, the Association was short-lived. For various reasons respondent National Literary Association, one of the principal financial backers of the Association, became dissatisfied and withdrew and by June, 1948 the Association had ceased to function.

(d) The next attempt at formal organization was through an association known as the Association of Subscription Agencies, Inc., or-

ganized in August, 1949, as a New York membership corporation. All of respondents were charter members of the Association. Among the officers were representatives of respondents National and National Literary Association. One of the principal objectives of the Association was that of dealing with the switching problem. While standards of practice appear never to have been actually adopted by the Association, a draft was prepared, which was printed and sent to all members and prospective members for their consideration. The draft appears to have represented at least the views of all of the respondents as to the standards which should be adopted. Respondents were largely responsible for the forming of the Association, each having contributed \$1,000.00 towards its initial expenses, and it is difficult to believe that any draft unacceptable to any of them would have been printed and circulated as a proposal. Under the title "Switching" the draft contained, among other provisions, the following:

No Association member or contracting managers or crew operators thereof shall directly or indirectly negotiate with, endeavor to entice away, or authorize any contracting managers or crew operators or solicitors clearing through another member without the prior written consent of such member. (Com. Ex. 124, p. 16)

(e) Like its predecessor association (National Association of Subscription Agencies, Inc.), this association was short-lived, ceasing to function about six months after its organization. The principal reason for its demise appears to have been the resignation of its executive head, Frank Ware. Ware had been chosen by respondents for the position because of his standing in the magazine circulation field, he having had experience both as an executive in the Magazine Publishers Association and as circulation manager for certain leading publications. Ware testified that he accepted the post with the Association with the understanding that the organization would include all subscription agencies, small as well as large, but that soon after the Association was organized he found that this was not to be the case, and that he therefore resigned.

9. (a) There is direct, uncontradicted testimony by a former official of respondent Continental that in 1945 that company entered into no-switching agreements with all of the other respondent companies except Periodical (Periodical not being contacted because some of its sales personnel had switched to Continental, and as a result there was some bad feeling between the two companies). These agreements, which were verbal, were to the effect that none of the companies would employ crew managers or solicitors of the others unless such individuals had been separated from their former agency for a period of one

year. The testimony of this witness is to the further effect that agreements of this nature were common among subscription agencies at that time, that they were a general practice in the industry.

(b) There is other evidence in the record showing the existence of no-switching agreements among respondents and between respondents or some of them and other subscription agencies. For example, respondent Continental on December 17, 1948, issued to its crew managers a bulletin reading in part as follows:

During the past ninety days, our attention has been called to several violations of the Standard of Practice, where managers have employed agents of other companies. This is a direct violation of our agreement with associate agencies, and must be stopped immediately! An agent of another company definitely cannot be employed by our managers, unless such agent has been out of the business one year, and then only if his record and financial status is clean with his previous agency. (Com. Ex. 67)

And respondent Union on March 23, 1949, issued a bulletin to its field force stating in part:

Union has a gentlemen's agreement with most field selling agencies (and National Literary League is included) to the effect that none of these agencies will enroll, or permit any of their managers or solicitors to enroll, a manager or solicitor who has been enrolled with another agency unless it can be definitely established by checking with the Central Registry Bureau records, that at least one year has elapsed since the person in question was active with the other agency. (Com. Ex. 74)

(c) During recent years there has been a definite trend in the industry toward the use of "bilateral" no switching agreements rather than general agreements. As implied by the term, the bilateral agreements are executed by pairs of agencies, each party agreeing not to switch the other's employees. Agreements of this type executed by each of respondents Continental and Periodical with another agency (not a respondent), probably in 1950, stated the following as one of the purposes of the agreement:

To prevent and eliminate the switching of, or inducing representatives of the respective agencies to violate their contracts or working arrangements with, or enticing away any representatives from their respective agencies.

And contained, among other provisions, the following:

It is understood and agreed that no representative, contract-manager, crew operator, or solicitor, shall directly or indirectly negotiate with, endeavor to entice away, or authorize any representatives, contracting managers, crew operators or solicitors of the other agency. * * *

It is further understood and agreed that the aforementioned terms and conditions do not obtain in any case (1) where the individual has not been engaged in the magazine business for at least one year, or (2) where the individual has not been engaged with either agency for at least one year, (3) except where the one year absence or inactivity has been occasioned by draft into military services or similar war contributions. (Com. Ex. 253-B)

(d) All of the no-switching agreements now in use in the industry, whether verbal or written, general or bilateral, appear to contain a one-year limitation provision; that is, the agreements have no application in the case of a crew manager or solicitor who has not been in the employ of another agency during the previous year. The existence of this limitation in the agreements is recognized in the complaint.

10. In view of the evidence heretofore detailed, as well as other evidence in the record, it is concluded that no-switching agreements and understandings exist among the respondents and between various respondents and other subscription agencies. In fact, there appears to be no real issue on this point, respondents frankly conceding, at least insofar as the bilateral undertakings are concerned, that such agreements do exist.

11. (a) Next presented is the vital issue of the validity of the agreements, that is, whether they are lawful or unlawful. On the one hand, there is the serious question whether parties may legally enter into an agreement which affects the employment rights or opportunities of persons not parties to the agreement (crew managers and solicitors), and particularly is this a serious question when it is recognized that such agreements might conceivably affect in some cases crew managers and solicitors who have not been guilty of improper selling practices.

(b) On the other hand, there is unquestionably a definite relationship between the improper and fraudulent selling practices which have been prevalent in the industry and the matter of switching. This relationship is established not only by testimony of the Secretary of Central Registry but by that of publishers and of representatives of the National Better Business Bureau. The no-switching agreements, while undoubtedly motivated to some extent by considerations of self-interest on the part of respondents, appear to represent a genuine effort by respondents to clear up their industry and redeem it from disrepute. Apparently, respondents have concluded from their experience that no-switching agreements represent the most effective way of dealing with the principal evil in the industry, that of misrepresentation and fraud on the part of field selling representatives.

(c) It seems clear that the agreements, unlike price-fixing agreements, are not inherently or per se illegal. Rather, the answer to the question of their legality depends upon such considerations as the circumstances under which the agreements were made, their intent or purpose, their reasonableness, and their effect. The first two of these considerations have already been discussed. As to the reasonableness and effect of the agreements, both in relation to crew managers and

solicitors and in relation to competition in the industry, the following factors appear to be pertinent.

(d) In the first place, the agreements, which now are usually bilateral in form, are binding only upon the particular agencies entering into them. While such agreements are common in the industry, they are by no means industry-wide or all inclusive. Apparently, there are numerous agencies which do not enter into them, and these agencies are free to employ representatives of other agencies just as though there were no such agreements existent in the industry. (The question whether reprisals have been attempted by respondents against such agencies will be discussed hereinafter.) Likewise, crew managers and solicitors are free to seek and accept employment from such agencies.

(e) Next, it appears to be within the contemplation of agencies entering into the agreements that occasions may arise in which crew managers and solicitors will wish for valid reasons to transfer from one agency to another, and that such transfers can be effected with the consent of the first agency. While this phase of the matter was not developed extensively during the hearings, there is some evidence on the point. In the standards of practice proposed for the Association of Subscription Agencies, Inc., and which apparently represented the views of respondents, the principal provision relating to switching (heretofore quoted in part in connection with another point) read:

No Association member or contracting managers or crew operators thereof shall directly or indirectly negotiate with, endeavor to entice away, or authorize any contracting managers or crew operators or solicitors clearing through another member without the prior written consent of such member. "Consent" as used in the preceding sentence shall refer in the case of a member organized in the form of a corporation to the consent of an officer thereof, and in the case of a member organized in the form of a sole proprietorship or a partnership, the consent of the proprietor or of a partner, as the case may be. (Com. Ex. 124, p. 16)

And a letter passing between respondent Union and another agency (not a respondent) on October 5, 1948, contains the following:

Confirming our telephone conversation of today, effective immediately I enter into a "gentlemen's agreement" whereby I will not put any of your people to work and you in turn will not put any of our people to work without a prior agreement between the two of us.

It is naturally understood if one of my men makes application to you or if one of your men makes application to me, if they have a release from the other, we are perfectly free to go ahead and give them a proposition. (Com. Ex. 72)

(f) Viewing the record as a whole, it seems fairly clear that the agreements are not intended to prevent the worthy crew manager or

solicitor in the ordinary course of business from transferring from one employer to another, but are intended to prevent the dishonest or irresponsible employee from switching from agency to agency and continuing his objectionable practices. No instance is disclosed of hardship having been suffered by any worthy employee as a result of the agreements.

(g) Of particular importance is the one-year limitation provision in the agreements. The inclusion of this provision goes far toward rendering the agreements reasonable. Pertinent in this connection is the decision of the Commission in the *Motion Picture Advertising Service Company* case, 47 F. T. C., 378, 344 U. S. 392, in which it was held that the exclusive dealing contract there involved was not unlawful if limited to a period of one year.

(h) Finally, there is the question of where the predominant public interest lies. The agreements (not to be confused with certain other actions of respondents referred to later) are not shown to have affected competition in the magazine field selling industry. Assuming, however, that the agreements might to some slight extent adversely affect competition and worthy field selling representatives, the agreements have unquestionably resulted in substantial benefit to the public in reducing fraudulent and other objectionable practices in the sale of magazine subscriptions. Prudence would seem to dictate the exercise of caution in undertaking to prohibit the use of an instrumentality which appears to represent a reasonable attempt at self-regulation by members of an industry, and which has contributed substantially toward protection of the public against imposition and fraud.

(i) For the reasons indicated, it is concluded that the agreements are not unlawful and should not be prohibited. This is not to say generally that agreements not to employ are valid, or that an agreement of this type which otherwise would be illegal can be saved from that status merely by the inclusion of a one-year limitation provision. The conclusion here expressed applies to the present agreements only, and because of the particular circumstances and considerations indicated.

12. (a) Next presented is the question whether respondents have jointly sought, through coercive measures, to impose on publishers and other subscription agencies their views as to switching; specifically, whether respondents have concertedly ceased or limited, or threatened to cease or limit, their efforts to obtain subscriptions for publishers who permit subscriptions for their magazines to be solicited by subscription agencies who engage in switching practices. Of importance here is the case of a subscription agency known as Federal Readers Guild.

(b) Federal Readers Guild was organized in 1947 by an individual named Rupert E. McLoughlin. McLoughlin was Assistant Executive Secretary of the Magazine Publishers Association from 1938 to 1944, when he left to join two other individuals, Walter Lake and Harold Hopkins, in the formation of respondent Publishers Continental Sales Corporation. Prior to their connection with Continental, Lake and Hopkins had been crew managers for respondent Periodical, and when they changed to Continental they took with them their crews.

(c) Some two years after Continental was organized, serious difficulties and ill feeling arose between McLoughlin on the one hand and Lake and Hopkins on the other, and as a result McLoughlin sold his interest in the business to the other two and left to form a new agency, Federal Readers Guild, which was organized early in 1947. Upon the formation of Federal Readers Guild, several crew managers with their crews switched to that agency from Continental, and later others did likewise. While it appears that from the time McLoughlin formed Federal Readers Guild, some efforts were made by Lake and Hopkins toward trying to induce publishers not to do business with that agency, it was not until June, 1949, that serious and concerted efforts toward that end were made by respondents generally.

(d) Shortly before that time, two other crew managers and their crews had come to Federal Readers Guild from other agencies. One of these managers, Robert Nace, came from Continental; the other, John J. Pryor, came from Periodical. Both had been large and successful crew operators and their change to Federal Readers Guild increased that agency's sales force by approximately one hundred persons. Upon coming to Federal Readers Guild, Nace and Pryor acquired capital stocks in the company and became officers in it.

(e) A few days later, respondent Leo E. Light of National Literary Association invited McLoughlin, Nace and Pryor to a conference which was held one afternoon in a hotel room in New York City. All three accepted the invitation and attended. In addition to Light and these three, there was present Richard Harrington, Manager of National Literary Association. The conference lasted more than two hours and was devoted almost entirely to a discussion of the switch of Nace and Pryor from Continental and Periodical, the prospects of their returning to those agencies, and the consequences which might be expected to follow if they did not return. According to the testimony of McLoughlin, which is uncontradicted, Light stated in substance that the venture (Nace's and Pryor's working with Federal Readers Guild) could not and would not succeed; that Nace's and

Pryor's crews would be interfered with and broken up; that the respondent companies would have all of the publishers "cancel out" on Federal Readers Guild, that is, cancel their authorization to Federal Readers Guild to solicit subscriptions for them; and that a meeting was to be held that evening by representatives of all of the respondents to discuss means and methods for accomplishing those results.

(f) While there is no testimony that this meeting was actually held, the reasonable inference is that it was held, in view of Light's statement to McLoughlin with respect to the meeting and the failure of Light and the other respondents to testify on the point. In any event, it is certain that during the two or three weeks immediately following the date of the afternoon conference, some fifteen publishers representing some twenty publications (several of them leading magazines) did cancel Federal Readers Guild's authorization to solicit subscriptions for them. Some of the publishers gave various reasons for their action, others gave no reason at all. It seems clear, however, that in most instances the action was due to pressure and coercion exercised by respondents; that is threats by respondents to discontinue sales efforts for the publishers. There is positive testimony from a representative of publishers, Charles H. Wilson, that in several conferences between himself and representatives of respondents Continental and National (which would appear also to include respondent Periodical, as it is in effect a subsidiary of National), he was told that unless he cancelled the authority of Federal Readers Guild to sell his magazines, these respondents would discontinue their efforts to obtain subscriptions for him. Wilson was one of those cancelling Federal Readers Guild's authorization.

(g) Also of significance is a letter written by Hopkins of Continental to the Subscription Manager of Fawcett Publications, reading in part as follows (While this letter is dated October 26, 1948 rather than 1949, this is evidently a typographical error):

Ted, I wasn't able to make myself too clear on the McLoughlin situation, except to say that we have had very good cooperation from about 15 solid publishers in cancelling the man out, as he has been a real ulcer in our side, due to the fact that we are not able to discipline managers as they always have the threat that they will go to work for McLoughlin. However, I expect to be in New York soon, and I will personally cover this with you. I do not expect you to be in the middle, but I do feel that you should cooperate with us to the best interests of the industry, the same as most of the others, and the ones that haven't, we will eventually get to yet, as soon as we have the opportunity to present our side of the picture. (Com. Ex. 135)

(h) It is urged by respondents that the Federal Readers Guild incident does not represent joint or concerted action on the part of

the respondents generally, but only indicates activity by the two agencies (Continental and Periodical) which had sustained injury as a result of McLoughlin's switching practices, and that respondent Light of National Literary Association in arranging for the conference and making the statements in question was attempting to serve merely in the role of peacemaker between these two agencies and Federal Readers Guild. This theory is rejected as improbable in the face of the existing facts and circumstances. The presence at the conference not only of Light but of Harrington, Manager of National Literary Association, which apparently had lost no personnel to Federal Readers Guild; the warnings or threats voiced by Light at the conference; his statement with respect to the contemplated meeting to be held that evening by representatives of all of the respondents; the absence of any testimony by either Light or Harrington contradicting McLoughlin's testimony as to what transpired at the conference; the failure of respondents to disavow Light's threats or to deny that the meeting announced by him was actually held; the numerous cancellations from publishers following closely after the date of the conference and of the announced meeting; the testimony of Wilson; and the letter from Continental to Fawcett Publications, all, considered together and against the background of the no-switching agreements, indicate joint and concerted action on the part of respondents, pursuant to an agreement or understanding among them.

(i) Respondents' actions in this instance were wrongful and oppressive. And unquestionably such actions have the tendency and capacity substantially to restrain competition in the field selling of magazine subscriptions. A subscription agency cannot exist without authorization from publishers to solicit subscriptions for their magazines, and it cannot obtain or retain such authorization if publishers are to be coerced into withholding or withdrawing it. Moreover, apart from the manner of competition, respondents' actions constitute unfair acts and practices. As heretofore pointed out, respondents are within their rights in entering into no-switching agreements. They do not, however, have the right to seek, through coercive measures, to impose their agreements and views as to switching upon other subscription agencies or upon publishers. It is not the agreements, but the abuse of them, which is injurious to competition and inimical to the public interest.

(j) While other instances of alleged coercion by respondents against publishers and subscription agencies are urged by counsel supporting the complaint, it is concluded that such alleged instances are not supported by substantial evidence.

13. The complaint further charges in substance that respondents have sought merely by efforts at persuasion, unmixed with any element of coercion, to influence or induce publishers to withhold or withdraw their authorization from subscription agencies who engage in switching. No violation of law is seen in such activities. The no-switching agreements not being unlawful, no sound reason appears why respondents may not legally seek merely through persuasion to convince publishers of the evils attending switching and to induce them in the exercise of their own independent judgment not to do business with subscription agencies engaging in that practice. It is when the line is crossed between mere efforts at persuasion on the one hand, and threats and coercion on the other, that the element of illegality enters.

14. The same principle is applicable to the charge in the complaint that respondents have supplied information and instructions to their respective employees with respect to the no-switching agreements. The agreements being lawful, no valid reason appears why respondents may not properly inform and instruct their employees in regard to them.

15. (a) Finally, the complaint charges that respondents have used and attempted to use trade associations and central registries of employees and agents in effectuating their no-switching agreements. Insofar as the two trade associations are concerned (National Association of Subscription Agencies, Inc. and Association of Subscription Agencies, Inc.), both were very short-lived, and little or no real use of them was made or attempted by respondents.

(b) As for Central Registry, that organization has consistently declined to attempt to deal with the switching problem, taking the position that the matter is one for the subscription agencies to handle among themselves. Moreover, at no time have any attempts on the part of respondents to enlist the aid of the Registry included any suggestion or demand that coercive methods be employed, either against subscription agencies or publishers. The most direct appeal was in the form of a joint memorandum addressed to the Central Registry Board by all of the respondents on April 22, 1949. After reviewing the objectionable selling practices prevalent among some subscription agencies, the memorandum concluded:

The agency practices which we have described above can not be rectified by the agencies. These practices, however, would not last very long if each publisher in the exercise of his individual discretion would decline to have his publications sold by an agency which engaged in switching operations, or authorized crew operators after their authority had been terminated by other agencies for dishonesty or improper selling practices.

It is our opinion that if the Central Registry Board is to curb improper selling practices by attacking them at their source, it can no longer choose to characterize the above practices purely inter-agency matters, and must recognize that agencies which engage in them, since they exist only by reason of the willingness of publishers to do business with them, are the responsibilities of the publishers.

While legal obstacles may exist, we do not believe that they will prove insuperable, since every business has the right to protect itself against trade abuses by the taking of reasonable measures. We are confident that the Central Registry Board can devise measures for coping with the above agency practices and we know that if it declines to attack those basic causes, the symptoms of improper selling practices will continue substantially as before.

Let me wind this up by saying—can we count on your support to help us do the job you want done? (Com. Exs. 25-E, 25-F)

(c) This would appear to constitute nothing more than an appeal or plea to the publishers. It was merely an attempt at persuasion, involving no element of coercion. No affirmative action on the memorandum was taken by the Board. Apparently the memorandum was read at a meeting of the Board but otherwise wholly disregarded. Nor is there any indication that action was taken by any individual publisher as a result of the memorandum.

(d) The only other matter relating to respondents' connection with Central Registry which requires consideration, is whether respondents have sought wrongfully to bar other subscription agencies from membership in the Registry. There appears to have been only one instance in which an application for membership in the Registry was rejected, and in that case the applying agency was operated by two individuals who had recently served as crew managers for respondent Periodical and had been dismissed by that agency for bad selling practices. Their violations had, in fact, been of such serious nature that a substantial monetary penalty had been assessed against Periodical by the Central Registry Board. At the meeting of the Board at which the application was rejected, nine Board members were present, five of them being representatives of publishers and four being representatives of subscription agencies, including respondents National, Continental and National Literary Association. The action of the Board was unanimous. No element of unfairness or arbitrary action is seen in this incident. On the contrary, the rejection of the application appears to have been fully warranted.

(e) One or two instances are disclosed in which there was delay on the part of the Central Registry Board in passing upon applications for membership. The delays, however, appear to have been due not to any arbitrary attitude on the part of respondents or the Board, but to the necessity of securing additional information regarding the applicant.

Order

CONCLUSIONS

It is concluded:

1. The proceeding is in the public interest.
2. Respondents' no-switching agreements are not unlawful.
3. Respondents in one instance have jointly and concertedly, and pursuant to mutual agreement or understanding, threatened to discontinue their efforts to obtain subscriptions for the magazines of certain publishers, unless such publishers withdrew authorization to solicit subscriptions for their magazines from a subscription agency which had employed sales representatives formerly connected with other subscription agencies. Because of such threats, a substantial number of such publishers did cancel such agency's authorization to solicit subscriptions for their magazines. Such actions on the part of respondents have the tendency and capacity substantially to restrain and injure competition in the sale of magazine subscriptions, are to the prejudice of respondents' competitors and the public, and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.
4. The other charges in the complaint have not been sustained.

ORDER

It is ordered, That the respondents, Union Circulation Company, Inc., National Circulating Company, Inc., Periodical Sales Company, Inc., Publishers Continental Sales Corporation, corporations, and their officers, and Leo E. Light and Roy C. Hodge, individually and as copartners doing business as National Literary Association, and respondents' agents, representatives and employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale and distribution of magazine subscriptions in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between or among any two or more of said respondents or between any of said respondents and others not parties hereto, to do any of the following acts or things:

1. Entering into, carrying out, enforcing or giving effect to any agreement not to employ parties who have previously been actively engaged for themselves or for others in the business of soliciting magazine subscriptions.

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2. Ceasing or limiting, or threatening to cease or limit, their efforts to obtain subscriptions for magazines for publishers unless such publishers refuse or discontinue authority to solicit subscriptions for their magazines to subscription agencies employing sales representatives formerly connected with other subscription agencies.

OPINION OF THE COMMISSION

By GWYNNE, Commissioner:

The complaint under Section 5 of the Federal Trade Commission Act charges respondents with the use of unfair methods of competition in two principal particulars, first, in a planned common course of action in the matter of "no-switching" agreements in the securing of magazine subscriptions and, second, in a common course of action in attempting to persuade and influence magazine publishers to withhold their business from subscription agencies not entering into such agreements. The hearing examiner found in favor of respondents as to the first charge and in favor of counsel supporting the complaint as to the second. Both sides appeal.

Respondents are engaged in the business of selling subscriptions for magazines by door-to-door solicitation. They operate through crews which travel from place to place. A crew may have from a few to 40 or more solicitors, together with a crew manager. Respondents contract directly with the "dealer," "contractor" or crew manager who, in turn, usually engages the solicitors and supervises their work. The solicitors, the managers and the agencies are all paid on a commission basis based on the number of subscriptions secured. The solicitors collect part or all of the subscription money and the proper amounts are remitted through the crew managers and the agencies to the publishers.

The business of publishing and selling magazines is an extensive one. Selling of subscriptions is important to the publishers for several reasons, among them being that advertising rates are based on current circulation. Among the various methods of securing subscriptions, door-to-door solicitation ranks second in importance and accounts annually for millions of subscriptions running into millions of dollars. The respondents have 3,000 solicitors and do a total annual business in subscriptions of \$15 million. The hearing examiner found that "respondents are among the leaders in this field and constitute a very substantial and influential segment of the industry."

There is considerable evidence in the record concerning the history and operation of the no-switching agreements. As found by the hearing examiner as far back as 1934, concerted efforts were being made

by subscription agencies to deal with the matter of switching and the problems which it created. At that time, eight agencies, including three of the respondents, entered into written "Standards of Practice" which attempted, among other things, to deal with the problems of switching. In 1940, the Central Registry was formed which will be described later. In December, 1947, the National Association of Subscription Agencies, Inc. was organized, in which each of the respondents was a member. This organization had ceased to function by 1948. In August, 1949, the Association of Subscription Agencies, Inc. was formed. All of the respondents were charter members, and representatives of two of them were officials of the Association. The hearing examiner found that "respondents were largely responsible for the forming of the Association, each having contributed \$1,000 toward its initial expenses and it is difficult to believe that any draft unacceptable to any of them would have been printed and circulated as a proposal." The "draft" referred to was a draft of proposed Standards of Practice printed and sent to all members and prospective members for their consideration. Under the title "Switching," the draft contained the following:

No Association member or contracting managers or crew operators thereof shall directly or indirectly negotiate with, endeavor to entice away, or authorize any contracting managers or crew operators or solicitors clearing through another member without the prior written consent of such member.

This organization ceased to function after six months, principally because of the resignation of its executive head. His reason for resigning was that he accepted the position with the understanding that the organization would include all subscription agencies small as well as large, but that soon after the Association was organized, he found this was not to be the case.

In recent years, there has been a trend toward bilateral (that is, agreements between two agencies) rather than a general contract for the industry. The separate agreements made by two of the respondents with a third agency (not a respondent) are typical. These agreements stated as one of the purposes:

To prevent and eliminate the switching of, or inducing representatives of the respective agencies to violate their contracts or working arrangements with, or enticing away any representatives from their respective agencies.

And contained, among other provisions, the following:

It is understood and agreed that no representative, contracting manager, crew operator, or solicitor, shall directly or indirectly negotiate with, endeavor to entice away, or authorize any representatives, contracting managers, crew operators or solicitors of the other agency. * * *

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It is further understood and agreed that the aforementioned terms and conditions do not obtain in any case (1) where the individual has not been engaged in the magazine business for at least one year, or (2) where the individual has not been engaged with either agency for at least one year, (3) except where the one year absence or inactivity has been occasioned by draft into military services or similar war contributions.

Counsel supporting the complaint argue that the no-switching agreements are boycotts affecting third parties, and are therefore unreasonable and illegal per se.

The hearing examiner held that the agreements, unlike price fixing agreements, are not inherently or per se illegal. He concluded the answer to the question of illegality depended upon the reasonableness of the agreements under all the circumstances.

Sugar Institute, Inc., et al. v. U. S., (1936) 297 U. S. 553, was a suit brought under the Sherman Act to dissolve a trade association and to restrain it and its members from engaging in a conspiracy in restraint of interstate and foreign commerce. The court said:

The restrictions imposed by the Sherman Act are not mechanical or artificial. We have repeatedly said that they set up the essential standard of reasonableness. *Standard Oil Company v. United States*, 221 U. S. 1; *United States v. American Tobacco Company*, 221 U. S. 106. They are aimed at contracts and combinations which "by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restraining competition or unduly obstructing the course of trade." *Nash v. United States*, 229 U. S. 373, 376. *United States v. Linseed Oil Co.*, 262 U. S. 371, 388, 389. Designed to frustrate unreasonable restraints, they do not prevent the adoption of reasonable means to protect interstate commerce from destructive or injurious practices and to promote competition upon a sound basis.

On the question of the reasonableness of these particular agreements, the following should be considered.

(1) The written contracts themselves are vague and capable of several constructions. In so far as the contracts prohibit an agency from inducing a representative of the other agency to violate his contract or working agreements with that other agency, they state only the duty that every person has not to induce another to break his contract. However, the use of the words "switching" and "authorization," together with the one year limitation, indicate that the agreements were meant to have a broader application than would be involved in the mere urging to violate a legal contract. The meaning of the contracts, their general purpose, and the manner in which they operated are shown by various memoranda and letters and other statements of respondents.

"Switching" has to do with the transfer of personnel from one agency to another. There is considerable dispute in the record as to

what the term actually means, and the application of the no-switching rule seems to vary in different agencies. For example, it might include situations (1) where a person had been enticed away in violation of his contract, (2) where he had been enticed away but not in violation of his contract, or (3) where he had left voluntarily and found work with another agency. Leaving to set up, or joining a new agency apparently is not switching. However, even there, the no-switching program would operate. A solicitor or crew manager leaving an agency to form a new one must get authorizations to take subscriptions. He may get these direct from the publisher or from other agencies which have been authorized by publishers. That is, some agencies follow the practice of accepting subscriptions taken by other agencies and sending them in under their own name. No-switching agreements would prohibit "authorizing" a new agency unless the personnel were exempted under the one year limitation.

It is clear that the agreements would affect the employment rights of persons not parties to the agreements and could affect the rights of solicitors and crew managers who had been guilty of no bad selling practices. It is also true that the restriction would not apply to *anyone* who had been out of the business for one year with the exception of those whose year's absence or inactivity had been occasioned by draft into the military service or similar war contributions.

A letter of October 5, 1948 by one respondent to another agency (not a respondent) throws some light on the actual operation of the plan.

Confirming our telephone conversation of today, effective immediately I enter into a "gentlemen's agreement" whereby I will not put any of your people to work and you in turn will not put any of our people to work without a prior agreement between the two of us.

It is naturally understood if one of my men makes application to you or if one of your men makes application to me, if they have a release from the other, we are perfectly free to go ahead and give them a proposition.

(2) The agreements were in part at least an attempt to remedy certain evils that had grown up in the business of door-to-door solicitation for subscriptions. These evils were described in the findings of the hearing examiner as follows:

6. (a) One of the most serious problems which has plagued the magazine field selling industry from its inception has been that of improper selling practices on the part of solicitors. These practices have included, among others, fake sympathy appeals, as, for example, that the solicitor is a disabled war veteran; misrepresentations as to the magazines or its subscription price; high pressure and even offensive and abusive sales methods; and failure to turn in subscriptions obtained and embezzling of money paid by subscribers. Frequently, crew managers have also been at serious fault, not only in the use themselves of ob-

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jectionable sales methods but also in encouraging the use of such methods by their crews, in failing to exercise proper supervision and discipline over their solicitors, and in failing to remit to the agency subscription moneys turned over to them by solicitors. These improper practices have at times become so flagrant that numerous cities and towns have adopted ordinances either prohibiting entirely or drastically restricting door-to-door selling in their respective communities.

(b) These conditions have been of serious concern not only to magazine field selling agencies but to publishers as well. For when field selling of magazines falls into disrepute the publisher suffers not only loss of subscriptions but also serious damage to the reputation of his publication. A member of the public who has been a victim of objectionable sales practices by a magazine salesman is likely to lay the blame squarely at the door of the magazine itself.

It also appears that each subscription agency which was a member of the Central Registry obligated itself to make good to the publisher any misappropriation of subscription money paid to any of its solicitors and not turned in by him.

The agencies were very properly interested in attempting to remedy the evils existing in their industry. Nevertheless, even if adopted solely for that purpose, the remedy sought to be applied must be reasonable.

(3) The no-switching agreements were partly the result of other motives than the desire to remedy evils in the business. The hearing examiner recognized this in the following finding:

The no-switching agreements, while undoubtedly motivated to some extent by considerations of self-interest on the part of respondents, appear to represent a genuine effort by respondents to clear up their industry and redeem it from disrepute.

There is evidence that the agreements were designed to accomplish (1) the elimination of certain selling practices distasteful to the public, (2) making easier the collection of debts owed the agency by its solicitors or crew managers, and (3) the preservation of crews built up by the agencies.

An official of Central Registry, in which respondents were members, had the following to report about a meeting held by the organization on June 27, 1949:

Discussion of "Switching."

18. There was, as usually happens in these meetings, some discussion of switching. The usual points were made (1) that the crew manager who could be switched to any agency selling the same, or nearly the same magazines, could be switched away; (2) that there was no additional business produced for publishers, if the same solicitors continued to sell the same subscriptions but the subscriptions reached the publishers from a different agency; (3) that the only sound way for an agency to build a business was to develop its own soliciting personnel; (4) that in cases in which an agency put pressure upon a crew manager

who had indicated a tendency not to adhere fully to the CR Standards of Practice, such crew manager might be invited to associate himself with a competing agency with the express or implied promise that he would not be held as strictly in line; and (5) that in a business like subscription field selling through traveling crews, there is a tendency for managers of crews to endeavor to form agencies without any real understanding of the problem of (a) agency management or (b) agency finances.

Two of respondents wrote a letter saying in part as follows:

This agency has always been opposed to the switching or enrollment of people who have had previous experience in the subscription field.

On another occasion, two of the respondents sent out identical bulletins containing the following statements:

We feel quite certain that you will welcome this clarification of our policy as it is distinctly to your advantage to know that the people you contract with and develop at considerable effort and expense are not suddenly to be pirated away.

There is, also, correspondence in the record indicating that certain of the respondents urged that certain solicitors who had switched be returned to their former agency.

It appears that the building and maintaining of an effective agency is a difficult matter and that publishers are interested in dealing with financially responsible agencies which are able to carry out their commitments with the degree of promptness that the circulation situation sometimes requires. The losing of trained personnel to other agencies, or through the formation of new ones, may seriously impair an agency's ability to carry out its contracts with the publishers. Hence, the agency is interested in maintaining its force intact. This is one of the reasons for the objection of many to the transfer of their personnel.

(4) There is dispute in the evidence as to the effectiveness and necessity of the no-switching agreements in remedying the evils of the industry.

In 1940, through the joint efforts of certain publishers and agencies, the Central Registry of Magazine Subscription Solicitors was created. Its affairs are managed by a Central Registry Board consisting of five members from the publishers and five from the agencies. Standards of fair selling practices have been adopted. Each member agency files with the Registry, cards showing the names, identification and other information concerning its solicitors and crew managers. This information is available to the members of the organization. Each of the respondents is a member, together with many others. The Register contains the names of some 15,000 or 20,000 solicitors and managers.

If agencies are anxious to avoid engaging a switcher with a bad record, or are willing to engage one with a good record, it would seem

that the Central Registry has the machinery for providing them with that information.

Central Registry cooperates with the National and local Better Business Bureaus and with local Chambers of Commerce and public officials in an effort to police soliciting for magazine subscriptions. Complaints received locally are sent to the National Better Business Bureau for transmission to the Central Registry. The Central Registry has authority to discipline member agencies for violation of the Standards of Practice. This cooperative program, so far as the National Better Business Bureau is concerned, began in 1946 and was well organized by 1948. Under the program, soliciting crews are encouraged to register with local authorities or organizations. Citizens are requested to make complaint of any improper selling practices which are handled through local facilities or forwarded to the Central Registry. In any event, the Central Registry is kept advised of the complaints, together with the individual against whom made. The program has been quite successful. Complaints, which at the beginning were about 1,000 per month, have now been reduced to about 230. John J. Burke, in charge of this matter for the National Better Business Bureau, testified that the complaints having a connection with switching were a small percent of the total, but often involved the more serious complaints.

Several witnesses, including representatives of the Central Registry and the National Better Business Bureau, testified that there is a relation between the bad practices in the industry and the switching by personnel from one agency to another. Cases are cited of individuals reported for these practices who later show up with other agencies and continue the same practices. The hearing examiner also found that the relationship does exist.

It is no doubt true that bad practices and switching are often traceable to a common cause, to wit, the unsatisfactory and unstable employee. There is evidence that other factors sometimes enter in. For example, Harold M. O'Hanlon, Secretary of the Central Registry, testified that the only reason for making a manager or solicitor want to change his connection would be either financial inducements or inducements of greater leniency in selling practices. It also appears that conditions in the agency also have a bearing. Frank Ware, also engaged in the subscription business, testified that the agencies most hurt by switching are the ones with the lowest commission rebates to managers and the agency with the lowest ethical standards is generally the agency that has the men who are most likely to switch and can be more easily enticed away than is the case with an organization which has strong principles of business conduct.

It is argued that the "no-switching" rule makes the solicitor more amenable to discipline. That is, he will be less likely to engage in bad practices if he knows his opportunity for re-employment in another agency is subject to the one year provision. There is no real evidence (aside from opinions of various witnesses) of the actual effect of the rule on the elimination of bad selling practices. Mr. O'Hanlon testified that taking into account the number of crews operated by respondents, the complaints concerning them were about on a par with the general field.

The hearing examiner said: "It appears to be within the contemplation of agencies entering into the agreements that occasions may arise in which crew managers and solicitors will wish for valid reasons to transfer from one agency to another, and that such transfers can be effected with the consent of the first agency."

However, the various memoranda circulated by respondents do not express the thought that exceptions are to be made in behalf of the worthy crew manager or solicitor. Statements are to the effect that employment will depend on proof that one year has elapsed since previous employment with another agency. It is true, of course, that the agencies might consent to the re-employment regardless of the rule.

In the absence of a contract to the contrary, every individual has the legal right to attempt to better his condition by seeking other employment or by going into business for himself. In the absence of any element of inducing another to violate a contract, every agency has the right to offer better pay or better working conditions, even though the result may be the transfer of personnel from competitors. These rights should not be contingent on the decision of a former employer, no matter how fairly and impartially he may attempt to render such decision. Somewhat similar attempts to provide extra-judicial tribunals for the elimination and punishment of the violations of rules has been condemned by the courts. See *Fashion Originators Guild of America, Inc. v. FTC*, (1941) 312 U. S. 457.

The hearing examiner also said:

Viewing the record as a whole, it seems fairly clear that the agreements are not intended to prevent the worthy crew manager or solicitor in the ordinary course of business from transferring from one employer to another, but are intended to prevent the dishonest or irresponsible employee from switching from agency to agency and continuing his objectionable practices. No instance is disclosed of hardship having been suffered by any worthy employee as a result of the agreements.

We think the record does show injury in the sense of actual restraint of commerce in the Federal Readers Guild matter. In recruiting its

crews that new organization had ignored the no-switching rule. Because of that, a representative of one respondent, apparently acting with the approval of all, threatened to break up the new crews and did in fact succeed in having certain publishers withdraw their business from the Federal Readers Guild. There is also evidence that the no-switching rule made the forming of new agencies more difficult.

Another evil in the industry arises from the fact that personnel who switched were often in debt to the former agencies for sums advanced or for subscription money collected. The collection of this debt might be easier if the employee were prevented from switching. One witness, Frank Ware, gives that as a reason for the no-switching rule. He further testified that in his experience, the amounts due could be collected by ordinary legal process and that the no-switching rule was unnecessary.

(5) The agreements contain a one year limitation, which the hearing examiner, on the authority of *FTC v. Motion Picture Advertising Service Company, Inc.*, 314 U. S. 392, concluded "goes far toward rendering the agreements reasonable."

In the above case, respondent produced and distributed advertising motion picture film. It had exclusive contracts with 40% of the theaters exhibiting such film in the area in which it operated. Respondent and three other similar agencies against whom separate charges were filed, had exclusive contracts running from 1 to 5 years with 75% of the theaters in the United States exhibiting advertising film. The court held that because of the exigencies of the situation and the practical requirements of the business, the exclusive contracts were beneficial to the distributors and preferred by the theater owners. The order of the Commission limiting such exclusive contracts to one year was held to be proper.

The situation there was not similar to the one we have here. A contract between the distributors whereby each agreed not to furnish film for one year to a theater operator who had for any reason renounced his exclusive dealing contract would be more like the contract sought to be upheld in this case.

The contracts between respondents and their representatives were all terminable on notice, the maximum time being 30 days. They contained no provision that the representative would not enter into competition for a stated period after the contract had terminated. The contract between a respondent and its representative contemplated that either could terminate the working agreement between them by giving 30 days' notice, with no restriction thereafter as to the representative's course of conduct. Nevertheless, the contract between respondents to

which the representative was not a party, would prohibit his employment for a year unless the first agency consented thereto.

(6) As found by the hearing examiner, the agreements "are binding only upon the particular agencies entering into them. While such agreements are common in the industry, they are by no means industry-wide or all inclusive. Apparently, there are numerous agencies which do not enter into them, and these agencies are free to employ representatives of other agencies just as though there were no such agreements existent in the industry. * * * Likewise, crew managers and solicitors are free to seek and accept employment from such agencies."

Nevertheless, it appears that the respondents are among the leaders in the field and constitute a very substantial and influential segment of the industry.

There is evidence of no-switching agreements between certain of the respondents and other agencies, not named as respondents. Furthermore, it appears that the respondents were active in attempting to have the practice adopted by other agencies and attempting to have it recognized and enforced by the Central Registry.

In *FTC v. Motion Picture Advertising Company, Inc.*, 344 U. S. 392 at page 394, the court said :

It is also clear that the Federal Trade Commission Act was designed to supplement and bolster the Sherman Act and the Clayton Act (see *FTC v. Beechnut Company*, 257 U. S. 441),—to stop in their incipency, acts and practices which, when full blown, would violate those acts (see *Fashion Originators' Guild v. FTC*, 312 U. S. 457), as well as to condemn as "unfair methods of competition" existing violation of them. (See *FTC v. Cement Institute*, 333 U. S. 683).

It is true that because of the exigencies of a particular situation, or because of the practical requirements of a certain business, some restraint on the freedom of contract may often be proper. In all such cases, however, courts have insisted that the restraint shall be limited to those which are reasonable under the circumstances.

The relationship between the agencies and their representatives was not strictly that of employer and employee. The contracts therefore were not technically the ordinary contract of hiring. Nevertheless, they did have to do largely with personal services. The restraints imposed were on the means of earning a livelihood.

Anderson v. Ship Owners Association of the Pacific Coast (1926), 272 U. S. 359, was a suit under the Sherman Act by a seaman, in behalf of himself and others, for an injunction and damages against respondents for maintaining a combination in restraint of trade. Members of the respondent association controlled substantially all American registered merchant vessels on the Pacific Coast. Under the rules of

the association, every seaman desiring employment must register at the office of the association and wait his turn for employment with any member. The association would designate the place, and the kind of job which the seaman would be offered.

The court pointed out that by entering into this combination the members had surrendered to the association their control over employment and held that the direct and necessary consequence was to interfere with the right of freedom of trade. "Restraint of commerce cannot be justified by the fact that the object of the participants in the combination was to benefit themselves in a way which might have been unobjectionable in the absence of such restraint."

Agreements, ancillary to contracts for sale of property or for employment, often are in partial restraint of trade. However, even these contracts, to which the person being restrained is a party, will not be enforced unless the restraint is reasonable. Restrictive covenants in contracts of hiring are tested by standards of reasonableness, but such covenants are not viewed by the court with the same indulgence and a smaller scope of restraint is permitted. 17 C. J. S. Contracts Section 254.

In *Arthur Murray Dance Studios v. Witter* (1952) Ohio, 105 N. E. 2nd 685, the court in declaring a contract illegal pointed out that the restraint must not be greater than necessary to protect the employer in some legitimate interest, must not be unduly harsh and oppressive to the employee, and must not be injurious to the public. A restraint restricting the exercise of a gainful occupation is "cautiously considered, carefully scrutinized, looked upon with disfavor, strictly interpreted and reluctantly upheld."

It is our conclusion that the no-switching agreements are, under all the circumstances, an unreasonable restraint and constitute unfair methods of competition within the meaning of Section 5 of the Federal Trade Commission Act. Because of this conclusion, we find it unnecessary to pass on other questions raised by counsel supporting the complaint.

Although the hearing examiner held that the no-switching agreements were legal, he nevertheless held that the acts of respondents in attempting by coercion to impose that policy upon the publishers was illegal.

The facts pertaining to this branch of the case are set out in the initial decision. They may be summarized briefly as follows:

Rupert E. McLoughlin, about 1944, left the Magazine Publishers Association and joined Walter Lake and Harold Hopkins in the formation of respondent, Publishers Continental Sales Corporation.

Two years later, because of difficulties between the three above named, McLoughlin left and organized the Federal Readers Guild. Thereafter, several crew managers with their crews switched to the Federal Readers Guild. Among the crew managers so switching were Robert Nace from Continental Sales Corporation and John J. Pryor from Periodical Sales Company. A few days later, a meeting was held which was attended by McLoughlin, Nace and Pryor, and also by Leo E. Light of respondent, National Literary Association, and Richard Harrington, Manager of National Literary Association. McLoughlin testified, without contradiction, that Light threatened to have all the publishers "cancel out" Federal Readers Guild and that a meeting with representatives of all the respondents would be held that evening to discuss ways and means to accomplish that purpose. There is no evidence whether the meeting was or was not held. Later, several publishers did cancel their authorizations with Federal Readers Guild.

There is also further evidence tending to corroborate the conclusion arrived at by the hearing examiner. We think he decided this phase of the case correctly.

Accordingly, the appeal of counsel supporting the complaint is granted. The appeal of respondents is denied. It is further directed that an order be issued in accordance with this opinion.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come on to be heard by the Commission upon the appeals of counsel supporting the complaint and of the respondents from the hearing examiner's initial decision, and briefs and oral argument of counsel in support thereof and in opposition thereto; and

The Commission having determined, for the reasons appearing in the written opinion of the Commission issued herewith, that the appeal of counsel supporting the complaint should be granted to the extent indicated in the opinion; that the appeal of the respondents should be denied; and that the hearing examiner's initial decision should be modified to the extent and in the manner indicated in the opinion;

It is ordered, That the appeal of counsel supporting the complaint from the hearing examiner's initial decision be, and it hereby is, granted to the extent indicated in the accompanying opinion of the Commission.

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

It is further ordered, That the findings as to the facts and conclusions in the hearing examiner's initial decision be, and they hereby are, modified to the extent and in the manner indicated in the accom-

panying opinion of the Commission and that the order in said initial decision be, and it hereby is, modified to read as follows:

It is ordered, That the respondents, Union Circulation Company, Inc., National Circulating Company, Inc., Periodical Sales Company, Inc., Publishers Continental Sales Corporation, corporations, and their officers, and Leo E. Light and Roy C. Hodge, individually and as copartners doing business as National Literary Association, and respondents' agents, representatives and employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale and distribution of magazine subscriptions in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between or among any two or more of said respondents or between any of said respondents and others not parties hereto, to do any of the following acts or things:

1. Entering into, carrying out, enforcing or giving effect to any agreement not to employ parties who have previously been actively engaged for themselves or for others in the business of soliciting magazine subscriptions.

2. Ceasing or limiting, or threatening to cease or limit, their efforts to obtain subscriptions for magazines for publishers unless such publishers refuse or discontinue authority to solicit subscriptions for their magazines to subscription agencies employing sales representatives formerly connected with other subscription agencies.

It is further ordered, That the findings as to the facts and conclusions in the hearing examiner's initial decision, as modified herein, be, and they hereby are, adopted as part of the Commission's decision.

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Order

IN THE MATTER OF
STANDARD DISTRIBUTORS, INC., ET AL.MODIFIED ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket 5580. Modified Order, Jan. 27, 1955*

Order modifying prohibitions issued June 13, 1952, 48 F. T. C. 1435, 1447, of false representations with respect to free offers, so as to permit respondents, in the event of their changing their selling practices, to take advantage of the "free goods policy", as set forth in the subsequently announced *Walter J. Black* opinion and decision, Docket 5571, Sept. 11, 1953, 50 F. T. C. 225.

Before *Mr. Frank Hier*, hearing examiner.

Mr. John M. Russell and *Mr. William L. Pencke* for the Commission.

Anderson & Roche, of Chicago, Ill., for Standard Distributors, Inc.,
LeRoy S. Bimstein and *A. J. Noreus*.

MODIFIED ORDER TO CEASE AND DESIST

This matter having come before the Commission upon respondents' petition for an amended order to cease and desist, and upon the answer of counsel supporting the complaint in opposition thereto; and

The Commission, having determined that its order to cease and desist issued on June 13, 1952, should be modified for the reasons and in the manner set out in its accompanying opinion, hereby issues its modified order to cease and desist as follows:

It is ordered, That the respondent, Standard Distributors, Inc., a corporation, and its officers, and the respondent, LeRoy S. Bimstein, individually and as an officer of said corporation, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the New Standard Encyclopedia and its supplement, World Progress, edited and published by Standard Education Society, or of any other book or books, do forthwith cease and desist from:

- (1) Representing, directly or by implication:
 - (a) That the New Standard Encyclopedia is a new encyclopedia;
 - (b) That one may obtain a set of the New Standard Encyclopedia or a reduction in the price thereof merely by writing a letter of recommendation therefor or an opinion thereon;

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(c) That any of the books sold by respondents may be obtained by any means other than by payment of the full purchase price; or that purchasers of a combination of books pay only for a part thereof:

(1) Unless all the conditions, obligations, or other prerequisites to the receipt and retention of the books claimed to be free or reduced in price shall be clearly and conspicuously explained or set forth at the offset so as to leave no reasonable probability that the terms of the advertisement or offer might be misunderstood; and

(2) Unless, with respect to the books required to be purchased in order to obtain the books claimed to be free or reduced in price, the offerer neither (a) increases the ordinary and usual price; nor (b) reduces the quality; nor (c) reduces the number or size of the books required to be purchased;

(d) That the price at which any book or combination of books is offered is less than the price at which it will be offered later, contrary to the fact;

(e) That the quality of the binding, printing, paper or illustrations of any book, as delivered, will be equal in such respects to samples thereof exhibited to prospective purchasers, contrary to the fact;

(2) Exhibiting to prospective purchasers samples of the binding, printing, paper or illustrations of such encyclopedia, supplement or any other book, which are superior in quality to the binding, printing, paper or illustrations of such books as delivered to purchasers thereof.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to the respondents, David Tuttle and A. J. Noreus.

It is further ordered, That the respondents, Standard Distributors, Inc., and LeRoy S. Bimstein, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this modified order.

OPINION OF THE COMMISSION

By GWYNNE, Commissioner:

The respondents have filed a petition asking for the modification of the order entered herein and also asking that the order be vacated as to respondent LeRoy S. Bimstein.

The complaint, which was issued August 30, 1948, charged unfair and deceptive acts and practices in commerce contrary to the Federal Trade Commission Act in the sale of encyclopedias. After a trial on the merits, the Commission, on June 13, 1952, issued its findings as to the facts and conclusions. The findings so far as material here were as follows:

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(b) Corporate respondent does not give free, or at a nominal price, the encyclopedia or any other book on the sole condition that the prospect will furnish it a letter of recommendation or of opinion thereof. No prospect or purchaser receives anything free from the corporate respondent—if he buys anything, he pays for everything he gets.

(c) No purchaser from corporate respondent secures the encyclopedia free by buying the supplement, or otherwise, but each purchaser buys and pays for all the books enumerated in the purchase contract, including the encyclopedia."

The order of the Commission directed, among other things, that respondents Standard Distributors, Inc., and LeRoy S. Bimstein should cease and desist from:

"(1) Representing, directly or by implication:

* * * * *

(b) That one may obtain a set of the New Standard Encyclopedia or a reduction in the price thereof merely by writing a letter of recommendation therefor or an opinion thereon; *or that any of the books sold by the respondents may be obtained by any means other than by payment of the full purchase price;*

(c) *That purchasers of a combination of books pay only for a part thereof;*

* * * * *

Representations by the respondents to the contrary were found to be false and misleading.

Thereafter an appeal was taken by respondents to the U. S. Court of Appeals for the Second Circuit which, on February 26, 1954, denied the appeal. Respondents then filed a petition for a rehearing claiming, among other things, that the decision of the Commission was not in accord with the new policy of the Commission as set forth in the matter of *Walter J. Black, Inc. v. FTC*. The court entered the following order:

The petition for rehearing is denied. Petitioners may, if so advised, apply to the Federal Trade Commission for the amendment of its order, notwithstanding our affirmance of it to bring it into conformity with the general policy of the Commission announced in re *Walter J. Black v. FTC*, decided on September 18, 1953.

The Black case had to do with the practice of advertising as "free" an article given to a purchaser, without additional cost, on condition that he buy some other article. In an opinion issued September 11, 1953, the Commission modified its previous policy and held that an

article could be advertised as "free" even though given only in connection with the sale of another article where all the conditions, obligations, etc. were clearly and conspicuously explained at the outset so as to prevent misunderstanding, and when the price of the article sold was not increased over the ordinary and usual price, nor the quantity, quality, or size of such article reduced.

It is clear that the so-called "free goods" policy of the Commission (either before or after the Black decision) had no connection with the practices of respondent which were the occasion for the order against them. Respondents gave nothing free. Their contract and their instructions to their salesmen clearly so indicated. The order was entered against them because their salesmen, acting contrary to direction but in the apparent scope of their authority, did falsely represent that books were being given to a selected few either free or at a reduced price.

However, assuming that respondents should change their selling practices to take advantage of the rule laid down in the Black case, would any part of the order prevent them from doing so? For example, respondents might decide to offer for sale a ten-volume set of the New Standard Encyclopedia at the regular price and give in addition thereto without further cost the Quarterly Loose Leaf Extension Service Supplement, or a Webster's Unabridged Dictionary. Such an offer would contemplate that the Supplement or the Dictionary may be received by means other than by paying the full purchase price for that particular article. Of course, payment of the regular price for the encyclopedia would be required.

The offer outlined above could be made under the Black decision if compliance were had with the conditions laid down therein. The question is would such an offer be contrary to that part of the order which provides as follows:

"(1) Representing, directly or by implication:

* * * * *

(b) * * * or that any of the books sold by the respondents may be obtained by any means other than by payment or the full purchase price;

(c) That purchasers of a combination of books pay only for a part thereof."

We think the order might be construed to prohibit the making of the above offer and would put respondents at a competitive disadvantage with competitors who were free to take advantage of the new "free" policy.

Respondents' request is that the last clause of (1) (b) (the portion underlined) and all of (c) be stricken. However, we think the order will be brought into conformity with the present law if (b) and (c) are modified to read as follows:

(b) That one may obtain a set of the New Standard Encyclopedia or a reduction in the price thereof merely by writing a letter of recommendation therefor or an opinion thereon.

(c) That any of the books sold by respondents may be obtained by any means other than by payment of the full purchase price; or that purchasers of a combination of books pay only for a part thereof:

(1) Unless all the conditions, obligations, or other prerequisites to the receipt and retention of the books claimed to be free or reduced in price shall be 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; and

(2) Unless, with respect to the books required to be purchased in order to obtain the books claimed to be free or reduced in price, the offerer neither (a) increases the ordinary and usual price; nor (b) reduces the quality; nor (c) reduces the number or size of the books required to be purchased.

All other relief demanded in respondents' petition is denied. The order is hereby modified as above indicated and it is directed that a proper modified order be issued.

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IN THE MATTER OF
COMMERCIAL TRAVELERS INSURANCE COMPANY
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6241. Complaint, Oct. 14, 1954—Decision, Jan. 27, 1955

Consent order requiring an insurance company in Salt Lake City, Utah, to cease falsely advertising the coverage and benefits of its accident and health policies.

Before *Mr. William L. Pack* and *Mr. Abner E. Lipscomb*, hearing examiners.

Mr. Andrew C. Goodhope and *Mr. Robert R. Sills* for the Commission.

Riter, Cowan, Finlinson & Allen, of Salt Lake City, Utah, and *Mr. Ralph E. Becker*, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as that Act is applicable to the business of insurance under the provisions of Public Law 15, 79th Congress (Title 15, U. S. Code, Sections 1011 to 1015, inclusive), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Commercial Travelers Insurance Company, a corporation, hereinafter referred to as respondent, has 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 Commercial Travelers Insurance Company is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Utah with its office and principal place of business at 32 Exchange Place, Salt Lake City, Utah.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged as an insurer in the business of insurance in commerce, as "commerce" is defined in the Federal Trade Commission Act, by entering into insurance contracts with insureds located in various States of the United States other than the State of Utah, in which states the business of insurance is not regulated by state law to the extent of regulating the practices of respondent alleged in this complaint to be illegal. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said

insurance policies in commerce between and among the several States of the United States.

Such policies have become known in the insurance trade and are sometimes referred to by respondent as "accident and health policies" or "accident and sickness policies."

Generally, such a policy provides that in consideration of a stated sum of money, sometimes referred to as a premium, and other considerations, respondent promises to indemnify the insured or policyholder in the event of injury to or the sickness of the insured in accordance with the various terms and conditions of such policy by paying cash benefits for losses resulting from accidental injury, disease or sickness.

Respondent, during the two years last past, has sold a variety of such policies, among which were the following:

1. Premium Reduction Disability Policy identified by the respondent as Form R41.
2. Family Medical or Surgical Policy identified by the respondent as Form MES40.
3. Hospital and Surgical Expense Policy identified by the respondent as Form HAS-39.
4. Hospital and Surgical Expense Policy identified by the respondent as Form HAS-46.
5. President's Bonus Policy identified by the respondent as Form PB.
6. Accident Policy identified by the respondent as Form ACH37.
7. Ten-Year Bonus Policy identified by the respondent as Form TYB-2M.
8. Expansion Refund Disability Policy identified by the respondent as Form ERD-2M.
9. Employees Income Plan identified by the respondent as Form EIP44-5M.
10. Creditors Group Disability Insurance identified by the respondent as Form 34.
11. Creditors Group Life Insurance identified by the respondent as Form 66.

PAR. 3. Respondent is licensed, as provided by the state law, to engage in the business of insurance, as heretofore generally described, in the States of Utah, Nevada, Arizona, Idaho, Wyoming, Colorado, Oregon, Washington, Montana, South Dakota, and New Mexico. Respondent is not now, and for more than two years last past has not been, licensed as provided by the respective state laws to engage in the business of insurance in any state of the United States other than those last above mentioned.

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Respondent has sold a substantial number of its said policies to insureds now residing in states other than those in which respondent has been duly licensed, as aforesaid, and respondent mails to such insureds or policyholders notices and receipts relating to the payment of renewal premiums and receives and accepts from such insureds or policyholders premiums mailed to it renewing the coverage purchased for the period of time covered by the premium submitted. Respondent also corresponds with insureds or policyholders located in said States other than those in which respondent has been duly licensed with respect to claims and the payment of claims; and when a claim is approved or a settlement made, the respondent mails to said policyholders located in said States in which the respondent is not licensed, as aforesaid, checks or drafts in payment of such claims. The renewal of term insurance in this manner constitutes trade in commerce to the same extent as the original purchase of said insurance.

PAR. 4. In the course and conduct of its aforesaid business, respondent, during the two years last past, disseminated and caused to be disseminated in the form of circulars and other printed and written matter, false, misleading and deceptive advertisements concerning the terms and provisions of various of its contracts of insurance as reflected by said policies aforesaid. These advertisements were disseminated by the United States mails or through licensed agents of respondent in commerce between and among the various States of the United States. The purpose and effect of these advertisements was and is to induce members of the public to become insured by the respondent under the terms and provisions of the policies advertised.

PAR. 5. In the course and conduct of its said business in said commerce, as aforesaid, the respondent has disseminated, among others of similar import and meaning, not herein set out, advertisements relating to its said policies containing statements hereinafter set forth.

1. (a) Relating to its "Hospital and Surgical Expense Policy," Form HAS-46—

Pays Full Benefits at All Ages. Policy does not contain provision terminating or reducing benefits at specified age.

(b) Relating to its "President's Bonus Plan," Form PB—

FOR INDIVIDUALS OR FAMILY GROUPS WITH FULL BENEFITS
FOR ALL AGES FROM 1 DAY TO 80 YEARS
PAYS ALL AGES

Full benefits are paid to persons aged 1 to 80. Contains no clause terminating or reducing benefits at specified age.

(c) Relating to its "Accident Policy," Form ACH 37—

No Reduction in benefits because of age or because of doing any act pertaining to any occupation.

Non-Assessable

Issued to Insurable Men and Women 16-65.

2. (a) Pertaining to its "Ten-Year Bonus Policy," Form TYB—

For any and every kind of sickness or disease which is contracted by the Insured and which begins while policy is in force

(b) Pertaining to its "Expansion Refund Disability Policy," Form ERD-2M—

Covers all forms of SICKNESS AND ACCIDENT

* * * OUR PLAN WILL PAY YOU
FOR ANY AND EVERY KIND OF SICKNESS OR ACCIDENT

(c) Pertaining to its "President's Bonus Plan," Form PB—

Pays full monthly rate for all forms of sickness, accidents.

Our "President's Bonus Plan"

Covers all forms of
SICKNESS AND ACCIDENT

* * * OUR PLAN WILL PAY YOU * * *
*FOR ANY AND EVERY KIND OF SICKNESS OR ACCIDENT

Never before have so many benefits for the entire family been included in one policy.

Never before has such complete protection been offered.

(d) Pertaining to its "Hospital and Surgical Expense Policy," Form HAS-46—

Benefits for Accidents, Sickness and Childbirth.

Provides Benefits for Hospital and Ambulance Expense. Also fees for surgical Operations due to Accidents or Sickness, regardless of where operation performed.

(e) Pertaining to its "Family Medical and Surgical Policy," Form MES40—

A plan designed by Commercial Travelers Insurance Company will pay hospital, medical and surgical expenses, doctor calls at home, childbirth costs and many other expenses that will benefit every member of your family—

(f) Pertaining to its "Premium Reduction Disability Policy," Form R41—

WE WILL PAY YOU

*FOR ANY AND EVERY KIND OF SICKNESS OR ACCIDENT Non-Confining Disability Covered.

*Exceptions as provided by the policy; Childbirth, Suicide, War Disabilities and Private Flying.

3. In addition to the statements set forth above in subparagraph 2 of Paragraph Five, pertaining to the various policies therein described, the following statement has been made by respondent pertaining to its "Accident Policy," Form ACH37:

Covers All Accidents except Military and Naval service and non-commercial aviation.

4. (a) Pertaining to its "Family Medical or Surgical Policy," Form MES40, and its "Hospital and Surgical Expense Policy," Forms HAS-46—HAS-39.

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2. Pays full hospital, medical and surgical benefits regardless of any other insurance or compensation you may now have.
9. Out patient benefits are paid in full in accordance with the benefits of the policy.

Here's what this amazing plan offers:

HOSPITAL ROOM. You select the hospital room coverage you feel is adequate for you and your family—\$5.00 to \$20.00 per day. Then if you are sick we pay up to 200 days room and board in any licensed hospital at the room rate you have selected.

HOSPITAL EXTRAS. In addition to your board and room, we pay for the many hospital extras that are usually the most expensive part of your hospital confinement. Look at this list!

Operating room—Laboratory service	} NO LIMIT UP TO \$1000.00 (Pays all of first \$100 plus 75% of next \$1200 on these combined hospital extras).
Surgical dressings . X-Rays	
Plaster casts and splints . Oxygen	
Hypodermics—Drugs of all types	
Anaesthesia and service of anesthetist	
Blood transfusions . Iron	

AMBULANCE SERVICE. Pays both ways, to and from the hospital, for either sickness or accidents.

SURGEONS' FEES. For each operation we will pay from \$10.00 to \$525.00. There are no exceptions as to the type of operation you have.

DOCTOR FEES. Even though no surgery is performed we still pay for doctor calls at your home, in the hospital or visits you make to his office or clinic.

ADDITIONAL DOCTOR BENEFITS. Unlike many other plans that require hospitalization for benefits, the CTI Plan pays for costly X-Rays, blood transfusions, oxygen, electrocardiograms, metabolism tests and first aid treatment received **IN THE DOCTOR'S OFFICE OR CLINIC.**

MATERNITY BENEFITS. We pay a \$50.00 delivery fee for doctor plus 8 times daily hospital benefit you select.

(b) Pertaining to its "Family Medical or Surgical Policy,"

MES40—

We are making this offer to acquaint you with the details of our new Hospital and Medical Expense Plan. This plan pays for your hospital room and board, surgical fees, doctor's calls at home, hospital or office, ambulance service, first aid treatment, plus extra hospital expenses such as operating room, surgical dressings, hypodermics, anesthesia, drugs, laboratory service, oxygen, blood transfusions, x-rays, etc. It also pays for hospital confinement for childbirth and the surgeon's fees for child delivery.

(c) Pertaining to its "Hospital and Surgical Expense Policy,"

Form HAS-46—

Pays full benefits regardless of any other insurance you have. Pays in addition to Workmen's compensation.

First Aid Benefit—pays benefit for doctor's fee for minor injuries not requiring hospital confinement.

Hospital room, hospital expenses, surgical fees, ambulance and other expenses will be assured for all family accidents or mishaps. In addition a special benefit allowance will be provided for maternity cases * * * and all at a price you can easily afford.

So, DON'T WORRY about illness and accidents in YOUR family. Your peace of mind alone is worth the few pennies this new policy will cost you.

(d) Pertaining to its "President's Bonus Plan," Form PB—

CTI's amazing new Hospital and Medical Expense Plan offers you and your entire family financial protection for accident, sickness, and childbirth * * * plus valuable benefits never before offered. Polio protection up to \$5,000. Pays full benefits regardless of other insurance you may now have. No medical examination necessary. Includes an optional clause giving you up to \$200 a month income. Contains an Incontestable Clause vitally important to you. "Increasing Benefits With Decreasing Cost" which simply means premiums are reduced up to 25% for non-claimants. Your policy is good anywhere in the world.

DOCTOR & SURGICAL BILLS

You choose your own doctor and surgeon. We pay up to \$150 doctor's fees for office, home or hospital calls. We pay up to \$525 for each surgical operation.

HOSPITAL BILLS

An identification card issued by the Company admits you to any hospital of your choice. Pays up to \$20 a day for as long as 200 days

FIRST AID BENEFITS

Pays benefits for doctor's fee for minor injuries not requiring hospital confinement.

OTHER BENEFITS

Cash for the added expenses of X-Rays, Anaesthesia, Laboratory Service, Drugs, Oxygen, Blood, Transfusions, Iron Lung, Operating Room, Nurses and other costly hospital fees.

PAR. 6. Through the use of said statements and representations, and others of similar import and meaning not specifically set out herein, the respondent represents and has represented, directly or by implication with respect to said policies of insurance, as follows:

(1) That the indemnification provided by its said policies against loss caused by accident or sickness may be continued to the age of 80 or may be continued indefinitely at the option of the insured.

That the indemnification provided by all of its said policies is not subject to cancellation by the respondent and that the insured is assured of the continuance of the indemnification provided by said policies by the payment of renewal premiums at the expiration of the term covered by each premium.

(2) That the indemnification provided by its said policies against loss from sickness is broad and all inclusive and provides indemnification against loss caused by any and all sicknesses with no exclusions.

That the indemnification provided by its said policies provides full indemnification for all types of operations and not merely those specifically listed in the surgical schedule found in said policies and that surgical benefits are paid in full for female conditions, occasioning an operation or operations, and that said policies do not limit the in-

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demnification provided the insured regardless of the number of days spent in the hospital in any one year and that there is no limit to the number of operations which may be performed and for which the respondent is liable during any disability or any period of time.

(3) That the indemnification provided by its said policies against loss from accident is broad and all inclusive and provides indemnification against loss caused by any and all accidents with the sole exception of those caused by Military and Naval service and non-commercial aviation.

(4) That the indemnification provided by its said policies against loss caused by accidents or sicknesses will indemnify the insured thereunder completely and fully for any and all losses as a result of any or all accidents or sicknesses.

That the indemnification provided by all of its said policies will pay for or will indemnify the insured thereunder fully for hospital rooms, any other hospital extras, complete ambulance service, surgeon fees up to \$525, all doctor fees, whether in a hospital or in a doctor's office or clinic, and complete payment for maternity costs.

That said policies will provide an income up to \$200 a month to any insured thereunder.

PAR. 7. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact:

(1) The indemnification provided by all of the respondent's said policies against loss caused by accidents or sicknesses, as the case may be, cannot be continued indefinitely or for any particular period of time at the option of the insured, but on the contrary, said policies are renewable at the option of the respondent only, and with the certain exceptions later referred to may be canceled or terminated by the respondent at the end of any premium payment period for any reason or for no reason at all and the indemnification against loss caused by one or more of certain specific accidents enumerated in said policies automatically terminate said policies and all further liability ceases.

Respondent's "Ten-Year Bonus Policy," Form TYB, and "Expansion Refund Disability Policy," Form ERD-2M, and "President's Bonus Policy," Form PB, all contain the following provision:

This policy is guaranteed renewable during any period the insured is qualified for the special ten-year cash bonus. The payment of such bonus matures and terminates this policy. The renewal of this policy on the next succeeding premium due date following a claim payment shall be at the option of the company.

(2) The indemnification provided by all of the respondent's said policies against loss from sickness is not broad and all inclusive and

does not provide indemnification against loss caused by any and all sicknesses with no exclusions.

The indemnification, provided by the respondent by all of its said policies, does not provide full indemnification for all types of operations and does not provide full indemnification for all female conditions requiring an operation or operations and said policies limit the indemnification provided the insured thereunder to a definite number of days spent in a hospital or hospitals in any one year and there is a limit to the number of operations which may be performed and for which the respondent is liable during any disability or any period of time.

(a) Respondent's "Ten-Year Bonus Policy," Form TYB, provides as follows:

PART C. MONTHLY ACCIDENT BENEFIT

Total Disability.—The Company will pay a monthly income for the period of disability at the rate specified under Part A1 if "such injury" alone shall within two weeks from the date of accident, wholly and continuously disable and prevent the Insured from performing any and every duty pertaining to his business or occupation.

Partial Disability.—The Company will pay an income, for a period of disability not exceeding one month, at one-half the rate specified under Part A1 if "such injury" shall not, within two weeks from date of the accident wholly disable the Insured, but shall within ninety days thereafter disable him, or shall, commencing on the date of the accident or immediately following total loss of time, prevent the Insured from performing one or more important duties pertaining to his business or occupation.

The total amount payable under this Part C for any one accident shall not exceed the Principal Sum, and no benefits shall be paid for the first week of disability resulting from any accident causing any loss specified in Part G, nor for any time the Insured is not under the regular attendance of a legally qualified physician or surgeon.

PART D. MONTHLY SICKNESS BENEFIT

Confining Sickness.—The Company will pay a monthly income for the period of disability at the rate specified under Part A2 if "such sickness" shall wholly and continuously disable and prevent the Insured from performing any and every duty pertaining to his business or occupation, and shall necessarily and continuously confine him within the house.

Convalescence Clause.—The Company will pay an income, for a period of disability not exceeding one month, at the rate specified under Part A2 if "such sickness" shall wholly and continuously disable and prevent the Insured from performing any and every duty pertaining to his business or occupation, by reason of any non-confining sickness or immediately following a confining sickness.

The total amount payable under this Part D for any one sickness shall not exceed the Principal Sum, and no benefits shall be paid for the first week of disability. The benefits provided under this Part C shall not be paid for any disability resulting from any accident causing any loss specified in Part G, nor

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for any time the Insured is not under the regular attendance of a legally qualified physician or surgeon.

PART E. HOSPITAL BENEFIT

If the Insured is necessarily and continuously confined in a licensed hospital, solely on account of "such injury" or "such sickness," the Company will pay from the first day of such confinement, in lieu of the monthly accident or sickness benefit, the monthly Hospital Benefit at the rate per month specified in Part A3, for a period not to exceed one month. If hospital confinement lasts longer than one month, benefits thereafter shall be payable at the regular monthly rate specified in Part A1 or A2. If hospital expenses are insured under Workmen's Compensation or Occupational Disease Law, or if they are covered or paid by the Veterans' Administration or some governmental body, then the benefits shall be payable at the regular monthly rate specified under Parts A1 or A2. The total amount of all payments shall not exceed the Principal Sum.

PART F. NURSE BENEFIT

If the Insured is necessarily attended by a graduate nurse, solely on account of "such injury" or "such sickness," the claim is not made for benefit under Part E, the Company will pay from the first day of such attendance, in lieu of the monthly accident or sickness benefit, at the rate of the monthly Nurse Benefit specified in Part A4 for a period not to exceed one month. If the attendance by a graduate nurse shall continue for more than one month, benefits thereafter shall be payable at the regular monthly rate specified in Parts A1 or A2. If the expense of a graduate nurse is insured under Workman's Compensation or Occupational Disease Law, or is covered or paid by the Veterans' Administration or some governmental body, then the benefits shall be payable at the regular monthly rate specified under Parts A1 or A2. The total amount of all payments shall not exceed the Principal Sum.

PART G. DEATH, DISMEMBERMENT OR LOSS OF SIGHT

If any one of the following specific losses shall result wholly from "such injury" within ninety days from the time of the accident the Company will pay:

FOR LOSS OF

Life.....	THE AMOUNT SPECIFIED UNDER PART A6
Both Hands or Both Feet.....	THE PRINCIPAL SUM
Entire Sight of Both Eyes.....	THE PRINCIPAL SUM
Either Hand or Either Foot.....	ONE-HALF THE PRINCIPAL SUM
Sight of One Eye.....	ONE-FOURTH THE PRINCIPAL SUM

Payment of any of the above losses, specified in this Part G, shall terminate this policy and all liability hereunder. Loss of hands or feet means loss by severance at or above the wrist or ankle joint, and loss of sight means entire and irrevocable loss of sight.

(b) Respondent's "Expansion Refund Disability Policy," Form ERD, respondent's "President's Bonus Plan," Form PB, and respondent's "Premium Reduction Disability Policy," Form R41, all contain provisions identical with or substantially similar to those provisions quoted above from the respondent's "Ten-year Bonus Policy," Form TYB.

(c) Respondent's "Hospital and Surgical Expense Policy," Form HAS46 and "Family Medical or Surgical Policy," Form MES40 provide, among other things, as follows:

The Insuring Clause.—(Company) HEREBY INSURES the Applicant first named in the attached application A, hereinafter called the Insured, and will pay, subject to all provisions and limitations herein contained, the benefits provided herein for expense of hospital confinement, commencing while this policy is in force, and other expenses actually incurred while this policy is in force on account of the Insured and the dependent members of the Insured's family, if any, named in said application (all of whom, including the Insured are hereinafter called the Family Group).

(b) Resulting from sickness or disease, the cause of which originates while this policy is in force, and more than fifteen days after the effective date thereof, hereinafter referred to as "such sickness"; and

(c) After ten months from the effective date hereof, resulting from childbirth, pregnancy or miscarriage.

In addition, respondent's "Hospital and Surgical Expense Policy," Form HAS46 provides as follows:

PART 1. HOSPITAL EXPENSE BENEFITS

If the Insured or any member of the Family Group shall be necessarily confined within a recognized hospital as a resident bed patient on account of "such sickness," or treated in a recognized hospital for "such injury," upon the advice of, and regularly attended by, a legally qualified physician or surgeon, other than the Insured or member of the Family Group, the Company will pay the Insured (or hospital if authorized by the Insured to do so) for the following items of hospital expense actually incurred by the Insured, or member of the Family Group, but not to exceed the amount stated below:

Hospital Room.

Including meals and general nursing care, not to exceed the Daily Indemnity set forth in Schedule A on the first page hereof, and not to exceed one hundred days for any one accident or sickness. The maximum period that the Daily Indemnity will be payable for each accident or sickness will be increased by twenty-five days for each full year that this policy is maintained in continuous force, until a maximum period of two hundred days has been reached.

Thereafter, this same policy provides that the respondent will indemnify the insured for the regular and customary charges made by the hospital for operating room charges, surgical dressings, hypodermics, plaster casts and splints, and specific payments, the amount of which depends upon the daily indemnity granted by such policy for anaesthesia, X-ray, laboratory service, drugs, oxygen, blood transfusion, and iron lung service.

The indemnity provided by this policy for childbirth benefits requires that the policy have been in force not less than ten months in order to obtain benefits and then will pay benefits equal to ten times the daily indemnity of said policy.

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The indemnification for ambulance costs is limited to \$25 if such ambulance is not confined to the corporate limits of a city.

The indemnity provided by this policy for tonsillectomy and adenoidectomy requires that the policy have been in force for at least six months and that respondent will pay the insured a sum equal to five times the daily indemnity of the policy and that "such payment shall be in lieu of any and all other benefits under this policy on account of such operation."

This said policy sets forth a schedule of maximum payments payable as indemnity for the expense of specific operations.

This policy provides for the following limitations and exclusions:

(1) This policy does not cover diagnosis, examinations or observations not due to actual illness or injury; rest cure; mental derangements or nervous disorders; dental treatment; injury or sickness caused by war or any act of war, declared or undeclared; alcoholism or hospital confinement in a hospital operated by the Veterans Administration.

(2) Tuberculosis, cancer, diseases of the heart or circulatory system, abdominal hernia or rupture, diseases of the generative organs, appendicitis, thyroidectomy, stomach ulcers, hemorrhoids, tonsillectomy, adenoidectomy or diseases of the gall bladder shall be covered under this policy only if hospital confinement begins after this policy has been in force six months or more.

Respondent's "Family Medical or Surgical Policy," Form MES40, in addition to the provisions from such policy quoted above contains the following provisions:

PART I. MEDICAL EXPENSE

If any member of the Family Group shall necessarily be treated by a duly licensed physician or surgeon for bodily injuries or sickness as described in the insuring clause on the first page hereof the Company will pay toward the expense of such medical treatments, including the first treatment for bodily injuries and beginning after the second treatment for sickness, up to Three Dollars (\$3.00) per treatment at home and Two Dollars (\$2.00) per treatment at the hospital or the doctor's office (limited in any case to one treatment per day) not to exceed One Hundred Fifty Dollars (\$150.00) as the result of any one accident or any one sickness.

PART II. MISCELLANEOUS EXPENSE

If any member of the Family Group shall necessarily incur miscellaneous expense for bodily injuries or sickness as described in the insuring clause on the first page hereof the Company will pay the Insured the expense actually incurred as follows:

(a) X-ray examinations, electrocardiograms or metabolism tests not to exceed Fifteen Dollars (\$15.00) as a result of any one accident or sickness.

(b) Use of oxygen not to exceed Fifteen Dollars (\$15.00) as a result of any one accident or sickness.

(c) Use of Iron Lung not to exceed Two Hundred Fifty Dollars (\$250.00) as a result of any one accident or sickness.

PART III. MATERNITY EXPENSE

If any member of the Family Group shall incur medical, surgical, or miscellaneous expenses due to childbirth, abortion, miscarriage, or any other complication of pregnancy while this policy is in force and not less than ten (10) months after its date of issue the Company will pay to the Insured the benefits provided herein for such expense but not to exceed Fifty Dollars (\$50.00) as a result of any one pregnancy.

PART IV. SURGICAL EXPENSE

If any member of the Family Group by reason of injury or sickness as described in the insuring clause on the first page hereof, undergoes an operation named in the Schedule of Operations appearing herein, and such operation is performed by a duly licensed surgeon, the Company will pay the surgeon's fee up to the amount specified in the Schedule for such operation. If more than one operation be performed on account of injuries sustained in any one accident or on account of any one illness, the limit of payment shall be the largest sum specified in the schedule for any one of the operations so performed.

PART VI. EXCEPTIONS

This insurance does not extend to or cover loss due to (a) venereal disease or syphilis; (b) mental derangement or nervous disorders; (c) dental operations or dental treatment; (d) simple rest cure; (e) war or any act of war; (f) childbirth, miscarriage, abortion, or any other complication of pregnancy except as provided, in Part III under the heading "Maternity Expense"; (g) abdominal hernia, tuberculosis or heart disease unless the loss occurs not less than six months after the date of issue of this policy; (h) surgical operations caused by tonsillitis, appendicitis or diseases of the generative organs unless the loss occurs not less than six months after the date of issue of this policy; (i) examinations not due to actual illness or injury.

Benefits provided by this policy are payable under Part L or Part IV, whichever provides the greater benefit, but not under both Parts for the same injury or illness.

In addition this same policy sets forth a schedule of operations including a maximum benefit which will be paid by the respondent for surgeon fees for specific operations.

(3) The indemnification provided by the respondent by all its said policies against loss from accident is not broad and all inclusive and does not provide indemnification to the insured against loss caused by any and all accidents with the sole exception of those caused by Military and Naval service and non-commercial aviation. In addition to the provisions of the respondent's various contracts quoted above in subparagraph 2 of Paragraph Seven including all the limitations and exceptions pertaining to respondent's liability thereunder, respondent's "Accident Policy," Form ACH37, provides in part as follows:

PART C. MONTHLY ACCIDENT BENEFIT

Total Accident Disability.—If "such injury" shall within thirty days from the date of the accident wholly and continuously disable the Insured from per-

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forming each and every duty pertaining to any business or occupation, the Company will pay for the period of such disability, beginning with the first day of disability, but not to exceed a total of sixty consecutive months, indemnity at the rate of the Monthly Accident Benefit specified in the schedule of Benefits under Part A1.

Partial Accident Disability.—If “such injury” shall, from the date of the accident, or immediately following a period of total accident disability, wholly and continuously disable the Insured from performing one or more important duties pertaining to his business or occupation, the Company will pay for the period of such partial disability, beginning with the first day of disability, indemnity at one-half the rate of the Monthly Accident Benefit, specified in the Schedule of Benefits under Part A1, but not to exceed a total of three months.

PART J. REDUCTIONS, LIMITATIONS AND EXCEPTIONS

* * * * *

3. In event of any disability caused by hernia or injured back, the amount payable under all parts of this policy shall be limited to the amount provided herein for two months' total accident disability.

4. All accident benefits specified in this policy shall be reduced one-half if loss arises or is caused by the performance of the duties of the Insured's occupation, as stated in the application for this policy, or by the performance of the duties of an occupation deemed by the Company to be equally hazardous.”

(4) The indemnification provided by the respondent by all of its said policies against loss caused by accidents or sicknesses will not indemnify the insured thereunder completely and fully for any and all losses as a result of any and all sicknesses or accidents.

The indemnification provided by all of said policies will not pay for nor indemnify the insured thereunder fully for hospital rooms, any other hospital extras, complete ambulance service, surgeon's fees up to \$525 for all operations, all doctors fees whether in the hospital or doctor's office or clinic and complete payment for maternity cost, and said policies will not provide an income up to \$200 a month to any insured thereunder.

(a) The provisions of respondent's “Family Medical or Surgical Policy,” Form MES40, quoted above, in subparagraph (2), provides for numerous exceptions and limitations to the indemnity provided by the respondent pursuant to such agreements.

(b) The provisions of respondent's “Hospital and Surgical Policy,” Form HAS46, quoted above in subparagraph (2) and described therein provides for a number of exceptions and limitations upon the indemnity provided by the respondent by said policies.

(c) The provisions of respondent's “President's Bonus Policy,” Form PB, described and quoted from above in subparagraph (2), provides for numerous limitations and exceptions from the indemnification provided by the respondent by such contracts. Respondent's “President's Bonus Policy,” in addition to continuing provisions substantially identical to those quoted above in subparagraph 2 (a) from respondent's “Ten-Year Bonus Policy,” Form TYB, contains the following provisions:

PART L. REDUCTIONS, LIMITATIONS, AND EXCEPTIONS

* * * * *

3. The insurance herein shall cover diseases peculiar to women, but not sickness which is complicated with, or caused by pregnancy or childbirth.

4. The Insured shall not be entitled to benefits for two or more disabilities at one and the same time, resulting respectively from accident and sickness; however, the Insured shall receive the largest benefit applicable thereto.

5. Hernia and injured back shall be covered only under the sickness clause of this policy, regardless of whether caused by accidental bodily injury.

PAR. 8. The use by the respondent of the aforesaid false and misleading statements and representations with respect to the terms and conditions of its said policies and its failure to reveal the limitations of said coverage found in said policies have had and now have the tendency and capacity to mislead and deceive and have misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid statements and representations were and are true and to induce said portion of the purchasing public to purchase insurance coverage from the respondent because of said erroneous and mistaken belief.

The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

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 January 27, 1955, the initial decision in the instant matter of hearing examiner Abner E. Lipscomb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The Federal Trade Commission, on October 14, 1954, issued its complaint in this proceeding, charging the respondent with the dissemination, during the two years last past, of false, misleading and deceptive advertisements concerning the terms and conditions of various of its contracts of insurance of the type known as "accident and health policies" or "accident and sickness policies," and its failure to reveal the limitations of coverage of such policies, in violation of the provisions of the Federal Trade Commission Act.

Thereafter, on December 21, 1954, counsel in this proceeding re-

requested a substitution of hearing examiners for the reason that Hearing Examiner William L. Pack, heretofore duly appointed to preside herein, was temporarily unavailable. Simultaneously counsel consented to the substitution of Hearing Examiner Abner E. Lipscomb for Hearing Examiner Pack, which substitution was forthwith effectuated. The respondent then entered into an agreement with counsel supporting the complaint, and, pursuant thereto, submitted to Hearing Examiner Lipscomb a Stipulation For Consent Order disposing of all the issues in this proceeding. Subsequent thereto, counsel submitted an amendment to the stipulation, which was duly received by the hearing examiner.

The respondent is identified in the stipulation as a corporation organized under and existing by virtue of the laws of the State of Utah, with its office and principal place of business located at 32 Exchange Place, Salt Lake City, Utah.

Respondent admits all the jurisdictional allegations set forth in the complaint, and agrees that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance therewith. It expressly waives the filing of an answer, hearing before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other proceedings before the hearing examiner or the Commission to which it may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

It is agreed by respondent that the order contained in the stipulation shall have the same force and effect as if made after full hearing, presentation of evidence and findings and conclusions thereon. Respondent specifically waives any and all right, power or privilege to challenge or contest the validity of the order entered in accordance with its stipulation. It also agrees that said Stipulation For Consent Order, together with the complaint, shall constitute the entire record in this proceeding, upon which the initial decision shall be based. The stipulation sets forth that the complaint herein may be used in construing the terms of the aforesaid order, which may be altered, modified or set aside in the manner provided by statute for orders of the Commission.

The stipulation further provides that the signing of the Stipulation For Consent Order is for settlement purposes only, and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint.

In view of the facts outlined above, and the further fact that the order embodied in said stipulation is, in substance, the order accom-

panying the complaint, and is adequate to forbid all the acts and practices charged therein, it appears that such order will safeguard the public interest to the same extent as could be accomplished by full hearing and all other adjudicative proceedings waived in said stipulation. Accordingly, in consonance with the terms of the aforesaid stipulation, the hearing examiner accepts the Stipulation For Consent Order submitted herein, together with the amendment thereto; finds that this proceeding is in the public interest, and issues the following order:

It is ordered, That the Commercial Travelers Insurance Company, a corporation, and its officers, 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 any accident, health, hospital or surgical insurance policy, do forthwith cease and desist from:

(a) Representing, directly or by implication:

(1) That said insurance policy may be continued in effect indefinitely or for any period of time, when, in fact, said policy provides that it may be canceled by respondent or terminated under any circumstances over which insured has no control, during the period of time represented;

(2) That said policy provides indemnification to insured in cases of sickness or accident generally or in any or all cases of sickness or accident, when such is not the fact;

(3) That said policy provides indemnification for hospital room and board, hospital extras, ambulance service, surgeon's fees, doctor's fees, additional doctor expenses, delivery fees in maternity cases or for any other medical, surgical or hospital expenses in any or all cases which are in excess of what is actually provided;

(4) That said policy will pay in full or in any specified amount or will pay up to any specified amount for any medical, surgical, or hospital service unless the policy provides that the actual cost to the insured for that service will be paid in all cases up to the amount represented.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That respondent Commercial Travelers Insurance Company, a corporation, 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 [as required by said declaratory decision and order of January 27, 1955].

IN THE MATTER OF
NOVELTY KNITTING MILLS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND OF THE WOOL PRODUCTS LABELING
ACT

Docket 6171. Complaint, Feb. 11, 1954—Decision, Jan. 29, 1955

Consent order requiring a manufacturer of wool products in Philadelphia, Pa., to cease violating the Wool Products Labeling Act through falsely tagging wool products as to the character and proportion of their constituent fibers, failing to label products with the information required by the Act, and furnishing false guaranties; and to cease violating the Federal Trade Commission Act through labeling as "100% Cashmere", etc., men's sweaters which were composed of a blend of cashmere and wool of the sheep.

Before *Mr. J. Earl Cox* and *Mr. Loren H. Laughlin*, hearing examiners.

Mr. George E. Steinmetz for the Commission.

Sterling, Magaziner, Stern & Levy, of Philadelphia, Pa., 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 January 29, 1955, the initial decision in the instant matter of hearing examiner Loren H. Laughlin, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (hereinafter referred to as the Commission) on February 11, 1954, issued its complaint herein under the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, against the above-named corporate respondent and also against the now deceased respondent Martin J. Feld, both individually and as an officer of said corporate respondent, and doing business as Ascot Knitwear Company, charging them and each of them in several particulars in substance with engaging in unfair and deceptive acts and practices and unfair methods of competition in violation of the provisions of said Acts and of the Rules and Regulations of the Commission promulgated under said Wool Products Labeling Act by misbranding, advertising and selling in commerce certain wool prod-