

Decision

IN THE MATTER OF
COMET PRESS BOOKS CORP., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7180. Complaint, July 11, 1958—Decision, May 19, 1959

Consent order requiring a New York City book publisher to cease representing falsely in advertising that it operated a cooperative publishing plan in which it shared financial risks with the author, and making a variety of false claims in such connection including misrepresenting the nature, size, and operation of the business; the effectiveness and extent of sales, promotion and publicity given an author-customer, the royalties paid him, etc.

Mr. Charles S. Cox supporting the complaint.

Mr. Murray Levine of *Levine & Berman*, of New York. N.Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on July 11, 1958, charging them with having violated the Federal Trade Commission Act by making false, misleading and deceptive statements concerning the nature, size, operation and duration of their business.

After issuance and service of the complaint, the respondents, their counsel, and counsel supporting the complaint entered into an agreement for a consent order. The order disposes of the matters complained about.

Under the agreement, respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing, and the document includes a waiver by respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the provisions of the agreement comply with all mandatory requirements of Section 3.25(b) of the Rules of Practice for Adjudicative Proceedings.

The hearing examiner having considered the agreement and

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proposed order and being of the opinion that the acceptance thereof will be in the public interest, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondent Comet Press Books Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Individual respondent Samuel F. Chernoble is treasurer, individual respondent Sam Goldman is vice president and individual respondent, Sylvia R. Kaplan is secretary of said corporate respondent. Individual respondent Milton U. Sheldon is "editor" and "executive vice president" of said corporate respondent. These individual respondents formulate, direct and control the acts, practices and policies of the said corporate respondent. All of said respondents have offices and a principal place of business at 200 Varick Street, New York, N.Y.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Comet Press Books Corp., a corporation, and its officers, and respondents, Samuel F. Chernoble, Sam Goldman and Sylvia R. Kaplan, individually and as officers of said corporate respondent, and respondent Milton U. Sheldon, individually, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the solicitation of contracts for the printing, promotion, sale and distribution of books in commerce, as "commerce" is defined in the Federal Trade Commission Act and in connection with the printing, promotion, sale and distribution of books in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that:

1. They operate a cooperative publishing plan in which they share with the author in the expense of editing, printing, binding, promotion and sale of the book, or that they are partners with the author;

2. They print or bind all the copies of the book called for in the first edition as listed in the contract with the author, unless and until such is the fact;

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3. Their organization has numerous employees or departments, or an art department;

4. They have been in business for 35 years or any other period of time in excess of the actual length of time that the corporate respondent has been in business;

5. They accept and have accepted for publication only those manuscripts with merit or sales appeal possibilities; or that they "chance" their own money in publishing authors' manuscripts;

6. Their promotion and sales campaign is effective or aggressive, or results in a complete sale of the first edition of the book published and promoted through them, except in rare instances;

7. An author publishing through them will receive back the sum of money invested by the author in having his or her book published through them, except in rare instances;

8. They have sold subsidiary rights of author's books published through them to motion picture studios, radio and television channels or for republication in foreign countries, unless such is the fact;

9. They own the plant or plants in which the books they contract to publish are printed and bound;

10. Reports made by "readers" of submitted manuscripts are "editorial reports" or that the reading by an official of the corporate respondent and his concurrence with the reader's report indicates that the manuscript has literary merit or should be published;

11. The favorable report by a reader on a submitted manuscript indicates that such manuscript has unusual merit; or that a submitted manuscript has merit to any degree, when such is not the fact;

12. Their evaluation of a submitted manuscript is a sincere or constructive one, or is an impartial expert opinion on which the author can rely;

13. The submission of a manuscript to them by an author is the best way of finding "tomorrow's authors of best sellers" or other language of similar import, or that any author publishing through them has ever had a "best seller;"

14. The publication and promotional efforts made by them for their authors have resulted in placing any author publishing through them on the way to literary prominence or financial success, provided, however, that in the event that such efforts

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should so result in the future, nothing herein shall be construed as preventing respondents from so representing;

15. Their advertisements of an author's book in national and local media are hard hitting or result in satisfactory sales to their authors;

16. Their sales promotion results in their authors' books being sold to book stores and libraries generally or that they are stocked for sale by book stores;

17. Their promotion, publicity and advertising start at the time of the acceptance of an author's book for publication, or that the same last until the author's book is stocked by the book store or book seller, unless and until such is the fact;

18. They have separate promotion, publicity and advertising departments;

19. Books published by them are award winning, fast selling titles, or are in demand by wholesalers, jobbers and retail stores;

20. Various organizations or branches of the armed services, or any one else, have ordered books published by them in greater quantities than is the fact;

21. They have contacts in the specialized school field that result in the sale of significant quantities of their authors' books for classroom or other use;

22. Any significant number of books published by them have been sold through the appearance of authors on radio and television or through autograph parties or that sufficient numbers of books have been sold by such means to be profitable over and above the efforts and expenses involved therein;

23. They circularize an announcement as to the publication of a book except as to the names submitted by the author, or to any extent in excess of the actual fact;

24. Their subsidiary rights program has resulted in an increase of their authors' income beyond the regular percentage return from the sale of the authors' books, unless such is the fact;

25. Reviews of books published by them appear in publications in the United States or foreign countries, in excess of those actually so appearing, or that their utilization of syndicates and individual book reviewers will guarantee a review of the author's book;

26. Books published by them have won any significant number of awards or citations for exceptional design and press work, or for any other reason that is not in accordance with the facts;

27. They have a worldwide distribution of any of their au-

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thors' books or any distribution, that is not in accordance with the facts, or that they have representatives in 25 or any other number of foreign countries;

28. They sell the books published by them to outlets in large cities or the remote parts of the nation in any appreciable number;

29. Any payment made to any author based on sales of the author's book is a royalty unless and until the author has recouped the sum of money paid under the contract therefor;

30. They pay an author 40%, or any other percentage or sum, as royalty on every book sold until the author has recouped the sum of money paid under the contract therefor, or that the sum paid the author by them is in excess of that paid an author publishing under the standard or straight royalty publisher's contract;

31. Advertisements for their authors' books appear in most of the worthwhile and important national media; or appear in any other media, unless such is the fact;

32. They have arranged for publication in England of "Great Symphonies," "Immigrants All-American All," "My Pupils and I," "Eastern Easter in the Holy Land," "Unconventional Prayers," or "Life of St. Josephat," or that they have arranged for such publication of any other titled book, unless such is the fact;

33. Their promises and claims are neither exaggerated nor elaborate.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

The Commission having considered the initial decision of the hearing examiner wherein he accepted an agreement containing a consent order to cease and desist executed on behalf of the corporate respondent Comet Press Books Corp., and by respondents Samuel F. Chernoble, Sam Goldman and Sylvia R. Kaplan, individually and as officers of said corporation, by respondent Milton U. Sheldon, individually, by respondents' counsel, and by counsel in support of the complaint, service of which initial decision was completed on April 16, 1959; and

It appearing that the initial decision may be deficient in that it fails to incorporate the substance of certain pertinent provisions of the agreement of the parties:

It is ordered, That said initial decision be, and it hereby is,

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amended by inserting between the second and third paragraphs thereof the following paragraph:

Under the agreement, respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing, and the document includes a waiver by respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

It is further ordered, That the initial decision as so modified shall on the 19th day of May 1959, become the decision of the Commission.

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

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IN THE MATTER OF
DANIEL LIEBERMAN, ET AL.
TRADING AS BERDAN FURS

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

Docket 7295. Complaint, Nov. 6, 1958—Decision, May 19, 1959

Consent order requiring furriers in Philadelphia, Pa., to cease violating the Fur Products Labeling Act by failing to comply with the invoicing requirements; by advertising in catalogs, cards, signs, and by other means which represented prices falsely to be "wholesale" or reduced from purported regular prices which were in fact fictitious or manufacturer's suggested retail prices, which represented themselves falsely as wholesalers or manufacturers of fur products, and which named other animals than those producing the fur in certain products; and by failing to maintain adequate records as a basis for said pricing claims.

Mr. Alvin D. Edelson for the Commission.

Trammell, Rand & Nathan, by *Mr. Hans A. Nathan*, of Washington, D.C., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated November 6, 1958, the respondents are charged with violating the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations made pursuant thereto.

On March 12, 1959, the respondents and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

Under the agreement, respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing, and the document includes a waiver by respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.