

(60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Commissioner Nicholson not participating for the reason that oral argument was heard prior to his taking the oath of office.

IN THE MATTER OF
AMERICAN MARKETING ASSOCIATES, INC., ET AL.

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION

OF THE FEDERAL TRADE COMMISSION ACT

Docket 8727. Complaint, Jan. 17, 1967—Decision, Feb. 5, 1968

Order requiring a Philadelphia, Pa., retail door-to-door seller of encyclopedias and other educational books, to cease misrepresenting that it is affiliated with the American Marketing Association or any other business group or that it is doing market research, that its employee applicants will be trained as junior executives and paid a salary, that it is affiliated with any educational or governmental agency, that it is selling its books at reduced prices, and using other deceptive sales tactics.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that American Marketing Associates, Inc., a corporation, and Stanley Kessler, individually and as a director of the said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing

d. Which contains the statement "The form enclosed is confidential, no one else may open" or any statement of similar purport.

4. Representing, directly, or by implication, that any of respondent's Payment Demand forms or any similar collection material sold by the respondent have been approved by the Federal Trade Commission or have been deemed to be in compliance with the requirements of the order to cease and desist entered by the Federal Trade Commission in Docket No. 6236, *In the Matter of Mitchell S. Mohr, et al.*

5. Misrepresenting Federal Trade Commission or court approval of any of respondent's envelopes, forms, or other material.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Commissioner Nicholson not participating for the reason that oral argument was heard prior to his taking the oath of office.

IN THE MATTER OF

AMERICAN MARKETING ASSOCIATES, INC., ET AL.

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to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent American Marketing Associates, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its main office and place of business located at 1422 Chestnut Street (Suite 702), Philadelphia, Pennsylvania.

Respondent Stanley Kessler is an individual and director of the corporate respondent. He is the sole stockholder and operator of the business of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the business of the advertising, offering for sale, sale and distribution of encyclopedias and other educational books to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, the said books, when sold, to be shipped from their place of business in the State of Pennsylvania, and from the places of business of their suppliers, located in the State of Pennsylvania and other States of the United States, to purchasers thereof located in States of the United States other than the States in which the shipments originate and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said books in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, respondents have been, and now are, in substantial competition in commerce with corporations, firms and individuals in the sale of books of the same general kind and nature as those sold by respondents.

PAR. 5. In the course and conduct of their business, as aforesaid, respondents sell said books at retail to the general public. Sales are made by respondents' agents, representatives or employees who contact prospective purchasers in their homes or at their places of business.

Respondents have formulated, developed and carried out a plan for the purpose of attracting and acquiring sales employees and for the purpose of selling said books.

A

In furtherance of said plan, respondents have disseminated or caused to be disseminated, and now disseminate or cause to be disseminated,

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classified advertisements in newspapers of general and interstate circulation and in other advertising media and have made statements and representations designed and intended to induce individuals to apply for employment and training in respondents' organization in reliance thereon.

Typical and illustrative of the foregoing, but not all inclusive thereof, are the following:

American Marketing Assoc. now opening new center city offices. Require services of several perky, well-groomed beginners (over 17) to assist our staff of bright, young, busy marketing, sales, Anthology & public relation execs.

\$89 SAL TO START

to those who meet our requirements, no exp. required. FULL TRAINING. No typing. These are permanent positions which could lead to a career in personnel management and supervision & on income in excess of \$4800 per year. YOU MUST BE PREPARED TO START IMMEDIATELY.

CALL FOR APPOINTMENT

LO 4-4345

FEMALE HELP WANTED

GALS

JR. EXEC.

TRAINEE

SAL. \$89 PER WK.

Large international marketing corp will now employ 4 bright well-groomed beginners (over 17) to fill supervisory and Jr. Market research positions now available due to recent promotions. If accepted you'll be trained (at our expense) to assist our present staff of Jr. Execs. MUST BE PREPARED TO START IMMEDIATELY. CALL FOR APPOINTMENT

543-4345

GALS

OVER 17

WOULD YOU
LIKE TO

* * * * *

* * * You will be working in our Marketing & Analysis Dept. assisting our staff of bright young, marketing, advertising, sales, anthological & public relations execs. * * * You must be prepared to start work immediately on \$360 monthly starting salary. For Easiest & best way to apply call for appt.

Mr. Disney

564-4345

MEN—Large international Marketing Concern Has Several Open'gs in its New Consumer Acceptance Dept Career Position. No Exp. Nec. No Selling. Full Training Provided. Must Be Able To Meet Public. Excel. Sal. To Start Management Oppty Available. Rapid Advancement To Excess of \$9000 per yr. Must be Able To Start Immediately. Apply At Our Center City Personnel Office. Amer. Mktg. Assoc. 1422 Chestnut St. Suite 702, 10 A.M. to 4 P.M. Only.

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MEN

OVER 17

SUPERVISORY
TRAINEES
SAL. \$89 PER WK.

Dynamic & fast growing WOMEN'S ORGANIZATION will now employ 4 bright well-groomed BEGINNERS to fill Jr. public relations and sales executive positions now available due to promotions. If accepted you'll be trained (at our expense) to supervise the young women who handle our printed matter for us. MUST BE PREPARED TO START IMMEDIATELY Interview by appointment only

Miss Marlo

LO 4-4345

* * * will come again employ the services of several students * * * to fill supervisory and Jr. Market Research positions under our Summer Student Employment Opportunity Program. Those accepted will be trained (at our expense) in all phases of marketing * * * Those who meet our requirements will be paid a salary of \$70.00 per week. No experience is required since full training will be provided by competent personnel administrators and students who are rejoining our staff this summer * * *

Marketing Research & Analysis

* * * * *

American Marketing Assocs Inc.
1422 Chestnut LO 4-4345

PRODUCTS ACCEPTANCE DIVISION
American Marketing Associates, Inc.

Editorial & Research Depts
Chicago Ill.

B

In furtherance of that part of the aforesaid plan to sell their books to prospective customers, respondents supply their agents, representatives or employees with a printed "sales pitch" and material in connection therewith and instruct them to use and follow same. Said agents, representatives or employees employ said printed sales presentation and material in orally soliciting the purchase of respondents' encyclopedias and other educational books.

Respondents, in said printed sales presentation and in advertising and promotional literature and other printed materials, and respondents' agents, representatives or employees, in the course of their sales talks, make many statements and representations concerning the trade status and organization of the respondents' corporation, their own status and employment, the quality and characteristics, the offer and price of respondents' books. Some of these statements and representations

are made orally by said agents, representatives and employees to prospective purchasers and some are contained in advertising and promotional literature displayed by said representatives to prospective customers.

PAR. 6. Through the use of such statements and representations and others similar thereto, but not specifically set forth herein, separately and in connection with the oral sales presentations of respondents' salesmen, as used variously by the respondents in the advertisements and the promotion of their products, respondents have represented, directly or by implication:

1. That respondents are associated or affiliated with the American Marketing Association; and that they are an association of persons, firms or corporations having a common interest.
2. That respondents are an international corporation with branch offices in major cities and its home office in Chicago, Illinois. They are engaged in the business of marketing research and analysis, advertising credits and public relations with annual sales in a recent year amounting to \$100,000,000.
3. That they are recruiting young men and women as trainees for career positions as junior executives in marketing research, sales, advertising credits, public relations, personnel supervision and management, to fill positions, created by promotions.
4. That trainees will be paid \$70 or \$89 a week, \$360 a month, or \$4,628 a year, as starting salaries with no previous experience required.
5. That respondents' organization consists of separate functional departments and divisions, such as Editorial, Research, Educational and Legal and a Products Acceptance Division; and that it has in its employ experts in the educational field, possessing special skills and qualifications such as doctoral degrees and maintains its own company psychologists.
6. That it represents Parents-Children's Institute, an organization that supplies educational materials to school systems; and that it is also affiliated with Parents Magazine and various agencies of the United States Government.
7. That the respondents have engaged in market research in conjunction with the University of California.
8. That at the request of leading educators meeting at Atlantic City, New Jersey, the respondents developed, in conjunction with the University of California, an educational program to link the home to the school.

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9. That the aforesaid educational program was endorsed and approved by leading educators and contained all the required readings of a child's school work; and that it would prepare the preschool child to pass the "Reading Readiness Test," required to enter the first grade of elementary school.

10. That respondents' representatives were making a "survey" of a select group of mothers, to solicit "endorsements" of the aforesaid educational program.

11. That the respondents' representatives were mothers with children or teachers who volunteered their services solely out of interest in the aforesaid educational program at no compensation or at a nominal compensation.

12. That under a "Mother's Club Plan" the aforesaid select group of mothers were being afforded the opportunity of obtaining this educational program at a special price, far below the regular price, which special price only covered the cost of production, such as paper, printing, bindings and royalties; and that the regular price would amount approximately to \$1,000, whereas the special price was only \$249.50; or that an optional yearly supplement could be purchased at a cost of \$4.98, which supplement normally cost \$14.98.

13. That if the customer paid a certain amount above the normal deposit, depending on the amount of the said excess deposit, the respondents would give the educational program, or parts thereof FREE to an orphanage.

PAR. 7. In truth and in fact:

1. The respondents are not associated nor affiliated in any manner with the American Marketing Association or any other organization and are not an association of persons, firms or corporations, having a common interest. Respondents are but a simple corporate entity engaged in business as hereinabove described.

2. The respondents are not an international corporation with branch offices in major cities and its home office in Chicago, Illinois. Further, the respondents are not engaged in the business of marketing research and analysis, advertising credits and public relations. The respondents maintain a single office in Philadelphia, Pennsylvania and are engaged in the door-to-door sale of encyclopedias and other educational books. At no time did their annual sales ever even remotely total \$100,000,000.

3. The respondents do not recruit young men and women as trainees for career positions as junior executives in marketing research, advertising credits, public relations, personnel supervision and management to fill positions, created by promotions or for any like positions. Indi-

viduals, recruited by respondents, are trained only for door-to-door selling of respondents' products.

4. Trainees recruited by respondents are not paid \$70 or \$89 a week, \$360 a month or \$4,628 a year or any salary by the respondents. Their only form of compensation is in the form of commissions on sales made by them.

5. The respondents' organization does not consist of separate functional departments and divisions, nor does it have in its employ experts in the educational field possessing skills and qualifications such as doctoral degrees nor do they maintain a staff of company psychologists.

6. The respondents do not represent Parents-Children's Institute, nor are they affiliated with Parents Magazine nor any agency of the United States Government.

7. The respondents have not engaged in market research or any other research in conjunction with the University of California or any other organization or institution.

8. The respondents have not developed an educational program in conjunction with the University of California, at the request of leading educators.

9. The aforesaid educational program was not endorsed and approved by leading educators and did not contain all the required readings of a child's school work. Further, a preschool child is not required to pass a "Reading Readiness Test" as a prerequisite for entering elementary school.

10. The respondents' representatives were not making a "survey," relating to schools, children, educational problems and conditions of a select group of mothers for the purpose of soliciting an "endorsement" for the aforesaid educational program or for any other purposes. The sole purpose of the respondents' representatives was to sell encyclopedias and other books to any customers who would purchase the same.

11. Respondents' representatives were not necessarily mothers with children or teachers who volunteered their services with little or no compensation but solely out of an interest in the aforesaid educational program. Respondents' representatives, as aforesaid, were salesmen and saleswomen, married or single, working for a commission to be realized from the sale of respondents' books.

12. The customers of the respondents are not a select group of mothers, who are being afforded the opportunity of obtaining the aforesaid educational program, under a "Mother's Club Plan" at a special price far below the regular price, which special price only covered the cost of production, such as paper, printing, bindings and royalties. Further, the regular price of the program would not amount approximately to

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\$1,000. In fact the respondents' regular price for this collection of books was the promoted "special" price of \$249.50, for which the respondents paid \$53.90. Further, the advertised "regular" price of \$14.98 for the optional yearly supplement was nonexistent and respondents' actual regular price of the yearly supplement was the "special" price of \$4.98.

13. Respondents did not give the educational program "free" to any orphanage in return for a customer paying a certain amount in excess of the usual minimum deposit.

Therefore, the statements and representations as set forth in Paragraphs five and six hereof were and are false, misleading and deceptive.

PAR. 8. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and to enter into contracts for the purchase of respondents' products because of such erroneous and mistaken belief.

The use by respondents of the aforesaid statements and representations in connection with the recruitment of personnel to sell encyclopedias and related books has had, and now has, the capacity and tendency to mislead prospective employees into the erroneous and mistaken belief that such statements and representations were, and are true and to induce them to respond to such advertisements and enter into respondents' employ in reliance thereon.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury to the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Mr. Anthony Kennedy, Mr. Ralph Carrigan, Federal Trade Commission, Washington, D.C., supporting the complaint.

Mr. Robert Eugene Smith, Baltimore, Md., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

AUGUST 24, 1967

Preliminary Statement

This is a proceeding under Section 5 of the Federal Trade Commission Act¹ in which respondents are charged with engaging in decep-

¹ 15 U.S.C.A. § 45 "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful."

tive acts and practices. The corporate respondent American Marketing Associates, Inc. (hereinafter AMA), a Pennsylvania corporation, has, since late 1964, been engaged in the door-to-door selling, in interstate commerce, of the New Standard Encyclopedia; Child Horizons; the Science Library; The Childrens' Classics Library, and other "educational materials" in Pennsylvania, Delaware, New Jersey, Maryland and the interstate area surrounding Philadelphia, Pennsylvania.

The complaint, which was issued January 17, 1967, seeks to have the individual respondent Stanley Kessler included in any order which may be entered against the corporate respondent, on the grounds, among others, that such inclusion is required in order to prevent effectively the violations of law which are charged in the complaint.

After the customary prehearing procedures under the Rules of Practice for Adjudicative Proceedings of the Federal Trade Commission, hearings were held in Philadelphia, Pennsylvania, on May 29 to June 7, 1967, both inclusive. Twenty-five (25) witnesses testified, and approximately 135 exhibits were received in evidence. The hearing record was closed on June 21, 1967. Proposed findings, conclusions and briefs have been filed by complaint counsel, but not by respondents. The matter is now before the hearing examiner for decision upon the entire record, including a prehearing stipulation, the exhibits, the testimony of the witnesses and other documents of record.

The deceptive acts with which the respondents are charged, include, among others:

1. The selection and use of a corporate name which is designed to, and does, lead the public to believe that the corporate respondent, American Marketing Associates, Inc., which was organized in 1964 under the laws of the State of Pennsylvania, is the American Marketing Association, a nonprofit, old, long-established, and highly respected, nationally active association which is primarily engaged in marketing research;
2. Using deceptive acts and practices in employing personnel;
3. Using deceptive acts and practices in effecting sales of their products;
4. Concealing and being evasive concerning the nature of the articles they sell;
5. Misrepresenting the corporation's true purpose; and
6. Representing to a prospective purchaser of their products that the price at which their products are being offered for sale is substantially lower than the price at which such products are customarily sold in the trade area in the regular course of business.

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The hearing examiner finds and concludes that complaint counsel have proven their case by reliable, probative and substantial evidence, and the hearing examiner has entered an order which has been framed to stop respondents' current deceptions and to prevent future deceptions.

Witnesses who testified in this proceeding were:

1. Dr. Charles S. Goodman, professor of marketing at the University of Pennsylvania, former director and officer of the Philadelphia chapter of the American Marketing Association;
2. Bonnie Ruth Simkins, former saleslady for AMA;
3. Sandra Serkin, former saleslady for AMA;
4. Mrs. Merle Urban, a housewife of Pennsauken, New Jersey, who signed up to purchase respondents' product and then cancelled her contract;
5. John Urban, the husband of Mrs. Merle Urban;
6. Mrs. Shirley R. Harrington, a housewife of Glassboro, New Jersey, who signed up to purchase respondents' product and later cancelled her contract;
7. Edward J. Wolfe, the principal of Brainard Elementary School, Cherry Hill, New Jersey, whom Mrs. Harrington telephoned to verify representations made to her by respondents' salesladies;
8. Miss Mary Ann Kowalczyk, former saleslady for AMA;
9. Miss Monica Stefanelli, former saleslady for AMA;
10. Dr. Barbara Lowery of Valley Forge, Pennsylvania, whose testimony was stricken;
11. Miss Linda Train of Patchogue, New York, former saleslady for AMA;
12. Mrs. Irene Scioli, a housewife of Philadelphia, Pennsylvania, who purchased respondents' product and later cancelled her contract;
13. Miss Gail M. Gordon, of Alden, Pennsylvania, former saleslady for AMA;
14. Miss Debra Ann Oliver, Philadelphia, Pennsylvania, former saleslady for AMA;
15. Stephen LaCheen, an attorney practicing law in Philadelphia, who prepared the papers of incorporation for AMA, minutes of the first meeting of the stockholders, and directors, the employment contracts, sales contracts, and all other legal documents used by the corporate respondent in its business;
16. Stanley Kessler, individual respondent, one of the organizers of the corporate respondent, an officer and director of the corporate respondent, and one of the persons who contributed part of the capital with which the corporate respondent initially started business. Kessler owns 20 out of 90 issued shares of the corporate respondent. He is and has been, since May 1963, responsible for the day-to-day operations of the business;
17. Benjamin Fishbein, a certified public accountant in Philadelphia, who arranged for a substantial part of the initial financing for AMA, an officer and director of AMA, who testified that he is the president in fact of the corporation;
18. Miss Mary Lou Harris, of Philadelphia, Pennsylvania, office manager of AMA since December 1964;
19. Mrs. Marlene Caesar of Philadelphia, Pennsylvania, a former saleslady for AMA;

20. Malcolm Hay, of West Philadelphia, Pennsylvania, a former salesman for AMA;

21. Mrs. Malcolm (Barbara) Hay, wife of Malcolm Hay, a former saleslady for AMA;

22. Miss Phillippa Stein, Philadelphia, Pennsylvania, a former saleslady for AMA;

23. Miss Elaine Pollack, a former saleslady for AMA;

24. Mrs. Susie White Wilkerson, the head of her own marketing research firm in Philadelphia, Pennsylvania, a member of the American Marketing Association for more than 20 years and a former officer and director of the Philadelphia chapter of the American Marketing Association;

25. Miss Dee Moran, a former employee of AMA.

The hearing examiner heard and observed the witnesses in the hearing room and on the witness stand. He observed their demeanor and their manner of answering questions. He was able to, and did, form an opinion as to their reliability and credibility. He was also able to, and did, form a judgment as to the weight and probative value of the testimony of each of the witnesses. He has considered the reliability, credibility and probative value of each witness' testimony, as well as their respective interests in the outcome of this proceeding, in determining the weight to be given to the witness' testimony.

The corporate respondent is but a small part ² of an industry which is nationwide and whose annual sales exceed \$209,692,000.³

Some of the better known encyclopedias and similar reference books which are sold by door-to-door solicitation include, according to Mr. Kessler (Tr. 583, *et seq*) :

Book of Knowledge
American Peoples Encyclopedia
International Encyclopedia
Americana Encyclopedia
Richards Encyclopedia
Comptons Encyclopedia
Encyclopedia Britannica
Wonderland of Knowledge
American Educator
New Wonderland Encyclopedia
New Standard Encyclopedia
American Educator
New Wonderworld Encyclopedia
Colliers Encyclopedia
The World Book
Childcraft
Grolier Encyclopedia

² Its sales for the year 1963 as reported in U.S. Treasury forms 1120 were \$106,656.96 (CX 18).

³ Bureau of the Census, Annual Survey of Manufacturers (1963), p. 22, Sec. 323.2 (Page 14) "Subscription Reference Books."

Art Linkletter Encyclopedia
The Children's Classics Library
Child Horizons
Science Library

Mr. Kessler testified that these encyclopedias are usually sold at a price which represents a very substantial markup of (four to five times) their original cost to the company selling them (Tr. 586). "The Book of Knowledge is approximately \$24, and it is sold for \$199.50" (Tr. 586). He further testified that 99 percent of all encyclopedias and reference books are sold directly to the consumer by means of the door-to-door soliciting technique, and that efforts to sell this type of product through regular retail establishments have been unsuccessful. Sales of encyclopedias are usually made on a monthly payment basis (Tr. 588).

The size of the industry and the fact that it reaches a large segment of the American public and solicits the American citizen in his or her home, makes it imperative that the technique employed by those engaged in the door-to-door selling of encyclopedias, be, like Caesar's wife, above reproach. The fact that this industry endeavors to create the impression that the purchase of encyclopedias is an inescapable parental obligation to their children makes it vital that the sales techniques employed be free of any deception—legal or otherwise.

The Federal Trade Commission, with full realization of the industry's importance and scope, has devoted extraordinary resources and energy to policing it. See:

- Americana Corporation et al.*, Docket 5085, 45 F.T.C. 32, 46 F.T.C. 253, U.S.D.C., Balt. Civil 16630;
- Basic Books Inc.*, Docket 7016, 56 F.T.C. 69;
- B. B. Bessemer, trading as American Academic Research Society*, Docket 2101, 17 F.T.C. 419;
- L. A. Bell, trading as the Cooperative Book Co.*, Docket 1551, 15 F.T.C. 169;
- Book-A-Week Club, Inc.*, Docket 4877, 39 F.T.C. 171;
- Book Give-Away Plan*, Docket 4913, 49 F.T.C. 1560;
- Charles V. Branch, doing business as National Surveys, Educational Development Co., United Acceptance Co.*, Docket 5632, 47 F.T.C. 888;
- Consumer Products of America, Inc.*, Docket 8679, 72 F.T.C. 533;
- Melvin Hines, trading as Cooperative Library Company*, Docket 3349, 27 F.T.C. 772;
- Crowell-Collier Publishing Company and P. F. Collier & Son Corp.*, Docket 7751, 70 F.T.C. 977;
- Crowell-Collier Publishing Company and P. F. Collier & Son Corp.*, Docket 4372, 32 F.T.C. 1640;
- P. F. Collier & Son Corp.*, Docket 3687, 32 F.T.C. 1639;
- Consolidated Book Publishers, Inc.*, Docket 4440, 32 F.T.C. 1003;
- Consolidated Book Publishers, Inc.*, Docket 1538, 14 F.T.C. 13, 15 F.T.C. 292;

David B. Clarkson Company, Docket 1540, 13 F.T.C. 117;
Educators Assn. Inc., Docket 3139, 28 F.T.C. 1006, 33 F.T.C. 708;
Encyclopaedia Britannica, Inc., Docket 5384, 48 F.T.C. 1416;
Encyclopaedia Britannica, Inc., Docket 7137, 59 F.T.C. 24;
Arthur A. Gache, Morton Gache and Irving Greemwood, d/b/a Encyclopedia Educational Service, Docket 5513, 45 F.T.C. 491;
General Surveys, Inc., and John H. Thies and G. J. Doucette, Docket 4554, 34 F.T.C. 1157;
R. M. Barnett, trading as Home and School Education Society, Docket 2721, 24 F.T.C. 1378, 24 F.T.C. 1389;
Bernard P. Holst Publishing Company, Bertram P. Holst, Docket 2652, 24 F.T.C. 404;
Charles E. Knapp, trading as Modern American Company, Charles E. Knapp, Inc., Modern American Corporation, A. J. Rosenbark, Jr., Cleo Samdahl, and A. B. Landrum and Blanche Wynne, Docket 3503, 28 F.T.C. 1204;
W. R. Maxwell, d/b/a International Publishing Co., Docket 1331, 11 F.T.C. 73;
Midwest Publishing Co. and Walter H. Gorham, Docket 2893, 26 F.T.C. 939, 27 F.T.C. 556;
Mutual Publishing Company, C. J. Shelton, H. A. Bufton, Publishers Acceptance Corporation, P. I. Neergaard, T. E. Thompson, Carl Critzinger, Educators Service Association, A. C. Thomas, H. A. Bufton, Docket 1571, 15 F.T.C. 402;
National Educators, Inc., Docket 5975, 49 F.T.C. 1358;
New Standard Publishing Company, Inc., Julius B. Lewis, and Doubleday-Doran & Co., Inc., Docket 4697, 47 F.T.C. 1350, 49 F.T.C. 1567;
Parke Austin & Lipscomb, Inc., Smithsonian Institution Series, Inc., Docket 4465, 34 F.T.C. 591;
Perpetual Encyclopedia Corp., North American Publishing Co., Inc., Docket 1371, 16 F.T.C. 443;
Progressive Education Society, Inc., I. R. Jacobsen, Docket 2132, 19 F.T.C. 242, 22 F.T.C. 916, 27 F.T.C. 755;
Sears Roebuck & Co., Docket 7081, 55 F.T.C. 147;
Standard Distributors, Inc., Docket 5580, 48 F.T.C. 1435, 51 F.T.C. 677;
Standard Education Society, Docket 1574;
Standard Education Society, Docket 994, 7 F.T.C. 20;
The Times Sales Co., Docket 2351, 21 F.T.C. 749, Docket 2801, 25 F.T.C. 464;
Joseph L. Morse, Moe Gache, Gertrude Morse and Rose Gache, d/b/a Unicorn Press, Docket 5488, 47 F.T.C. 258;
United Educators, Inc., General Research Foundation, Inc., Publishers Finance Co., Inc., Docket 3428, 29 F.T.C. 551;
James H. Christie, d/b/a United Surveys, Docket 5730, 47 F.T.C. 532;
Universal Educational Guild, Docket 5718, 47 F.T.C. 1678, Docket 5938, 51 F.T.C. 452;
World Library Guild, Inc., Docket 2511, 23 F.T.C. 598.

In the *Literary Market Place Directory of American Book Publishing* for the year 1966-1967, the publishers of encyclopedia listed on page 145 are:

The Americana Corporation, a subsidiary of Grolier, Inc.;
Books, Inc., a subsidiary of Publishers Co., Inc.;

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Columbia University Press;
The Crowell Collier Educational Corporation;
Encyclopedia Britannica, Inc.;
Field Enterprises Educational Corporation;
The Frontier Press;
Grolier, Inc.;
McGraw-Hill Book Co.;
The Macmillan Co., a division of Crowell Collier and Macmillan, Inc.;
The New Wonder World, Inc.;
Oxford University Press, Inc.;
Parents' Magazine's Cultural Institute;
Philosophical Library, Inc.;
Richards Co., a subsidiary of Grolier, Inc.;
SETI Publishers, Ltd.;
Spencer International Press, a subsidiary of Grolier, Inc.;
United Educators, Inc.;
William H. Wise & Co., Inc.

On page 25, Under *Crowell Collier & Macmillan, Inc.*, the following are listed:

1. *Crowell Collier & Macmillan, Inc.*, the vendor of and/or operator of Collier's Encyclopedia and other reference books, textbooks, trade books, book clubs, retail bookstores, home study courses, supplementary educational materials and *Grade Teacher* magazine. See also The Macmillan Company, Free Press, The Glencoe Press, Glencoe, P. F. Collier, Inc., and other references below.
2. *Crowell Collier Institute of Continuing Education*, a division of Crowell Collier & Macmillan, Inc., the vendors of educational services for professionals and executives.
3. *The Berlitz Schools of Languages of America, Inc.*, a subsidiary of Crowell Collier & Macmillan, Inc., the vendors of language instruction.
4. *Berlitz Publications, Inc.*, a subsidiary of Crowell Collier & Macmillan, Inc., the vendor of language books and records.
5. *P. F. Collier, Inc.*, a subsidiary of Crowell Collier & Macmillan, Inc., the vendors of Collier's Encyclopedia, The Harvard Classics, Collier's Junior Classics and other reference works.
6. *P. F. Collier & Son, Inc.*, a subsidiary of P. F. Collier, Inc.
7. *Collier Services, Inc.*, a subsidiary of P. F. Collier, Inc., engaged in the mail order sales of books and general merchandise.
8. *La Salle Extension University*, a subsidiary of Crowell Collier & Macmillan, Inc., the vendor of home study courses in business management, law, accounting and other business and vocational fields, and high school completion for adults.
9. *Crowell Collier Educational Corporation*, a subsidiary of Crowell Collier & Macmillan, Inc., the vendor of Collier's Encyclopedia and other reference book sets.
10. *Teachers Publishing Corporation*, a subsidiary of Crowell Collier & Macmillan, Inc., the vendor of elementary classroom teaching aids and professional books and *Grade Teacher* magazine.
11. *The Macmillan Co.*, a subsidiary of Crowell Collier & Macmillan, Inc., publisher of trade books in all fields; elementary, high school, college and graduate school textbooks; professional books.

12. *The Free Press*, a division of The Macmillan Co., the vendor of college textbooks and professional books, primarily in social sciences and humanities.

13. *Glencoe Press*, a division of The Macmillan Co., the vendor of books for junior and community college markets.

14. *Collier-Macmillan Library Service*, engaged in the sales of all Crowell Collier, Macmillan and Free Press titles to libraries.

15. *Collier-Macmillan International*, the vendor of textbooks and tapes in English as a second language.

16. *Professional & Technical Programs, Inc.*, a subsidiary of Crowell Collier & Macmillan, Inc., the vendor of specialized book clubs: Library of Science, Behavioral Science Book Service, Natural Science Book Club, The Executive Program, Nurse's Book Society, Grade Teacher Book Club, The Folio Society of London, Library of Computer and Information Sciences, Library of Urban Affairs, Lawyers' Literary Guild.

17. *Brentano's Inc.*, a subsidiary of Crowell Collier & Macmillan, Inc.

On page 45 of the *Literary Marketplace Directory*, under Grolier, Incorporated, the following are shown:

1. *Grolier Incorporated*, publisher of The Encyclopedia Americana, The Book of Art, The Book of Knowledge, Encyclopedia International, Grolier Universal Encyclopedia, The American Peoples Encyclopedia, Our Wonderful World, Richards Topical Encyclopedia, The Book of Popular Science, Lands & Peoples, The Australian Encyclopedia, Encyclopedia Canadiana, The Children's Encyclopedia, New Education Library, Modern Library of Knowledge, L'Encyclopedie de la Jeunesse, La Science pour Tous, Pays et Nations, other encyclopedias, educational reference works, and programmed learning materials.

2. *Americana Corporation*, a subsidiary of Grolier Incorporated, engages in sales of The Encyclopedia Americana and other educational reference works and programmed learning materials.

3. *Grolier International, Inc.*, a subsidiary of Grolier Incorporated, engages in international sales of Grolier publications and programmed learning materials.

4. *The Grolier Society, Inc.*, a subsidiary of Grolier Incorporated, engages in the sale of The Book of Knowledge and other educational reference works and programmed learning materials.

5. *R. H. Hinkley Co.*, a subsidiary of Grolier Incorporated, engages in sales of educational reference works of Grolier Incorporated.

6. *Franklin Watts, Inc.*, a subsidiary of Grolier Incorporated, vendor of juvenile and adult non-fiction.

7. *Grolier Educational Corporation*, a subsidiary of Grolier, Incorporated, engages in the development and sales of educational materials and the sales of Grolier publications in the educational field.

8. *The Americana Interstate Corporation*, a subsidiary of Grolier Incorporated—"mail order."

9. *American Peoples Press, Inc.*, a subsidiary of Grolier Incorporated—"mail order."

10. *Grolier Enterprises, Inc.*, a subsidiary of Grolier Incorporated—"mail order."

11. *The Grolier Society, Ltd.*, a subsidiary of Grolier Incorporated, conducts sales of The Childrens Encyclopedia, New Education Library, Modern Library of Knowledge, and programmed learning materials.

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12. *The Richards Company, Inc.*, a subsidiary of Grolier Incorporated, engages in the sale of *The American Peoples Encyclopedia* and other educational reference works.

13. *The Career Institute*, a subsidiary of Grolier Incorporated, sells correspondence courses and makes mail order sales.

On page 77 of the Literary Marketplace Directory *Parents' Magazine Press* shows:

(1) That it is a Division of *Parents' Magazine Enterprises, Inc.*, 52 Vanderbilt Avenue, New York, New York.

(2) *Parents' Magazine Cultural Institute*, a Division of *Parents' Magazine Enterprises, Inc.*, promotes subscription, reference, mail order, school, library and home sales of *The Cultural Library*; *Columbia Encyclopedia*; *Classics To Grow On*; *Better Living Encyclopedia*; *Young Years Library* (13 Titles).

Moody's Industrial Manual for June 1967 shows net sales for the year ending December 31, 1967, for

Grolier, Inc. (page 743)	\$152, 371, 385
and for	
Crowell Collier & Macmillan, Inc. (page 2496)	\$148, 903, 014

In a consent judgment filed December 9, 1965, in the United States District Court for the District of Maryland, Civil Action 16638, *The Americana Corporation* (a subsidiary of Grolier, see *supra*) by stipulation, agreed to pay \$100,000 penalties for its violation of a Federal Trade Commission order which had previously been entered against it.

It may be helpful to mention some of the more familiar criteria which the courts and the Commission have articulated for determining what constitutes deceptive and unfair acts and practices under Section 5 of the Federal Trade Commission Act:

The hearing examiner may find deception proven in this record without evidence that the public was deceived, on the basis of his visual examination of exhibits. *Double Eagle Lubricants, Inc. v. Federal Trade Commission*, 360 F. 2d 268, 270 (10th Cir. 1965), *certiorari denied*, 384 U.S. 434 (1966). The examiner may, by visual examination of the exhibits, ascertain what representations respondents are making to the banks with whom they do business; the governmental offices with which they file various documents as required by law; to the persons whom they solicit to become door-to-door sales persons for their encyclopedia and reference books; to the householders to whom they endeavor to sell their product; and to the public generally.

"* * * Capacity to deceive and not actual deception is the criteria by which practices are tested under the Federal Trade Commission Act," *Goodman v. Federal Trade Commission*, 244 F. 2d 584, 604 (C.A. 9, 1957). "To tell less than the whole truth is a well-known

method of deception; and he who deceives by resorting to such method cannot excuse the deception by relying upon the truthfulness per se of the partial truth by which it has been accomplished." *P. Lorillard Co. v. F.T.C.*, 186 F. 2d 52, 58 (C.A. 4 1950). "A statement may be deceptive even if the constituent words may be literally or technically construed so as to not constitute a misrepresentation. * * * The buying public does not weigh each word in an advertisement or a representation. It is important to ascertain the impression that is likely to be created upon the prospective purchaser * * *," *Kalwajtys v. Federal Trade Commission*, 237 F. 2d 654, 656, *certiorari denied*, 352 U.S. 1025. "Moreover, advertisements are not to be judged by their effect upon the scientific or legal mind, which will dissect and analyze each phrase, but rather by their effect upon the average member of the public who more likely will be influenced by the impression gleaned from a quick glance at the most legible words," *Ward Laboratories, Inc., et al. v. Federal Trade Commission*, 276 F. 2d 952, 954 (C.A. 2 1960), *certiorari denied*, 364 U.S. 827. In determining the meaning of representations made by respondents, the hearing examiner must concern himself not only with the express language of respondents' representations but also with the overall impression which such representations convey, *American Home Products Corporation*, Docket No. 8641 (Commission opinion, December 16, 1966, p. 8) [70 F.T.C. 1524, 1610]. "The law is not made for the protection of experts, but for the public—that vast multitude which includes the ignorant, the unthinking, and the credulous, who, in making purchases, do not stop to analyze, but are governed by appearances and general impressions," *P. Lorillard Co. v. F.T.C.*, 186 F. 2d 52, 58; *Aronberg v. F.T.C.*, 132 F. 2d 165, 167.

"The law is violated if the first contact or interview is secured by deception (*F.T.C. v. Standard Education Society, et al.*, 302 U.S. 112), even though the true facts are made known to the buyer before he enters into the contract of purchase (*Progress Tailoring Co. v. F.T.C.*, 7 Cir. 153 F. 2d 103, 104, 105)." *Carter Products, Inc. v. F.T.C.*, 186 F. 2d 821, 824, 7 Cir. 1951; *Exposition Press v. F.T.C.*, 295 F. 2d 869.

In establishing the unfair and/or deceptive character of respondents' acts and practices, complaint counsel need not have proven that any particular number of persons were misled thereby. In representing and protecting "that vast multitude which includes the ignorant, the unthinking and the credulous," it is sufficient for complaint counsel to have proven that there would be some members of the public who would be misled by respondents' practices (*Prima Products, Inc. v. F.T.C.*, 209 F. 2d 405, 409 (C.A. 2 1954)).

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Findings of fact not made in the form submitted by counsel, or in substantially that form, are hereby rejected for the reasons, among others, that they may not be material to an adjudication of the issues, or they may be otherwise incorporated herein in substance, or the adoption of such proposed findings in the form submitted may not convey semantically the meaning which the hearing examiner desires to convey.

All motions made and not heretofore ruled upon are hereby overruled and denied.

FINDINGS OF FACT

1. The Federal Trade Commission has jurisdiction over the parties to and the subject matter of this proceeding. This proceeding is in the public interest.

2. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

3. In the conduct of their business, respondents have been, and now are, in substantial competition, in commerce, with other persons, firms and/or corporations who sell books of the same general kind and character as those sold by respondents.

4. Respondents sell their books in commerce at retail to the general public. The sales are made by respondents' agents, representatives and/or employees.

5. Respondents' acts and practices herein set forth constituted and now constitute unfair methods of competition of commerce, and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

6. The first witness for counsel supporting the complaint was Dr. Charles S. Goodman. Dr. Goodman testified that he is a professor of marketing at Wharton School of Finance and Commerce at the University of Pennsylvania. He started as a lecturer, became assistant professor in 1948, and associate professor in 1953. He became a full professor in 1957 (Tr. 15). Dr. Goodman, born in Detroit, Michigan, on April 5, 1916, has a bachelor's degree in Business Administration from the University of California, Los Angeles; a master's degree in Economics from the University of California, Los Angeles; and a Ph.D. in Business Administration from the University of Michigan. He has been full-time with the University of Pennsylvania since 1946 (Tr. 17). As a professor, Dr. Goodman has done outside research and consulting work in order to maintain his efficiency and competency.

7. In 1940 Dr. Goodman went to the University of Michigan where he was employed as a research associate by the Bureau of Business

Research. In 1942 he went on active duty in the United States Naval Reserve until 1946, at which time he returned to the University of Michigan in January to finish work on his Ph.D. degree. Dr. Goodman then went to work at the University of Pennsylvania on a full-time basis in the fall of 1946 (Tr. 18).

8. Dr. Goodman's publications include: *The Control of Customer Returns*, University of Michigan Press (1942), coauthored with a gentleman named Galt; *Location of Fashion Industries*, University of Michigan Press (1948); *Campus Shopping Patterns*, published (1954) in the *Journal of Retailing* and coauthored with Professors Ralph Bryer and Donald Blenkerts; *Channels and Flows in Marketing Householding Materials*, a three-volume research project coauthored with Professor Cox, financed by the Housing and Home Research Finance Agency, and published in the *Journal for Marketing* for July 1956 (Tr. 19).

9. The Distribution and Services section in the *Historical Statistics of the United States from Colonial Times to 1957*, published by the Department of Commerce, prepared by Doctors Goodman and Cox at the request of the Social Science Research Council, was published in 1957. Dr. Goodman's article, *Significance of Marketing Data in the Business Censuses* is in the proceedings of the American Marketing Association for June 1960. *The Producers' Council Distribution Study* (1960 Progress Report) and *The Role of Marketing in a Private Enterprise Economy* appear in proceedings of the Sixth Annual Conference of the Association of Canadian Schools of Commerce and Business Administration held in Toronto in April 1963. *Supply Support Requirements of Non-Residential Construction* was published in 1962. *Supply Support Requirements of Homebuilders* was produced at about the same time by the Producers' Council. *Adaptation to Markets in the Distribution of Building Materials*, prepared in collaboration with Doctors Cox and Root, was published by the Producers Council in 1963. *Distribution in a High Level Economy* coauthored by Doctor Goodman with Doctors Cox and Thomas C. Fishindler (Tr. 21) is a textbook primarily for use at the graduate level, and was published by Prentice-Hall in 1965. Dr. Goodman has been a participant, since 1956, in the Marketing Theory Seminar.

10. Dr. Goodman had been a member of the Industrial Advisory Committee of the American Marketing Association for three or four years; proceedings editor of the American Marketing Association since 1959; and a member of the Association's Census Advisory Committee from 1957 to 1966 (Tr. 20-22). Dr. Goodman was second vice president of the Philadelphia chapter of the American Marketing

Association from 1963-1964; vice president of the Philadelphia chapter from 1964 to 1965; president of the Philadelphia chapter from 1965 to 1966. He has been a director of the Philadelphia chapter of the American Marketing Association since 1961, and a national director of the American Marketing Association since 1961. Dr. Goodman has been a member of the American Marketing Association for twenty years (Tr. 23).

11. The American Marketing Association is the most widely recognized and respected professional association in the field of marketing (Tr. 24). CX 100, a directory of the Philadelphia chapter of the American Marketing Association for the year 1967, contains the names, addresses, business affiliations, and telephone numbers of the Philadelphia chapter of the American Marketing Association. It would unduly prolong this initial decision to list all the well-known businesses whose personnel are members of the Philadelphia chapter. The Philadelphia chapter of the American Marketing Association was the first of the sixty chapters now affiliated with the Association.

12. The American Marketing Association was organized by 27 marketing pioneers in December 1931. It was the first affiliate of the American Marketing Society. The Society was the Association's predecessor organization. In 1937 the American Marketing Society merged with the National Association of Marketing Teachers to form the American Marketing Association (Tr. 27).

13. The American Marketing Association is incorporated as a non-profit organization in the State of Illinois, has its principal office at 230 North Michigan Boulevard, Chicago, Illinois, but is authorized to do business in other States (Tr. 28). The Association has 60 local chapters in various cities and regions in the United States and Canada, including one in Montreal and one in Toronto. The national Association operates through a board of directors. As of April 30, 1967, the national Association had 14,133 members (Tr. 29-30). Fifteen percent of the members are "essentially academic" in the sense of having their primary affiliation with faculties of colleges or universities; eighty-five percent of the members are in business or government. Not more than two percent of the membership "would be" government (Tr. 31).

14. The principal office of the Association in Chicago serves the various local chapters. It is under the management of a full-time executive director who has been with the Association for several years (Tr. 31). The staff of the national office has approximately a dozen employees (Tr. 32). The bulk of the Association work is done through the contributed efforts of its members (Tr. 33).

15. The Philadelphia chapter of the American Marketing Association had 460 members as of April 30, 1967 (Tr. 34). It does not have a permanent office address. The office is usually run from the address of the then current chapter secretary. The Philadelphia chapter has its own officers and directors (CX 100). One may not be a member of any local chapter of the Association unless he is also a national member (Tr. 36), although it is permissible to be a member of the national Association and not affiliate with a local chapter (Tr. 36-37). Dues for the national Association and for the local chapter are billed separately, but they are paid jointly. Among others, the purpose of the American Marketing Association is to foster the development of and the study of marketing research, marketing development, and the application of scientific methodology to marketing techniques (Tr. 37).

16. In January or February 1965, Dr. Goodman was first made aware of the fact that the respondent, American Marketing Associates, Inc., was being mistaken for, and confused with, American Marketing Association (Tr. 38). This confusion was caused, either deliberately, or inadvertently, when Benjamin Fishbein, Stanley Kessler, Stephen LaCheen, and Stanley Drizzen selected the corporate name. The hearing examiner is impelled by the undisputed facts in this record, and the natural inferences to be drawn from such facts, to find, and does find, that Benjamin Fishbein, Stanley Kessler, Stanley Drizzen and Stephen LaCheen intended that their corporation, the respondent herein, should pass itself off as the American Marketing Association. The American Marketing Association had occupied too prominent a position in the city of Philadelphia for too long a time to have escaped the notice of Messrs. Fishbein, an auditor; LaCheen, an attorney; and Kessler, a long time resident of the city, who majored in marketing at Temple University (Tr. 457).

17. Complaint counsel's witness, Mrs. Susie White Wilkerson (Tr. 735, *et seq.*), who had been a member of the Philadelphia chapter of the American Marketing Association for more than twenty years, testified that the weekly meetings of the Philadelphia chapter were publicized in the Philadelphia newspapers with the time, place, and speaker usually mentioned. Annually the Philadelphia chapter of the Association has a public presentation of the Parlin Award which receives wide publicity. Assuming, *arguendo*, that all this publicity had escaped the attention of Messrs. Fishbein, Kessler, LaCheen, and Drizzen, Mrs. Wilkerson's uncontradicted testimony is that on January 5, 1965, she personally telephoned the offices of the corporate respondent and told someone there that its corporate name was being confused with the American Marketing Association (Tr. 739). When

Mrs. Wilkerson telephoned the offices of the corporate respondent on January 5, 1965, the phone was answered, "American Marketing"—not with the full corporate name (Tr. 741, *et seq.*). Mrs. Wilkerson, as an officer and director of the Philadelphia chapter of the American Marketing Association, received many complaints resulting from the Fishbein-Kessler-LaCheen-Drizzen corporation using an almost identical name. Dr. Goodman also testified to a number of complaints (Tr. 48, Tr. 65, *et seq.*). On January 5, 1965, American Marketing Associates, Inc., was a very young enterprise.⁴ Its principals could have changed the corporate name with a minimum of effort and no adverse effects. Mrs. Wilkerson testified that the person at the corporate respondent's offices, who spoke to her over the phone on January 5, 1965, was reluctant to tell her the precise business of the corporation (see Tr. 748, 749, 750). "He acted like I was trying to steal something from him, just by trying to find out what he was doing" (Tr. 749).

18. Messrs. Fishbein and Kessler should cease immediately doing business as American Marketing Associates, Inc., or under any other name, corporate or otherwise, which is misleading and confusing, and, thereby, deceptive.

19. Messrs. Fishbein's and Kessler's intention to deceive is demonstrated further by the fact that the minutes of the first meeting of the shareholders and of the directors (CX 3), apparently were never signed; no such meeting was held; and Benjamin Fishbein, according to his own testimony, withheld from the bank with which AMA was doing business, the knowledge that he, Fishbein, was, and is, president, *de facto*, of the corporate respondent (see *infra* p. 237). This is most unusual in view of Mr. Fishbein's profession—accountancy—where truth, candor, precision, and accuracy are *sine qua non*.

20. The Articles of Incorporation of American Marketing Associates, Inc. (AMA) (CX 1 *et seq.*), were prepared by Stephen Robert LaCheen, a practicing attorney in Philadelphia, who shared office space with Benjamin Fishbein and Robert Coles, an accounting firm (Tr. 528). Minutes of the first meeting of shareholders of the corporation allegedly held on December 18, 1964 (CX 3), are not signed. These minutes show the following shareholders present: Stanley Kessler—20 shares; Robert Coles—35 shares; and Benjamin Fishbein—35 shares.

21. Robert Coles and Benjamin Fishbein were and are partners in the practice of accountancy in Philadelphia. The accounting firm's investment in AMA was made upon Fishbein's initiative. Fishbein testified that Coles accepted his, Fishbein's, advice in investing in

⁴ Its charter was issued on November 30, 1964 (CX 1).

AMA. Coles did not participate in the preincorporation conferences nor did Coles participate actively in AMA operations.

22. The minutes of the first meeting of shareholders of AMA allegedly held on December 18, 1964, are not signed, nor are the minutes of the first directors' meeting, allegedly held the same day (CX 3). The directors' minutes show the following directors present: Stanley Kessler, Robert Coles, and Benjamin Fishbein.

23. In a letter dated January 21, 1965, from Stanley Kessler to the Better Business Bureau of Greater Philadelphia (CX 99 A, B, C), the statement is made that the officers of AMA then were:

Mr. B. Fishbein, President,

Mr. R. Coles, Sec.-Treas.,

There is no Vice-President.

24. A corporate resolution (CX 95) authorizing the making of bank loans from Lincoln National Bank by AMA names Stanley Kessler as president, and Mary Lou Harris as secretary-treasurer of AMA. The AMA corporate resolution authorizing the corporate bank account (CX 96) names Kessler as president and Mary Lou Harris as secretary-treasurer. A corporate loan resolution for the Lincoln National Bank names Kessler as president and Mary Lou Harris as secretary-treasurer (CX 97). A resolution dated February 15, 1965, authorizing a corporate bank account (CX 98) lists the corporate officers as:

Stanley Kessler, President, and Mary Lou Harris, Secretary-treasurer.

25. Benjamin Fishbein testified (Tr. 528, *et seq.*) that he is a graduate of Temple University in accounting, and has been a certified public accountant for the last 18 years. In addition to the practice of accounting, Fishbein had engaged in a second mortgage business, a truck business, several loan companies, and in AMA (Tr. 529). Fishbein testified he does not participate in the "actual running" of the business:

The actual running of the business? No, I am engaged in these other business [businesses] to the extent to which I am concerned with financial information. The extent to which I am concerned with the financial information is whether the business is making a profit, in what direction is it headed, and whether, in my opinion, my investment is a secure one and whether I make money or not. (Tr. 529.)

26. Fishbein, also a director of Frankfort Paper Box Company, and McLean Packaging Corporation, testified (Tr. 530-533):

Oh, about three or four years ago or five years ago, as the case may have been, Stanley Kessler and I were talking, and he said that the book business was a very good business, and I had discussed in rathy [rather] lengthy detail as to

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what could be expected as a return if I were able to provide the means and wherewithal to create such a business.

We discussed this at great length, and I said, "Well, what the hell, we will take a shot and go into business."

However, I wanted to create a corporation because I in no way wanted to have any personal liability in the event the business did not take off as was projected.

Steve LaCheen, who is now in my office, was consulted by me, and I told Steve to set up a corporation, and from that point on, we got rolling.

* * * * *

I have had no previous experience in almost any of the businesses I have gone into. I just had to determine by my own feel whether they were worthwhile to invest in or not. The only experience I have had is in the accounting business. These other things, in which I got involved, were purely because I thought these businesses would give me an opportunity of earning extra money.

Q. Would it be fair to say that your interest in American Marketing Associates is a financial venture?

A. Yes.

Q. Would you say it is limited to that?

A. Very—limited to this extent: I am not actively engaged in the running of the business. I am concerned with, however, whether the business is running profitably or whether it is not running profitably. I have certain guides that I use. I want to determine the profitability of the sales, and I get a report on a regular basis, so I make my own valuation as to whether the business is profitable and to the extent it is profitable I am happy with the business. If it is not profitable, I would no longer be happy with it.

* * * * *

The financing end of it is my primary responsibility. Insofar as running the business is concerned, day-to-day management, I have had nothing to do with it.

Q. Who does that?

A. Stanley Kessler. It is his job to make sure that the books are received, and to make sure that the monies are collected, to make sure the bills are paid, and, then, they have two girls in the office who have other functions: one collects the money, and the other, I think she trains the sales people to go out into the field to sell the books.

* * * * *

Robert Coles came into this corporation as a direct result because he was my partner in the accounting business. He knows nothing. He does not handle anything at all in the business. Everything is handled directly through me. He knows nothing about the business.

* * * * *

Q. How much stock do you hold?

A. I am not sure of this, I am not sure of this, but I think between Bob and myself we hold 70 percent of the stock. (Tr. 533.)

27. AMA does not hold formal stockholder meetings and has not declared dividends on its stock. Fishbein receives a \$100 per week "management fee" from AMA (Tr. 533 *et seq.*). He testified:

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Q. What do you know of your own knowledge of the designation of the name American Marketing Associates?

A. I have no idea what it means; *I was not interested.* (Tr. 534) [Emphasis supplied].

* * * * *

Fishbein further testified:

I am truly President of the company. The only time, in some of our relationships with the bank, I did not want them to know that I was an officer of the company. I did not care who used the name as an officer of the company—It is a very flexible kind of thing. It was really not my concern who used their name as President, but I, by and large, was. So, from that point of view, anyone depending on who we needed as President could have signed it. In any of our relationships with the banks, I have tried not to be President of the company because as a practicing CPA and one who has some contacts with the banks it would not be a very good business idea. (Tr. 535.)

HEARING EXAMINER GROSS: As to your partner, meaning your CPA partner, do you consider him as one of the officers and directors of the company?

THE WITNESS: As a practical thing, reducing it to very practical things, many of the things I am in he is in with me in one form or another.

* * * * *

* * * So, I say, "We are going to do it," and he never says "No." (Tr. 536.)

28. Stanley Kessler, the individual respondent in this proceeding is 41 years old. He graduated from Temple University, Philadelphia, on February 15, 1950, with a B.S. degree in marketing; attended Rittenhouse College in Philadelphia, Martin College in Philadelphia, and Wright Junior College, Chicago, Illinois. During his business career, Mr. Kessler has driven a taxicab (Tr. 454); worked in Lite Brothers Department Store as an executive trainee in bathrobes; worked for Pioneer Custom Upholstering Company (Tr. 458); been in the slip-cover business, in the drapery business, in the furniture business (during which time he became engaged in the financing business) and worked in the statistical department of the United States Signal Corps in Philadelphia (Tr. 457). As a partner in National Custom Upholstering Company, Kessler handled the financing of furniture. As a partner in Customcraft Upholstering and Slip Cover Company Kessler handled the financing of accounts (Tr. 459-460). Kessler worked for the Grolier Society, Inc. for one day (Tr. 460). The Grolier Society (see *supra* pp. 227-228) then sold education materials through the mails, manufactured bookcases, and was in the financing business. Kessler opined that Grolier then did approximately \$150 million worth of business a year on an international basis (Tr. 461). Kessler stayed at Grolier for only one day because he did not like the door-to-door sale of books (Tr. 461).

29. After leaving Grolier, Kessler accompanied a gentleman named Harvey Walden in order to learn the correct technique for the door-to-door selling of books and encyclopedias. Harvey was then selling the American Education Encyclopedia and the Humanity Library (Tr. 462). Kessler was "on my own" as far as compensation was concerned.

30. Thereafter, Kessler was with the Publishers Agency for four to six months (Tr. 464). Then he went back to the Grolier Society as a "procurement manager." Among his other functions at Grolier, Kessler took salesmen into the field and trained them in the techniques of door-to-door selling (Tr. 466). He was with Grolier for two and one-half years. Then he went with a Grolier subsidiary, Richards Company—Book of Knowledge Division (Tr. 468) (see *supra*, pp. 227-228). At the Richards Company Kessler sold the Book of Knowledge and other "educational materials" (Tr. 468).

31. From Grolier, Kessler went to the Martin-Murray Corporation, Lake Bluff, Illinois, the United Educators Division, where he did "lead selling," being compensated on an "overwrite" basis. Kessler also worked for New Wonder World, Inc., and with Parents Magazine Cultural Institute (Tr. 471) (*supra*, p. 228). At Parents Magazine, Kessler's job was "the sale of educational materials" (Tr. 472). Kessler also worked for Automatic Superettes, Inc., which changed its name to "Vendtronics." He was vice president of Vendtronics Corporation. This company sold automatic vending machines. Kessler was with Vendtronics, Inc., until June 1, 1967 (Tr. 473), although the company had ceased to be active in 1963 or 1964.

32. Kessler was acquainted with Benjamin Fishbein who knew of Kessler's background. One day Kessler and Fishbein talked in Fishbein's office about forming a company for the door-to-door selling of books and encyclopedias (Tr. 475). After Kessler mentioned the difficulty of obtaining financing for such a company Fishbein undertook to obtain the financing. With that understanding, Fishbein and Kessler agreed to form the corporation now known as American Marketing Associates, Inc., the corporate respondent.

33. Kessler, and a friend whom he had known from his bookselling experiences, Stanley Drizzen (Drake), proposed ten possible names for the corporation to Robert LaCheen, the attorney selected by Fishbein to handle the legal work involved (Tr. 476). "American Marketing Associates" was the "fourth or fifth" name suggested. This name "American Marketing Associates" was cleared through the office of the Pennsylvania Secretary of State in Harrisburg.

34. The confusion caused by the selection of "American Marketing Associates, Inc.," as the corporate name was made known to respondents as early as January 5, 1965, by Mrs. Susie White Wilkerson (Tr. 735-740), who had been a 20-year member of the American Marketing Association, and was an officer and director of the Philadelphia chapter of the Association.

35. On January 5 and January 6, 1965, Mrs. Wilkerson informed someone at American Marketing Associates of the confusion (Tr. 739-740) only 35 days after its charter had been issued by the Commonwealth of Pennsylvania. Thereafter, Mrs. Wilkerson endeavored, without success, to talk to Kessler personally about the confusion created by use of the name "American Marketing Associates." Neither Kessler, Fishbein, Drizzen nor LaCheen had done anything up to the time of the hearings in May and June 1967 to remove this confusion.

36. Mary Lou Harris was secretary and Stanley Drizzen (Drake) was general manager of AMA (Tr. 479). Drizzen's responsibility was to work out the educational program that the corporation was to sell, the forms of contracts to be used, and the basis upon which AMA salesmen would be compensated (Tr. 479). Kessler devoted his efforts chiefly to the area of collections and credit (Tr. 480). Kessler put up approximately \$3000 to get AMA started and Fishbein furnished approximately \$15,000. Benjamin Fishbein received 35 shares, Robert Coles 35 shares, and Kessler 20 shares out of one hundred shares authorized (Tr. 481).

37. Drizzen (Drake) had no proprietary interest in AMA (Tr. 482). Benjamin Fishbein negotiated the lease for AMA's business premises at 1422 Chestnut Street, Philadelphia (Tr. 482). Drizzen (Drake) was in charge of sales; Kessler was in charge of credits and collections (Tr. 484). "Pricing" of the "educational material" was submitted to Fishbein for his approval (Tr. 484-485).

38. The employment and sales contracts and all other legal papers used by AMA were prepared by Drizzen and LaCheen (Tr. 486). The Research Service Certificate (CX 73) which is furnished by AMA to its purchasers is issued by Standard Information Service, 130 North Wells Street, Chicago, Illinois (Tr. 487), and permits the owner of the certificate to obtain research service on an unlimited basis over a period of ten years (Tr. 488). AMA purchasers receive a similar information service along with the Child Horizons Library (Tr. 488).

39. AMA buys the encyclopedias it sells from Eastern Guild Inc., Philadelphia (see *infra*, par. 86), who, in turn, purchases them from a major distributor. The publisher of the encyclopedia guarantees the

"research service" which respondents offer to the purchasers of the encyclopedias.

40. Kessler cleared AMA's corporate activities with Fishbein. He did not speak to Coles "too often." (Tr. 499.) Kessler was responsible for Drizzen (Drake) being hired as an employee of AMA (Tr. 499). He had known Drizzen at Parents' Magazine Cultural Institute, The Automatic Vendtronics Corporation, New Wonder World, Inc., and Grolier, for two years before Drizzen was employed by AMA (Tr. 500). Drizzen's responsibilities and duties at these other companies were chiefly in the sales area (Tr. 501). It was Drizzen's responsibility to "develop" and place advertising for AMA (Tr. 503). After Drizzen left AMA, Joanne Del Buono was responsible for AMA's advertising.

41. AMA received Better Business Bureau complaints about its advertisements (Tr. 505). Kessler testified, "I do not remember the substance of the complaints." Kessler's working title with AMA is "Regional Director."

42. Drizzen left AMA in May 1965 for reasons which are not developed in the record. Thereafter, Kessler "took over the overall day-to-day operation of the business" (Tr. 509). Kessler had Miss Joanne Del Buono replace Drizzen in "placing advertising, hiring, training and overall supervision of the solicitors. Again, her job became autonomous. She had the complete right to do whatever she chose so long as she showed us orders" (Tr. 507-508). Miss Del Buono had worked for AMA before Drizzen left and after Drizzen left, she "took over his duties" (Tr. 508). AMA never had more than six salaried employees, including Kessler (Tr. 511).

43. Counsel for both sides represented to the hearing examiner that they wished to call Stanley Drizzen (Drake) as a witness. The closing of the record was postponed to afford counsel an opportunity to put Drizzen on the witness stand. Counsel represented to the hearing examiner that they were unable to locate Drizzen.

44. One of the charges in the complaint is that respondents' sales persons, upon first knocking at a prospect's front door, conceal the fact that they are selling encyclopedias and represent, contrary to the fact, that they are making "surveys." This charge in the complaint is supported by the evidence, and the hearing examiner so finds.

45. Dr. Charles Goodman testified that using phony surveys as a sales gimmick is very harmful to bona fide surveys and survey takers (see Tr. 52 *et seq.*). On the basis of Dr. Goodman's uncontradicted expert testimony (Tr. 73-77), the hearing examiner finds that respondents are not engaged in making market surveys as those terms are used and understood by the average lay person (Tr. 76, 77). When respond-

ents' door-to-door sales person represents, contrary to fact, that he or she is making a survey, such deception has a deleterious effect upon the bona fide survey, and the bona fide survey taker. People who have been deceived by the phony survey approach are thereafter reluctant to respond to or cooperate with the bona fide survey (Tr. 80, 82). Injury is done to the bona fide survey even though the householder responding to a phony survey taker did not buy anything. If the housewife has spent several hours of her time with a sales person when she initially thought she was being interviewed for a survey, she resents having been deceived into giving up the time under false pretenses. The housewife's time is valuable to her. She acquires a bad mental attitude toward surveys. Thereafter, this housewife may refuse to respond to the inquiries of a bona fide survey taker, and a segment of the public whose opinions would be valuable to a bona fide survey are foreclosed. All bona fide surveys are impaired by using the false survey device, as is done by respondents, for obtaining an initial audience to make a sale (Tr. 88).

46. Dr. Goodman testified that the use of a "survey" or "research program" as an opening approach by a door-to-door salesman:

* * * has been a long-standing problem, without reference to the particular case at all, the use of a survey gimmick as an entree for sales has led prospective respondents to refuse to answer questions of legitimate surveyors—

* * * Door-to-door selling under the guise of data collecting has an adverse effect on door-to-door data collecting. This is not a new problem. It is of sufficiently long-standing at the association level.

The testimony of other witnesses in support of the complaint may be summarized:

47. *Bonnie Ruth Simkins*, a high school graduate, went to work for AMA in June 1965, after graduating from high school; was 17 years old at the time; responded to an advertisement in the Philadelphia Inquirer, and worked for approximately one and a half months. The ad to which Miss Simkins responded asked for girls over 17 years old, and promised a weekly salary of \$89 (Tr. 105). Miss Simkins was interviewed by "Jo Dee" (Joanne Del Buono). Miss Simkins testified that after her application had been accepted, "Well, after a brief talk with Jo Dee, I was introduced to a crowd of other fellows and girls, and they were playing records and it looked like kind of fun to me because I did not know that this was work for \$89 a week" (Tr. 106). The nature of Miss Simkins' employment—that it involved the door-to-door sale of books—was made clear to Miss Simkins on her first day of training.

After her training period an AMA district manager transported Miss Simkins and other sales personnel of AMA into the field in his car, into the States of New Jersey, Maryland, Delaware and Pennsylvania (Tr. 135).

48. The AMA ad to which Miss Simkins responded misrepresented the nature of the employment for which applicants were being solicited. The ad was intended to convey and did convey the impression that persons responding to the ad would be considered for jobs with a research organization, educators, and recognized educational institutions. Respondents' deceptive representation of the jobs they were attempting to fill are seen in CX 19-CX 41, CX 42, CX 43-CX 48 inclusive. Jobs which respondents were attempting to fill were simply jobs to engage in the door-to-door sale of encyclopedias and reference books.

49. Miss Simkins spent June 30, July 1, 2 in AMA's training program (Tr. 144), and started to work in the field on July 5, 1965 (Tr. 145). After her training period was completed, Miss Simkins reported to the AMA office at 8:30 a.m., "we sat in the classroom, we either danced or sang and by quarter to nine our managers took us to various places by car. We were left to solicit in the area of five to six city blocks" (Tr. 134-135). Dee Moran was Miss Simkins' field manager. In order to earn the \$89 per week guaranteed salary advertised in their ads, AMA sales personnel had to make 88 presentations of AMA products in a thirty-day period (Tr. 146). The alternate method of compensation was \$35 commission for each complete set of encyclopedias sold (Tr. 146). Miss Simkins understood the compensation options which were available to her (Tr. 146-159). She sold six sets of encyclopedias while she was at AMA (Tr. 141). She was not sure whether she had been fully compensated for the sets she sold (Tr. 153).

50. *Sandra Serkin* (Tr. 170 *et seq.*) was called principally to verify her handwriting on some training material which AMA gave Bonnie Ruth Simkins during her training period. One day Miss Simkins left her glasses at home and Miss Serkin made notes of the lecture for Miss Simkins. Miss Serkin assumed that the name of the company for which she was working was "well, I assumed it was Association because that is what I copied down" (Tr. 172).

51. *Mrs. Merle Urban* (Tr. 174-Tr. 183), a housewife of Pennsauken, New Jersey, was called upon at her home by two representatives of AMA in the spring of 1965. The AMA representatives "said they were conducting a survey for preschoolers. Immediately I let them in under the assumption that they possibly were from the Board of Education."

"They asked me if they could ask a few questions, and I said 'of course' * * *" (Tr. 175). Mrs. Urban testified: "'* * * then they slowly started to present the books that they were selling, or said that they were not selling but were introducing and that I would not be purchasing the books just endorsing them; that the purchase price was almost a thousand dollars but that I would be just paying the royalties, not the purchase price * * *" (Tr. 175-176). "To my knowledge, they said they were taking a survey of preschoolers" (Tr. 179). The price quoted to Mrs. Urban for the AMA product was \$249 (Tr. 179). Mrs. Urban was asked by the AMA representative whether she was aware that all preschool children were required to take a test prior to entering the first grade and * * * that their vocabulary should consist of at least 2200 words or associates of words (Tr. 180).

When Mrs. Urban realized that evening that she had been tricked into buying respondents' product she discussed the matter with her husband, and, at a later time phoned respondents, and respondents cancelled the contract for the purchase of the books.

52. *John Urban* (Tr. 183-Tr. 189), the husband of Mrs. Merle Urban, verified what his wife said she had told him about the manner in which the AMA representative conducted themselves in her presence and while in their home.

53. *Mrs. Shirley Anne Harrington* (Tr. 190-Tr. 201) of Glassboro, New Jersey, testified that on Saturday, February 6, 1965, a representative of AMA knocked on her door at home and the representative "said she was taking a census of children in schools, and I invited her in" (Tr. 192). The AMA saleslady represented to Mrs. Harrington, contrary to the fact, that a Mr. Edward J. Wolfe, the principal of Memorial School in Pittman, New Jersey, "was endorsing the science volumes which was part of these encyclopedias" which she, the AMA representative, was selling. Mrs. Harrington was tricked into buying a set of the encyclopedias. Later, Mrs. Harrington called Mr. Wolfe by telephone and Mr. Wolfe denied any knowledge of the specific set of science books, and further denied that he had endorsed such set or any other product. When Mrs. Harrington complained to AMA, her contract for the purchase of the books was cancelled (Tr. 200). Later, someone from AMA tried to deliver the books to Mrs. Harrington, but she refused to accept them. The contract was cancelled to Mrs. Harrington's satisfaction (Tr. 200-201).

54. *Edward J. Wolfe* (Tr. 202-Tr. 206), the principal of the Memorial School, Pittman, New Jersey, verified the facts to which Mrs. Harrington had testified. Mr. Wolfe testified in substance that he told Mrs. Harrington that he had never endorsed the set of books which the AMA

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representative had said that he had endorsed, nor had he ever endorsed any other product.

55. *Maryann Kowalczyk* (Tr. 206-Tr. 237), of Roslyn, Pennsylvania, responded in March of 1966 to an AMA ad in the Philadelphia Inquirer, which advertised a salary of \$89 a week to start (Tr. 209). After an interview with Miss Del Buono, of AMA, Miss Kowalczyk left her job as a sales accountant in the Naval Air Station in Willow Grove and started her training with AMA on March 22, 1966 (Tr. 208-209):

Did she indicate to you what you were going to be trained for?

A. Gee, I had no idea. I had no idea what marketing was, what it was, exactly. I did not think I would be selling door-to-door.

Q. Did she indicate to you what you were going to be trained for initially?

A. No (Tr. 210).

* * * * *

A. Well, for four days classes started around 10:00 o'clock in the morning, and the first day Joe Dee [Miss Del Buono] showed us broadsides (CX 68, CX 70, CX 71, CX 72) of a product that we were supposed to present for *endorsement* [emphasis supplied] (Tr. 210).

CX 64, CX 66-CX 68 and CX 70 are specimens of the "broadsides" to which Miss Kowalczyk testified. All of the broadsides in evidence were shown to the trainees (Tr. 211). To assist her in making sales AMA gave Miss Kowalczyk sets of the broadsides, a company manual (CX 52(a)-(v)), and "a pad of guarantees that we were supposed to get the *endorsing mother* [emphasis supplied] to sign and get certain information about her family that we wrote on these guarantees" (Tr. 221). At first, Miss Kowalczyk did not realize that she had been handed a pad of sales contracts and credit applications (Tr. 211-Tr. 212). Miss Kowalczyk's training period lasted "3 or 4 days." The trainees were told to be in the AMA office at 8:30 in the morning so they could meet their managers. " * * * we were told that we could do anything we wanted, we could dance to records, talk, or anything * * *" (Tr. 212). Miss Kowalczyk's manager, Stan Madden, drove her into the field in a two-door sports coupe in which there were 9 people (Tr. 213). While Miss Kowalczyk was working for AMA, its sales personnel were driven to New Jersey, Maryland, and Delaware for the purpose of making sales.

56. After Miss Kowalczyk was driven back from the field at the end of the day "we waited for a meeting; we usually had a little session with Mr. Kessler before we went home at night and he would look over our guarantees" (Tr. 215). Miss Kowalczyk did not receive any compensation from AMA as salary or commission for her

work (Tr. 217). She had not sold any books, nor had she made the required 88 presentations in a thirty-day period. Miss Kowalczyk testified that AMA sales persons were instructed that if asked if they were selling anything they should reply "That we were just getting opinion on a product that was to be marketed" (Tr. 218).

57. Miss Kowalczyk terminated her employment with AMA because Stan Madden, her sales manager, returned to an impecunious prospect upon whom Miss Kowalczyk had previously called, and pressured the impecunious prospect into buying a set of encyclopedias (Tr. 218-219). "* * * I did not think it was fair to the woman. I did not think she had the money to take it. So I got my kit together, all my materials, my broadsides, my manual, everything, and I handed them in, and Mr. Kessler and Stan tried to talk me out of leaving * * *" (Tr. 219-220). Miss Kowalczyk did not think her job involved selling when she started (Tr. 223), "I thought I was getting endorsements and opinions on a product" (Tr. 223). Miss Kowalczyk learned that her job was selling encyclopedias for the first time after she went out into the field (Tr. 235). Miss Kowalczyk knew she would be paid a commission for every "endorsement," but it was never referred to as a "sale."

58. *Monica Stefanelli* (Tr. 239-Tr. 265) of Glenside, Pennsylvania, who was then 18 years old (Tr. 259), responded to an AMA ad for "college students" (Tr. 240) and worked for AMA from June 15, 1966, to July 7, 1966. Miss Stefanelli was in the AMA training class for 3 or 4 days. She understood that if she made 88 presentations during the 30-day period she would be paid \$360. During her training period it was represented that she would be engaged in obtaining endorsements. "It was called an 'endorsement,' but actually, it was selling books" (Tr. 242). When asked what she thought the job involved, Miss Stefanelli testified, "I asked what the job was about when I went in for the interview, and they said it is too long to explain—'We will tell you if you get the job'." So then, when we went in, when I got the job then it was explained to me what it was about" (Tr. 243). Miss Stefanelli worked for about three weeks, including her training period, in Allentown, Mount Penn, and Windgap, Pennsylvania, and Rosita, New Jersey (Tr. 244). The witness did not understand that she was being compensated on a commission basis. "I understood that this was not on a commission basis" (Tr. 262).

59. *Linda Train* (Tr. 297), 18 years old, responded in October 1966, to an AMA newspaper ad for a person to train as a "manager" (Tr. 298). Her original application for the job is dated October 3, 1966

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(RX 15, RX 17; Tr. 320). The name, "American Marketing Associates, Inc.," was not mentioned in the ad. The witness called a telephone number given in the ad; went to the AMA offices on Chestnut Street; and was told that if she were hired she would be trained as a manager and earn \$87 a week (Tr. 300). Miss Train was interviewed by "Joanne" who said, "We would be working for Parents' Enterprises" (Tr. 301) * * * "that they sponsored something like that, and she asked our names, to introduce each other to each other" (Tr. 301). "Joanne" conducted the training (Tr. 302). Miss Train described the training procedure:

A. Well, she told us—the way she read it off it was like we were talking to the mother or father or both, and—we would go to a house, and we would say: "We are interviewing mothers in the neighborhood about the new methods of teaching," and we would ask if they had children under 10. and if they said "Yes", we asked them if we could come in and ask them a few questions. When we got in, we would ask them a few questions, and find out if they had a phone, and if they did, we would ask them some more questions, and we got down to the endorsement campaign, and asked them if they would like to see it. (Tr. 303.)

AMA trainees were required to memorize the presentations which they gave to prospective customers (Tr. 305).

Miss Train had originally been told she was going to work for the Parents' Enterprises but on the second day of training, while returning from lunch, Miss Train saw the AMA sign in the building directory and asked Miss Del Buono about the discrepancy in names. Miss Del Buono said that "they had just moved out and they had not had time to take the sign down." Miss Train thought that she was working for Parents' Enterprises.

We were never told we were selling; we were told that we were introducing a product and I never realized that we were selling until the day I went out with my manager to their homes (Tr. 306).

60. On her first day in the field Miss Train was driven to Columbia, Pennsylvania, in the car of her manager, "Mark," last name not known (Tr. 308). The first day in the field Miss Train, then 18 years old, was with the field manager. The second day she was with another girl. The third day she was by herself (Tr. 309). AMA instructed Miss Train that when the door was opened by a prospective customer she should represent that AMA wanted the customer's opinion about "a program" (Tr. 310).

61. AMA sales persons were in the field from approximately 10 o'clock in the morning until approximately 4:30 p.m. Then they were driven back to the AMA offices in Philadelphia (Tr. 312). The witness received the impression "we were to receive \$25 for three days' training,

and \$35 for any endorsements that we got." Joanne Del Buono was Miss Train's "boss" (Tr. 315). Miss Train was in the field for three days. She quit because she "did not like the job" (Tr. 316).

62. *Mrs. Irene Scioli* (Tr. 330-Tr. 348), a housewife, of Philadelphia, was called upon by the AMA saleswoman, Annunziata Devine, on June 14, 1965. Miss Devine told Mrs. Scioli to call her "Nancy." " * * * She said she was taking a survey of the teachings in the public school system * * * " (Tr. 332). Mrs. Scioli testified:

Q. Did you ask her if she was selling anything or were going to try to sell you anything?

THE WITNESS. No, I believed she was taking the survey. I never thought she was a salesperson because in my estimation, if she was selling something she would have had at least a briefcase. In fact, that was the only reason I let her in, because I did not think she was a salesperson (Tr. 336).

Mrs. Scioli signed up to buy a set of AMA encyclopedias from Miss Devine for \$240, and gave a five dollar check as a deposit on the order. Upon reflection later, Mrs. Scioli called the AMA offices and spoke to a man who identified himself as the company lawyer (Tr. 342-343). When she did not get any satisfaction from the man on the telephone, Mrs. Scioli called the Better Business Bureau. Later she filled out a form from the Better Business Bureau setting forth her experience with AMA (Tr. 343).

63. Nancy Devine represented to Mrs. Scioli that she was getting a special price (Tr. 344-345); and that when the encyclopedias were later advertised nationally the price would be substantially higher than that for which they were being offered to Mrs. Scioli. Mrs. Scioli stopped payment on the \$5 check that she had given Miss Devine. AMA never got any of Mrs. Scioli's money; Mrs. Scioli never received the encyclopedias.

64. *Gail Gordon* (Tr. 348-Tr. 378) of Alden, Pennsylvania, graduated from Temple University in June 1965. She first contacted AMA in June 1965 because a friend of hers showed her an AMA "flyer" (CX 24) offering summer jobs to engage in market research. The flyer directed interested persons to ask for a "Mr. Thurston." (Respondents admit that no Mr. Thurston was ever in their employ.) When Miss Gordon went for her first interview at AMA she was told that Mr. Thurston was not in. She was ushered in to see respondent Kessler (Tr. 351).

Q. Would you describe the interview with Mr. Kessler? This is your first interview at the company.

A. Mr. Kessler spoke first of all, and told us that the University of California had engaged them to do, the American Marketing Associates, to do a research

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program on education—a research project on an educational program, and they had the finances to hire approximately 100 people that summer. He also said that the previous summer they had hired 75 people but the University had allowed them a larger grant for this summer and that they were able to hire approximately 100 people this summer to do, in effect, market research on an educational program that was developed by the University of California, and that my job, if I were hired, would be to interview young housewives and, in effect, to get them to endorse this program, just as a famous person would endorse any kind of a program that you saw on TV, and then these people would be allowed to use this program if we could use their names as an endorsement for the program (Tr. 352).

* * * * *

* * * I was led to believe that there was no money involved, but that I would be interviewing young housewives just to get them, well, get them to endorse the program * * * I have to use that word again (Tr. 353).

During Miss Gordon's training period with AMA she was required to memorize a special mimeographed sales presentation (Tr. 357). Miss Gordon "understood Mr. Kessler to be my boss" (Tr. 352). Miss Gordon was taken into the field by Phillippa Stein. It was the witness' understanding that the prospects upon whom she was to call had been contacted earlier and had been alerted to the visit from the AMA representative (Tr. 361).

65. Phillippa Stein told the housewife upon whom she called with Miss Gordon that she was not selling anything (Tr. 362). When a housewife was reluctant to let the salespeople into her house and inquired whether she were selling anything, Miss Stein said "no, we definitely are not selling anything at all" (Tr. 362). Upon being admitted to the house, Miss Gordon went through the sales presentation as she had learned to do in the training session (Tr. 362). Such presentation required approximately an hour (Tr. 363).

66. After a few calls Miss Gordon realized that her calls upon prospects had not been prearranged. Miss Gordon testified "each successive day in the training period I found that it [the job] was not exactly as I thought it was to be and that the job was not exactly as they represented" (Tr. 364).

67. *Deborah Oliver* (Tr. 381-Tr. 414), 17 years old, a high school graduate with one year of college at Temple University (Tr. 382), at the time she testified was a receptionist at the Bell Telephone Company in Philadelphia. She initially responded to an AMA ad in the paper in April 1966 (Tr. 353), and worked for AMA for about five days beyond the initial three-day training period (Tr. 408). She sold one set of encyclopedias, and was paid \$35 commission on that sale, the final payment of \$25 being received in May 1967. During her training period at AMA Miss Oliver was instructed to tell prospective custom-

ers, upon her initial contact with them, that she was conducting a "survey" (Tr. 410). AMA misrepresented to Miss Oliver that her calls upon prospective customers would be prearranged (Tr. 409).

68. *Stephen Robert LaCheen* (Tr. 416-Tr. 450), a member of the bar of Pennsylvania, was and is in the private practice of law in Philadelphia. He prepared the articles of incorporation for AMA, Inc. At the time, LaCheen had been a long time personal friend of, and shared office space with Benjamin Fishbein and Robert Coles, who were carrying on the practice of accountancy (Tr. 525). LaCheen prepared the Articles of Incorporation of AMA and the corporate papers which usually are required to complete such incorporation. Copies of the corporate minutes including the waivers of notice of the first meeting of the stockholders and of the directors (which were produced in response to complaint counsel's request) are not signed. The minutes recite the following shareholders present at the first meeting: Stanley Kessler—20 shares; Robert Coles—35 shares; and Benjamin Fishbein—35 shares (CX 3).

Respondents' witnesses testified, in pertinent part:

69. *Marlene Petchon Caesar* (Tr. 609-Tr. 636), 31 years old, had previously worked with Stanley Drizzen (Drake) at the Grolier Society, selling encyclopedias on a door-to-door, commission basis. She wanted to resume the selling of encyclopedias and got in touch with Stanley Drizzen at AMA in March 1965 (Tr. 610). She was with AMA until May 1965; was paid \$35 Commission for each "package" of encyclopedias sold for \$249.50. Miss Caesar had been trained in the door-to-door selling technique by Drizzen when she was at Grolier. At Grolier she sold *The Book of Knowledge* (Tr. 620). After leaving Grolier the witness worked for a year and a half selling wigs on a door-to-door basis (Tr. 619). At AMA Mrs. Caesar solicited sales in Pennsylvania, New Jersey, and Delaware (Tr. 625). During her two months at AMA she earned between \$700 or \$800 in commissions (Tr. 626) and left AMA because of "a personal problem that had nothing to do with the company" (Tr. 630). In making her presentations of the AMA products the witness did not use the word "sale" (Tr. 630) but the word "endorsement" (Tr. 631).

70. *Malcolm Hay* (Tr. 637-Tr. 666), an insurance salesman at the time of his testimony, had formerly been a district manager for AMA. He was a high school graduate and after he got out of the Navy in September 1958 he went to an IBM school for about 16 months. Thereafter, he worked for Leeds and Winthrop, a precision instrument company, assembling precision instruments for more than four years (Tr. 646). Thereafter, Mr. Hay went to work for Parents' Magazine sell-

ing books on a door-to-door basis and stayed with Parents' Magazine from April until October 1964. Mr. Hay received his training in door-to-door selling of books at Parents' Magazine. He started to work for AMA in January 1965 (Tr. 650) and did not go through a training period. He received a \$50 commission on each sale he made plus a \$10 overwrite for each set sold by the salespeople whom he transported to the field in his automobile. Mr. Hay traveled to New Jersey, Delaware and Maryland to solicit orders (Tr. 655). AMA had "four or five" district managers when Hay was there (Tr. 657).

71. *Barbara (Mrs. Malcolm) Hay* (Tr. 667-683) worked for "approximately six months" (Tr. 670). She originally established contact with AMA by responding to an AMA advertisement in a newspaper (Tr. 674). Previously, she had been "involved" in selling in Louisiana (Tr. 675). CX 43 looked "familiar" to the witness as the type of ad to which she responded (Tr. 678-679). She solicited orders for AMA in Delaware, Maryland, New Jersey, and Pennsylvania (Tr. 682).

72. *Phillippa Stein* (Tr. 684-709) had graduated from Pennsylvania State University in December 1966, worked one summer for Mr. Drizzen at "Parents Association" (Tr. 700) doing door-to-door selling of books. Drizzen (Drake) trained Miss Stein in the door-to-door selling technique at Parents (Tr. 700). The witness worked for AMA during the summer of 1966; was a district manager; was paid \$50 commission on each set of books she sold, plus a \$10 overwrite on sets sold by the salespersons whom she transported to the field. Although Miss Stein was a teacher in the public schools, she testified that she had never seen a "reading readiness" test⁵ (Tr. 696-697). The witness' reference to "reading readiness" tests in her sales presentation was only "hearsay" (Tr. 697). Miss Stein did not go through the usual training period at AMA (Tr. 701). She worked one summer as a waitress for Rich Pike Delicatessen (Tr. 703). During the period she was with AMA she solicited orders in New Jersey and Pennsylvania (Tr. 704-705).

73. Miss Stein testified that in her presentation to prospective purchasers of AMA products she never said she was selling encyclopedias (Tr. 707). The prospective customers were not made aware that they were going to have to pay out money until *after* Miss Stein gave the product talk (Tr. 708). If a prospective customer asked "what are you selling?" * * * "I told her I was not selling anything" (Tr. 708-709). Miss Stein "might" have said: "we just want to talk to [you] about the education of your children" (Tr. 709).

⁵ See *supra*, p. 243.

74. *Elaine Pollack* (Tr. 710-Tr. 733), 23 years old, responded to an AMA ad in the Philadelphia Inquirer in March 1965 and was interviewed at AMA by Drizzen (Drake) (Tr. 712); trained by Drizzen (Tr. 713) and then "went out and sold books" (Tr. 713). She used a foot shuffling technique for gaining admission into the house of a prospective customer (Tr. 714). The "product" was sold for "\$249.50, \$10 for shipment" (Tr. 715). She was with AMA a little bit less than three months. After graduation from high school, she worked for a year as a clerk in a bank and then went to Temple University (Tr. 716). The feature about the AMA ad which attracted Miss Pollack was its statement that no typing was required (Tr. 717). Miss Pollack was compensated on a commission basis by AMA. She could not remember precisely how much money she earned in the two and a half months she was with AMA but estimated that she earned more than \$300 for the two and a half month period (Tr. 719). Initially, Miss Pollack did not tell a prospective customer that she was selling (Tr. 722, Tr. 725, Tr. 726). She called upon prospective customers in Pennsylvania, New Jersey, and Delaware (Tr. 724).

75. *Dee Moran* (Tr. 751-Tr. 795), 20 years old, became associated with AMA in December 1964 (Tr. 751). She had previously worked for Stanley Drizzen (Drake) at Parents' Magazine Cultural Institute. Drizzen (Drake) telephoned the witness and asked her to come to work for him after he had become associated with AMA (Tr. 752). Miss Moran went to AMA as a district manager and stayed for 8 or 9 months (Tr. 752). She was paid a \$50 commission on every set of books she sold plus a \$10 overwrite on sets sold by the salespeople whom she drove to the field. Miss Moran's recital of the modus operandi of the AMA sales force did not differ in any material aspect from the stories testified to by the other AMA district managers. Miss Moran testified in substance that the sales talk which was utilized by AMA personnel was essentially the same that Miss Moran had been taught by Drizzen at Parents' Magazine except that the books being sold were different (Tr. 755-756). The witness had received CX 55 and 56(a)-(h) from another AMA district manager, Georgine Scott (Tr. 765). The witness denied that she was fired from AMA "for using unauthorized materials" (Tr. 770). The witness attempted to make sales in Philadelphia, New Jersey, Maryland, and Delaware (Tr. 771). At AMA, Miss Moran met other persons who had left Parents' Magazine and came to AMA to work (Tr. 774) including the witness, Georgine Scott and Cathy Paoli (Tr. 774). Drizzen introduced Miss Moran to Kessler. At AMA, Drizzen "was in charge of the office. He did the hiring, the training, and so forth" (Tr. 775).

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Drizzen told Miss Moran that Kessler was in charge of "collections and debits [debts]" (Tr. 775).

76. Drizzen left AMA and went to "Parents" in Baltimore before Miss Moran left AMA (Tr. 776). The witness never underwent any training at AMA (Tr. 778).

77. *Stanley Kessler, respondent*, testified in his own behalf (Tr. 789-795). This portion of Mr. Kessler's testimony does not support additional, material findings of fact which are not summarized elsewhere in this initial decision.

THE EXHIBITS

Exhibits in this record fall into the following rough categories: A. Corporate proceedings, B. AMA advertisements for help, C. Training material, D. Contracts used in the business, E. Sales material and F. Miscellaneous.

A. Corporate Proceedings

78. Some corporate proceedings are reflected in CX 1, CX 2(a) (b), CX 3-8, and CX 95-98. These exhibits show and it is found that AMA was chartered by the State of Pennsylvania to do business on November 30, 1964. When respondents were notified by Mrs. Wilkerson on January 5, 1965, that the corporate name was creating confusion, respondents, and Benjamin Fishbein, and LaCheen, could have eliminated the confusion by changing the corporate name after less than 26 working days since the issuance of the corporate charter. As far as the record shows, no effort was ever made to eliminate this confusion.

The corporate proceedings in evidence support a finding that Benjamin Fishbein, Stephen LaCheen and Stanley Kessler were careless of, or indifferent to, the necessity of conducting their business affairs in the usual and customary manner for such enterprises. Small "closed" corporations, such as AMA, abound in American business—but such businesses do not ordinarily represent to their business associates one list of corporate officers in one set of papers and a different list in a different set of papers. If Benjamin Fishbein, the largest capital contributor, wanted to keep his name out of the corporate proceedings, for business reasons, there is no good reason why he should not have done so. It is interesting to speculate why Fishbein, an accountant, did not insist upon a meticulous adherence to the facts, and consistency in the way the facts were represented to outsiders. AMA's corporate officers named in The Lincoln National Bank resolution

authorizing the bank account, and the making of loans (CX 95) are Stanley Kessler, president, and Mary Lou Harris, secretary-treasurer. The corporate officers named in Kessler's January 21, 1965, letter to the Better Business Bureau of Greater Philadelphia (CX 99) are Mr. B. Fishbein, President and Mr. R. Coles, Secretary-Treasurer. There is no Vice-President" (CX 99(a)). In CX 84, a short statement describing the American Marketing Associates, Inc., prepared for the Federal Trade Commission, at its request, it was represented that the officers of the corporation are:

Mr. Leonard Fishbein, President, 10225 Selmer Plaga, Philadelphia, Pa.

Mr. Albert Gordon, Secretary-Treasurer, 1110 Princeton Avenue, Philadelphia, Pa.

There is no Vice President (CX 84).

Benjamin Fishbein testified that he really didn't think it made any difference who was represented to be the corporate officers—that he, Fishbein, was the president in fact (see Ante p. 237). The examiner finds that Benjamin Fishbein, Stanley Kessler and Stephen LaCheen's actions in representing to interested parties who the corporate officers were and are—when evaluated along with—and as part of the other deceptions proven in this record, constitute deceptive acts and practices which violate Section 5 of the Federal Trade Commission Act.

79. The hearing examiner has previously found, and now reiterates his finding (*supra*), that the first act of Messrs. Benjamin Fishbein, Stanley Kessler, and Stephen LaCheen—the selection of the corporate name—was and is a deceptive act and practice and violates Section 5 of the Federal Trade Commission Act.

B. Advertisements for Help

80. In their advertisements for help (CX 19-35, inclusive, and CX 37-48, inclusive), respondents have represented, and do represent, contrary to the fact:

- (a) That they conduct marketing research;
- (b) That they conduct marketing surveys;
- (c) That they are a "large, international marketing corporation" (CX 29);
- (d) That they have an "anthology" department (CX 31, CX 32, CX 33);
- (e) That being hired as an AMA door-to-door salesperson could "lead to a career in personnel management and supervision" (CX 33);
- (f) That they had in their employ a "Mr. Disney" (CX 21); a "Miss Marlo" (CX 23); a "Mr. Thurston" (CX 24); a "Mr. Von Savage" (CX 39); a "Miss Gayle" (CX 41); a "Mr. Baxter" (CX 47); a "Dr. Arthur West" (CX 59);

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(g) That AMA is a "world-famous industrial publishing corporation" (CX 40); is "an international organization that does market research, advertising, sales" (CX 42).

C. Training Material

81. The exhibits characterized as "training material" include CX 52, CX 62, and CX 63. Based upon his examination of these exhibits and other evidence in the record, the examiner finds that respondents have represented, and do represent, contrary to the fact:

(a) That they had an "educational director" (CX 59); and "educational coordinator" (CX 62) on their staff:

(b) That their products had been endorsed by "the former Superintendent of Schools, Chicago, Illinois" (CX 60); "the United States Department of Education" (CX 60); Angelo Patri, "leading authority on child psychology" (CX 61); Dr. Spock (CX 63).

82. CX 52-58, inclusive, and other evidence in this record support a finding, and the examiner finds, that respondents trained their sales personnel to give "canned" sales presentations, but this fact did not and does not constitute a deceptive act or practice. The fact that respondents' sales personnel were required to commit their sales presentations to memory does not constitute a deceptive act or practice. It was, and is the representations that were and are made in the sales presentations themselves that may or may not be deceptive. It was, and is a deceptive act and practice for respondents to instruct their sales personnel, in sales presentations, to represent that such sales personnel are conducting surveys and that they are engaged in market research; and to deny that they are selling books, or selling anything (see testimony of Mary Ann Kowalczyk, p. 244, Linda Train, p. 246, Gail Gordon, p. 247, Deborah Ann Oliver, p. 248, Phillippa Stein, p. 250); to infer that the purchase of their products was essential for a child to pass the reading readiness test required for admission to the public schools; and/or to infer directly, or by innuendo, contrary to the fact, that respondents' products have the endorsements of any well-known person or organization, including the former Superintendent of Schools of Chicago, Illinois; Angelo Patri; Dr. Spock, the United States Department of Education, or the University of California.

D. Contracts

83. Respondents' format for their employment agreements, sales agreements, and credit applications, is intended to, and does, disguise the fact that such documents are employment contracts, purchase contracts, and/or credit applications. The exhibits with the words

"Products Acceptance Division" (CX 4-17, CX 72, CX 76) as the predominant printing at the top, are purchase agreements. Respondents violate the Federal Trade Commission Act by attempting to cause their customers to believe at the outset, that the customer is not buying something for which he or she must pay money. The Federal Trade Commission Act was and is violated if respondents' first interview or contract is secured by deception, even though the true facts are made known to the buyer before he or she enters into the contract of purchase. (Paraphrased from *Exposition Press v. FTC* 295 F. 2d 869 at 873 which quoted the principle, with approval from *Carter Products*, 186 F. 2d 821, 824.) This principle is especially significant with reference to the opening leads which respondents' sales personnel use when they first knock upon a prospective customer's front door, or first ring the front door bell, and represent that they, the salespersons, are not selling anything but are taking a survey, or doing something other than that which they actually are doing—selling books.

STIPULATED FACTS

The following findings of fact are made *in haec verba* the prehearing stipulation filed in this record on May 10, 1967:

84. a. The corporate respondent, American Marketing Associates, Inc., was incorporated under the laws of the State of Pennsylvania on November 30, 1964. Its "registered address" for State purposes is that of its Attorney, Stephen R. LaCheen, Esq., Suite 3100, Lewis Tower Building, 225 15th Street, Philadelphia, Pennsylvania.

b. Its principal office and only place of business is located at Suite 702, 1422 Chestnut Street, Philadelphia, Pennsylvania. The corporate respondent does not have any other branch offices or places of business. (CX-1.)

c. The application for incorporation shows that the incorporators of the corporate respondent were:

Mr. Benjamin Fishbein, 517 Mermaid Lane, Windmoor, Pennsylvania.

Mr. Robert Coles, 1116 East Slocum Street, Philadelphia, Pennsylvania.

Miss Cecilia J. Bartolino, 1120 North 20th Street, Camden, New Jersey.

d. The said application for incorporation shows that each incorporator had one share of common stock. (CX-2.)

e. The officers of the corporate respondent are:

Benjamin Fishbein—president.

Robert Coles—secretary and treasurer.

There is no vice president.

f. The directors of the corporate respondent are Benjamin Fishbein, Robert Coles and Stanley Kessler. (CX-3.)

g. Stock of the corporate respondent consists of 100 shares of common stock with a par value of \$10 per share.

85. The corporate respondent for some time last past has been, and at the time of issuance of the subject complaint and for some time thereafter, has been engaged in the business of advertising, offering for sale, sale and distribution of encyclopedias and other educational books to the public.

The principal books and encyclopedias sold and distributed by the corporate respondent are:

The New Standard Encyclopedia (14 Volumes).

Child Horizons (5 Volumes).

Science Library (7 Volumes).

Children's Classics Library (10 Volumes).

and supplements thereto.

86. In the course and conduct of its business, the corporate respondent now causes, and for some time last past has caused, the said books and encyclopedias, when sold, to be shipped from its place of business in the State of Pennsylvania and from the place of business of its supplier, Eastern Guild Inc., 1315 Vine Street, Philadelphia, Pennsylvania, to purchasers thereof located in States of the United States other than the State in which said shipments originate. Purchasers of the said books and encyclopedias reside in the States of Pennsylvania, New Jersey, Delaware and Maryland. (CX-4 through CX-17.)

87. In the course and conduct of its business, the corporate respondent for some time last past and at the time of issuance of the subject complaint and for some time thereafter has been in competition in commerce with corporations, firms and individuals in the sale of books of the same general kind and nature as those sold by the corporate respondent.

Companies engaged in the sale and distribution of encyclopedias and books in the Greater Philadelphia area include the major publishers of encyclopedias as well as distributors and retailers. Among these are Grolier, which, through subsidiaries and divisions publishes the Book of Knowledge, Encyclopedia Americana, Grolier Encyclopedia, Richards Encyclopedia and International Encyclopedia among other publications. The Richards Encyclopedia is distributed through the Richards Company and through two Grolier subsidiaries, Spencer Press and R. H. Hinkley Company. Spencer Press also publishes and distributes the International Encyclopedia.

Other companies that engage in retail door-to-door sales of encyclopedias in the Greater Philadelphia Metropolitan area are Parent's, Encyclopedia Britannica, Great Books and Collier's.

88. In the course and conduct of its business the corporate respondent sells said books at retail to the general public. Sales are made by the corporate respondent's agents, representatives or employees, who contact prospective purchasers in their homes or at their place of business. From the date of its incorporation on November 30, 1964, through December 31, 1965, the gross sales of the corporate respondent, less returns and allowances, amounted approximately to \$106,656.96. (CX-18.)

89. The corporate respondent has formulated, developed and carried out a plan for the purpose of attracting and acquiring sales employees and/or representatives and for the purpose of selling said books to the public.

In furtherance of said plan the corporate respondent has disseminated or caused to be disseminated, and now disseminates classified advertisements in newspapers of general and interstate circulation and in other advertising media and have made statements and representations designed and intended to induce individuals to apply for employment and training in respondent's organization in reliance thereon.

Typical and illustrative of the foregoing but not all inclusive thereof, are the following:

CX-19—Philadelphia Inquirer—March 7, 1965.

CX-20—Philadelphia Inquirer Sunday—August 29, 1965.

CX-21—Philadelphia Inquirer Sunday—February 21, 1965.

CX-22—Philadelphia Inquirer Sunday—August 29, 1965.

CX-23—Philadelphia Inquirer Sunday—September 19, 1965.

CX-24—Advertising Flyer.

CX-25—Advertisement in the Yellow Pages.

CX-4 through CX-17—Contracts of Sale.

In addition to the foregoing exhibits of advertising, the corporate respondent also placed the following advertisements:

CX-26—Philadelphia Inquirer—Sunday, August 22, 1965.

CX-27—Philadelphia Inquirer—Sunday, August 22, 1965.

CX-28—Philadelphia Inquirer—Sunday, August 29, 1965.

CX-29—Philadelphia Inquirer—Sunday, Sept. 19, 1965.

CX-30—Philadelphia Inquirer—Sunday, Oct. 17, 1965.

CX-31—Philadelphia Inquirer—Sunday, Oct. 17, 1965.

CX-32—Philadelphia Inquirer—Sunday, Oct. 17, 1965.

CX-33—Philadelphia Inquirer—Sunday, Jan. 3, 1965.

CX-34—Philadelphia Inquirer—Sunday, Feb. 7, 1965.

CX-35—Philadelphia Inquirer—Sunday, Feb. 14, 1965.

CX-36—Philadelphia Inquirer—Sunday, Feb. 21, 1965.

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CX-37—Philadelphia Inquirer—Sunday, Feb. 28, 1965.
CX-38—Philadelphia Inquirer—Sunday, Mar. 14, 1965.
CX-39—Philadelphia Inquirer—Sunday, Mar. 28, 1965.
CX-40—Philadelphia Inquirer—Sunday, May 23, 1965.
CX-41—Philadelphia Inquirer—Sunday, May 23, 1965.
CX-42—Philadelphia Inquirer—Sunday, May 30, 1965.
CX-43—Philadelphia Inquirer—Sunday, Sept. 26, 1965.
CX-44—Philadelphia Inquirer—Sunday, Oct. 3, 1965.
CX-45—Philadelphia Inquirer—Sunday, Oct. 10, 1965.
CX-46—Philadelphia Inquirer—Sunday, Oct. 10, 1965.
CX-47—The Sunday Bulletin—May 1, 1966.
CX-48—Philadelphia Inquirer—Jan. 29, 1967.

The telephone number listed in the aforesaid advertisements as LO 4-4345 or 564-4345 is the telephone number of the corporate respondent American Marketing Associates Inc.

The "flyer" advertisement (CX-24) was circulated on the Campus of Temple University, Philadelphia, Pennsylvania.

90. The screening and training of applicants at the company usually extends from Monday through Friday of one week. The initial interview is conducted on Monday and a second group interview is conducted on Tuesday, both of which are handled by Miss Joanne Del Buono, who is the company's "Personnel and Staff Training Director." The Training periods are also conducted by her on Wednesday, Thursday and Friday.

There are three documents that are executed by the company and its sales representatives during the training period, these being the initial agreement of understanding regarding compensation agreements (CX-49), a written "test" of the trainee's understanding of his working relationship with the company (CX-50) and lastly the independent contractor's agreement (CX-51).

91. In furtherance of that part of the aforesaid plan to sell their books to prospective customers the corporate respondent supplies its agents, representatives or employees with a "printed sales pitch" and material connected therewith and instructs them to use and follow the same. Typical, but not all inclusive of such material are the following:

CX-61—The Child.

CX-62—One Page form letter of "Educational Co-ordinator."

Note: CX-62 is left by the solicitor after the sale of the program has been accomplished.

CX-63—Child Horizons Library Introduction.

CX-64—Child Horizons Library "Broadside."

CX-65—Child Classics Introduction.

CX-66—Child Classics "Broadside."

CX-67—New Standard Reference Library Introduction.

CX-68—New Standard Encyclopedia "Broadside."

CX-69—Information Service Introduction.

CX-70—Information Service "Broadside."

CX-71—The Science Library "Broadside."

CX-72—Products Acceptance Division Blank Contract.

CX-73—Standard Information Service Certificate.

CX-74—Standard Quarterly Review Service Guarantee Certificate.

Note: CX-73 and CX-74 are mailed to the purchasers of the program by the Eastern Guild Inc., distributor of New Standard Encyclopedia Inc.

92. The corporate respondent, through the use of such statements and representations and others similar thereto, but not specifically set forth herein, separately and in connection with the oral sales presentation of respondent's salesmen, as used variously by the respondent in the advertisements and promotion of their products, admits that it has represented directly or by implication:

a. That it is recruiting young men and women as trainees for career positions as junior executives in marketing research, sales, advertising, credits, public relations, personnel supervision and management, to fill positions created by promotions.

b. That trainees will be paid \$70 or \$89 a week, \$360 a month or \$4,628 a year as starting salaries with no previous experience required.

c. That respondent's representatives were making a "survey" of a select group of mothers to solicit "endorsements" of the aforesaid educational program.

d. That some of respondent's representatives were mothers with children or teachers who volunteered their services solely out of interest in the aforesaid educational program at no compensation or at a nominal compensation.

93. The corporate respondent admits in truth and in fact:

a. That the corporate respondent is not associated nor affiliated in any manner with the American Marketing Association or any other organization and is not an association of persons, firms or corporations, having a common interest. The corporate respondent is a simple corporate entity engaged in business as hereinabove described.

b. The corporate respondent is not an international corporation with branch offices in major cities and its home office in Chicago, Illinois. The corporate respondent maintains a single office in Philadelphia, Pennsylvania, and is engaged in the door-to-door sale of encyclopedias and other educational books. At no time did their annual sales ever total \$100,000,000.

c. The corporate respondent does not have in its employ experts in the educational field possessing skills and qualifications such as doctoral degrees nor does it maintain a staff of company psychologists.

d. The corporate respondent does not represent Parent's-Children's Institute, nor are they affiliated with Parent's Magazine nor any agency of the United States Government.

e. The corporate respondent has not engaged in market research or any other research in conjunction with the University of California or any other organization or institution.

f. The corporate respondent has not developed an educational program in conjunction with the University of California, at the request of leading educators.

g. The corporate respondent admits that its representatives were not necessarily mothers with children or teachers who volunteered their services with little or no compensation but solely out of an interest in the aforesaid educational program. Corporate respondent's representatives, as aforesaid were salesmen or saleswomen, married or single working for moneys or income to be realized from the sale of respondent's books.

Stanley Kessler, individual respondent, must be included and joined in the order being entered, in order to stop the deceptions which have been proven in this record and to prevent their future recurrence. Had Benjamin Fishbein been named as a respondent, he too would be included in the order. Joining Kessler in the order is inescapable if we apply the facts found herein to the rationale of legal precedents which establish the criteria for determining whether individual respondents should be named in Commission cease and desist orders. The examiner has read the language of the Fifth Circuit in the *Doyle* case, 356 F. 2d 381, 383, and of the Ninth Circuit in the *Flotill* case, 358 F. 2d 224, 233, as well as the precedents which sustain the inclusion of individual respondents in an order. (See Docket No. 8697, *Coran Bros. Corporation. et. al.*, opinion of the Commission dated July 11, 1967, at pages 2, 3 and 4 [72 F.T.C. 1, 24-25]). Benjamin Fishbein and Stanley Kessler could, merely by changing the corporate name, continue the same deceptions under a new name, unless Kessler at least (Fishbein is not a respondent) is under a personal interdiction to conduct any and all door-to-door selling businesses in which he now is, or hereinafter may be engaged free of all deception proscribed by Section 5 of the Federal Trade Commission Act.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over the parties to and the subject matter of this proceeding. This proceeding is in the public interest;

2. The respondents, and each, and both of them, have violated Section 5 of the Federal Trade Commission Act in the manner set forth in this initial decision;

3. In order to prevent the current and possible future deceptive acts and practices of respondents an appropriate order must be entered. Such an order should bind both respondents.

The Benjamin Fishbein-Stanley Kessler-Robert Coles-American Marketing Associates, Inc.—operation is so permeated with deception that the usual and customary form of order entered in adjudicative proceedings before the Federal Trade Commission may not reach all of the deceptions which have to be remedied in this specific factual situation. It is, therefore,

ORDER

Ordered, That respondents Stanley Kessler and American Marketing Associates, Inc., a Pennsylvania corporation, their agents, representatives, and nominees, and/or all other persons acting for, with, or on behalf of, said respondents cease and desist forthwith from:

1. Doing business under the corporate name, "American Marketing Associates, Inc.," or any other name, corporate or otherwise, which can, directly or by innuendo, cause confusion in the minds of the public, or any specific segment of the public, and/or create a false or deceptive impression of the true purposes of the enterprise;

2. Representing, directly or by innuendo, that they are carrying on market research and/or making surveys: *Provided, however*, That it shall be a good defense in any enforcement proceeding for respondents to demonstrate that they are in fact carrying on market research and/or making surveys as those terms are generally understood;

3. Misrepresenting who are the actual officers and directors of the corporate respondent;

4. Representing in their advertisements for help, and in their sales presentations: (a) that they are an international corporation; (b) that they employ certain categories of persons (such as "educational director") who in fact are not in their employ; (c) that they are affiliated, in a business way, or otherwise, with any institution of higher learning or with any other business or institution with which they are not in fact so affiliated; (d) that they train their employees to become junior executives or to become personnel managers, or for any other position for which such employees are not in fact so trained;

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5. Misrepresenting in their advertisements, and otherwise, the true nature of the job being proffered to the applicants for employment who are solicited;
6. Using a format for their employment contracts, sales agreements, and other legal documents, which format does not label such documents precisely as to what they are;
7. Using the names of fictitious persons and/or fictitious titles in their advertisements and other representations;
8. Denying that they are engaged in the sale of a product;
9. Representing that they are engaged in any activity other than that in which they are in fact engaged;
10. Representing to any prospective customers, directly, or by innuendo, that the price quoted for their products represents a saving from the price at which the products are usually and customarily sold in the recent regular course of business in the trade area involved;
11. Any and all other practices which are found in this initial decision, to be false, misleading or deceptive as described herein.

OPINION AND FINAL ORDER OF THE COMMISSION

In this proceeding, initiated by a complaint issued January 17, 1967, complaint counsel have appealed from the initial decision rendered by the hearing examiner on August 24, 1967. While respondents filed a notice of intention to appeal, they did not perfect their appeal by filing an appeal brief as required by Section 3.52 of the Rules of Practice. Complaint counsel do not challenge the findings of fact and conclusions made by the examiner. Their appeal is limited to the form of the order. They assert that the form of order adopted by the hearing examiner is, in certain respects, unclear and inadequate to assure discontinuance of the illegal acts and practices found.

After careful consideration of the entire record, the Commission has determined that the evidence fully supports the findings of fact and conclusions contained in the initial decision, and they are hereby adopted by the Commission. We have also determined that complaint counsel's objections to the form of the order are well taken. The order we are entering is designed to overcome the deficiencies noted by complaint counsel. It is tailored to prohibit, in clear and specific terms, the unlawful acts and practices in which the record establishes that respondents have engaged. Accordingly,

It is ordered, That respondents American Marketing Associates, Inc., a corporation, and its officers, and Stanley Kessler, individually

and as a director of the said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of encyclopedias or 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:

1. Using the words "Marketing" or "Associates" or any other word or words, or abbreviations thereof, of similar import or meaning as a part of respondents' trade or corporate name or in any other manner in their sales, promotional, or advertising activities; or representing, directly or by implication, that respondents are an association of persons, firms or corporations having a common interest;

2. Representing, directly or by implication, that:

- (a) Respondents are associated or affiliated with the American Marketing Association; or misrepresenting, in any manner, respondents' trade or business, associations, affiliations or identity;

- (b) Respondents are an international corporation or have branch offices or have annual sales of \$100,000,000 or any other amount in excess of respondents' actual annual gross sales; or misrepresenting, in any manner, the size, scope, extent, amount or volume of respondents' business or operation;

- (c) Respondents are engaged in the business of marketing research and analysis or advertising credits, or public relations; or misrepresenting, in any manner, the nature of respondents' business;

- (d) Jobs are available or applicants are sought as trainees for junior executive positions in market research and analysis, advertising credits, public relations, personnel supervision or management; or misrepresenting, in any manner, the type or kind of employment offered;

- (e) A salary or income is being paid for any job or position when only a commission is paid to those accepting the employment; or misrepresenting, in any manner, the amount or method of compensating employees;

- (f) Respondents' business organization consists of separate functional departments or divisions such as Editorial, Research, Educational or Product Acceptance; or using any

fictitious or misleading organizational descriptions or designations;

(g) Respondents have in their employ experts in the educational field possessing special skills, qualifications or doctoral degrees or employ their own company psychologists; or misrepresenting, in any manner, the number, kind or qualifications of the persons employed by respondents;

(h) Respondents represent "Parents'-Children's Institute" or are affiliated with Parents Magazine or any agency or instrumentality of the U.S. Government or any local or state government; or that respondents have engaged in research in conjunction with the University of California or any other organization or institution; or misrepresenting, in any manner, respondents' trade or business associations, affiliations or representations of any other organizations;

(i) Respondents have developed an educational program in conjunction with the University of California at the request of leading educators; or misrepresenting, in any manner, the persons or organizations which assisted or participated in the formulation of the program by respondents to prospective purchasers;

(j) Respondents' program was or is approved or endorsed by leading educators; or that it contains all the required reading materials of a child's assigned school work; or that it will enable a preschool child to pass the "Reading Readiness Test" or any test for entrance to elementary school;

(k) Respondents' representatives are making or conducting a survey; or are soliciting only a select group of mothers for the purpose of obtaining an endorsement of the aforesaid educational program or for any purpose other than the sale of books; or that respondents' representatives are mothers or teachers who have volunteered their services solely because of interest in the aforesaid educational program or for any other reason at no compensation or only at a nominal compensation; or misrepresenting, in any manner, the purpose of the call or interview by respondents' representatives with prospective purchasers;

(l) Under a "Mother's Club Plan" or any other plan, selected groups of mothers or any other class or group of purchasers are afforded the opportunity of obtaining the aforesaid educational program or any of respondents' prod-

ucts, either singly or in combination at a special price, below the regular price, which special price is sufficient only to cover the cost of production such as paper, printing, bindings and royalties; or that the regular price of said educational program would amount approximately to \$1,000 or that the regular price of optional annual supplements to said program is \$14.98; or that the regular price of any of respondents' goods or services, whether offered or sold singly or in combination, is any amount which is in excess of the price at which said goods or services have actually been sold or offered for sale in good faith for a reasonably substantial period of time by respondents in the recent regular course of their business;

(m) Any price at which respondents' books, supplements, publications, programs or any other products are offered for sale, is a "sale," bargain, special, or reduced price: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that said "sale," bargain, special, or reduced price constituted a substantial reduction from the regular price at which such books, supplements, publications or programs or other products were actually sold or offered for sale in good faith for a reasonably substantial period of time by respondents in the recent regular course of their business;

(n) Respondents have donated or supplied, or will donate or supply, to any orphanage or other organization, without charge, respondents' whole educational program or parts thereof: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that such donations were actually made in every instance in the manner represented.

3. Falsely representing, in any manner, that savings are available to purchasers or prospective purchasers of respondents' merchandise at retail; or misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' merchandise at retail.

It is further ordered, That 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 of their compliance with this order.

Commissioner Nicholson not participating.

Complaint

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IN THE MATTER OF

HAWAIIAN CASUALS, LIMITED, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C—1294. Complaint, Feb. 5, 1968—Decision, Feb. 5, 1968

Consent order requiring a Hawaiian manufacturer of ladies' dresses and sportswear, to cease importing, manufacturing, or selling dangerously flammable wearing apparel.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Hawaiian Casuals, Limited, a corporation, and Shirley R. Hicks and Karl H. Heyer, individually and as officers of said corporation, hereinafter referred to as respondents have violated the provisions of said Acts and the Rules and Regulations promulgated under the Flammable Fabrics Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Hawaiian Casuals, Limited, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Hawaii. Respondent Shirley R. Hicks is the president of said corporate respondent and respondent Karl H. Heyer is the vice president of the corporate respondent. They formulate, direct and control the acts, practices and policies of said corporation.

Respondents are engaged in the manufacture, sale and distribution of textile fiber products, including wearing apparel in the form of ladies' dresses and sportswear, with their office and principal place of business located at 1311 Kamaile Street, Honolulu, Hawaii.

PAR. 2. Respondents, now and for some time last past, have manufactured for sale, sold and offered for sale, in commerce; have imported into the United States; and have introduced, delivered for introduction, transported and caused to be transported, in commerce; and have transported and caused to be transported for the purpose of sale or delivery after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act, articles of wearing apparel, as the term "article of wearing apparel" is defined therein, which articles of wearing