

IN THE MATTER OF  
CHARLTON PRESS, INC., ET AL.

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

*Docket 6628. Complaint, Sept. 11, 1956—Decision, Jan. 30, 1959*

Order requiring a publisher and a distributor in Derby, Conn., to cease selling comic books consisting largely of material previously published by others without conspicuously disclosing on the front cover the fact of such previous publication.

*Mr. Charles S. Cox* for the Commission.

*Eastman, Bronstein & Van Veen*, of New York, N.Y., by *Mr. Lee V. Eastman*, for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The Commission's complaint in this matter charges the respondents with violation of the Federal Trade Commission Act through the publication and sale of "comic" books or magazines consisting in large part of material previously published by others, without disclosing such fact to prospective purchasers. After the filing of respondents' answer, hearings were held at which evidence both in support of and in opposition to the complaint was received. Proposed findings and conclusions have been submitted by all parties and the case is now before the hearing examiner for final consideration. Any proposed findings and conclusions not included herein have been rejected.

2. Respondents Charlton Press, Inc., and Capital Distributing Company are corporations organized and doing business under the laws of the State of Connecticut. Respondent John Santangelo is president and general manager of Charlton Press, Inc., and president of Capital Distributing Company. Respondent Edward Levy is treasurer of both corporations. Respondent Burton N. Levy is vice president of Charlton Press, Inc. Respondent Allan Adams is vice president and general manager of Capital Distributing Company. The address of all of the respondents is Charlton Building, Derby, Conn. The individual respondents formulate the policies and direct and control the acts and practices of the corporate respondents of which they are officers.

3. Respondents are engaged in the publication, sale and distribution of comic books or magazines. The term comic books

includes also western stories, adventure stories, animal stories, etc. The books are printed by respondent Charlton Press, Inc., in Derby, Conn., and distributed by respondent Capital Distributing Company to wholesalers who sell to retailers who in turn sell to the public.

Respondent Capital Distributing Company causes the books or magazines, when sold, to be transported from its place of business in the State of Connecticut to purchasers located in various other States of the United States and in the District of Columbia.

4. In the course and conduct of their business respondents are in substantial competition with other corporations and individuals and with firms engaged in the sale and distribution of comic books in interstate commerce.

5. The record establishes beyond question that respondents' publications consist in substantial part of material which has previously been published and sold by others. Not only is this evident from a comparison of certain of respondents' books with those of other publishers, but there is extended, uncontradicted testimony to this effect from two former employees of respondents who were well acquainted with respondents' methods of operation. In fact, respondents' answer to the complaint virtually admits the practice. The amount of previously published material used in the books varies, ranging from a few pages to almost the entire book.

6. The following instances are illustrative of respondents' practice:

(a) Respondents' publication "Gabby Hayes" dated August 1955 (Commission Exhibit 1) contains seven pages (pages 25-31) of story and drawings titled "Gabby Hayes and the Human Porcupine" which are identical with a story and drawings appearing in a publication of Fawcett Publications, Inc., dated April 1951, (Commission Exhibit 83) pages 28-34. The title of the Fawcett publication was "Gabby Hayes Western."

(b) Respondents' publication "Lash LaRue Western," dated September 1955, (Commission Exhibit 2) contains approximately ten pages (pages 1-10) of story and drawings titled "Lash LaRue, the Frontier Phantom Rides Again," which are identical with a story and drawings appearing in a publication of Fawcett Publications, Inc., dated October 1951 (Commission Exhibit 85), pages 24-32. The title of the Fawcett publication was "Lash LaRue Western," and the particular story and pictures carried

Decision

55 F.T.C.

the same title as the story and pictures appearing in respondent's book.

This same publication of respondents carried a story two pages in length (pages 22-23) which was identical with a story appearing in the Fawcett publication at pages 14-15.

Also in this same book of respondents, at pages 25-31, was a story and drawings titled "Lash LaRue, in Target for Highway-men" which was essentially the same as a story and pictures appearing in a Fawcett publication dated October 1952 (Commission Exhibit 84), pages 1-8.

(c) Respondents' book "Rocky Lane Western" dated September 1955 (Commission Exhibit 3), contained ten pages (pages 1-10) of story and pictures titled "Rocky Lane in Trouble Trail," which were identical with the first ten pages of a Fawcett publication dated January 1951 (Commission Exhibit 87), the story and drawings being titled exactly as in respondents' book.

(d) Respondents' book titled "Atomic Mouse" dated Summer 1957 (Commission Exhibit 104), contained eight pages (48-55) of story and drawings titled "Hoppy, the Magic Bunny," which were essentially the same as a story and drawings appearing in a Fawcett publication dated Winter 1948-49 (Commission Exhibit 143), pages 1-8.

(e) Another book of respondents titled "Atomic Mouse," dated May 1956 (Commission Exhibit 31), contains six pages (pages 20-25) titled "Happy, the Magic Bunny, in the Camera Menace," which are almost identical with a story and drawings appearing in a Fawcett publication dated Winter 1949-1950 (Commission Exhibit 135), pages 2-7.

(f) A book of respondents titled "Lash LaRue Western," dated December 1956 (Commission Exhibit 141), contained six pages (pages 17-23) of story and pictures titled "Lash LaRue—the General's Last Stand," which are essentially the same as a story and drawings in a Fawcett publication dated October 1950 (Commission Exhibit 142), pages 26-31, the title being identical with that in respondents' book.

(g) Respondents' publication "Romance" dated Fall 1957 (Commission Exhibit 105), contained thirteen pages (pages 33-47) of story and drawings titled "Love Walks in Truth," which were identical with a story and pictures bearing the same title which appeared in a Fawcett publication, "Sweethearts," dated April 1949 (Commission Exhibit 144), pages 2-14.

(While in the publications of respondents referred to above

the name of the publisher is given as "Charlton Comics Group," this is in fact a trade name used by respondents.)

7. There is no disclosure of any kind on respondents' books that the publications contain previously published material. Obviously, members of the public purchasing comic books understand, in the absence of clear disclosure to the contrary, that such publications consist of new, original material, not old material previously published by others. The failure of respondents to disclose the fact of such prior publication constitutes a representation that the books consist entirely of new material.

8. Respondents insist that they are not responsible for any books which were published prior to December 1955 or January 1956. Their position is that respondent Charlton Press, Inc., (which was organized in 1946) did not enter the business of publishing comic books until August 1955, when it purchased the assets of a company known as Derby Color Press, of Derby, Conn., which was engaged in that business. They further say that due to heavy floods in the Derby, Conn., area in the summer and fall of 1955, it was the last of that year or first of 1956 before Charlton Press, Inc., was able to publish any comic books.

The record establishes, however, that even though Charlton Press, Inc., may not have actually published any comic books before the last of 1955, it was selling and distributing them prior to that time. There is testimony from a wholesale news dealer in Elizabeth, N.J., that he received deliveries of comic books from Charlton Press, Inc., in May, June, July and August 1955. And there are also in evidence delivery tickets showing delivery of comic books by Charlton Press, Inc., to news dealers in Brooklyn, N.Y., in June, July and August 1955 (Commission Exhibits 90-93).

Moreover, the case in support of the complaint is not dependent upon these early publications or deliveries. The instances cited in paragraph 6 above include books published in 1956 and 1957, and it is also clear from other evidence in the record that the practice was continued during those years.

9. With respect to the matter of jurisdiction, admittedly respondent Capital Distributing Company is engaged in interstate commerce. And, as shown above, Charlton Press, Inc., has made at least some interstate sales. Moreover, there is such close connection and community of interest between the two corporations that as a practical matter the acts of one are in effect the acts of the other. As already stated, respondent John Santangelo is

Order

55 F.T.C.

president of both corporations and respondent Edward Levy is treasurer of both. The two corporations are located in the same building and operate virtually as a single enterprise. The comic books are supplied by Charlton Press, Inc., to Capital Distributing Company with full knowledge that they are to be sold and distributed in interstate commerce. Charlton Press, Inc., thereby furnishes to Capital Distributing Company means and instrumentalities whereby misleading practices may be carried on in such commerce. It is therefore concluded that jurisdiction is present as to both of the corporate respondents, and also as to the individual respondents inasmuch as they formulate the policies and direct and control the acts and practices of the corporations.

10. The sale and distribution by respondents of comic books consisting in whole or in substantial part of material which has been previously published by others, without disclosure of the fact of such previous publication, has the tendency and capacity to mislead and deceive dealers and members of the public as to the nature, content and identity of such books or parts thereof, and to cause them to purchase substantial quantities of such books as a result of the erroneous and mistaken belief so engendered. In consequence, trade is unfairly diverted to respondents from their competitors. The present proceeding is therefore in the public interest.

#### CONCLUSION

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

#### ORDER

*It is ordered,* That the respondents, Charlton Press, Inc., a corporation, and Capital Distributing Company, a corporation, and their officers, and John Santangelo and Edward Levy, individually and as officers of said corporations, and Burton N. Levy, individually and as an officer of Charlton Press, Inc., and Allan Adams, individually and as an officer of Capital Distributing Company, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of comic books or magazines or other publications in commerce, as "com-

merce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Offering for sale, selling or distributing any book or magazine consisting in whole or in substantial part of material previously published by others, without clearly and conspicuously disclosing on the front cover of such book or magazine the fact of such previous publication.

DECISION OF THE COMMISSION AND ORDER TO FILE  
REPORT OF COMPLIANCE

The respondents having filed an appeal from the hearing examiner's initial decision requiring them to forthwith cease and desist the practice of selling or offering for sale in commerce "comic" books or other publications consisting in whole or in substantial part of material which has been previously published by others, without disclosing the fact of such previous publication; and

The Commission having considered the matter and having determined that the findings and conclusions of the hearing examiner are supported in all respects by the record and that the order contained in the initial decision is fully justified:

*It is ordered*, That the respondents' appeal be, and it hereby is, denied.

*It is further ordered*, That the hearing examiner's initial decision filed July 2, 1958, be, and it hereby is, adopted as the decision of the Commission.

*It is further ordered*, That the respondents, Charlton Press, Inc., and Capital Distributing Company, corporations, John Santangelo and Edward Levy, individually and as officers of said corporations, Burton N. Levy, individually and as an officer of Charlton Press, Inc., and Allan Adams, individually and as an officer of Capital Distributing Company, 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 contained in the aforesaid initial decision.

IN THE MATTER OF  
R. H. MACY & CO., INC., ET AL.

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

*Docket 7219. Complaint, Aug. 5, 1958—Decision, Jan. 30, 1959*

Consent order requiring a corporate operator of retail stores in New York, together with the licensee of one of its departments, to cease advertising falsely in newspapers that automobile seat covers offered for \$15.94 and \$10.99, respectively, had sold recently at \$29.94 to \$39.94, and \$22.94.

*Mr. Harry E. Middleton, Jr.* for the Commission.  
*Howrey & Simon*, by *Mr. William Simon*, of Washington, D.C.,  
for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 5, 1958, issued and subsequently served its complaint in this proceeding against the above-named respondents.

On December 16, 1958, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondents waive any further procedural steps before the hearing examiner and the Commission; waive the making of findings of fact and conclusions of law; and waive all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. This agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the following order to cease