

Decision

IN THE MATTER OF
TRI-STATE PRINTERS, INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT*Docket 6678. Complaint, Nov. 16, 1956—Decision, May 9, 1957*

Order requiring publishers in Bucklin, Mo.—who invited the help of women's church, fraternal, patriotic, school, etc., organizations in obtaining advertising from local merchants in a community for a proposed "cook book", "date book", etc., in return for a free supply of the books which they could then sell to raise money for their club—to cease representing that the publication was "free" when transportation and other costs were required to be paid; delivering to the sponsoring groups publications inferior to or different from samples shown when contracts were signed; representing that delivery would be made within a stated period when actually contracts remained unperformed for several years; and using the names or references of Better Business Bureaus, banks, etc., as endorsement of their business standing and integrity when not genuine or fully authorized, among other unfair acts and practices.

Mr. Charles S. Cox for the Commission.

Mr. George A. King and *Mr. Willard C. Kienast*, respondents, *pro se* individually and as officers of respondent Tri-State Printers, Inc., a corporation, and also for said corporate respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding involves alleged violations by respondents of the Federal Trade Commission Act. It is charged in the complaint, in substance, that the respondents have induced numerous religious, fraternal, patriotic and other community groups throughout the entire country to enter into contracts with respondents whereby the members of such community groups assist the respondents in selling advertising to local merchants. This advertising is to appear in certain publications produced by the respondents, such as recipe books, calendars and the like. The consideration for such assistance is that such a community group is to be furnished a certain number of free copies of respondents' particular publication, which the group desires, and in which the advertisements are to be published. The group is then at liberty to sell such books at a price usually suggested at \$1.00 per copy, and to retain the proceeds from the sale of such books for the particular purposes and benefits of the group. It is alleged, however, either that respondents make no deliveries at all of such publications after receiving the

money from the merchants for their advertising, or if delivery of such books is made, it is long delayed beyond the agreed time of delivery, within 30 to 90 days, and the publications as delivered are defective in workmanship and material and far inferior to the samples whereon the contracts and the procurement of the advertising of the merchants were predicated. Furthermore, it is charged that respondents' publications are never delivered until the intervention of Better Business Bureaus and the like occurs. It is pleaded that such acts and practices of respondents constitute both unfair methods of competition in commerce and also unfair or deceptive acts or practices in commerce, all in violation of the Federal Trade Commission Act.

This initial decision finds generally that the material allegations of the complaint have been fully sustained by the evidence in the record and that by their said unfair methods of competition and unfair and deceptive acts or practices in commerce the respondents have each violated the Federal Trade Commission Act in the particulars charged in the complaint. A cease and desist order appropriate to the findings made and conclusions drawn herein is issued herewith.

This proceeding was instituted on November 16, 1956, by the filing of a complaint against respondents. After lawful service of process upon them, respondents on December 17, 1956, filed with the Commission a formal letter which contained various admissions and denials of the allegations of the complaint and also set forth matters purporting to be in excuse or justification of respondents' conduct. This letter was treated by the Commission as an answer to the complaint and ordered filed as such. Upon the issues joined by the complaint and respondents' said letter so treated and filed as answer, and upon due notice, numerous hearings were held in several states on various dates commencing on February 18, 1957, and ending on March 1, 1957. Said hearings were held in Columbus, Ohio; Indianapolis, Indiana; Springfield, Illinois; Brookfield and Bucklin, Missouri; Waterloo and Ottumwa, Iowa; and Ruston, Louisiana. At such hearings held elsewhere than in Missouri, numerous officers and members of various religious, fraternal, patriotic and other community groups from small towns or communities gave detailed testimony, supported by numerous letters and other relevant documentary exhibits. This evidence fully sustains the allegations of the complaint as to the respondents' sharp, deceptive and unfair methods of business operations. This evidence disclosed breaches by respondents of their respective agreements with such groups of such character as to evidence a willful, arrogant and

conscienceless attitude on the part of respondents with reference to keeping their contracts with their customers. At the two hearings which were held in Missouri the testimony of the respondents King and Kienast, and also that of officials of the Bucklin State Bank and the Bucklin Chamber of Commerce were received. On February 21, 1957, at Brookfield, Missouri, after being fully advised of their rights in such regards, respondents submitted their own evidence and then rested their defense. It is of special note that at this hearing the Attorney General of Missouri had a member of his official staff present as an observer, although he properly took no part in the proceeding.

The Commission's case in chief was not finally rested, however, until March 1, 1957, at Ruston, Louisiana. The case was thereupon closed for the taking of evidence. Respondents not having requested any proposed findings, conclusions and order and Commission's counsel having withdrawn his earlier request for the same and submitted the case on the record, the case was formally closed and this initial decision has been promptly rendered in view of the great and wide-spread public interest involved and the necessity for a prompt decision herein in order that further fraudulent, unfair and deceptive acts and practices of the respondents along the lines hereinafter found to be unlawful may not further deceive, mislead and defraud the public to its substantial damage, and also further unfairly prejudice, impair and undermine the public confidence in the business of respondents' competitors.

The allegations of the complaint, in addition to those relating to the corporate and official character of the respondents, and the nature and extent of their business in competition with others engaged in similar business, charge in substance, that respondents through salesmen have contracted with certain community groups, usually located in small towns or communities, that a specified number of free copies of certain books or other publications of respondents will be furnished to such groups on condition that the group will sponsor, and one or more members of such a group will personally aid respondents' sales persons in soliciting local businessmen for advertisements to be included in such publications; that the respondents will receive all money collected for advertising sold but such local group is authorized to sell the said free copies of such books or other publications to be furnished it by respondents, and to retain the proceeds thereof for the organization's own uses; that the respondents' products, when actually delivered, are far inferior in quality to those samples which were exhibited during solicitation; that delivery thereof is never made within 30, 60 or

90 days as variously promised by respondents' salesmen and not even for many months or even for years thereafter. Various other false and misleading misrepresentations are also alleged to have been made by respondents in soliciting the members of such sponsoring community groups in order to effect the contracts made with such groups.

The respondents, in their said letter so treated as an answer, while admitting the allegations of the complaint with respect to the corporate capacity of the corporate respondent and the official position held herein by the other respondents, and the general nature, extent and competitive character of their business, however, do contest and deny generally the complaint's allegations pertaining to the alleged false and misleading methods used by respondents' salesmen in procuring business for it, although they admit there were many material defects in the products delivered and that delays of from one to two years occurred in the delivery thereof. And respondents further plead in substance that they are still endeavoring to secure necessary materials to complete and ship all their contracted publications to the purchasers thereof to bring their business to a completely current basis during the year 1957, admitting they are behind in fulfilling many of the contracts, and further complaining that they have lost money in their business for some two years past.

At the hearing in Brookfield, Missouri, the respondents verbally advanced and presented another, and certainly a purely wallydraggle defense or contention, which in effect is that no order should be issued herein by the Federal Trade Commission as it might endanger or destroy the opportunity that respondents now have of obtaining a substantial loan of money by the Small Business Administration of the United States Government, application for which is currently pending before the officials of such Administration, and which loan respondents frankly admit is vitally needed before they can comply with at least some 250 outstanding contracts of respondents which are now substantially in default. This defense the hearing examiner considers to be wholly without legal or factual merit. It is beyond the authority and function of this hearing examiner to determine matters of policy for even the Federal Trade Commission, let alone that of another Federal agency, although the examiner feels that he would be most derelict in high duty if he did not point out that no feeling of regret or contrition has been expressed or has been apparent during this proceeding on the part of the individual respondents by reason of their conduct in these transactions insofar as the grave financial injury, as well as the immeasur-

able inconvenience and humiliation to respondents' customers is concerned. That the Government should lend public money in order to continue and perpetuate the said conduct of respondents is too unbelievably and shockingly incongruous for apt expression herein.

The evidence presented in support of the complaint was chiefly that of representatives of women's groups. A total of some 38 women, as well as the ministers of three different denominations and one church layman, gave material testimony at the several hearings which were held. The evidence clearly indicates that respondents' sales representatives deliberately selected women's groups to sponsor their sale of advertising as hereinafter set forth, although the pastor of a church or some male officer of a predominantly women's organization might be initially interviewed in order to contact the female members of such a group. These various groups, whose chief officers or other officials and members testified to the respondents' unfair practices in the course of this proceeding, were as follows: Advent Christian Church, of Stantontown, Ohio; Howard, Ohio, Church of Christ, and its women's organization, known as the Willing Workers; the Methodist Church of Middleburg, Ohio, and its Women's Society of Christian Service; the University Community Church, of Woodstock, Ohio, and its Women's Alliance; the Methodist Church, of Tipp City, Ohio, and its Women's Society of Christian Service; Charity Rebekah Lodge No. 52, of Waldron, Indiana; the Christian Church of Pittsboro, Indiana, and its Young Adults Class; the Boggstown, Indiana, Parent-Teachers Association; the North Christian Church, of Advance, Indiana; the Carmel, Indiana, Methodist Church and its Methodist Youth Fellowship; the Union Chapel, Indiana, Methodist Church, and its Women's Society of Christian Service; the Morton, Indiana Methodist Church; the Matthews, Indiana, Methodist Church, and its Church Choir; the Women's Auxiliary of Post 83, AMVETS, of Sherman, Illinois; Eastern Star Lodge No. 396, of Mason City, Illinois; the Baptist Church, of Girard, Illinois, and its Ruth Class; the Methodist Church, of Whitten, Iowa, and its Women's Society of Christian Service; the Parent-Teachers Association, of Central City, Iowa, and its "Band Boosters Club"; the St. Girard Study Club, of the St. Girard's Roman Catholic Church, of Dyersville, Iowa; the Christian Church, of Garwin, Iowa, and its Women's Fellowship; the American Legion Auxiliary No. 543, of Bristow, Iowa; the AMVETS Auxiliary, of Aplington, Iowa; the Royal Neighbors Lodge, of Powersville, Iowa; the American Legion Auxiliary, of Clarksville, Iowa; the Rebekah Lodge, of Kalona, Iowa; the Mt. Zion Methodist Church of Libertyville, Iowa, and its

Methodist Youth Fellowship; the American Legion Auxiliary of Parnell, Iowa; the Assembly of God Church, of Ruston, Louisiana, and its Women's Missionary Council.

The hearing examiner has given full, careful and impartial consideration to all the evidence presented and to the fair and reasonable inferences arising therefrom, as well as to any and all facts pleaded in the complaint which are admitted by the respondents' letter treated and filed as their answer and to all additional statements set out in such answer relating to respondents' methods of doing business with the public and to the fact that they have several business competitors in the same or similar lines of business. Upon the whole record thus considered, it is found that the complaint's material allegations are each and all established by a preponderance of the evidence, the examiner specifically finding as follows:

Prior to 1950 each of the individual respondents, George A. King, and William C. Kienast had been a salesman, for some three years and five years, respectively, for Walsworth Bros., who are offset lithographers and printers, located in Marceline, Missouri, which concern was engaged in the business of publishing and selling college and high school annuals, calendars, recipe books and other similar products. Respondents King and Kienast then lived at Marceline and have lived there continuously until the present time. In about 1950, the said respondents decided to form a similar business of their own at the much smaller town of Bucklin, Missouri, some seven or eight miles distant from Marceline. Each invested about \$2500 of capital, and they also jointly procured some necessary credit with which to get the business under way. They then entered into this publishing business as a partnership, shortly thereafter incorporating the respondent Tri-State Printers, Inc., which is and has been since about 1951, a corporation organized, existing and doing business under the laws of the State of Missouri. The individual respondents George A. King and Willard C. Kienast are and have been ever since said corporation was formed, the president and treasurer respectively, thereof. All of said respondents have since said corporation always maintained their office and principal place of business at Bucklin, Missouri. The said individual respondents formulate, direct and control the acts, practices and policies of said corporate respondents and are and always have been the sole owners and stockholders thereof, except for a token share of stock apiece held by the wife of each of said individual respondents, which was evidently in order to qualify such wives as additional necessary officers of said corporation.

The respondents for some six years last past have been and now are engaged in the printing, sale and distribution of books and other publications, some of which are entitled or designated by them as "Cook Books," "Cookie Books," "Casserole Books," "Date Books," and "Calendars." They are also engaged in the publication, sale and distribution of high school and college annuals, and although such books are not involved directly in this proceeding, the time required to print them is falsely claimed by respondents to have some favorable bearing on their failure to furnish the purchasers of its other publications with the publications due them within a reasonable time after the consideration therefor has been received by respondents, which publications respondents' salesmen variously promised would be delivered within 30, 60 or 90 days of the respective dates of the numerous contracts in evidence herein.

In the course and conduct of their business, the respondents have caused and do cause their said printed products to be shipped from their place of business at Bucklin, Missouri, to numerous purchasers thereof located throughout the United States. Such purchasers and also many other purchasers who contracted for but never received such printed products aggregate many thousands of church, fraternal, patriotic and other community groups with almost countless numbers in numerous small communities in each of the 48 States of the United States.

Respondents are now and have been in substantial competition in commerce with other corporations, individuals and partnerships likewise engaged in the sale and distribution of books and publications of the same or similar nature, the respondents in their said answer having referred to and set forth as exhibits attached thereto certain documents prepared by some of their said competitors, to wit: Walsworth Bros., Marceline, Missouri; R. Wallace-Pischel, Box 143, Marceline, Missouri; Community Services, Inc., 408 East 22nd Street, Kansas City 8, Missouri; All-State Publishing Company, 13614 Ambaum Road, Seattle 66, Washington; and Community Advertising Co., 19507 S. Seattle, Washington, and also Box 235, Brookfield, Missouri.

Respondents King and Kienast, as already stated, began business together as a partnership but shortly thereafter incorporated their business as "Tri-State Printers, Inc." In order to develop substantial business from the very start, they employed a considerable number of salesmen, some forty of whom were apparently raided from the respondents' former employer, the said Walsworth Bros., of Marceline, Missouri. As an apparent inducement to these various salesmen to work for respondents, each was furnished an automobile

owned by respondents in order to cover his selected and assigned territories more completely and rapidly. But after a year or so of this wholly unsupervised vehicle operation had resulted in the cancellation of respondents' entire line of automobile liability insurance, they disposed of such vehicles by selling them under various contracts to the said agents. The respondents also continuously recruited other sales people from time to time by establishing temporary headquarters in various prominent hotels in large cities throughout the entire country and advertising in the newspapers in such cities for competent and experienced salesmen and saleswomen. As a result of such activities, a vast amount of contracted orders soon began to flow into the respondents' Bucklin office and printing plant from all the States of the Union.

The individual respondents' testimony reveals that they are proud of the fact that they themselves had trained all of the agents who had been employed by them, both the salesmen who obtained these contracts and the saleswomen who came later and solicited and collected for the advertisements. Respondents strenuously contended, however, that the contracts signed by the various sponsoring groups expressly provided that respondents were not bound by any representations of these agents such as those promising definite early dates of delivery of the publications contracted for. Respondents therefore insisted upon standing strictly on the provision of their contracts which stated that, "Any other agreement which does not appear on this agreement will not be binding." They also had some vanity in another clause they had inserted in their contracts, a so-called "liquidated damage" clause, whereby the sponsoring group became liable to the extent of \$50.00 if it failed to sponsor the requisite advertising by the local merchants. There was no corresponding clause, however, fixing damages to be paid by respondents in event they did not live up to their contracts and agreements, which as now appears, would have been a very wise, fair and reasonable provision. Inquiry by Commission's counsel at the hearing as to why the deliveries of the various publications were not promptly made in accordance with the agents' promises, that is within 30, 60 or 90 days of the date of the contract, as the case might be, met with the ready response, in essence, "You know how these salesmen are. They will just tell people anything to get their name on a contract." The respondents were also quite exultant that they had prepared their said one-sided contracts without legal assistance and had protected themselves against any such contingencies. Unfortunately for respondents, under the facts in this proceeding, which is brought solely in the public interest, they cannot

stand upon any technical niceties in clauses in their said self-prepared contract forms as a valid defense. It is now well established in this type of Federal Trade Commission proceeding that whatever rules of agency law might be applicable in ordinary legal actions, such rules do not apply here and respondents are liable for all promises and representations held out by their agents in the securing of signers to respondents' contracts. A principal may not reap the benefits while disclaiming his agent's authority. *International Art Co. v. F.T.C.* (C.C.A. 7, 1940), 109 F. 2d 396. This rule has been specifically applied to the sale of publications, even where the evidence clearly discloses that the salesmen have not been authorized to make misrepresentations. See *Parke, Austin & Lipscomb, Inc. v. F.T.C.* (C.C.A. 2, 1944), 142 F. 2d 437, 440, certiorari denied 323 U.S. 753. But here the respondents seem to have condoned the salesmen's acts, taking the view that it was somewhat ludicrous for the unsuspecting public to be so misled by respondents' salesmen when the foregoing provision in the contracts warned them against the salesmen's glib promises.

With salesmen continually getting contracts signed everywhere, the business rolled in to Bucklin so fast, in fact, that with respondents' limited equipment, and help and their lack of financial ability to purchase the necessary paper, ink and other materials, they were unable to take care of the orders with proper material and workmanship, or with due dispatch. But the respondents, nevertheless, continued to put more salespeople in the field to take many more orders, irrespective of respondents' knowledge that they could neither physically nor financially perform their existing contracts, let alone perform any new additional ones. It is true that respondents under various contracts had purchased offset printing machinery and equipment and under contract of purchase had acquired possession of a two-story building in Bucklin in which such printing equipment is set up and respondents' offices are maintained. They had also rented a storeroom in another building for storing printing supplies. With their plant and equipment they could undoubtedly have taken care of a reasonable number of orders expeditiously and properly, provided, of course, that they had used sound financial judgment, had maintained their credit with suppliers and had not squandered nearly all of the incoming receipts on unjustified high salaries and other allowances and expenses for themselves. The business could have been a legitimate business if it had been managed by respondents in a conservative, honest and businesslike manner, but as events proved out, it soon became a monumentally fraudulent racket due to the ways in which respondents operated

such business. The respondents had learned something about salesmanship but quite evidently had not learned that to run a successful, sound and permanent business requires more than that, it requires compliance with contracts and the delivery of the goods and rendition of the services the contracts call for. Respondents make no claim whatsoever that their inability to perform their contracts was due to their inability to procure labor or materials by reason of acts of God, war or national crisis. And the evidence shows that it was not a failure due to lack of customers.

Respondents' own Exhibit 1, its financial statement for 1955, indicates that the gross total income of the corporate respondent during the year 1955 was some \$500,000. Respondent Kienast also testified that such income in 1954 was also approximately \$500,000. The net worth of the corporation, according to respondents' financial statements, for 1955 and 1956, its Exhibits 1 and 2, is even now in excess of \$40,000. In 1956 respondents' Exhibit 2 indicates that the corporate income had fallen off about 50 per cent. This was and still is, indeed, a very substantial business in a small rural town of about 750 inhabitants. Very large salaries were paid by respondents King and Kienast to themselves. They also made substantial other allowances to themselves for the payment of respondents' stock in the respondent corporation. Personal income taken by said respondents from the business aggregated about \$35,000 annually. Substantial other expenditures in undisclosed amounts were also made out of corporate funds by both respondents King and Kienast in traveling about the country in the procurement of new sales people and the promotion of more business. These lavish expenditures in the early years of a newly established small business soon brought the firm's financial situation into such a precarious position that there were insufficient capital funds available to buy the necessary materials and pay the required labor to produce the large amount of back order publications which were already contracted to many sponsoring organizations unless respondents continued the taking of new orders from many other such sponsoring organizations. Both in their answer and in their testimony, respondents conceded that they are currently from one to two years behind with the delivery of many of the publications. Respondent King stated that while their business is approximately one-third school yearbooks and two-thirds other printed products, the company was not far behind on its yearbook orders but had unfilled back orders from many hundreds of groups for "Casserole Books," "Date Books" and "Cookie Books." Since respondents had collected all of their money in advance from the local merchants through the influence

and aid of the good and trusting women of the local sponsoring organizations, the respondents were in fact living "high on the hog" not on their honest earnings but entirely at the expense of their creditors and customers. This was unquestionably due to respondents' own large salaries, which were only slightly reduced by them in 1956 when rapidly falling receipts from incoming business made some reductions necessary, and also to other large personal expenses paid by respondents to themselves. Respondents' creditors and customers were under the circumstances completely at respondents' mercy—a commodity which the evidence clearly indicates neither of the respondents had in stock.

In their solicitation of business, respondents originally used as printed references on their contracts the names of the Bucklin State Bank, the Bucklin Chamber of Commerce and the Better Business Bureau (location unnamed). There never was a Better Business Bureau at Bucklin. It was admitted that while respondents had been members of the Kansas City, Missouri, Better Business Bureau for about one year, that organization upon learning of respondents' practice in such regard had immediately requested them to desist from using such name as a reference. Similarly, the witness Russell Stocksdales, Cashier of the Bucklin State Bank, while stating that the bank had at one time issued a general letter of recommendation of respondent corporation, testified it had later requested that the respondents withdraw the bank's name as such a reference because the respondents' failures to comply with their contracts had become quite embarrassing to the bank and had caused it much unfavorable publicity. Prior to that time the bank had received some thirty or more letters of complaint per month (See Commission's Exhibit 72), so many that its officers only answered such letters of inquiry where return postage was forwarded. The Bucklin Chamber of Commerce was a very small organization of about forty members with a very limited budget from its annual dues of \$5.00 per member, and its president, the local postmaster, and its secretary, the teller of the bank, testified that because of the volume of complaint letters without return postage received, the bank and the Chamber of Commerce had both been compelled to refer such letters of complaint to the respondents themselves for answers. The evidence discloses that respondents' answers to their customers were continued "stalls," and false excuses for delay and similar promises of future delivery.

While the respondents' method of doing business might vary slightly from community to community, the general pattern of its business as clearly disclosed by the positive, direct evidence in the record of numerous transactions was as follows: A salesman rep-

resenting respondents would come into a community, make inquiry as to a group, preferably a women's group, which might be interested in raising funds. Upon learning the name of such a group, sometimes through a local filling station or other place of business, or even through the pastor of a local church, the salesman would then proceed to the home of the lady who was the chief executive of such women's group and there impress upon her the ease with which her organization could raise a substantial amount of money by receiving "free" "cookie books," "calendars" or other publications of respondent which could be sold to friends and others. Taking into consideration the usual enthusiastic characteristics of the good women who always head up such organizations as women's church societies, fraternal orders, patriotic society auxiliaries and the like in the smaller communities throughout this country, it is not surprising that they were quickly "highly pressured" into signing a contract for their group with respondents, of which Commission's Exhibit Nos. 1 and 14 are perfect examples. If the good lady demurred on the basis that the group's other officers would also have to pass upon the contract, she was cleverly told that the respondents' sales representative was leaving town immediately and could not wait and that another similar group of women was eager to take advantage of such a fine contract and that only one such contract would be executed in that neighborhood. As the poet has said,

"What cannot a neat knave with a smooth tale
Make a woman believe."

She therefore signed the contract but the salesman was never seen or heard from again. Since these salesmen were paid at the straight rate of \$30.00 per contract obtained, it is understandable that they desired to be hastily on their way in order to obtain as many contracts as possible during any given day. Before leaving any lady who had signed a contract, however, the salesman impressed upon her for the first time the fact that her group would be liable to forfeit \$50.00 damages under the contract if they did not aid in getting the proposed advertising. A few days later a telephone call would come to this lady from Bucklin, Missouri, stating that on a certain date a female representative of respondent corporation would arrive at her home and that either she or some other woman in her local organization should be prepared to go with this female representative of respondents to solicit the local merchants. Such female representative did appear in due course and one or more local ladies went with her to the merchants of their vicinity where respondents' representative solicited ads for the cookie book, recipe

book or whatever publication had been contracted for on behalf of that sponsoring group. The ads were paid for in cash by the local merchants. In some cases such merchants made donations to the local group but refused to buy ads. The respondents' representative insisted on taking this money also and forwarding it with the other receipts of the day to respondents in Bucklin, Missouri. Since her earnings were largely on a commission basis, she naturally wanted the total collections to be as large as possible. And like the high pressure male salesman who had preceded her, this ad selling saleswoman then also disappeared, never to return again.

In their unholy greed to obtain for themselves even these charitable donations to the sponsoring groups, the respondents finally had printed into their allegedly "Copyright 1952" contract forms a clause that "All remuneration (sic) collected during solicitation by our authorized representative to be retained by Tri-State Printers, Inc." (See for example, Commission's Exhibit 1, executed November 8, 1954, and Exhibit 14, executed February 24, 1955). Their earlier, also allegedly "Copyright 1952" contract forms, printed in larger type, had not included the foregoing quoted language but only included collections for "advertising sold." (See for example, Exhibit 21, executed February 23, 1954, and Exhibit 27, executed August 26, 1954.) Evidently the respondents, again acting as their own lawyer, closed this leak in their financial pump, it may be inferred, by printing in this "takeall" clause because of some experiences wherein some local ladies going around with respondents' female representatives had stood their ground and insisted on keeping all of the pure donations for the local group and not treating them as "advertising sold" under the terms of the contract but in accordance with the stated intent of the givers of such donations. Under the circumstances, this change in the contract form constitutes another badge of fraud.

The proceeds of one day's canvassing for advertisements according to the evidence, might be as small as \$47.50, or might run to as much as four or five hundred dollars, dependent upon the enthusiasm with which the local merchants in a given case greeted the efforts of the particular sponsoring local women's group to raise money. Upon soliciting the contract from the head of the organization, as well as later in canvassing the merchants for advertising, the respondents' representatives showed samples of the particular publication covered by the contract, which samples were of good material, clear, legible and attractive printing and good workmanship and were bound with plastic bindings, which bindings facilitate the use of the publication in that it can be opened to any place

and remain open and flat upon the surface. This was of particular advantage in the case of "Cookie Books" and other recipe books as the cook can be busy with the ingredients going into the recipe, while carefully reading and following its instructions.

Respondents' representative who obtained the contract had promised that delivery of the books or other publications would be made within 30, 60 or 90 days from the date of the contract, which contract specifies the number of books or other publications to be supplied free to the sponsoring group. The contract forms used, while silent as to the time of publication and containing the specific clause purportedly invalidating the agreements not contained therein as above quoted, nevertheless do provide that any additional orders of the publications which the sponsoring group might desire must be placed within 90 days. This is, in a manner, a form of verification of the oral statement of the respondents' salesmen to the sponsoring group's signer of the contract that delivery will be made in 90 days and would no doubt be so construed by the average woman who hastily read it in the high pressure atmosphere created by respondents' salesmen.

Although the various groups which entered into contracts with respondents fully performed on their part by sending a representative or representatives to the local merchants with the saleswomen representing respondents, in numerous cases the respondents have utterly failed to comply with their part of the contract by supplying the group with any of the "free" publications referred to therein, either within the promised 30, 60 or 90 days period, or within long periods thereafter. Respondents admit what the evidence shows, that many shipments have not been made and are currently not being made until after the expiration of one or two or more years from the date of the contract, the evidence clearly disclosing that such contracts remain unperformed by respondents for several years, despite many requests from the sponsoring group.

The publications supplied by respondents to said sponsoring groups also have differed materially from, and are far inferior in many ways from the samples exhibited at the times of the signing of the contract and the procurement of the advertising. In many instances such publications are poorly stapled instead of being bound in plastic binders as promised. Respondents concede that they save an average cost of 6 cents per volume by stapling rather than by using the plastic binders shown by their representatives. The publications received are also printed on inferior paper with inferior material comprising the backs thereof and in many instances are printed in a faded, blurred or other illegible manner. In certain

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instances the names of the sponsoring organization are misprinted. Many of the publications received by various groups are so inferior as to be unfit for sale or even for use by its members, in at least one instance the testimony showing that the "Cookie Books" received wholly omitted certain indispensable ingredients from some purported cookie recipes therein, such as flour. In at least one instance the publications to which the organization was entitled were "free" "Cookie Books" but what it actually received and paid transportation for was a number of books entitled "Indiana History," a school examination book on such subject, which was compiled and printed by an entirely different publishing corporation than respondent and which was entirely worthless to the receiving group. The exhibition to purchasers of samples of merchandise of a kind and quality different from that actually delivered is an unfair and deceptive practice under the provisions of the Federal Trade Commission Act. *Consumers Home Equipment Co., et al. v. F.T.C.* (C.C.A. 7, 1947), 164 F. 2d 972, 973. Respondent accepted no blame for these defects and despite many letters of complaint after more than two years never have complied with their contract with this group (R. 124). In all instances the recipients of respondents' various publications had to pay their cost of transportation, which cost varied, usually running between \$1.00 and \$2.00, although such publications in all cases were to be furnished "free" to the sponsoring organization. Respondents again make the technical claim that their contracts do not provide "free" transportation, but only "free" publications, a matter which clearly is misleading to the public who read the contract.

The evidence, with its many types of badges of fraud, so frequently repeated, unquestionably leads to the conclusion that the respondents by their reckless continuance of their high pressure sales methods upon additional local groups and their local merchants when they actually knew that they could not make reasonable or proper delivery of the many publications already sold as they had promised, evidences not only a general lack of business integrity, but also emphasizes an utter disregard, disrespect and contempt by respondents for the many fine women of the almost countless religious, charitable and patriotic women's organizations which they have unfairly induced to sponsor their various publications and to assist respondents in procuring cash paid in advance advertisements from local merchants, which must amount in the aggregate to far more than a million dollars. It must be remembered that the respondents received all of their money long in advance of any performance on their part to the sponsoring groups and their

advertisers. After that, the various sponsoring groups in these small communities could only rely upon respondents' business honesty and their ability to perform their contracts and agreements. It must be recognized that whatever private rights may exist, the relatively small amounts of money involved in each case and other practical considerations render virtually impossible any ordinary legal effort by such groups against the respondents to enforce their private rights. Respondents had a most cold-blooded indifference to their failure to perform their innumerable contracts throughout the entire country, while comparatively immune from private litigation by the defrauded groups and living in luxury on the high salaries and other large remunerations derived for the most part from the money solicited by these good women and paid in advance by the merchants of these small communities solely to assist the local sponsoring groups in their charitable works. Such conduct on respondents' part constitutes a large-scale iniquitous public cheat and fraud, compared with even a systematic robbing of poor boxes in the churches is but picayune larceny. One of the sponsoring ladies testified that she was greatly embarrassed and humiliated before the sisters in her organization and the good merchants of the community, who were her relatives and friends. While other witnesses were not so outspoken as to their emotions, the conclusion is inescapable that each and all of the persons so hoodwinked and misused by respondents had similar reactions when it became apparent that they and their group had been made mere cat's paws in such a rankly dishonest and fraudulent transaction. The record is clear that no money would have been raised at all by respondents' representatives from the sale of ads to the local merchants had it not been for the nature of these sponsoring groups and the superior characters of their fine women members whose confidences and good names have been so flagrantly exploited and abused by these respondents. In the 28 instances concerning which direct evidence was taken, and in those other instances in nearby communities which were recited by the witnesses from hearsay, the story is practically the same. And the pattern must have been repeated in the innumerable other instances wherein the record clearly indicates like contracts were made throughout the entire country. It is a tragic picture to think of these good ladies so enthusiastically interested and engaged in their works of Christian love and charity for their church, their lodge, their patriotic society or other like organization, that they sponsored an apparently worthy cause, only to discover later that their confidence had been so badly misplaced and violated that they are still greatly chagrined and embarrassed thereby among

their neighbors and friends. To select women's organizations of religious, fraternal, patriotic and civic character and to prey upon the credulous innocence of noble women devoted to their worthy causes in the oft-repeated practice of this type of venal fraud from community to community throughout the land is surely one of the lowest forms of rascality the annals of this Commission may bear witness to. For months and even years these good women waited for their promised publications in vain. Their letters of inquiry usually remained wholly unanswered by the unobliging respondents until such organizations as the Better Business Bureau of a given community intervened, or attorneys started writing letters to the respondent. Then as a rule, prompt action took place on respondents' part, although the inferior goods sent were not in compliance with their contracts. The respondents sometimes answered complaints by form letters, which in substance stated that they were busy with other publications, usually high school class annuals, and that they would get around to printing respondents' type of publication as soon as they finished with the work then on hand. It did not make much difference when the letter was dated, it could be in any month or season of the year, it was always the same story, although in fact respondents were also badly in default with that type of contracts as well as those relating to "Cookie Books" and the like. These evasive tactics are but other badges of fraud linking the respondent irrevocably to an intent to deprive these sponsoring organizations of the fruits of their conscientious labors.

The use by respondents of the foregoing false, misleading and deceptive representations, statements and practices has had, and now has, the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the same are true and into the purchase of respondents' said products. As a result thereof, substantial trade in commerce has been and is now being unfairly diverted to respondents from their competitors and substantial injury has been and is now being done to competition in commerce.

The evidence hereinbefore set forth relating to the nature, substantial volume and extent of respondents' interstate business and of the character of their acts and practices in interstate commerce fully and clearly establish that this proceeding is to the interest of the public and that the order subsequently set forth herein should issue. In determining the facts herein the examiner has had the full benefit of observing and hearing all of the witnesses including the respondents King and Kienast, as they testified. And the conduct and demeanor of each witness has been fully considered and

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evaluated in connection with his or her testimony in making the findings of fact herein.

There being jurisdiction of the persons of each of the respondents, upon the findings of fact hereinbefore made, the hearing examiner hereby makes the following conclusions of law:

1. The aforesaid acts and practices of respondents hereinabove found were and are all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute unfair methods of competition and unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

2. The Federal Trade Commission has jurisdiction over all of the respondents' acts and practices which have been hereinabove found to be false, misleading and deceptive.

3. The public interest in this proceeding is clear and substantial. Upon the foregoing findings of fact and conclusions of law, the following order is hereby entered:

ORDER

It is ordered, That the respondents, Tri-State Printers, Inc., a corporation, and George A. King and Willard C. Kienast, both individually and as officers of said corporation, the other officers of said corporation and the agents, representatives and employees of the said respondents, or any of them directly or through any corporate or other device, in connection with the offering for sale, sale and distribution, under written contract or otherwise, in commerce as "commerce" is defined in the Federal Trade Commission Act, of any publications entitled or designated generally as "Cook Books," "Cookie Books," "Casserole Books," "Date Books," "Calendars," "Record Books" or such or similar kinds and types of publications, however they may be particularly entitled or designated, or any other kind or type of publications whatever and whether printed and published by respondent corporation or by any other person, firm or corporation, do forthwith cease and desist from representing in any manner or by any medium of communication or information directly or by implication:

1. That any such publication is "free" unless in fact the delivery of the same is to be made without any cost or charge therefor to the buyer or recipient thereof, and such delivery is made without requirement of any present, past or future service, forbearance or other legal consideration on the part of such buyer or recipient;

2. That any such publication will be in accordance with any purported sample thereof shown to any prospective buyer of any

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such publication unless such publication when delivered shall strictly conform to such sample;

3. That delivery of any such publication to any person contracting to purchase the same will be made by a stated date or within any stated period of time, unless such delivery is in fact to be made and actually is made by the stated date or within the stated period of time;

4. That any name or statement of any other person, firm, or corporation, which may be used as a reference relating to respondents' business standing, reputation, integrity, or capacity to perform their contracts is genuine, current and fully authorized by the reference named, unless such is the fact; and

5. That any other matter, fact or thing is true of and concerning respondents' business status, standing or capacity or their business methods and practices or the origin, quality, quantity, composition or workmanship of any publication printed, published, kept for sale, or sold by respondents, unless such is the fact.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 9th day of May, 1957, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF
LIBBEY-OWENS-FORD GLASS COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(a)
OF THE CLAYTON ACT

Docket 6700. Complaint, Dec. 26, 1956—Decision, May 9, 1957

Consent order requiring one of the nation's two largest manufacturers of automotive safety glass to cease violating sec. 2(a) of the Clayton Act by selling its safety glass to General Motors at substantial discounts off the price it charged independent competitors.

Mr. William C. Smith for the Commission.

Mr. Stuart S. Wall, of Toledo, Ohio; *Mr. Carson M. Glass*, and *Hogan & Hartson*, by *Mr. Joseph J. Smith, Jr.*, of Washington, D.C., for the respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondent with violation of the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, by price discrimination in the sale of automotive safety glass of like grade and quality to competing purchasers.

By answer respondent denied the charges of violation of the Clayton Act, and set forth affirmative defenses of cost justification, good-faith meeting of equally low prices of competitors, and abandonment. Thereafter, respondent, its counsel, and counsel supporting the complaint entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Acting Director, Bureau of Litigation of the Commission, and thereafter transmitted to the Hearing Examiner for consideration. The answer of respondent may be disregarded, inasmuch as the agreement provides that the record on which the initial decision and the decision of the Commission will be based shall consist solely of the complaint and this agreement.

The agreement identifies respondent Libbey-Owens-Ford Glass Company as an Ohio corporation, with its office and principal place of business located at 608 Madison Avenue, Toledo, Ohio.

The agreement further provides that respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint