

Decision

IN THE MATTER OF
BANTAM BOOKS, INC.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6802. Complaint, May 16, 1957—Decision, Nov. 24, 1958

Order requiring a distributor of books in New York City to make adequate disclosure on the front cover and title page when parts of the original text of reprints had been deleted and when new titles were substituted for the original titles of reprinted books.

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

Weil, Gotshal & Manges, by *Mr. Horace S. Manges*, of New York, N.Y., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that respondent has violated the Federal Trade Commission Act by failing to disclose, or disclose adequately, that certain of the books which it publishes and distributes in commerce are abridgments and that changes of title have been made in others. It is alleged that such failure "has had, and now has, the tendency and capacity to lead a substantial portion of the purchasing public into the mistaken and erroneous belief that said books are complete and unabridged, or are new and original publications." Respondent has denied all the allegations of the complaint except those pertaining to corporate organization and business activities in selling and distributing books in commerce.

Hearings were held at which evidence in support of and in opposition to the allegations of the complaint was received, duly recorded and filed. At the close of the case-in-chief in support of the complaint, respondent filed a motion to dismiss for lack of evidence sufficient to establish a *prima facie* case, which motion was denied. At the completion of the reception of evidence, proposed findings of fact and conclusions were filed and have been ruled upon in a separate document.

Upon the entire record, the following findings and conclusions are made:

1. Bantam Books, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New

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York, with its office and principal place of business located at 25 West 45th Street, New York, N.Y.

2. Respondent is now and has been for more than two years last past engaged in the business of selling and distributing paper-backed books, and causing said books, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in the various other states of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said books, in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent published books under 128 different titles in 1955; 143 during 1956; and 52 between January 1 and April 30, 1957.

3. In the course and conduct of its business, respondent has been and is in substantial competition with other corporations and with individuals, partnerships and others engaged in the same business.

4. Some of the books sold and distributed by respondent are abridgments—reprints of books from which portions of the original text have been shortened by paraphrasing, or omitted. Seven such were published in 1955; seven in 1956; none during the first four months of 1957. The fourteen such books published in 1955 and 1956 are in the record as exhibits. Among them are the following:

(a) The Kill

Occupying most of the right upper one-third of the front cover, on a bluish-gray background, appears the following:

By the author of "NANA"
EMILE ZOLA
A penetrating study of a
beautiful and recklessly sensual
woman, in the money-mad
world of 19th Century Paris.

Below this, just above the middle of the page and extending across its width, is the title

The

KILL ("Kill" in $\frac{3}{4}$ " type; the I
in yellow, other letters red).

Just below the middle is a picture of a thinly clad woman and man in recumbent pose. At the lower left near the bottom of the cover, in $\frac{3}{32}$ " black type, are the words "NEW ABRIDGED EDITION." The fact of abridgment is not mentioned elsewhere.

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The title page shows only that the book was translated from the French "La Curée."

(b) The Nine Wrong Answers

Across the right upper corner of the front cover, in two lines, are the words:

The most baffling mystery . . .
The most agonizing suspense . . . ,

followed by the name of the author; to the right and above the middle of the cover is the title,

THE	($\frac{1}{2}$ " letters,
NINE	red on yellow,
WRONG	one word to a
ANSWERS	line).

At the lower right of the cover is pictured a girl sitting on the edge of a bed; at the left side, extending from the bottom well above the middle of the cover, is pictured a hand and revolver muzzle, in dark colors; at the lower left corner, in $\frac{3}{32}$ " red letters not too distinctly displayed upon a background partly yellow and partly black, are the words "NEW ABRIDGED EDITION." There is no other indication on the title page or elsewhere that the publication is an abridgment.

(c) The Time of the Gringo

At the top of the front cover page, in five lines of heavy black type, appear the words:

Splendor and violence,
passion and betrayal—
a great novel of the
last days of Spanish rule
in the Southwest;

across the middle of the cover in two lines of large white type upon a reddish and dark background is the title; across the bottom, less distinctly displayed than any other copy on the cover, in small white type on a mottled brown-and-whitish background, are the words "NEW EDITION, AUTHORIZED ABRIDGMENT." There is no indication elsewhere that the book is abridged.

The first page inside the cover is filled with newspaper comment. At the top in large letters, quoted from the San Francisco Chronicle, is the expression "Marvelously Full and Brilliant Panorama." Immediately below this, quoted from the Boston Herald, is the following:

The Time of the Gringo is a big book in size, scope and significance, exciting, full bodied and intensely interesting . . .

The seeming purport of these quotations is that the text is in full, rather than abridged.

(d) The Autobiography of Benvenuto Cellini

Upon a mottled background the title appears in large white letters across the top of the front cover in three lines; the middle of the cover depicts a striking painting; across the bottom at the lower right, in small but reasonably legible white type, is the inscription "new abridged edition." The fact of abridgment is not elsewhere noted.

(e) The Count of Monte Cristo

The background of the cover page appears to be a painting or picture of the Count; the title is prominently displayed on the lower half of the cover in large white letters upon a dark background; just below the title in yellow, easily legible letters are the words, "A New Translation by Lowell Bair." No indication is to be found on the cover, the title page, or elsewhere, that the text of the original publication has been condensed or abridged, yet the evidence clearly shows that to be the fact.

5. Many of the books sold and distributed by respondent carry titles different from those under which they were originally published. Eight such were published in 1955, fifteen in 1956, and four during the first four months of 1957. Of the more than twenty-five such books presented in evidence in this proceeding, those listed below are typically representative of the practice about which complaint is made in this proceeding.

(a) Rag Top

In the left middle part of the front cover, in white letters more than one inch in height upon a dark background, the title is displayed in two conspicuous lines; across the top of the cover in $\frac{1}{4}$ " letters is the author's name; immediately below the title appears a five-line descriptive characterization of the book; across the bottom on a gray background in small yellow letters of uniform size, which add to its inconspicuousness, appears the phrase, "PUBLISHED AS THE CUP OF FURY BY RANDOM HOUSE." On the title page "RAG TOP" again appears in large letters, with "THE CUP OF FURY" in parentheses below. On the reverse of this title page there is in small type the statement, "Originally published by Random House, Inc. under the title The Cup of Fury."

(b) Time-X

The author, title and descriptive blurb are centered on the cover, clearly and readily perceptible; inconspicuously, at the very bottom, in quite small type, is the statement "Published as The Science Fiction Sub-Treasury by Rinehart & Company, Inc." The title page, clearly in sizeable type well centered, shows, "TIME-X Originally published under the title THE SCIENCE-FICTION SUBTREASURY."

(c) Man From Tomorrow

The title appears in letters more than $\frac{3}{8}$ " high across the middle of the front cover, the three words being in contrasting colors—red, white and yellow, upon a blue and grayish background; then follows the name of the author, nine lines of descriptive material, and across the bottom in small type, some of which is practically indistinguishable because of a blurring background, is the statement "Published as WILD TALENT by Rinehart & Company, Inc." Centered on the title page, the fact that the book was originally published under the title "Wild Talent" is shown; on the reverse side of the title page, it is shown again in very small type.

(d) Woman Doctor

At the lower right corner of the front cover, in small indistinct type, in washed-out, inconspicuous blue upon a red background, is the phrase "Published as Women Will Be Doctors by Random House, Inc." In distracting clearness just above this phrase are the words "Complete and Unabridged." The title page shows that the book was "Originally published under the title Women Will Be Doctors."

(e) The Shipwrecked

Across the very bottom of the front cover, in reasonably distinct but small type, appear the words, "Published as England Made Me by Doubleday & Co., Inc."; the title page shows nothing as to change of title, but on the reverse side of the title page, under "Printing History," appears in very small type the statement "Doubleday edition published under title England Made Me September 1935"; further down on this page, in slightly larger type, is the statement "Copyright, 1935, by Graham Greene under the title England Made Me" (in the last two instances the under-scoring indicates use of italics).

6. Forty-one of respondent's paper-backed books are in the record as exhibits. One of these, "The Green Cockade," not previously discussed, was originally published as "Catch A Falling

Star," and is an abridgment. The fact that the book was published under a different title is indicated on the front cover and on both front and back of the title page; the fact of abridgment is referred to only on the front cover. This typifies respondent's practice. Practically without exception, change of title is specifically noted or indicated on the front cover and on the title page; while abridgment is noted only on the front cover.

As previously pointed out, front-cover disclosures were frequently indistinct due to smallness of type, lack of variance in size of type, inept selection of location on the page and through use of colors affording little contrast with the background against which they appeared. Title-page disclosures were often in very small type. Often the disclosures indicate lack of a sincere effort to make the facts as to change of title or abridgment known to the prospective purchaser.

7. Respondent presented an expert in the field of social and applied psychology who had developed, for university use, a first course on the application of psychology to marketing problems and situations, and is a consultant on matters relating to visual communication. His experience included direction of a research program to determine the best way for car cards to communicate what they were supposed to convey to those who read them, including the problem of placing text and picture in such relationship that the message would be most readily observed and read. He had supervised a study of the marketing of paperbound books, in connection with which determinations were made as to the readability of the material on front covers and as to the manner in which the average person seeking to buy such a book looks at it. He stated that a "great deal of relevant research" had been done in this and related areas. Based on this research material and his own experience, he had reached some definite conclusions on the subject involved in this proceeding.

8. He stated that the problem involves three different dimensions—first, position on the cover and what we know about how people perceive position on the printed page—second, factors other than position relevant to how people perceive a printed page—third, how a paper-bound book is physically perceived, handled and examined by a prospective purchaser. He said that the sequence in which the parts of a page of printed material of almost any kind are looked at by persons who know English, is, first, the part a little to the left of center, then the top, and then the bottom. Other factors involve (a) "legibility of the back-

ground in which the material occurs," (b) "contrast of the given type in the particular background," (c) any "illustration * * * which must be regarded as part of the background against which the printed material is read," (d) "the type face that is employed," (e) "length of the given line and the space available at either end of the printed line," (f) "spaces between lines," (g) "actual spaces between letters in a word and between words in a line," (h) "color contrast," (i) "size of type," (j) "the margins that are employed," and (k) "illumination under which the particular material is employed." These, he said, "pretty much summarize the kinds of things that must be considered in determining the extent to which a given legend or a given statement or a given collection of printed materials will be visible on a book cover of any kind."

9. As to the manner in which paper-bound books are actually read or looked at by prospective purchasers, he said his own research¹ disclosed that the time a prospective purchaser is in physical or visual contact with the paper-bound book which he may subsequently purchase ranges from one minute to ten minutes, averaging approximately four minutes; that the prospective purchaser spends most of his time looking at the cover—"will look * * * at the center of the page where he generally expects to find the title * * * for some phrase or combination of words or title that is familiar to him," the title being more important than whatever illustration may be on the cover; that he will then look at the top of the page for the author, then will look at the bottom; most persons will "riffle through the pages," some look at the table of contents, date of publication, depending upon their reading habits. The rear cover does not appear to be very important. It is looked at occasionally.

10. This expert witness was handed many of the books in evidence, particularly those hereinabove commented on in paragraphs 4 and 5, and, in response to questions by respondent's counsel, stated that in his opinion the legends on the cover pages as to change of title and abridgment "would readily attract the attention of a prospective purchaser."

11. Applying the criteria delineated by the witness, his opin-

¹ This research involved interviews with selected samples of the population. Of 5,600 interviews, 1,413 contained statements about paper-bound books; 724 of these were men, 689 women, divided geographically among Rochester, Boston and New York, respectively, as follows: 267, 394 and 752. Their reading of paper-bound books varied from one to over 300 per person, per year.

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ion does not appear to be justified and cannot be accepted. The more intelligent, more experienced, careful prospective buyer might well observe and comprehend the many legends, which are certainly not the sort that he who runs may read. But many buyers would not glean the fact that some of these books had previously been published under different titles, or were abridgments, and would therefore be deceived. The legends are practically all at the bottom of the page, the last part to be looked at; they are in small type, frequently of uniform size and spacing, the use of upper and lower case being avoided; in many cases the legend is printed in a color which blends rather than contrasts with the background upon which it is placed; legibility is often poor. A random examination of some of the books not hereinbefore specifically mentioned confirms these facts. For example—"Star Shine" bears the legend "Published as Angels and Spaceships by E. P. Dalton & Company, Inc.," in white type upon a background of various shades of blue, yellow and green upon a page which presents in striking clarity the title, authorship, and other information about the book; "The Long Swords," "The Tough Die Hard" and "Death's Long Shadow" present like situations.

"A Cry In The Night" has the legend in small-type caps, uniformly spaced across the bottom, "PUBLISHED AS ALL THROUGH THE NIGHT BY DODD, MEAD & CO.," unattractive and readily passed over; of similar nature is the disclosure on "The Royalist" that it had been previously published as "The Hastening Wind." In very few instances can the disclosure of abridgment or change of title be found to be clearly and conspicuously displayed.

12. The Commission's policy is clear, having been established in the matter of *The New American Library of World Literature, Inc., et al.*, Federal Trade Commission Docket 5811; original Commission decision 49 F.T.C. 760; decision of Second Circuit Court of Appeals remanding the case for modification of the order to cease and desist, 213 F.2d 143; modified order of the Commission issued January 13, 1955, approved and affirmed by the Second Circuit November 25, 1955, 227 F.2d 384. The Commission found:

The offering of a book for sale constitutes an implicit representation that the book contains the entire original text and that the title under which it is offered is the original title. In the absence of a clear and conspicuous disclosure of the fact of abridgment or change of title, the offering of an

abridged book or of an old book under a new title unquestionably has the capacity and tendency to deceive and mislead prospective purchasers.

In that case disclosure was made on the covers of respondents' books, and almost without exception on the copyright page, the title page, or elsewhere, in small type. Such disclosure was found to be wholly inadequate, the Commission declaring that two poor disclosures do not add up to one good one.

13. The facts in this proceeding are less favorable to respondent than were the facts in the *New American Library* case.² In one instance at least—"The Count of Monte Cristo"—the fact of abridgment is not disclosed at all, the legend relating only to a new translation; in numerous other instances, the notation as to abridgment appeared only on the cover, not on the title page; the legends as to change of title were inconspicuous. Upon the whole record, it must be concluded that respondent has not met the standards required under the Federal Trade Commission Act, and that the respondent has not adequately disclosed the fact that certain of its published books are abridgments of the original publications and that certain of its other books are reprints of books originally or previously published under different titles than those used by respondent.

CONCLUSIONS

14. The failure of respondent to make adequate disclosure that certain of its books are abridgments, and that books to which it has given new titles are not different from the books of which they are reprints, has had, and now has, the tendency and capacity to lead a portion of the purchasing public into the mistaken and erroneous belief that said books are complete and unabridged, or are new and original publications, and to induce a substantial portion of said public to purchase respondent's said books because of said erroneous and mistaken belief. As a result thereof, trade has been and is unfairly diverted from respondent's competitors, and substantial injury has been and is being done.

15. The aforesaid acts and practices of respondent are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act. This proceeding is in the public interest. Therefore,

² See also *Hillman Periodicals v. F.T.C.*, 174 F.2d 123; and recent F.T.C. orders in the Matters of *A. A. Wynn, Inc., et al.*, Docket 6792, and *Dell Publishing Co.*, Docket 6759.

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It is ordered, That respondent Bantam Books, Inc., 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 of books in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling any abridged copy of a book unless one of the following words, "abridged," "abridgment," "condensed" or "condensation," or some other word or phrase stating with equal clarity that said book is abridged, appears in clear, conspicuous type upon the front cover and upon the title page of the book, either in immediate connection with the title or in another position adapted readily to attract the attention of a prospective purchaser;

2. Using or substituting a new title for, or in place of, the original title of a reprinted book unless a statement which reveals the original title of the book and that it has been previously published thereunder appears in clear and conspicuous type upon the front cover and upon the title page of the book, either in immediate connection with the title or in another position adapted readily to attract the attention of a prospective purchaser.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

This matter having been heard on the respondent's appeal from the hearing examiner's initial decision; and

The Commission having considered the entire record, including the briefs of counsel (oral argument not having been requested), and having concluded that the initial decision is correct and appropriate in all respects to dispose of the proceeding:

It is ordered, That the respondent's appeal be, and it hereby is, denied.

It is further ordered, That the hearing examiner's initial decision, filed July 25, 1958, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondent, Bantam Books, Inc., 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 contained in the aforesaid initial decision.

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IN THE MATTER OF
BLOCK'S, INC., ET AL.

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

Docket 7242. Complaint, Aug. 28, 1958—Decision, Nov. 25, 1958

Consent order requiring furriers in Syracuse, N.Y., to cease violating the Fur Products Labeling Act by using fictitiously high prices as regular prices in newspaper advertisements and on labels and representing sale prices as reduced therefrom, and representing falsely in advertising that furs were on sale at "½ price" and "Now up to 60% off."

S. F. House, Esq., for the Commission.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued August 28, 1958, charges the respondents Block's, Inc., a corporation, and George S. Block, individually and as an officer of the corporate respondent with violation of the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated under the last-named Act, in connection with introduction into commerce, and in the sale, advertising and offering for sale, transportation and distribution, shipping and receiving in commerce, of fur and fur products, as the designations "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

After the issuance of said complaint respondents on September 22, 1958, entered into an agreement for a consent order with counsel in support of the complaint, disposing of all of the issues in this proceeding, which agreement was duly approved by the director and assistant director of the Bureau of Litigation of the Federal Trade Commission. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all of the jurisdictional allegations of the complaint and agreed that the record herein may be taken as though the Commission had made findings of jurisdictional facts in accordance with such allegations. By said agreement the parties expressly waived a hearing before the hearing examiner or the Commission, the