

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 8th day of July 1961, 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
ENCYCLOPAEDIA BRITANNICA, INC.

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

*Docket 7137. Complaint, May 5, 1958—Decision, July 10, 1961**

Order requiring a prominent publisher, with headquarters in Chicago, to cease representing falsely—through statements of its door-to-door salesmen and in advertising and promotional literature it furnished to them and which they displayed and distributed to prospects—that the price quoted for the Encyclopaedia Britannica, and particularly the price quoted for a combination offer including the Encyclopaedia Britannica and other books, services, and merchandise, constituted a special or reduced price, and that such offer was available for a limited time only, usually described by the agent as the time of his call on the prospect.

Mr. Terral A. Jordan supporting the complaint.

Mr. James T. Welch, of Washington, D.C., *Mr. A. M. Gilbert*, of New York City, and *Mr. Harry J. Joy* of Chicago, Ill., for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding alleges that Encyclopaedia Britannica, Inc., a corporation, hereinafter called respondent, violated the provisions of the Federal Trade Commission Act by making certain misrepresentations in its printed advertising and promotional literature and oral statements by its salesmen in connection with the sale of its books and services, including the En-

* Decision of June 16, 1961, as modified by order of July 10.

cyclopaedia Britannica. The respondent denied the allegations set forth in the complaint.

Specifically, the complaint is directed against two alleged practices of the respondent which the complaint alleges to be in violation of the Act. First, it is alleged that the respondent, in printed advertising and promotional literature and oral statements by its solicitors or salesmen represented to prospective purchasers that the price quoted for its books, including the Encyclopaedia Britannica, particularly the price quoted for a "combination offer," including the Encyclopaedia Britannica and other books, services and merchandise, constituted a special price for a sale price other than the regular price at which said books, services and merchandise were offered; Secondly, that its offer to sell books, either singly or in combination, at the prices quoted was available for a limited time only, which was usually described by respondent's representatives as being limited to the time of the call on the prospective purchaser.

It was further alleged that the prices quoted by respondent and its representatives were not special or reduced prices either singly or in combination, but were respondent's usual and regular retail selling price for said books, services and merchandise as offered, either singly or in combination; that respondent's offer to sell said books, etc., was not limited to a particular call or visit by respondent's salesmen but was usually available on the price and terms stated to the prospective purchaser.

Hearings have been held at which oral testimony and documentary evidence were received in support of and in opposition to the allegations of the complaint. Approximately twenty-one so-called "public" witnesses testified in support of the complaint. These witnesses purported to testify concerning oral statements and representations made by respondent's salesmen in the course of the latter's sales presentations of respondent's books, especially respondent's "combination offer" of its Encyclopaedia Britannica. One of these "public" witnesses was an attorney-advisor in the employ of the Federal Trade Commission who testified to a sales presentation made to him after he was aware of the investigation being made by the Federal Trade Commission in this matter and after he had talked with the attorney-advisor who was actually conducting the investigation on behalf of the Federal Trade Commission. At the time of the sales presentation by respondent's saleslady to the attorney-advisor, the latter did not intend to purchase respondent's books but submitted to the sales presentation in order to obtain evidence and testimony to be used in this pro-

Findings

59 F.T.C.

ceeding. Under such circumstances, the hearing examiner does not give any weight to the testimony of the attorney-advisor employed by the Commission. Another "public" witness was a former salesman employed by respondent who, during approximately four weeks of such employment, unknown to respondent, was simultaneously and successively employed by two of respondent's competitors. Ultimately, the salesman was discharged, leaving respondent's employment considerably in debt to one of respondent's district managers. The testimony of this witness was not worthy of belief. While on the witness stand the witness evidenced noticeable hostility toward the respondent. For these reasons the hearing examiner has given no weight to his testimony in making the findings of fact in this decision.

Proposed findings of fact, conclusions of law and order have been filed by counsel supporting the complaint. A motion to dismiss the complaint and brief in support thereof has been filed by counsel for respondent. These have been considered. All proposed findings of fact and conclusions of law not specifically found or concluded herein are rejected. Upon the basis of the entire record the undersigned hearing examiner makes the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. The respondent Encyclopaedia Britannica, Inc., is a corporation organized and doing business under the laws of the State of New York with its office and principal place of business located at 425 North Michigan Avenue, Chicago, Illinois.

2. The respondent Encyclopaedia Britannica, Inc., is now, and for more than two years last past has been engaged in the business of publishing, distributing and selling books, including an encyclopaedia called Encyclopaedia Britannica. The respondent causes its said books, including the Encyclopaedia Britannica, when sold, to be transported from its place of business in Chicago, Illinois to purchasers located in various states of the United States and the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained a substantial course of trade in commerce between and among the various states of the United States and the District of Columbia in said books including the Encyclopaedia Britannica. Respondent is now and has been in substantial competition in commerce with other individuals, firms and corporations engaged in the sale in commerce of books of the same general kind and nature as those sold by respondent.

3. The respondent Encyclopaedia Britannica, Inc. sells its said books, including the Encyclopaedia Britannica and allied products, at retail to the ultimate consumer. Respondent advertises and promotes the sale of its books, including the Encyclopaedia Britannica, by mailing advertising and promotional pieces direct to the ultimate consumer and by advertisements placed in national magazines and periodicals. Persons interested in purchasing respondent's books often answer these advertisements by clipping and removing a coupon from the advertisement, writing their name and address thereon and returning it to respondent. The name and address of the person answering the advertisement is then referred by respondent to one of its salesmen, who then makes a personal call on the prospect at the address given. In their sales presentations, respondent's salesmen and representatives make representations concerning the quality, composition and prices of respondent's books, including the Encyclopaedia Britannica. Some of these representations are contained in advertising and promotional literature displayed and distributed by respondent's salesman to said prospective purchasers and some of said representations are orally made by respondent's salesmen to said prospective purchasers. Said advertising and promotional literature is furnished to its salesmen by respondent.

4. It is the contention of counsel supporting the complaint that respondent, in its advertising and promotional literature mailed by respondent to prospective purchasers and also published in magazines, periodicals and newspapers and exhibited to prospective purchasers by respondent's salesmen, as well as by oral statements made by respondent's salesmen to prospective purchasers, has represented that the price quoted to prospective purchasers for its books, including the Encyclopaedia Britannica, and particularly the price quoted for a "combination offer," including the Encyclopaedia Britannica, and other books, services and merchandise, constituted a special price, or some other kind of money saving price other than the regular price at which said books, services and merchandise were and are offered for sale and sold, and that savings were and are afforded to purchasers. Respondent's so-called "combination offer" includes the 24 Volume set of Encyclopaedia Britannica, the 2 Volume Britannica Language Dictionary, the Britannica World Atlas, bookcase to contain the set of Britannica and Atlas, the Library Research Service and Britannica Book of the Year. The basic combination is the set of Encyclopaedia Britannica and the privilege to purchase the Year Book at a claimed reduction in price and the research service. To these may be added the dictionary, Atlas, and bookcase, either one

Findings

59 F.T.C.

or all of them. In support of his contention that respondent's advertising represents that its set of Encyclopaedia Britannica and other products are offered for sale at reduced prices and that purchasers are realizing savings in their purchases, counsel supporting the complaint offered numerous exhibits. The following are excerpts from some of respondent's advertising and promotional literature:

CX 4A reads in part, "Here is an offer we are making on the *New Edition* of ENCYCLOPAEDIA BRITANNICA . . . We believe you'll want to have a preview of this combination offer. It is one of the *greatest* MONEY-SAVING offers that Britannica has made in its nearly 200-year history!"

CX 4C reads in part, "MONEY SAVING OFFER . . . WITHOUT COST OR OBLIGATION, please let me have illustrated preview booklet and details of your money saving offer on the ENCYCLOPAEDIA BRITANNICA . . ."

CX 7 and CX 8 read in part, "Now available . . . direct to you from the publisher BRAND NEW EDITION OF THE WORLD FAMOUS ENCYCLOPAEDIA BRITANNICA On Easy . . . Book a Month Payment Plan . . . You may wonder how we're able to make this truly amazing offer. First, because of the great demand for this magnificent set, we have ordered a tremendous printing. Also, by offering this set Direct from the Publisher, we have saved many distribution costs. *These savings are passed on to you.*" (underscoring supplied)

5. In addition to the advertising and promotional material distributed by respondent, excerpts from some of which are quoted above, respondent also prepared and published for use by its salesmen a sales presentation, CX-26A through S. These were sometimes referred to as "flip cards." Respondent instructed its salesmen to follow and use the sales method and technique contained in these cards in presenting respondent's "combination offer" to prospects. Respondent also authorized its salesmen to read from CX-26 to their prospects. Supporting Commission counsel's claim that respondent represented that the price to prospective purchasers for the Encyclopaedia Britannica under its "combination offer" was a reduced price or some other kind of money saving price other than the regular price and that purchasers will realize savings in the purchase of said books are the following excerpts from CX-26A-S:

Moreover, this program provides an opportunity for you to acquire the WORLD'S MOST CHERISHED REFERENCE LIBRARY at a fraction of the cost of the material in any other manner,—which represents a unique discount to your family. (26B)

We advertise and retail the Book of the Year at \$12.00 a volume. This program, however, entitles you to the privilege of securing one volume each year for the next 10 years for only four ninety-five a volume.

This is a discount of approximately 60% of the retail price, *as outlined in our brochure.* (26E)

The individual retail price of each item is listed in our official price list.

In return for your cooperation of assisting us in compiling a list of local families of your intellectual level, who would appreciate receiving advertising literature describing the new edition, the individual retail price will not apply in connection with our co-operative offer.

The retail prices are listed merely for a basis of comparison.

Please refer to our *official price list* for the regular retail prices. (26N)

In return for your cooperation—this is our new “Book a Month” proposal.

This plan makes the ownership of Britannica—as convenient as the purchase of daily newspapers and magazines.

It is subject, however, to withdrawal without notice. Therefore, if your family has an appreciation for a reference work as fine as Britannica—we urge you to take advantage of the immediate opportunity.

If we deliver—in the next two or three weeks—the entire 24 volume of the new edition—keep your library up to date for the next ten years with the Britannica Book of the Year—permit you to utilize our research facilities for the next ten years—AT OUR EXPENSE—

AND ALSO INCLUDE the other important items outlined in our brochures—which in the opinion of many top authorities makes the Britannica program the finest educational program ever published—

ALL OF WHICH—IF PURCHASED SEPARATELY AT REGULAR RETAIL PRICES—WOULD AMOUNT TO \$511.50 of Britannica merchandise—

But then, if we “X” out the regular retail price—AND MERELY PASS ALONG TO YOU—THE SMALLEST DOLLAR AND CENT COST POSSIBLE—AN AVERAGE OF ONLY \$37.30 A YEAR—DELIVER THE ENTIRE 24 VOLUMES ALL AT ONE TIME—AND GO ONE STEP FURTHER—PERMIT YOU TO SEND ONE MEMO EACH MONTH—TO MATCH THE 24 VOLUMES—CAN WE COUNT ON YOUR COOPERATION? (26P)

6. Through the use of the above-quoted statement in respondent's sales presentation (CX-26P) “ALL OF WHICH—IF PURCHASED SEPARATELY AT REGULAR RETAIL PRICES—WOULD AMOUNT TO \$511.50 OF Britannica merchandise—But then, if we “X” out the regular retail price—AND MERELY PASS ALONG TO YOU—THE SMALLEST DOLLAR AND CENT COST POSSIBLE—AN AVERAGE OF ONLY \$37.30 A YEAR—DELIVER THE ENTIRE 24 VOLUMES ALL AT ONE TIME—AND GO ONE STEP FURTHER—PERMIT YOU TO SEND ONE MEMO EACH MONTH—TO MATCH THE 24 VOLUMES—CAN WE COUNT ON YOUR COOPERATION?” respondent thereby represents the price of \$511.50 to be the “regular retail price” of the Encyclopaedia Britannica under the “combination offer.” On the other hand, Mr. G. Clay Cole, respondent's Vice-president in charge of sales testified that the price of \$511.50 repre-

sented the sum total of the prices set forth on CX-25. (CX-25 is an accordion-type brochure purporting to show prices and pictures of the Encyclopaedia Britannica, the Book of the Year, the Research Service, the Bookcase, the Dictionary, the World Atlas and the Home Reading Guides under the respondent's "combination offer.") Mr. Cole further testified that the price of \$414.50 shown on the first panel of CX-25 covers the merchandise shown on the first three panels of the exhibit, namely, the set of Encyclopaedia Britannica in the Red Royal Binding (priced at \$294.50 for the set only on CX-22B, respondent's price list), plus the Year Books at \$12.00 per volume for 10 years or \$120.00, plus the privilege of the Research Service. The price of \$511.50, therefore, consists of the set of Encyclopaedia Britannica at \$294.50, 10 year books @ \$12.00 per volume, or \$120.00, the bookcase for \$37.50, the Dictionary for \$35.00 and the Atlas for \$25.00. Thus it is seen that the purported regular price of \$511.50 is fictitiously padded in the amount of \$120.00 since the purported reduced price of \$373.00 does not include anything for the Year Books. By and through the use of the word and figure "price \$414.50" directly under the picture of a set of Encyclopaedia Britannica in the Red Royal Binding, on the first panel of CX-25, respondent thereby represented that \$414.50 was the regular retail selling price of the Encyclopaedia Britannica alone, whereas, in truth and in fact, the regular retail selling price of the Encyclopaedia Britannica in the Red Royal Binding was actually \$294.50, as shown by respondent's price list, CX-22B. Respondent's representations of discounts and savings are false. There are no actual savings to purchasers and respondent's regular retail prices of the various "combination offers" are shown on CX-22A and B. With the exception of the price of the Encyclopaedia Britannica in the Blue Levantex binding, the prices contained in CX-22A and B have been the same since 1949. Respondent's salesmen are not permitted to deviate from the prices set forth in CX-22A and B. Accordingly, it is found that the prices quoted by respondent and its salesmen for the Encyclopaedia Britannica either singly or in combination were and are not reduced prices but are the usual and regular retail selling prices for said books, services and merchandise as offered either singly or in combination and do not afford savings to purchasers.

7. The second count in the complaint concerns the allegation that respondent's offer to sell its books, etc., either singly or in combination at the quoted prices was available for a limited time only which was usually described by respondent's salesmen as being limited to the time of the call on the prospective purchaser, whereas

respondent's offer to sell said books was not limited to a particular call or visit by the salesmen but was usually available on the price and terms stated to the prospect. Respondent instructed its salesmen not to make return calls to prospects. Respondent employs approximately 2,500 salesmen. Through experience it was found that if a salesman was unable to make a sale at the conclusion of his sales presentation to a prospect, it was not economically feasible for the salesman to make a return call on that prospect. Experience showed that, if the prospect did not purchase respondent's books at the conclusion of the salesman's presentation, the salesman's time would be put to more productive use if he called on a new prospect and made a new sales presentation rather than a call back to the previous prospect. Accordingly, when a customer requested time to think over and decide whether to purchase the Encyclopaedia Britannica after the salesman's presentation, the salesman customarily replied to the effect that the customer should make up his mind that day or that evening because the salesman would not make a return call tomorrow or tomorrow evening. In the opinion of this hearing examiner such a practice in and of itself is not illegal and is not a representation that the offer to sell respondent's books was available for a limited time only. However, these statements cannot be considered alone in view of the statements in respondent's printed and promotional material, such as CX-4A, CX-5, CX-6, CX-7, CX-8 and CX-26 where respondent states: "This offer is necessarily subject to withdrawal without notice;" "Since this offer is necessarily limited" and "It is subject, however, to withdrawal without notice." Also, CX-45 and CX-46 place a time limit on the availability of the offer. When these written statements are considered along with the oral statements by respondent's salesmen to the prospect that the salesmen would not make a call back, the customer interpreted these statements to mean that respondent's offer was limited in point of time. Respondent thereby represented that its offer to sell books at the advertised prices and terms was available for a limited time only, although, as a matter of fact, respondent's books, services and merchandise are usually and regularly available at the prices and on the terms and conditions stated to the prospective purchaser.

8. The aforesaid false, misleading and deceptive representations by respondent in its advertising and promotional material used in connection with the sale of its books, services and merchandise has had and now has the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said misrepresentations were and are true and into the

Order

59 F.T.C.

purchase of substantial quantities of respondent's books and merchandise by reason of such erroneous belief. As a result thereof, substantial trade in commerce has been unfairly diverted to the respondent from its competitors and substantial injury has been done to competition in commerce.

9. Counsel for respondent urges that respondent should not be held conclusively responsible for each and every misrepresentation made by its salesmen because it could not continue to sell through salesmen in the face of such liability. Counsel also argues that the testimony shows that many of the public witnesses who testified at the request of the Commission did not remember the exact oral statements and representations made to them by respondent's salesmen several years previous to the date on which they testified and that the testimony of other public witnesses was vague and indefinite and did not comport to the standard of reliable, probative and substantial testimony required by The Administrative Procedure Act. Counsel also urges that the testimony of some of the Commission witnesses should be disregarded entirely by reason of their obvious prejudice and hostility toward respondent. Some of these objections of counsel are well taken. However, the findings of fact made herein are not based upon the oral testimony of witnesses who appeared and testified in support of the complaint, but are based largely upon documentary evidence printed and distributed by respondent. This documentary evidence was received in evidence and has been discussed in this decision. It is sufficient to establish the substantial allegations set forth in the complaint. Counsel also urges that many of the advertising pieces and promotional material have been discontinued and replaced by less objectionable material. CX-4A, CX-5, CX-6, CX-7, CX-8 and CX-26 were in use until approximately the year of 1958. The statements in these advertising pieces were made by respondent in spite of Stipulation No. 3242 (CX-1) signed by respondent and the Cease and Desist Order dated June 12, 1952, entered by the Commission in *Encyclopaedia Britannica, Inc.*, Docket No. 5384. This record does not disclose any "unusual circumstances" which would relieve respondent from the prohibitions of a cease and desist order.

ORDER

It is ordered, That the respondent, Encyclopaedia Britannica, 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 or distribution of encyclopaedias, periodic supplements thereto, research memberships, or any other books or

publications, or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That the prices or terms at which the aforesaid goods and services are customarily or regularly offered for sale, or sold, either singly or in combination with other goods or services, are special, reduced or discounted prices or terms; or are special, reduced or discounted prices or terms as a part of an offer to a special or selected class or group of purchasers or as a part of an advertising survey program or as a part of an introductory offer or as a part of any other kind of sales or promotional program; or afford any savings to the purchaser.

2. That any offer to sell said goods or services at their regular or customary prices or terms or at prices or terms generally the same as their regular or customary prices or terms is limited or otherwise restricted or unavailable.

OPINION OF THE COMMISSION

By Secret, *Commissioner*:

The complaint in this matter charges respondent with violating Section 5 of the Federal Trade Commission Act by falsely representing that certain books, merchandise and services were offered for sale at special or reduced prices and that the offer to sell at such prices was available for a limited time only. The hearing examiner held in his initial decision that the allegations of the complaint were sustained by the evidence and both sides have appealed from this decision. Respondent has appealed from certain findings and from the order to cease and desist. Counsel supporting the complaint has taken exception to certain rulings and statements contained in the decision and to the hearing examiner's failure to base his findings on certain portions of the record.

We will consider first respondent's contention that the findings upon which the order is based are not supported by the evidence.

Respondent is engaged in the business of publishing and selling books, including an encyclopaedia called "Encyclopaedia Britannica". In addition to the encyclopaedia, respondent also sells other books, merchandise and services, including a 2-volume language dictionary, a world atlas, a bookcase specially designed to hold the encyclopaedia and atlas, a library research service, and the Britannica Book of the Year. Sales of these items are made directly to the ultimate purchaser through respondent's own sales organization. Respondent also sells and distributes other merchandise but, for the

purpose of this opinion, it is necessary to consider only respondent's practices in connection with the sale of the aforementioned goods and services.

The Encyclopaedia Britannica is offered in several different bindings and the price of the basic set of 24 volumes ranges from \$294.50 to \$671.50. This set of books is usually and regularly offered for sale and sold by respondent either separately or in combination with other books, merchandise, or services. The basic combination offer is the encyclopaedia, the research service for 10 years, and the privilege of purchasing the Book of the Year at \$4.95 per volume for 10 years. This combination may also be purchased with the atlas, dictionary or bookcase or with any two or all three of these accessories. The price of the encyclopaedia in each binding, except the "Blue Levantex" binding, has remained the same since 1949, and the prices of the various combinations, other than those which include the encyclopaedia in the "Blue Levantex" binding, have also remained the same since that year. Since the representations made by respondent in connection with the offering for sale and sale of the encyclopaedia in "Red Royal" binding and combinations which include the encyclopaedia in this binding are typical of those made by respondent in connection with the offering for sale and sale of the encyclopaedia in all other bindings and combinations which include the encyclopaedia in such other bindings, we will confine our discussion to the alleged unfair practices as they relate to the sale of the encyclopaedia in the "Red Royal" binding and combinations which include the encyclopaedia in this binding.

Sales are made by respondent directly to the public through its own salesmen who make personal calls on prospective customers. The prices at which the aforementioned books, merchandise and services are sold are set forth in a price list furnished the salesmen and the salesmen are not permitted to deviate from these prices. The following is a list of the prices at which the encyclopaedia in the "Red Royal" binding and the various accessory items have been sold since 1949:

Encyclopaedia only	\$294.50
Basic combination offer: encyclopaedia, research service for 10 years and privilege of purchasing Book of the Year for 10 years at \$4.95 per volume	298.00
Basic combination offer, including any one of the accessory items— atlas, dictionary or bookcase	323.00
Basic combination offer, including any two of the accessory items.....	348.00
Combination offer, including all three accessory items.....	373.00

In selling the aforementioned books, merchandise and services, the salesman is required to follow a standard sales presentation prepared

and approved by respondent. This sales presentation is an offer to sell the encyclopaedia in combination with the various accessory items. According to respondent, its sales representatives "are painstakingly and repeatedly schooled and instructed as to the use of the single form of sales presentation prepared and approved by the Respondent and are directed and required to follow both the form and substance of such presentation without deviation therefrom." Since all sales to the general public are made through respondent's salesmen and since the salesmen are required to adhere to the aforementioned price list and sales presentation, it is clear that respondent usually and regularly sells the various accessory items in combination with the encyclopaedia and that the usual and regular prices for these items are the prices set forth in the price list. Although there is some testimony that the accessory items have been sold separately at prices other than those contained in the price list, it is apparent, for the foregoing reasons, that these items are not usually sold in this manner and that such sales must necessarily be isolated and infrequent occurrences.

Although respondent has for a number of years usually and regularly sold the encyclopaedia and accessory items at the prices set forth in the aforementioned price list, the record discloses that it has represented in written advertising and in the sales presentation made by its representatives that such prices are special or reduced prices and that the offer to sell at such prices is a limited or restricted offer. The following representations are typical of those used by the respondent to convey the impression that the prices at which its books, merchandise and services are usually and regularly sold are special or reduced prices:

Here is an offer we are making on the *New Edition* of ENCYCLOPAEDIA BRITANNICA . . . We believe you'll want to have a preview of this combination offer. It is one of the *greatest* MONEY-SAVING offers that Britannica has made in its nearly 200-year history!

MONEY SAVING OFFER . . . WITHOUT COST OR OBLIGATION, please let me have illustrated preview booklet and details of your money saving offer on the ENCYCLOPAEDIA BRITANNICA . . .

Now available . . . direct to you from the publisher BRAND NEW EDITION OF THE WORLD FAMOUS ENCYCLOPAEDIA BRITANNICA On Easy . . . Book a Month Payment Plan . . . You may wonder how we're able to make this truly amazing offer. First, because of the great demand for this magnificent set, we have ordered a tremendous printing. Also, by offering this set Direct from the Publisher, we have saved many distribution costs. These savings are passed on to you.

Moreover, this program provides an opportunity for you to acquire the WORLD'S MOST CHERISHED REFERENCE LIBRARY at a fraction of the cost of the material in any other manner—which represents a unique discount to your family.

We advertise and retail the Book of the Year at \$12.00 a volume. This program, however, entitles you to the privilege of securing one volume each year for the next 10 years for only four ninety-five a volume.

This is a discount of approximately 60% of the retail price, *as outlined in our brochure.*

The individual retail price of each item is listed in our official price list.

In return for your cooperation of assisting us in compiling a list of local families of your intellectual level, who would appreciate receiving advertising literature describing the new edition, the individual retail price will not apply in connection with our co-operative offer.

The retail prices are listed merely for a basis of comparison.

Please refer to our *official price list* for the regular retail prices.

In return for your cooperation—this is our new “Book a Month” proposal.

This plan makes the ownership of Britannica—as convenient as the purchase of daily newspapers and magazines.

It is subject, however, to withdrawal without notice. Therefore, if your family has an appreciation for a reference work as fine as Britannica—we urge you to take advantage of the immediate opportunity.

If we deliver—in the next two or three weeks—the entire 24 volumes of the new edition—keep your library up to date for the next ten years with the Britannica Book of the Year—permit you to utilize our research facilities for the next ten years—AT OUR EXPENSE—

AND ALSO INCLUDE the other important items outlined in our brochures—which in the opinion of many top authorities makes the Britannica program the finest educational program ever published—

ALL OF WHICH—IF PURCHASED SEPARATELY AT REGULAR RETAIL PRICES—WOULD AMOUNT TO \$511.50 of Britannica merchandise—

But then, if we “X” out the regular retail price—AND MERELY PASS ALONG TO YOU—THE SMALLEST DOLLAR AND CENT COST POSSIBLE—AN AVERAGE OF ONLY 37.30 A YEAR—DELIVER THE ENTIRE 24 VOLUMES ALL AT ONE TIME—AND GO ONE STEP FURTHER—PERMIT YOU TO SEND ONE MEMO EACH MONTH—TO MATCH THE 24 VOLUMES—CAN WE COUNT ON YOUR COOPERATION?

As pointed out by the hearing examiner in the initial decision, respondent has represented that the price of \$511.50 is the regular retail price of the encyclopaedia and accessory items under the combination offer. The price of \$511.50 is arrived at by totaling the individual prices of the various items included in the combination offer, i.e., the encyclopaedia at \$294.50, ten volumes of the Book of the Year at \$12.00 per volume, or \$120.00, the bookcase for \$37.00, the dictionary for \$35.00, and the atlas for \$25.00. Since the purchaser does not receive the Book of the Year under the combination offer but merely the privilege of purchasing this item at \$4.95 per volume, the representation that \$511.50 is the usual and regular price of the books, merchandise and services, included in the combination offer, is false on its face. Using respondent's own figures, the price of \$511.50 is fictitiously padded at least in the amount of \$49.50.

The hearing examiner also found that respondent had misrepresented the price of the encyclopaedia in the "Red Royal" binding by placing the word and figure "Price \$414.50" directly beneath a picture of the encyclopaedia in one of its advertisements. Respondent contends, however, that the amount of \$414.50 is the price of the encyclopaedia, together with the Book of the Year and research service which are also depicted in the same piece of literature. We have examined the advertising in question and agree with the hearing examiner that it is designed in such a manner as to create the impression that the price of the encyclopaedia alone is \$414.50. Moreover, the price of the encyclopaedia in combination with the Book of the Year and research service is not \$414.50, as contended by respondent. According to respondent's price list, this combination sells for \$298.00 plus \$4.95 per year for ten years, or a total of \$347.50.

These findings alone are sufficient to support an order prohibiting respondent from misrepresenting the usual and regular prices of its merchandise. The hearing examiner has also made the following findings or conclusions which relate generally to the various claims and representations made by respondent to the effect that the prices at which its encyclopaedias are sold either singly or in combination with other books, merchandise or services are special or reduced prices:

Respondent's representations of discounts and savings are false. There are no actual savings to purchasers and respondent's regular retail prices of the various "combination offers" are shown on CX-22A and B. With the exception of the price of the Encyclopaedia Britannica in the Blue Levantex binding, the prices contained in CX-22A and B have been the same since 1949. Respondent's salesmen are not permitted to deviate from the prices set forth in CX-22A and B. Accordingly, it is found that the prices quoted by respondent and its salesmen for the Encyclopaedia Britannica either singly or in combination were and are not reduced prices but are the usual and regular retail selling prices for said books, services and merchandise as offered either singly or in combination and do not afford savings to purchasers.

Respondent takes exception to this statement, arguing that the prices of its books, merchandise and services are higher when sold separately than when sold in combination and that the difference between the two prices represents a saving to the purchaser. Although we are in substantial agreement with the hearing examiner's conclusions, we believe that his findings of fact are inadequate and should be modified to state more specifically the manner in which respondent has misrepresented the prices of its goods and services.

It is clear from the record in this connection that respondent has represented that the prices at which its encyclopaedia and accessory

Opinion

59 F.T.C.

items are sold in combination are special or reduced prices. In making this representation, respondent has compared its combination prices with the prices at which the various items included in the combinations are sold separately and individually. It has thereby represented directly and by implication that the usual and regular price of any combination of items is the sum of the prices at which the various items included in the combination are sold separately and individually. Such representations are misleading and deceptive. As contemplated and preordained by respondent's prepared sales presentation, the various accessory items are usually and regularly sold in combination with the encyclopaedia, not separately and individually; and the usual and regular price of any combination has been the price of that combination as set forth in respondent's price list, not the sum of the prices required to be paid by purchasers who might buy the component items separately. Consequently, the prices at which respondent's encyclopaedia and accessory items are sold in combination are not special or reduced prices and the difference between such prices and the sum of the individual prices of the items included in the combination does not represent a saving to the purchaser.

Respondent also takes exception to the hearing examiner's finding that it had represented that its offer to sell its goods or services at the regular prices or terms was available for a limited time only. The record shows, in this connection, that respondent represented in advertising that its combination offer was subject to withdrawal without notice. This same offer had been made for many years and was in fact respondent's standard offer. With the exception previously noted, there had been no variation in prices since 1949. Nevertheless, as respondent has pointed out, such offer could be withdrawn without notice and a statement to that effect was not untruthful. The record also discloses that whenever a prospective purchaser could not decide whether to purchase respondent's goods or services at the conclusion of a sales presentation, the salesman was instructed to, and did, inform the prospect that if he intended to make the purchase he would have to make up his mind at that time since the salesman would not make a return call. Although there is some conflict in the evidence on this point, it appears that respondent's salesmen usually do not make return calls. Consequently, this statement by the salesmen would also seem to be true.

The foregoing considerations are not controlling to decision, however, since we are of the opinion that the salesman's "no-return call" statement was made under such circumstances that the prospective purchaser would reasonably interpret it to mean that the combi-

nation offer would be withdrawn if not accepted at the time of the salesman's call. Having been led to believe by respondent's advertising and the sales presentation that respondent's books, services and merchandise were being offered to him at a special or reduced price, the prospective purchaser might well understand the salesman's "no-return call" statement to mean that the offer to sell at such price was limited to the time of the call. That the statement was so interpreted is shown by the testimony of witnesses who had heard the sales presentation. It is clear that these witnesses were under the impression that the offer to sell at the prices quoted by respondent's salesmen would be withdrawn if not accepted at the time of the salesman's call. Consequently, we agree with the hearing examiner that respondent had represented that the offer to sell at its usual and regular prices was limited or otherwise restricted. Respondent's appeal on this point is rejected.

Respondent's contention that the first paragraph of the order to cease and desist is too restrictive is also rejected. This paragraph would prevent respondent from representing in connection with the offering for sale, sale or distribution of its encyclopaedias or other books, merchandise and services:

That the prices or terms at which the aforesaid goods and services are customarily or regularly offered for sale, or sold, either singly or in combination with other goods or services, are special, reduced or discounted prices or terms; or are special, reduced or discounted prices or terms as a part of an offer to a special or selected class or group of purchasers or as a part of an advertising survey program or as a part of an introductory offer or as a part or any other kind of sales or promotional program; or afford any savings to the purchaser.

Respondent argues, in effect, that unless the clause "when such is not the fact" is included in the paragraph, respondent will be prohibited from making truthful representations with respect to its special prices to selected classes of customers or with respect to the savings afforded by its combination prices.

We do not agree. As hereinbefore stated, the prices at which respondent usually and regularly sells its books, merchandise and services are the combination prices set forth in its price list. If, as respondent contends, sales are made to selected classes, such as members of the Armed Services, at prices less than the combination prices, there is nothing in the order to prevent respondent from so representing. The order will, however, prohibit respondent from representing directly or by implication that the usual and regular price of any combination of items is the sum of the individual prices of the various items in the combination by comparing the prices at which its goods and services are sold in combination with the prices

Opinion

59 F.T.C.

at which such good and services are sold separately and individually or in any other manner. The order will also prohibit respondent from otherwise representing that the prices at which its books, merchandise and services are usually and regularly sold are special or reduced prices or that the difference between the usual and regular prices, namely, the combination prices, and the sum of the prices at which the items included in any combination are sold separately and individually represents a saving to the purchaser.

The second paragraph of the order contained in the initial decision would prohibit respondent from representing in connection with the offering for sale, sale or distribution of encyclopaedias or other books, merchandise and services:

That any offer to sell said goods or services at their regular or customary prices or terms or at prices or terms generally the same as their regular or customary prices or terms is limited or otherwise restricted or unavailable.

We agree with respondent that this inhibition would prevent it from making truthful and nondeceptive representations concerning the availability of an offer to sell at certain prices or terms. For example, if respondent would in good faith decide to increase the usual and regular price of any combination of goods or services, it would not be permitted by the order to inform prospective purchasers of such price change prior to the date on which it would go into effect. Consequently, we believe that this paragraph should be modified to permit nondeceptive representations concerning such limitations or restrictions which respondent may impose on offers to sell its goods and services.

The appeal of counsel supporting the complaint is directed primarily at certain rulings in the initial decision whereby the hearing examiner either rejected or refused to give weight to the testimony of certain witnesses who had testified in support of the complaint. One of the issues raised by this appeal concerns the following statement by the hearing examiner with respect to the testimony of certain witnesses who had been contacted by respondent's sales representatives:

Counsel [for respondent] also argues that the testimony shows that many of the public witnesses who testified at the request of the Commission did not remember the exact oral statements and representations made to them by respondent's salesmen several years previous to the date on which they testified and that the testimony of other public witnesses was vague and indefinite and did not comport to the standard of reliable, probative and substantial testimony required by The Administrative Procedure Act. Counsel also urges that the testimony of some of the Commission witnesses should be disregarded

entirely by reason of their obvious prejudice and hostility toward respondent. Some of these objections of counsel are well taken. However, the findings of fact made herein are not based upon the oral testimony of witnesses who appeared and testified in support of the complaint, but are based largely upon documentary evidence printed and distributed by respondent.

Counsel supporting the complaint has taken exception to the last sentence of this ruling insofar as it implies that the examiner has rejected all of the testimony of the witnesses. We agree with counsel supporting the complaint that the ruling is vague and ambiguous. It is particularly confusing since elsewhere in the initial decision the hearing examiner apparently relies on the testimony in question. On page 9 thereof, he refers to certain representations made by respondent and finds that "the customer interpreted these statements to mean that respondent's offer was limited in point of time."

If the hearing examiner meant to reject the testimony in question by the above-quoted ruling, he was in error. We do not agree that the testimony was vague and indefinite or that it "did not comport to the standard of reliable, probative and substantial testimony required by The Administrative Procedure Act." The fact that the witnesses did not recall "the exact oral statements and representations" made to them by respondent's salesmen is certainly no reason to disregard their testimony. Although the hearing examiner stated that the respondent's various contentions included arguments that "some" of the witnesses were prejudiced and biased, he merely concluded that "some of these objections" were well taken. Hence, there was no suggestion by the hearing examiner that all of the witnesses were so biased. As a matter of fact, we find nothing in the testimony or elsewhere in the record to indicate that these witnesses were so biased and hostile toward respondent that they could not be believed. The statements of these witnesses with respect to the beliefs and impressions which they testified were engendered by respondent's sales presentation are significant. The import of their testimony is that they had been led to believe that respondent's combination prices were reduced or special prices and that the offer to sell at such prices was available for a limited time only. This coincides with our own interpretation of respondent's claims and supports the allegation that the representations made by respondent's salesmen were misleading and deceptive. Consequently, we agree with counsel supporting the complaint that the hearing examiner should not have refused to place any reliance on this testimony, even though his findings could be sustained by other evidence of record.

Order

59 F.T.C.

Counsel supporting the complaint has also taken exception to other rulings by the hearing examiner excluding evidence offered in support of the complaint. In view of the fact, however, that the allegations of the complaint are supported by other evidence of record, a determination of the questions raised by these exceptions is not material to this decision and, consequently, will not be made.

All arguments made by respondent which have not been discussed herein are rejected.

To the extent indicated herein, respondent's appeal and the appeal of counsel supporting the complaint are granted and in all other respects they are denied. The initial decision, in those respects in which it is contrary to the views expressed herein, is modified to conform with such views. An appropriate order will be entered.

Chairman Dixon and Commissioner Elman did not participate in the decision of this matter.

FINAL ORDER

Respondent and counsel in support of the complaint having filed cross-appeals from the initial decision of the hearing examiner, and the matter having been heard on briefs and oral argument; and the Commission, for the reasons stated in the accompanying opinion, having granted in part and denied in part the appeals of respondent and counsel in support of the complaint, and having modified the initial decision to the extent it is contrary to the views expressed in said opinion:

It is ordered, That the following order be, and it hereby is, substituted for the order contained in the initial decision:

It is ordered, That the respondent, Encyclopaedia Britannica, 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 or distribution of encyclopaedias, periodic supplements thereto, research memberships, or any other books or publications, or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That the prices or terms at which the aforesaid goods and services are customarily or regularly offered for sale, or sold, either singly or in combination with goods or services, are special, reduced or discounted prices or terms; or are special, reduced or discounted

prices or terms as a part of an offer to a special or selected class or group of purchasers or as a part of an introductory offer or as a part of any other kind of sales or promotional program; or afford any savings to the purchaser.

2. That any offer to sell said goods or services which is not limited or otherwise restricted as to time, price or any other factor is so limited or restricted.

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

It is further ordered, That respondent Encyclopaedia Britannica, Inc., shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist contained herein.

Chairman Dixon and Commissioner Elman not participating.

ORDER MODIFYING ORDER TO CEASE AND DESIST

The Commission having issued its decision in this proceeding on June 16, 1961, containing its order to cease and desist; and

It appearing that through inadvertence the word "other" was omitted from the fifth line of paragraph 1 of said order to cease and desist and that the words "or as part of an advertising survey program" were omitted from the twelfth line of paragraph 1 of said order to cease and desist; and

It appearing that said order to cease and desist should be modified to correct these omissions:

It is ordered, That paragraph 1 of said order to cease and desist be, and it hereby is, modified to read as follows:

1. That the prices or terms at which the aforesaid goods and services are customarily or regularly offered for sale, or sold, either singly or in combination with other goods or services, are special, reduced or discounted prices or terms; or are special, reduced or discounted prices or terms as a part of an offer to a special or selected class or group of purchasers or as a part of an advertising survey program or as a part of an introductory offer or as a part of any other kind of sales or promotional program; or afford any savings to the purchaser.

Chairman Dixon and Commissioner Elman not participating.

Order

59 F.T.C.

IN THE MATTER OF
DIAMOND CRYSTAL SALT CO.

MODIFIED ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT

Docket 7323. Modified order, July 11, 1961

Order modifying divestment order of Feb. 4, 1960 (56 F.T.C. 818), by excluding from its prohibition of future acquisitions, the purchase of three affiliated companies engaged in the sale of salt in small packets designed for use as individual servings.

Before *Mr. Walter R. Johnson*, hearing examiner.

Mr. William J. Boyd, Jr. and *Mr. Arthur J. Hessburg* for the Commission.

Dickinson, Wright, Davis, McKean & Cudlip, by *Mr. Edward P. Wright*, of Detroit, Mich., for respondent.

ORDER RULING ON PETITION FILED JUNE 7, 1961, AND MODIFYING
PARAGRAPH 4 OF THE ORDER TO DIVEST AND TO CEASE AND DESIST

The respondent having filed a petition on June 7, 1961, which requests that the Commission approve the respondent's proposed purchase of certain package manufacturing machinery and patents attendant thereto, the land and building housing such machinery, and the existing inventory now owned by three affiliated companies known as Unit-Packet Corporation, Packet Products Corporation and Hoag-Russell Company, which concerns have been engaged in the sale of salt in small packets designed for use as individual servings; and

The Commission having issued its decision in this proceeding on February 4, 1960, containing its order to divest and to cease and desist, which order, among other things, prohibits the respondent from acquiring any time during the succeeding ten years the assets or share capital of any corporation in commerce and engaged in the business of producing and/or distributing salt; and the Commission having accordingly determined that respondent's petition should be treated as a request that the order be duly modified to exclude the above purchase from its purview; and

It appearing from the facts stated in the petition and in the answer filed by counsel supporting the complaint, which joins in the request that the petition be granted, that there is no reasonable probability that any of the anticompetitive effects proscribed by the relevant statute will result from the proposed purchase, and the