

Complaint

IN THE MATTER OF

THE JEWELL CORPORATION TRADING AS
TODD'S ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket C-1440. Complaint, Oct. 25, 1968—Decision, Oct. 25, 1968*

Consent order requiring a Washintgon, D.C., distributor of wrist watches, blenders and other merchandise to cease advertising merchandise which is not in stock, and without clearly disclosing when stock is available only in limited supply.

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 The Jewell Corporation, a corporation, trading and doing business as Todd's, and Jerry Jewell, individually and as an officer of said corporation, and Alvin Fischer, individually and as general manager of said corporation, hereinafter referred to as respondents, have violated the provisions of said 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 The Jewell Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 11th and F Streets, NW., in the city of Washington, District of Columbia.

Respondent Jerry Jewell is an officer 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.

Respondent Alvin Fischer is general manager of the corporate respondent. He formulates, directs and controls the acts and practices of said 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 advertising, offering for sale, sale and distribution of wrist watches, blenders and other articles of mer-

chandise to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place of business in the District of Columbia to purchasers thereof located in various States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their Hamilton wrist watches and Waring blenders, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers, respecting the character of their offer to sell and the merchandise included in such offer.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

MEN'S & LADIES' WATCHES
HAMILTON BENRUS ELGIN GRUEN
Automatics Calendars 17-21 Jewels Water Resistant
Expansion Bands Huge Selection
3 DAYS ONLY \$19.88

* * * * *

DOORBUSTERS
3-DAY SALE
Waring Blender
8 Speeds Push Button Controls Easy to Clean Snap-Out Blades
Heat Resistant Glass Container Complete with 128 Page Cookbook
\$19.88

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, the respondents have represented, and are now representing, directly or by implication, that:

1. The offer set forth in said advertisement is a *bona fide* offer to sell the advertised Hamilton wrist watches at the price and on the terms and conditions stated.

2. The respondents have sufficient quantities of the advertised Waring blender available in stock to meet the reasonable demands of their customers.

PAR. 6. In truth and in fact:

1. The offer set forth in said advertisement was not a *bona fide*

offer to sell the advertised Hamilton wrist watches at the price and on the terms and conditions stated. Respondents did not have any of the advertised merchandise available for sale.

2. Respondents did not have sufficient quantities of the advertised Waring blender available in stock to meet the reasonable demands of their customers.

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

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale and distribution of wrist watches, blenders and other merchandise of the same general kind and nature as those sold by respondents.

PAR. 8. The use by 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 said statements and representations were and are true and into the purchase of substantial quantities of respondents' merchandise by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of 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.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of

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said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent The Jewell Corporation, trading and doing business as Todd's, is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 11th and F Streets, NW., Washington, D.C.

Respondent Jerry Jewell is an officer of said corporation and respondent Alvin Fischer is general manager of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents The Jewell Corporation, a corporation, trading and doing business as Todd's or under any other name, and its officers, and Jerry Jewell, individually and as an officer of said corporation, and Alvin Fischer, individually and as general manager of 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 wrist watches, blenders or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any products are offered for sale when such offer is not a bona fide offer to sell such products at the prices and on the terms and conditions stated.

2. Advertising any article of merchandise for sale, unless sufficient quantities of such merchandise are available in

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stock to meet reasonably anticipated demands: *Provided, however,* That merchandise available only in limited supply may be advertised if such advertising clearly and conspicuously discloses the number of units in stock and the duration of the offer.

3. Misrepresenting, in any manner, the quantity of merchandise advertised for sale.

4. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products or services and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

IN THE MATTER OF

THE NEW AMERICAN LIBRARY OF
WORLD LITERATURE, INC., ET AL.¹

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

Docket 5811. Complaint, Sept. 19, 1950—Decision, Oct. 28, 1968²

Order modifying an earlier order of January 11, 1965, 67 F.T.C. 15, which prohibited a New York City publisher from selling book reprints under a different title without disclosing the original title by adding to such disclosure provision that the book was published "in the English language in the United States."

MODIFIED ORDER

OCTOBER 28, 1968

The Commission on August 17, 1967, having issued its order to show cause why its modified order to cease and desist issued January 11, 1965 [67 F.T.C. 15], should not be reopened and further modified, and

¹ Now known as The New American Library, Inc.

² Reported as revised by Commission's order of Dec. 26, 1968.

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Respondents by their counsel on September 15, 1967, and December 28, 1967, having filed their answers and amended answer expressing no objection to said modification but showing that the corporate respondent is now known as "The New American Library, Inc." and moving that the modified order be further modified to reflect said change in the name of the corporate respondent and to strike the names of the two individual respondents, and

The Commission for the reasons set forth in its order to show cause dated August 17, 1967, being of the opinion that the public interest requires reopening of the proceedings which culminated in its modified order of January 11, 1965, and modification of the order entered therein, and

The Commission being further of the opinion that the modified order should be further modified to reflect the change in the name of the corporate respondent but that no sufficient showing has been made which would justify striking the names of the individual respondents,

It is ordered, That said proceedings be, and they hereby are, reopened and the Commission's modified order of January 11, 1965, be, and it hereby is, modified by revising Paragraph 2 thereof to read as follows:

"Using or substituting a new title in place of the title under which a book was first published in the English language unless a statement which reveals the first English language title and that it has been published previously thereunder and each and every title under which said book was previously published in the English language in the United States and that it has been published previously thereunder appears in clear, conspicuous type upon the front cover and upon the title page of paperback books and upon the front flap of the jacket or dust cover and upon the title page of hard cover books, either in immediate connection with the title or in another position adapted readily to attract the attention of a prospective purchaser."

It is further ordered, That said order be, and it hereby is, modified by changing the name of the corporate respondent to "The New American Library, Inc."

Commissioner MacIntyre abstained from this action of the Commission but without prejudice to his participation in future actions and decisions of the Commission regarding this matter.

IN THE MATTER OF

MATTHEW HUTTNER ET AL. TRADING AS
PYRAMID BOOKSMODIFIED ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket 6307. Complaint, Mar. 8, 1955—Decision, Oct. 28, 1968*

Order modifying an order of June 24, 1955, 51 F.T.C. 1261, which prohibited a New York City publisher from selling book reprints under a different title without disclosing the original title by adding to such disclosure provision that the book was published "in the English language in the United States."

MODIFIED ORDER

OCTOBER 28, 1968

The Commission on August 17, 1967, having issued its order to show cause why its order to cease and desist dated June 24, 1955 [51 F.T.C. 1261], should not be reopened and modified, and

Respondents by their counsel on September 8, 1967, having filed their answer and on December 22, 1967, having filed their "Statement in Opposition to Commission's Motion for Issuance of Modified Order," and having expressed no substantive objections to said modification and having further urged that said modification should be made simultaneously by the Commission in similar orders outstanding against other publishers in connection with retitling of books and that the Commission initiate and carry through a proceeding to modify an injunction issued against the respondents pursuant to stipulation dated January 31, 1963, in the United States District Court for the Southern District of New York, and

The Commission having this day modified said similar orders against other publishers and having notified respondent that the Commission will extend due cooperation to respondents' actions seeking a conforming modification of said injunction, and for the reasons set forth in its order to show cause dated August 17, 1967, being of the opinion that the public interest requires reopening of the proceedings which culminated in its order of June 24, 1955, and modification of the order entered therein,

It is ordered, That said proceedings be, and they hereby are, reopened and the Commission's order of June 24, 1955, be, and it hereby is modified by revising Paragraph 2 thereof to read as follows: