

IN THE MATTER OF
THE CROWELL-COLLIER PUBLISHING COMPANY,
ET AL.*¹

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

Docket 7751. Complaint, Jan. 18, 1960—Decision, Feb. 4, 1969

Final order making effective the cease and desist order of September 30, 1966, 70 F.T.C. 977, prohibiting a New York City publisher from using false claims in selling its encyclopedias by door-to-door solicitation, and making the same order effective against the respondent parent corporation, its successor and the new subsidiary.

INITIAL DECISION ON REMAND BY WALTER R. JOHNSON,
HEARING EXAMINER

JANUARY 4, 1968

The complaint herein, which was issued on January 18, 1960, charged that respondents made false, misleading, and deceptive

*Now known as Crowell Collier and Macmillan, Inc.

¹This respondent was incorporated in 1920 as "THE CROWELL PUBLISHING COMPANY," changing its title to "THE CROWELL-COLLIER PUBLISHING COMPANY" in 1939, and to "CROWELL-COLLIER AND MACMILLAN, INC." in 1965 (CX 258 A-B).

statements in connection with the sale of their books, including Collier's Encyclopedia, at retail to the general public. Said complaint alleged that the parent company, Crowell-Collier Publishing Company, dominated, controlled, and dictated the acts and practices of its wholly owned subsidiary, P. F. Collier & Son Corporation. Hearings were held for over a five year period before Hearing Examiner Loren H. Laughlin (now deceased), and in his initial decision, dated September 3, 1965 [70 F.T.C. 977], he ordered that the complaint be dismissed as to both respondents, concluding that the parent corporation was not engaged in commerce; that it did not control, dictate, or dominate the acts of its subsidiary; and that its subsidiary, P. F. Collier & Son Corporation, was dissolved and went out of existence in December 1960. In the initial decision, it is noted that P. F. Collier, Inc. (not a party to the proceeding), was organized, and that there was "some rather vague testimony * * * that the new corporation sold Collier's Encyclopedias and occupied the same offices as did the dissolved corporation," but it was never developed what the relationship was between the dissolved and the new corporation. By reason of the rulings made as to the non-liability of the two respondent corporations, the Hearing Examiner did not, in his initial decision, analyze and discuss the evidence in the record upon the issues relating to the alleged false, misleading, and deceptive statements.

Complaint counsel appealed the initial decision and, under date of September 30, 1966, the Commission vacated the initial decision finding that the respondent, P. F. Collier & Son Corporation, had violated the Federal Trade Commission Act as charged in the complaint. It issued a cease and desist order against said dissolved respondent and "its successor or assign," but directed that the order should not become effective until further order of the Commission. The Commission remanded the case to a hearing examiner to conduct hearings and take evidence on the issues of whether the parent company had dominated, controlled, and dictated the acts and practices of P. F. Collier & Son Corporation, and whether P. F. Collier, Inc. is the successor to P. F. Collier & Son Corporation and, as such, subject to an order. The Commission issued a notice of the remand to P. F. Collier, Inc., and ordered that it "be afforded the opportunity to participate in the taking of further evidence in this matter and presenting any evidence or argument which it may desire, in reply to the evidence and argument that may be introduced by counsel support-

ing the complaint." On November 1, 1966, this hearing examiner was designated to conduct the remand hearings.

On November 3, 1966, the hearing examiner contacted counsel for each side, informing them that he intended to schedule hearings during the week of December 12th and requested them to meet with him in a pre-hearing conference on November 16, 1966. Counsel for the parties met with the hearing examiner on the latter date and efforts to bring about agreements that would expedite the remand proceeding proved unsuccessful. Although complaint counsel were agreeable to suggested procedures, respondents contended that the remand proceeding was illegal and refused to commit themselves in any manner. Over respondents' objections, hearings were scheduled to begin December 12, 1966. At the pre-trial meeting, the hearing examiner denied a motion of the respondents, filed on November 15, asking him to certify to the Commission respondents' request for clarification of the Commission's remand order. Respondents filed an interlocutory appeal with the Commission, which was denied by the Commission on December 6, 1966.

On December 6, 1966, the respondents filed a motion to quash certain subpoenas issued at the request of complaint counsel. On the morning of December 8, 1966, counsel for the parties met with the hearing examiner at a stenographically reported conference and, following oral argument, the motion to quash was denied; whereupon, respondents filed an appeal with the Commission which was denied on March 3, 1967.

On December 8, 1966, P. F. Collier, Inc., and the respondent, Crowell Collier and Macmillan, Inc., filed a complaint in the United States District Court for the District of Columbia, Civil Action No. 3251-66, naming the hearing examiner, the Federal Trade Commission, and the individual members of the Commission as defendants, the purpose of the suit being to enjoin the proposed remand hearings as unlawful. The named defendants moved to dismiss the complaint, or, in the alternative, for summary judgement. Subsequent to the filing of the injunctive action, the hearing examiner cancelled the scheduled hearings set to begin on December 12, 1966, in New York, New York, and on December 16, 1966, in Washington, D.C., and did not reset remand hearings during the pendency of the matter in the District Court. On May 26, 1967, the United States District Court granted the defendants' motion to dismiss. On the same day, the District Court in a separate order denied plaintiffs' motion for a stay

pending appeal. On June 1, 1967, plaintiffs filed their notice of appeal to the United States Court of Appeals for the District of Columbia Circuit, and on June 23, 1967, they filed in said Court a motion for a stay pending appeal. By per curiam order dated July 25, 1967, the Court of Appeals denied appellants' (plaintiffs') motion for stay pending appeal.²

When counsel for respondents refused to agree to the scheduling of hearings at any time, the hearing examiner issued an order for a pre-hearing conference which was held on July 5, 1967. Counsel for respondents were present at the conference, which was stenographically reported but not public, and such counsel announced that they did not waive any jurisdictional objections that they might have by such appearance. After considerable discussion on and off the record, hearings were scheduled and were held in New York City on August 2, 3, 4, 7, 8, and 9, and in Washington, D.C., on August 9, 14, 16, and 17, 1967, and at such times and places counsel supporting the complaint put in their case. On September 12, 1967, counsel for the parties met with the hearing examiner in a pre-hearing conference, which was stenographically reported but not public, for the purpose of scheduling hearings to give the respondents and P. F. Collier, Inc. the opportunity to submit any evidence in rebuttal to that which was submitted by complaint counsel. Such hearings were held in Miami, Florida, on September 27 and 28, in New York, N.Y., on October 3, 4, and 5, and in Washington, D.C., on October 10 and 16, 1967. On the latter date, the record was closed for the receipt of evidence. Proposed findings and replies thereto were submitted by the parties on November 17, and December 4, 1967, respectively.

The hearing examiner has given full consideration to the evidence submitted by the parties and, pursuant to the directions of the Commission, he hereby certifies to it the record with the following findings of fact and conclusion on the limited issues involved in the remand for final disposition:

The respondent, The Crowell-Collier Publishing Company (sometimes hereinafter referred to as Respondent #1 or the parent company) was incorporated in the State of Delaware on May 6, 1920, under the name of "THE CROWELL PUBLISHING COMPANY," said name being changed to "THE CROWELL-COLLIER PUBLISHING COMPANY" on May 26, 1939, and to "CROWELL COLLIER

² During the course of the hearings hereinafter referred to, respondents' counsel announced that they were abandoning the appeal.

AND MACMILLAN, INC.," on May 6, 1965 (CX 258 A-B). There are in the record annual reports of such company filed by it with the Delaware Secretary of State for the years 1949 through 1965 (CX 259-275), which list the nature of the corporation's business for the years 1949 through 1956 as "Printing and Publishing" of magazines, in 1957 as "Printing & Publishing," and 1958 through 1965 as "Publishing." All such reports show the location of its principal office in Delaware to be 129 South State Street, Dover, Delaware, and, with the exception for the year 1949, it lists 640 Fifth Avenue, New York, New York, as its principal place of business outside of Delaware. The address of its New York City office at present is 866 Third Avenue (Tr. 3720).

The respondent, P. F. Collier & Son Corporation (sometimes referred to herein as Respondent #2), a wholly owned subsidiary of the parent company, was incorporated under the laws of the State of Delaware. Although its articles of incorporation were filed on February 4, 1952, its corporate setup was not completed until July 16, 1954. On December 30, 1960, it was merged into the parent company and its corporate existence was terminated (CX 245 A-I, 246 A-L, 247 A-D, 248). Each of the annual reports by Respondent #2, filed with the Delaware Secretary of State for the years 1954 through 1960, shows the nature of the corporation's business to be the sale of books; that the location of its principal office in Delaware is 129 South State Street, Dover, Delaware; and that its principal place of business outside of Delaware is 640 Fifth Avenue, New York, New York.

P. F. Collier, Inc. (sometimes hereinafter referred to as the new subsidiary), a wholly owned subsidiary of the parent company, was incorporated under the laws of the State of Delaware on December 22, 1960 (CX 276 A-K, 277). Its annual reports, filed with the Delaware Secretary of State for each of the years of 1961 through 1965 show the nature of the corporation's business to be the sale of books; that the location of its principal office in Delaware is 129 South State Street, Dover, Delaware; and that its principal place of business outside of Delaware is 640 Fifth Avenue, New York, New York.

The officers of Respondent #2 during the last year of its existence were John Boe, President; E. J. McCaffrey, vice-president; Norman Bennett, vice-president; J. M. MacDonald, secretary; and William J. Seif, treasurer. Its board of directors were Raymond C. Hagel, W. D. Cole, E. J. McCaffrey, Sumner Blossom, John Boe, and Norman E. Bennett (CX 256 A-C). The same

individuals served in the same capacities with the new subsidiary during its first year of existence (CX 278). Each one of the named individuals during 1960 served the parent company as follows: W. D. Cole, chairman of the board and a director; Sumner Blossom, vice chairman of the board and a director; Raymond C. Hagel, president and a director; John Boe, vice president; Norman Bennett, vice president; J. M. MacDonald, secretary; and W. J. Seif, controller.

A comparison of the articles of incorporation of Respondent #2 (CX 246 A-L) and the articles of incorporation of the new subsidiary (CX 276 A-K) as to the nature of the business of the corporations and the objects or purposes to be transacted, promoted or carried on by them shows that word for word they are the same.

With reference to the merger and dissolution of Respondent #2 and the creation of the new subsidiary, the minutes of the meeting of the board of directors of the parent company, held on December 13, 1960, read:

The Chairman presented a plan for the liquidation of its wholly-owned subsidiary, P. F. Collier & Son Corporation and merger into the parent company, as well as the organization, in the State of Delaware, of two new wholly-owned subsidiary corporations, and outlined the advantages obtainable under the new corporate alignment.

After full discussion, upon motion duly made, seconded and carried, it was RESOLVED, that the Plan of Merger and Liquidation of P. F. Collier & Son Corporation presented to this meeting and marked Exhibit 1 be and the same hereby is adopted and approved.

EXHIBIT 1
PLAN OF MERGER AND LIQUIDATION
OF P. F. COLLIER & SON CORPORATION

The outstanding stock of P. F. Collier & Son Corporation ("P. F. Collier"), a Delaware corporation, consists of 15,000 shares of Common Stock of the par value of \$100 each, all of which shares are owned and held by The Crowell-Collier Publishing Company ("Crowell-Collier"), a Delaware Corporation. Upon the filing with the Secretary of State of Delaware and the recording of a Certificate of Ownership and Merger conforming to the requirements of Section 253 of the Delaware Corporation Law, all of the aforesaid capital stock shall be cancelled and P. F. Collier shall be merged and liquidated into Crowell-Collier and all of the assets of P. F. Collier shall vest in Crowell-Collier subject to all the liabilities of P. F. Collier and the rights of all creditors thereof.

RESOLVED, that P. F. Collier & Son Corporation, a Delaware corporation, be merged into The Crowell-Collier Publishing Company, a Delaware corporation, that said The Crowell-Collier Publishing Company shall be the surviving corporation, and that upon the filing in the Office of the Secretary of State of Delaware and recording of the Certificate of Ownership and

Merger hereinafter in the[s]e resolutions authorized, said The Crowell-Collier Publishing Company shall assume all of the obligations of said P. F. Collier & Son Corporation; and be it further

* * * * *

The Chairman stated the Company proposed to organize under the laws of the State of Delaware two corporations, P. F. Collier, Inc. ("P. F. Inc.") and Collier Services, Inc. ("Services"), all of the outstanding capital stock of which is to be owned by the Company.

After discussion, upon motion duly made, seconded and carried, it was RESOLVED, that subject to the merger of P. F. Collier & Son Corporation ("P. F. Collier") into the Company becoming effective, the Chairman of the Board, Vice Chairman of the Board, President, any Vice President or the Treasurer be and they hereby are authorized:

1. to subscribe to 25,000 shares of the Common Stock of P. F. Inc. of the par value of \$100 each at the price of \$100 per share, said subscription to be paid by the transfer to P. F. Inc. of such furniture, fixtures, equipment, inventories, leases and prepaid expenses of P. F. Collier vested in the Company pursuant to the aforesaid merger as may be designated by such officers, plus cash for the balance of said subscription price;

2. to subscribe to 2,000 shares of the Common Stock of Services of the par value of \$100 each at the price of \$100 per share, said subscription to be paid in cash;

3. to execute, acknowledge and deliver such deeds, assignments of leases, bills of sale, assignments of contracts, assignments of copyrights and other appropriate instruments of transfer, and to execute such other certificates and documents and to do such other acts and things, as may be necessary or appropriate to effect the transfer of assets to P. F. Inc. in partial payment of the aforesaid subscription;

4. to enter into an agreement with P. F. Inc. whereunder P. F. Inc. would purchase from the Company for resale by P. F. Inc. Collier's Encyclopedia, Harvard Classics, Collier's Encyclopedia Year Books and other publications at cost to the Company plus \$35 for the Encyclopedia and the Harvard Classics, 50¢ for the Year Books and \$1 for other publications, whereunder P. F. Inc. would act as the collection agent for the Company to collect installment contracts and other accounts receivable of the Company for a charge of ½% of the amount collected plus actual collection expenses incurred, and whereunder P. F. Inc. would have the right to use mailing lists vested in the Company pursuant to said merger in exchange for the obligation to maintain and keep current such lists; and containing such other terms and conditions as the proper officers shall determine; * * * . (RX 69 J-L.)

Eugene J. McCaffrey, assistant secretary of the parent corporation from September 1951 to December 31, 1953, then treasurer until December 31, 1962, also vice president from 1959 to the end of 1962, an accountant by profession, was called as a witness by the defense and testified that he knew the facts surrounding the dissolution of Respondent #2; that he had recommended

the dissolution; and that the reason for the dissolution was entirely financial. His explanation, which was given in some detail, will not be discussed as it would serve no purpose (Tr. 4460-62). He stated that the dissolution was not effected because of the pendency of a Federal Trade Commission proceeding (Tr. 4464-65), a conclusion which the hearing examiner regards as of doubtful value.

Mr. McCaffrey also testified with reference to the dissolution in 1952 of the P. F. Collier & Son Corporation (Tr. 4467-68). This company, a wholly owned subsidiary of Respondent #1, was incorporated under the laws of the State of Delaware on July 29, 1939 (CX 242). He stated that he was assigned to put the plan into effect, explaining (Tr. 4468):

We had to merge offices in thirty-three cities where the Crowell-Collier magazine organization had an office and the P. F. Collier combined magazine and book department had offices. So we developed a plan of merger of the two organizations which enabled us to separate the selling of magazines to one sales manager's control, the selling of books to a book sales manager's control, and collection for the two organizations under the control of a collection manager.

He stated further that the dissolution did not have relationship to any pending legal proceedings. On cross-examination, he stated that he was not aware of a proceeding entitled *United States versus P. F. Collier & Son Corporation* for violation of the Fair Labor Standards Act of 1938. On request of complaint counsel, the hearing examiner took official notice of said proceeding reported in 208 F. 2d 936. Therein the United States, on September 10, 1952, filed in the United States District Court for the Southern District of Indiana a criminal information charging the corporate and individual defendants with numerous violations of the Fair Labor Standards Act of 1938. A motion was made to quash service on the corporate defendant and to dismiss the information as to it upon the ground that the corporation had been dissolved on January 2, 1952. The District Court entered an order allowing the motion, and the United States appealed. The Court of Appeals (Seventh Circuit) reversed holding that the dissolved corporation may thereafter be proceeded against either criminally or civilly as authorized by the laws of the State of Delaware.

Kenneth Ernst, a certified public accountant, also testified for the defense as to the reasons for the January 1952 dissolution, saying in part (Tr. 4566-67):

* * * As I remember, the accounting practice of P. F. Collier and Son Corporation with respect to the magazines that it sold was different than the accounting practice that parent company, Crowell-Collier Publishing Company, used in its sale of magazines. And it was decided that it was desirable to conform these two policies, and one way of doing it was to liquidate P. F. Collier and Son Corporation, which of course, automatically changed the accounting. That's my recollection of the situation.

On completion of the direct examination, the following exchange took place between the hearing examiner and the witness (Tr. 4567-68):

HEARING EXAMINER JOHNSON: I'd like to ask a question. Why is it necessary to liquidate a corporation to make a change in an accounting system of the existing corporation?

THE WITNESS: I think it is conceivable that the change could have been made without liquidating the company—the corporation, but you would have to then file application with the tax authorities to change, and all that kind of thing.

HEARING EXAMINER JOHNSON: Well, I can't understand why it is necessary to liquidate a corporation to change its accounting system.

THE WITNESS: Well, I agree, Your Honor, that I wouldn't say it was necessary. I think it was a simple way of doing it. That's the answer.

The minutes of a regular meeting of the board of directors of the parent company held on December 26, 1951, read in part (RX 68 B-C):

The Chairman stated that the officers of the Company had been considering the advisability of conducting directly the business which had been conducted by the Company's wholly-owned subsidiary, P. F. Collier & Son Corporation. He advised the Board that, after full consideration and after discussion with counsel, the officers of the Company recommended that the Company should begin conducting the P. F. Collier business at the opening of the next fiscal year and that in connection therewith P. F. Collier & Son Corporation would be dissolved and liquidated as at the opening of business on January 2, 1952. He submitted a proposed Plan of Liquidation for this purpose.

After discussion, upon motion duly made, seconded and unanimously carried, it was

RESOLVED, that the Board of Directors of this Company hereby authorizes, approves and directs that the Company's wholly-owned subsidiary, P. F. Collier & Son Corporation, a Delaware corporation, be dissolved and liquidated at the opening of business on January 2, 1952, pursuant to the following Plan of Liquidation:

Plan of Liquidation

"1. P. F. Collier & Son Corporation, a Delaware corporation (herein called 'P. F. Collier'), which is a wholly-owned subsidiary of The Crowell-Collier Publishing Company, a Delaware corporation (herein called 'Crowell-Collier'), shall be dissolved and liquidated, effective as at the opening of

business on January 2, 1952. Pursuant to this Plan, a Certificate of Dissolution of P. F. Collier shall be filed with the appropriate authorities of the State of Delaware at the opening of business on January 2, 1952.

"2. P. F. Collier shall, effective as at the opening of business on January 2, 1952, distribute all its assets to Crowell-Collier against surrender for cancellation of all stock of P. F. Collier which is owned by Crowell-Collier.

"3. Crowell-Collier shall assume all liabilities of P. F. Collier."

On January 14, 1939, the Federal Trade Commission issued its complaint (Docket No. 3687) against P. F. Collier & Son Corporation, a New Jersey corporation, with its home office and principal place of business located at 250 Park Avenue, New York, New York, charging the respondent with deceptive practices in connection with the sale of encyclopedias (National Encyclopedias) (CX 320 A-J). On January 9, 1941 [32 F.T.C. 1639], the Commission issued an order closing the case for the reason that the respondent corporation had been dissolved (CX 320 O). The said corporation was dissolved on September 28, 1939 (CX 217 P). The minutes of the meeting of the board of directors of the parent company, held on July 25, 1939, read in part (RX 67 A-B):

The Chairman stated that within the past year the City of Jersey City, New Jersey, had adopted a policy of assessing property taxes against all of the intangible as well as tangible property of New Jersey corporations, with the result that P. F. Collier & Son Corporation, a wholly owned subsidiary of this company, had been assessed for \$10,000,000 of property by Jersey City for the year 1937. It is likely that P. F. Collier & Son Corporation will be assessed in a large amount for the year 1938. A large assessment has also been made for the year 1939. These assessments are in addition to the small assessment made by the City of Newark, where the Collier Corporation's office is located.

Efforts have been made by the company and its counsel to have these assessments removed or reduced.

The Chairman recommended that, in order to prevent incurring further large tax liability in the State of New Jersey, steps be taken to reincorporate the subsidiary, P. F. Collier & Son Corporation, under the laws of the State of Delaware. To that end, he recommended that the officers of this company form a new corporation under the laws of the State of Delaware, transfer to said new Delaware corporation all of the stock owned by this company in the present New Jersey corporation, P. F. Collier & Son Corporation, and authorize such action by the directors of the New Jersey and Delaware corporations as may be deemed advisable, either by merger or dissolution, to accomplish the reincorporation of the corporation, P. F. Collier & Son Corporation under the laws of the State of Delaware.

After discussion it was, upon motion duly seconded and unanimously carried:

RESOLVED, That the officers of this corporation, or any of them, be and they hereby are authorized and directed to form, or cause to be formed, a corporation under the laws of the State of Delaware under the name of P. F. Collier & Son Corporation, or such variation thereof as may be determined upon and found to be available, and with such capital as the officers in their discretion may determine; and upon the formation of said corporation, to assign, transfer and deliver to said Delaware corporation, in exchange for all of its capital stock, 500 shares, including the qualifying shares for directors, being all of the issued and outstanding shares of stock of P. F. Collier & Son Corporation, the New Jersey corporation, now owned and held by this company; and further * * *.

The P. F. Collier & Son Corporation was incorporated under the laws of the State of Delaware of July 29, 1939, and dissolved on January 4, 1952 (CX 242).

On November 8, 1940 [32 F.T.C. 1640], the Federal Trade Commission issued its complaint (Docket No. 4372) against Crowell-Collier Publishing Company (Respondent #1 herein), P. F. Collier and Son Corporation, a Delaware corporation, and individuals who are officials of the corporate respondents charging the respondents with unfair and deceptive acts in the sale of encyclopedias (CX 321 A-O). In the answer filed by the respondents (CX 321 P-W), they admit that the "respondent The Crowell-Collier Publishing Company is now and for the several years last past has been engaged in the business of editing magazines, books, encyclopedias or reference books and in the sale and distribution of magazines in commerce"; admit "that in the course and conduct of its business respondent The Crowell-Collier Publishing Company is now and at all times herein mentioned has been in competition with other corporations and with firms, partnerships and individuals engaged in the business of editing and compiling books and magazines and in the sale and distribution thereof in commerce"; admit the plans, methods, statements and representations as alleged in the complaint are deceptive and misleading, but deny that such plans, methods, statements, and representations were or are used, authorized, permitted or condoned by respondents. For a separate defense, it is alleged in part (CX 321 U):

In 1939 P. F. Collier and Son Corporation, a New Jersey corporation, and, after its organization, respondent P. F. Collier and Son Corporation, a Delaware corporation, took the lead in the industry in attempting to establish fair trade practice rules for the industry. To accomplish this purpose, such corporations were the prime movers in bringing about the formation of The Subscription Book Publishers' Institute and in assisting such Institute

in the preparation of the suggested fair trade practice rules, for the approval of which application was made to the Federal Trade Commission. * * *

The Commission entered an order closing the case, reading (CX 321 Z):

This matter coming on to be heard by the Commission upon the petition of respondents that the complaint herein be dismissed, and it appearing from said petition that the respondents had not engaged in the unfair practices alleged in the complaint for a considerable period of time prior to the issuance of the complaint, and that respondents Crowell-Collier Publishing Company, a corporation, and P. F. Collier and Son Corporation, a corporation, have executed agreements to abide by the Trade Practice Conference rules for the Subscription and Mail Order Book Publishing Industry, promulgated by the Commission on September 3, 1940, and that they have since the promulgation of said rules complied therewith in all respects, and the Commission having duly considered said petition and the record herein, and being now fully advised in the premises;

IT IS ORDERED that the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

By the Commission.

The sale of Collier's Encyclopedias by the parent company or one of its subsidiaries has been continuous from the time publication was started in 1950 to the present date (Tr. 3896-99). Such sales were made as follows: By P. F. Collier & Son Corporation from 1950 to the date it was dissolved, January 2, 1952; from the latter date to July 16, 1954, by the parent company through its division styled P. F. Collier & Son; from July 16, 1954, to December 30, 1960, by P. F. Collier & Son Corporation, Respondent #2 herein, and thereafter to the present date by the new subsidiary, P. F. Collier, Inc. When P. F. Collier & Son Corporation was dissolved in 1952, its sales managers went to work for P. F. Collier & Son, a division of the parent company (Tr. 3897). The managers of the branch offices, who were in charge of crews engaged in the sale of Collier's Encyclopedias during the last year of the operation of Respondent #2 (1960), were substantially the same persons performing the same functions for P. F. Collier, Inc., during the first year of its operation (1961) (Tr. 3896). The billing and the collection of accounts receivable for P. F. Collier, Inc., have been performed by its field offices throughout the United States. The same organizational structure was employed by the parent company and Respondent #2 at least since 1951. When

P. F. Collier & Son Corporation was merged into the parent company in 1960, the accounts receivable of the former were not passed on to the new subsidiary, but were retained by the parent company. The latter designated P. F. Collier, Inc., to make collections thereof for which it was paid a fee (Tr. 3919-3929).

John G. Ryan, called by complaint counsel as a witness, testified that he was associated with the Collier group of firms beginning in 1933 as assistant manager, traveling auditor, branch manager, assistant to the president, branch manager, general superintendent, general manager, vice president and president; that in January 1956 he was elected president of P. F. Collier & Son Corporation; that he reported to the officials of the parent company on the affairs of the subsidiary; that in 1956 he reported to Mr. McCaffrey, treasurer, and Mr. Vance Johnson of the parent company; that about March 1957 Mr. Cole became chairman of the board of Crowell-Collier to whom he reported concerning the operations of P. F. Collier & Son Corporation; that there was a planning or steering committee of the parent corporation made up of Mr. Cole, Mr. Blossom, Mr. McCaffrey, and himself, which met possibly once a week and discussed the affairs of P. F. Collier; that on April 2, 1959, the board of directors of the parent company authorized Mr. Cole to terminate his position as president of the subsidiary; and that Mr. Cole told him that he was not satisfied with the progress of P. F. Collier and fired him.

John Boe, chairman of the board of P. F. Collier, Inc., and senior vice president of the parent company, and Norman E. Bennett, president of P. F. Collier, Inc., and vice president of the parent company, called as witnesses by complaint counsel, both testified that they had never been members of any planning or management committee of the parent corporation. Mr. Boe testified (Tr. 3903):

By Mr. Cox:

Q. Have you ever served on the executive committee of The Crowell-Collier Publishing Company?

A. No, sir.

Q. Or the management committee?

A. I don't believe there is such a thing as a management committee.

Q. Are you a member of the planning committee of Crowell-Collier Publishing Company, and what is now known as Crowell Collier and Macmillan, Inc.?

A. I am not.

Q. Have you been?

A. I never have been. In fact, I don't know of the existence of such a committee.

Mr. Bennett testified (Tr. 3917-18):

MR. McNALLY: * * *.

Q. Are you now or have you ever been a member of any planning or steering or organizational committee of the parent corporation which had to do in its functions with the goals, operations or planning for the subsidiary having to do with the sale of encyclopedias, not other subsidiaries?

THE WITNESS: Please read the question.

(Question read.)

A. No.

Q. Do you know whether any such committee ever existed?

A. I know of no such committee as ever having existed.

Subsequent to the testimony of Mr. Boe and Mr. Bennett, complaint counsel offered The Crowell-Collier Publishing Company 1960 Annual Report, which was received in evidence and contains a picture of both of said witnesses in a group designated as an Operating Committee (CX 409, page 5). The description under the picture reads:

OPERATING COMMITTEE—To coordinate the activities of the subsidiaries and establish uniform policies. Crowell-Collier last year established a 14-man Operating Committee composed of the principal officers of each subsidiary as well as those of the parent organization. Members of the Committee are [left to right] (1) B. Y. Brett, President, The Macmillan Co.; (2) J. B. Bennett, Vice President and General Manager, The Macmillan Co.; (3) R. C. Whitin, Director of Operations Planning, The Crowell-Collier Publishing Co.; (4) W. B. Smith, Director of Marketing, The Crowell-Collier Publishing Co.; (5) Leonard Shatzkin, General Manager, Crowell-Collier Paperbacks; (6) Jeremiah Kaplan, President, The Free Press; (7) R. C. Hagel, President, The Crowell-Collier Publishing Co.; (8) E. J. McCaffrey, Treasurer, The Crowell-Collier Publishing Co.; (9) N. E. Bennett, Vice President, The Crowell-Collier Publishing Co.; (10) Sumner Blossom, Vice Chairman of the Board, The Crowell-Collier Publishing Co.; (11) R. M. Purcell, President, Crowell-Collier Broadcasting Corp.; (12) Warren Sullivan, Vice President, The Crowell-Collier Publishing Co.; (13) W. D. Cole, Chairman of the Board, The Crowell-Collier Publishing Co.; and (14) John Boe, President, P. F. Collier, Inc., and Vice President, The Crowell-Collier Publishing Co.

The Annual Report states (pages 3 and 4):

P. F. Collier & Son Corporation was merged with Crowell-Collier, the parent Company, on December 30, 1960. A new wholly-owned sales subsidiary, P. F. Collier, Inc., was established January 3, 1961 to distribute Collier's Encyclopedia, the Harvard Classics and the Company's other subscription book products.

It is apparent that the committee was created before Respondent #2 was dissolved and continued with the creation of P. F. Collier, Inc., by the parent company.

Sumner Blossom, called as a witness by the respondents, testified that he was employed by the parent corporation for 35 years as an editor of several of its magazines (Tr. 4424); that the magazines were liquidated by the company in 1956 (Tr. 4428); that he is now, and, with the exception of the year 1956, has been, a member of its board of directors since 1944 (Tr. 4427); that he was elected a vice president of the parent corporation in 1957 and was an officer thereof when he retired on December 31, 1965 (Tr. 4417-18); that there was an informal group in the period of 1957, 1958, and 1959 made up of John Ryan, the president of P. F. Collier Company, himself, Wilton Cole, chairman of the board of the parent corporation, and Eugene J. McCaffrey, who was treasurer, which met periodically to discuss company affairs (Tr. 4419); and that it was not the purpose of the group to dictate the acts and practices of P. F. Collier & Son Corporation. He stated (Tr. 4420-21):

It was to keep the officers of the parent company advised as to the intent of the subsidiary company and its estimate of budgets and its future operational practices. That is to say its financial—of their estimate of sales and such things as that.

When shown a picture of a group designated as the "Operating Committee" in the 1960 Annual Report of the parent corporation (CX 409) and asked about the function of the committee, the witness said (Tr. 4419-4420):

This was a committee which was organized by Raymond C. Hagel, who succeeded me as president of the Crowell Collier Publishing Company. Its purpose was to exchange ideas and to coordinate the activities of the several subsidiaries and the parent company. Its general purpose was to keep from duplicating expenditures, to keep the officers of the subsidiaries abreast of the salaries paid, and similar financial items; and also to consult with and exchange opinions with the officers of the parent company who are members of the committee.

When asked, "At any time in your knowledge, did the parent company ever dictate the acts and practices of the encyclopedia subsidiary?", he answered: "If you are talking about the day-to-day activities and the general policies to be followed, no" (Tr. 4421). He stated that the operating committee lasted four or five to six months; "It rather petered out, because apparently it accomplished nothing, * * *" (Tr. 4430). Mr. Blossom

confirmed the testimony of Mr. Ryan to the effect that his dismissal as president of Respondent #2 was the result of action taken by the board of the parent corporation. In this connection, he testified that he was president of the parent company when Mr. Ryan's services were terminated as president of the subsidiary; his services were terminated "because of the lack of results and because of Mr. Ryan's belief that the sale of encyclopedias, in this country at least, had reached the saturation point, and that we were on the sales plateau from which he could see no promise" (Tr. 4431); that the action was taken by the board of the parent corporation; "The board acted on a recommendation of Mr. Cole, who told the board that Mr. Ryan did not have any other belief in the future of the sales operation of the P. F. Collier Company, and that the results had not been set up to today" (Tr. 4432); "They authorized Mr. Cole the discretion to dismiss Mr. Ryan, which he did in my presence" (Tr. 4432). On cross-examination, the witness testified that the informal group did discuss the sales goals of the subsidiaries (Tr. 4423); that the main business of P. F. Collier Company was the sale of encyclopedias and the collection of accounts (Tr. 4423-24); that Mr. Ryan would make his reports on those two subjects at times (Tr. 4424); that he never knew "of any specific goals being set down, but he was expected to show an improvement over the previous year regularly, if he could" (Tr. 4424); that he never had anything to do with the operation of the P. F. Collier Company, even while he was a member of its board of directors, stating (Tr. 4427): "This was run pretty much—if not wholly, autonomously by the officers of the P. F. Collier Company."

There are in evidence numerous pages taken from the financial publications of Moody's and Standard & Poors relating to the parent company and its subsidiaries. For example, Moody's Industrial Manual for 1960 (CX 397 A-C) with reference to Crowell-Collier Publishing Co. reads in part:

Subsidiaries: Company controls the following:

* * * * *

P. F. Collier & Son Corp. (incorporated in Delaware Aug. 2, 1954), wholly owned, publishes and sells books in United States * * *. (Emphasis added.)

Complaint counsel seem to take the position that the use of the word "controls" is equivalent to saying that the parent company

dominated, controlled, and dictated the acts and practices of its subsidiary. The testimony of Mr. John Sherman Porter, who was with the Moody company from 1915, and was editor-in-chief of the Manual from about 1925 to the date of his retirement in June 1962, called as a witness by complaint counsel, shows that the word "controls" did not have such a broad meaning. On cross-examination, Mr. Porter testified (Tr. 3962-63):

Q. For example, in connection with Commission's Exhibit 343, on the third page, where it says "P. F. Collier & Son Company (controlled by Crowell Publishing Company)," you meant that all of the stock or substantially all of the stock was owned by Crowell Publishing?

A. At least 51 percent. That was our understanding of the word "controlled." Some companies would say "we don't control the management. They operate the company." This relates to stock control.

There are in the remand record a number of copyright exhibits received in evidence at the instance of complaint counsel. They are Commission Exhibits 309 through 319 and 462 through 465, described on pages 4281 through 4290 of the transcript. The hearing examiner has studied said documentary evidence and has come to the conclusion that the exhibits are meaningless insofar as the remand issues are concerned. See the testimony of Bella L. Linden, called as a witness for the respondents, set out on pages 4401 through 4415 of the transcript.

Norman E. Bennett, president of P. F. Collier, Inc., and vice president of the parent company, whose testimony has heretofore been in part cited, testified that the presentation utilized by salesmen did not use an introductory portion in which the man identified himself with the parent company nor was such use authorized. In this respect, the witness said (Tr. 4195-96):

Q. Are you familiar with the sales presentation utilized by salesmen in connection with the sale of Collier's encyclopedia at the present time?

A. Not completely, no.

Q. Is the type of sales presentation used in connection with the sale of Collier's encyclopedia under your jurisdiction?

A. Only in the sense that I am president of the company.

Q. But you have a concern that the salesmen adhere to an authorized form of sales presentation?

A. Basically, yes, sir.

Q. Does that authorized form of sales presentation include naming Crowell-Collier and Macmillan, Inc., in the sales presentation?

A. Yes, sir, in the sense that it shows the prospectus. The sample volume of the company shows the other divisions of the company of Crowell-Collier.

Q. Is it a fact that the presentation utilized by salesmen includes an

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introductory portion in which the man identifies himself with Crowell-Collier and Macmillan, Inc.?

A. No, sir.

Q. It is not a fact?

A. No, sir, not to my knowledge.

* * * * *

Q. I am really referring to the introductory portion of the presentation used by the salesman before he gets to showing this prospectus.

A. No, sir. It is not authorized (Tr. 4197).

There were received in evidence copies of classified advertisements appearing in the "HELP, MEN" column in the May 11, 19, 21, 28, June 1 and 4, 1964 issues of The Washington Post where the abbreviated name of the parent corporation was used as the proposed employer (CX 441 B, 442, 443 B, 444, 445, 492). The Washington Post Company billed P. F. Collier, Inc., for said advertisements (CX 446, 447). For example, the advertisement appearing on May 21, 1964 reads (CX 443 B):

COLLEGE MEN

HERE IS YOUR OPPORTUNITY

Each summer we hire students for sales promotional work, who earn in excess of \$550 per month salary plus a chance to win one of fifteen \$1000 scholarships toward future education, trips to the world's fair and vacations in Europe available to other students. All applicants must be neat in appearance. Call between 9 a.m.-2 p.m.

* * * * *

Crowell Collier Corp. 1402 G St. n.w.

Pursuant to a subpoena issued at the request of complaint counsel, through witness John Boe, the respondents produced the order blank contracts used in connection with the sale of Collier's Encyclopedias by the parent company and its subsidiaries for the years from 1949 to date, which show that the parent company was held out as the publisher of the said encyclopedias (CX 410-420).

The form used in 1949 by P. F. Collier & Son Corporation under the Pre-Publication Plan reads (CX 410 A-D):

The story of COLLIER'S ENCYCLOPEDIA. Its sponsors, with 75 years' experience in publishing educational books, part of a great organization responsible for the success of three of America's outstanding publications—Collier's, The American, and Woman's Home Companion magazines, expended more than a year in an exhaustive program of preliminary planning and organizing this tremendous editorial undertaking.

The form used in 1951 by P. F. Collier & Son Corporation reads (CX 411 A-E):

Behind Collier's Encyclopedia is a reputation of seventy-five years of book publishing. In back of this is the comparably long and successful record of the parent company, The Crowell-Collier Publishing Company, publishers of Collier's, The American Magazine, and The Woman's Home Companion. With a feeling of confidence that our efforts have resulted in an unusual achievement of editorial excellence, we present these volumes to the reading public.

P. F. COLLIER & SON CORPORATION

(Sgd.) R. G. Smith

R. G. Smith

President

The form used in 1952 by the parent company reads (CX 412 A-D):

Behind Collier's Encyclopedia is a reputation of seventy-five years of book publishing. In back of this is the comparably long and successful record of the parent company, The Crowell-Collier Publishing Company, publishers of Collier's, The American Magazine, and The Woman's Home Companion. With a feeling of confidence that our efforts have resulted in an unusual achievement of editorial excellence, we present these volumes to the reading public.

P. F. COLLIER & SON

DIVISION OF THE CROWELL-COLLIER PUBLISHING COMPANY

(Sgd.) R. G. Smith

R. G. Smith

President

The form used in 1954 by the parent company reads (CX 413 A-D):

Behind Collier's Encyclopedia is a reputation of seventy-five years of book publishing. In back of this is the comparably long and successful record of the parent company, The Crowell-Collier Publishing Company, publishers of Collier's, The American Magazine, and The Woman's Home Companion. With a feeling of confidence that our efforts have resulted in an unusual achievement of editorial excellence, we present these volumes to the reading public.

P. F. COLLIER & SON

DIVISION OF THE CROWELL-COLLIER PUBLISHING COMPANY

The form used in 1955 by P. F. Collier & Son Corporation reads (CX 417 A-D):

The story of Collier's Encyclopedia is the story of five years of intensive planning, organizing, editing, and manufacturing. Behind it is a reputation of more than eighty years of reference book publishing plus the long and successful record of such outstanding magazines as Collier's, The Woman's Home Companion and The American Magazine.

The form used in 1958 by P. F. Collier & Son Corporation reads (CX 418 A-D):

Behind your new Collier's Encyclopedia is the experience and high standard developed through more than eighty-two years of reference book publishing.

The form used in 1962 by P. F. Collier, Inc. reads (CX 420 A-B):

P. F. COLLIER, INC.
The Crowell-Collier Publishing Company
640 Fifth Avenue
New York 19, N.Y.

Simon J. Nork, general superintendent of P. F. Collier, Inc., having been with said subsidiary since 1961, and prior thereto with respondent, P. F. Collier & Son Corporation, called as a witness in connection with the defense, testified that he has a staff of five girls whose duties include the review of the ads that have been placed in the various newspapers and "They have instructions to read each and every ad, and if there is anything that is in violation of the company rules they are to either call it to my attention or send what we term an error letter to the branch that has inserted that ad that is in violation of our rules" (Tr. 4442). The witness identified three so-called error letters or error sheets, which were sent out by his office to the branch offices of P. F. Collier, Inc.: One dated November 3, 1966, to the Boston office in regard to an ad in the Providence Journal of Providence, R.I., for young men, over 18, to help manager, Crowell-Collier & Macmillan, Inc. (RX 64 A-B); one dated January 24, 1967, to the Louisville office in regard to an ad appearing in The Jefferson Reporter, Louisville, Ky., for a young man to assist manager of local business, Crowell-Collier & Macmillan (RX 65 A-B); and one dated April 13, 1967, to the Charlotte branch with reference to an ad where the name, Crowell Corp., was used (RX 66). He testified (Tr. 4451):

A. P. F. Collier, Inc. insists and have issued instructions from time to time to the effect that nobody associated with P. F. Collier, Inc. should or can in any way use the terminology that they represent Crowell-Collier and Macmillan.

Q. Does that policy encompass statements by salesmen as well as statements in classified ads?

A. It does.

The witness identified two letters, one dated May 4, 1965, and the second dated June 20, 1967, which were sent to all field offices of P. F. Collier and stated that the name of the parent

company was not to be used by the subsidiary in connection with the operation of the subsidiary (RX 62-63). The first time such a letter was sent out was on May 4, 1965, as indicated by the following exchange (Tr. 4446):

MR. McNALLY: To your knowledge, has a similar letter bearing the same type of message gone out in the past to the field offices?

THE WITNESS: That 6158—I think that is the number, the one that was issued in 1965 * * *.

MR. McNALLY: You are referring to Respondents' Exhibit 62?

THE WITNESS: Yes.

MR. McNALLY: Is that your answer to the question?

THE WITNESS: Yes.

On cross-examination, he testified that the district sales manager composes the ads and sends them to the papers for the branch offices in his district; that there are approximately 50 district offices located throughout the United States; that the district sales managers generally are men who have come through the ranks selling encyclopedias and their years of experience in the sales or supervision of sales of Collier's Encyclopedia vary from five to twenty-five years; that each district sales manager makes up his own pattern and some will follow the patterns of others because they believe their particular type of advertisement is better than the other fellow's; that he has noticed advertisements bearing the name of Crowell-Collier and Macmillan—there have been a few, but very isolated cases; that he cannot account for the use of the name, Crowell-Collier and Macmillan, by the district sales managers; and that it is his assumption that they feel that perhaps Crowell-Collier-Macmillan is more of a publicized name than P. F. Collier (Tr. 4452-56).

The testimony of two former salesmen of Collier's Encyclopedias, Jonathan Grumette and Dennis Kendig, which the hearing examiner regards as credible and uncontradicted, shows a continuation by P. F. Collier, Inc., of the practices prohibited by the Commission in its order against the respondent, P. F. Collier & Son Corporation. This evidence was received over the strong objections of counsel for respondents and P. F. Collier, Inc., who take the position that such evidence is beyond the scope of the remand. The hearing examiner disagrees with their position and relies on an order of the Commission issued on June 2, 1967, in *A. & M. Karagheusian, Inc.*, Docket No. 7636, where it is said in part (page 4) [71 F.T.C. 1700, at 1702-3].

* * * although the law relative to the application of administrative orders to successor corporations is not entirely settled, the courts in considering this question have on several occasions indicated that the fact that the successor continued the prohibited practice was of significance * * *.

Jonathan Grumette, of Brooklyn, New York (whose testimony appears on pages 4057 through 4125 of the transcript), a graduate of Dartmouth receiving his Bachelor of Arts degree in June of 1967, testified concerning his short career of six days as a trainee and salesman of Collier's Encyclopedias during January 1964 in Miami, Florida. During the latter part of December 1963, while in his junior year, he quit Dartmouth at the age of 18, and went to Florida where he had been promised certain employment which did not materialize. A Dartmouth school friend, Steve Dana, went to Florida with him. In response to an ad appearing in the Miami Herald in January of 1964, the two went to an office located at 400 Congress Street, Miami, which had some form of the name "Collier" on the door. They were interviewed by Mr. Galli. "He was the most important person in the office that I ever saw there. He was either the manager of the office or just beneath the manager" (Tr. 4059). Mr. Galli asked them about their family and college backgrounds and he mentioned that they would be involved with placing sets of encyclopedias. Mr. Galli told them the firm they would be associated with "was the Collier Company, the same company that used to publish Collier's Magazines, and that its headquarters was in the Crowell-Collier Building in New York. * * * And that this branch was part of The Crowell-Collier Company" (Tr. 4123-24). Mr. Grumette and Mr. Dana were told to return to the office later in the afternoon, which they did. They and a few other boys who had been interviewed the same day were taken in two cars to a suburb of Miami. Mr. Grumette rode in a car driven by Mr. Galli, and the second car was driven by George Castle, an instructor. They were dropped off at a corner and told to meet back there at 10 o'clock at night. Mr. Grumette's job was to go with Tony Grimaldi, who had been with the company two or three months, carry his brief case, and listen to him make his presentation to the people at their homes. When they returned to the car that night at 10 o'clock, Mr. Galli told Mr. Grumette that he had been accepted and to report the following morning.

On the second day, Mr. Galli handed him a mimeographed sheet encased in a plastic-type envelope, called the "Introduc-

tion" and the "Qualifier," representing portions of the speech to be given to people at their homes, which he copied word for word. It was checked by Mr. Galli and maybe Mr. Castle to see if it had been copied correctly. On the third day, he reported at 12 o'clock in accordance with instructions, and Mr. Castle gave an oral presentation relating to the showing of the parts of the encyclopedia to the people. "He gave it very, very slowly. We were told to copy it from his speech. At the end of it, he checked. He read it back and made sure that we had copied it correctly" (Tr. 4067). After that he was taken out to the field again, accompanying Mr. Grimaldi. Mr. Grimaldi said that in keeping with instructions he should memorize the sales presentation word for word. "If there was a slight mistake, even of two or three words, they would correct you and make you learn it perfectly" (Tr. 4075). Before he gave it to the public, he gave it "[t]o George Castle, in the office, in the classroom. He had to approve the way you gave the presentation before you were allowed to give it on your own" (Tr. 4075). Thereafter he was on his own, working three days from 3 or 4 o'clock until 10 o'clock each day, but he did not place any sets. He testified in some detail regarding the parts of the presentation he could remember that he gave to the people whom he called upon. It was about the end of this period that Steve Dana reported to him that a man in one of the homes he visited had shown Mr. Dana a document concerning P. F. Collier which Mr. Dana described to Mr. Grumette as some kind of Federal command to stop something. This prompted the two to sever their connections with Collier's. They went to the Better Business Bureau and talked with Mr. Proctor, who sent them to the Miami office of the Federal Trade Commission where Mr. Frost was in charge.

On cross-examination, Mr. Grumette revealed that on his third visit to the F.T.C. office on February 5, 1964, he gave a written statement which he had prepared, describing it as "A statement of everything that happened with Collier's" (Tr. 4088), his handwritten notes of the introduction and qualifier which he copied from the typewritten sheet given him by Mr. Galli, and the presentation dictated to him by George Castle. Mr. Grumette said that Steve Dana also had given a written statement. Counsel for the defense requested the production of the three mentioned documents, and, after marking each for identification in the order named as CX 427 A-R, CX 428 A-H,

and CX 429 A-R, complaint counsel voluntarily delivered the documents to defense counsel. At the latter's request, a recess of about twenty minutes was taken to give such counsel the opportunity to go over the documents before proceeding with further cross-examination. Subsequently, the documents were received in evidence on the request of complaint counsel.

On redirect examination, the witness identified a number of items handed over to Mr. Frost of the Commission's Miami office, which each had in his sales kit supplied by the employer. Among such items received in evidence were: An "Owner's Register" card which is presented to a buyer for his signature, reading: "I will cooperate with you in your Program and express my opinion of Collier's Encyclopedia. You may use my name as a Registered Owner" (CX 432); a "P. F. Collier, Inc. Identification Card" certifying that he was an authorized representative (CX 434); and a copy of a full-page ad by P. F. Collier, Inc., in Life magazine showing a picture of the 24 volumes of Collier's Encyclopedia setting forth in bold type the price of \$539 (CX 436 A-B).

The sales representation that the witness was instructed to give and did give to the public in his efforts to place the encyclopedia is set forth in his handwritten notes (CX 428 A-H) reading:

INTRODUCTION

To Wife: May I speak to your husband please? (Could you call him for me please?)

To Husband: Hi there, my name is I'm doing an opinion. It's a matter of a couple of questions I stopped by to ask you. Do you have a minute? Fine. The reason I stopped by in the evening is I thought it would be the best time to find both you and your wife at home. Can we get her in this, too? Fine.

QUALIFIER

Inside

Folks, I'll make this as brief as possible. I'm from Colliers, the same company that used to publish the old Colliers magazines.

I'm sure you know they stopped all their magazines about 6 years ago. Did you ever see them?

The reason for asking is that recently Colliers ran some ads in magazines, on your TV, and in newspapers, about a new field the company is going into. Tell me have you seen any of the ads? Would you associate the name Colliers with any product other than magazines. Actually few people know of this new Field but Colliers has spent the last 6 years and close to 12 million dollars compiling a new home reference library. So new it's not even on sale yet, and won't be for several months. This is some of the advertising, does it look familiar (show ad). The national advertising

has not been effective, so they are advertising on a family basis, and that's the only purpose of my call tonight. Colliers is going to ask a few families in each area who can qualify to help them with their advertising. Of course Colliers will pay these families. Now they don't pay in cash, but they will pay in merchandise.

Here's the program:

Colliers will do two things for the family if they will do two things for them.

1st—Colliers will actually place the complete 24 vols. Library in the house as an absolute advertising premium. The entire price will be marked off to advertising.

2ndly—Colliers will obligate themselves to keep the set up-to-date for the family, that's so the whole family especially the children will get full benefit and use of it. They will do this by sending out a big bound year book each year and also by enrolling the family in the Colliers Reference Service. Of course Colliers will expect the family to keep the set up to date by themselves. However, Colliers will do this at the school or library cost which is newspaper cost or about a dime a day. There is no other charge of any kind at any time.

But there are two things that Colliers will require of the family in return for placing the set with them on this premium basis.

1st—Within 30-90 days after receiving the set, the family must write a letter expressing their comments on the set. A testimonial letter. I'm sure you've seen testimonial letters on other products, right?

2ndly—Colliers will require the familys written permission to use their name and letter as part of their local advertising.

You see, the reason for the program, when the set goes on sale the school teachers and housewives will contact the families about it, but because it is new, families will ask, who do we know that has the set, how do they like it? Instead of bothering advertising families with phone calls or visits the Collier personnel will show these families the letters.

I'm sure you can see the psychology behind the letter. The only thing I might add is I'm with Colliers, they've been in the publishing business for 88 years and are a multimillion dollar corp.

On this program they will actually place a complete 24 Vols. set in the families home as a premium. Their letter will pay for it. Colliers puts this in writing. Of course, we don't expect anyone to endorse something they haven't seen. But on the basis of what I have outlined if it were actually possible for Colliers to extend an invitation like this to your family, does this sound like something you might go along with them on. Would you be willing to write a letter for the set? Or just how does the program sound to you? Fine. I don't have the complete set with me, but the company has sent along a sample or preview Vol. to show you what you might be asked to write a letter for. Naturally we can take it or leave it from there. FAIR ENOUGH?

LEADINS TO PRESENTATION—Before showing sample—or while showing

1. C. E. Stretcher (explain)—this is what the backs of our library would look like in a familys home.

2. Prospectus (explain)—the company has supplied me with what they

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call a Prospectus. In other words they have taken 20 to 40 pages out of each volume and put it in here to give you folks a better idea what the entire library will contain.

3. Hot Shot (explain)—I would like to show you folks what some of the top educators, librarians and colleges have to say about our new library, and also show you how an advertising familys letter and name will be used.

4. Reference Service (explain)—Part of my job this evening is to show a family how this library can be kept up to date with current events. We will have two sources of information—First, our reference service (explain reference service).

5. Yearbook Stretcher—Our second source of information will be our yearbook (explain yearbook).

6. Summary—I would like to show you folks in black and white what Colliers will do for an advertising family.

7. Verbal Close—I would like to summarize the entire program in one important question, and that is (verbal close).

8. Calender Bank—If you folks *promise not to laugh* I will show you how easily a family can handle their upkeep.

(Questions)

COMMITMENTS IN PRESENTATION—After sample—

1. C. E. Stretcher.

2. Prospectus—

a) Do you like what you have seen.

b) Would this be something you would use and appreciate having not only now, but especially over the years to come?

c) Would you be willing to write a letter for the set?

3. Hot Shot—

a) Can you see the full psychology behind the letter and using it in a matter like this.

b) Would you have any objection to our using your name and letter in a notebook like this.

4. Reference Service—

a) Because of the tremendous scope of the service most of the families I've talked with say that this could even be the most important part of the entire program. I'm sure you can see the many many ways in which you yourselves could use a service like this. *RIGHT?*

5. Yearbook Stretcher—

a) I'm sure you can see the importance of keeping a library up to date with services like these. Right?

6. Summary—

a) But, the upkeep is all handled for an advertising family at the current production cost of a dime a day, 7 dimes in a week, or in a year it comes to just 36.95. I'm sure that you would agree that that's somewhat of a discount from \$60 dollars a year.

7. Verbal Close—

a) If Colliers will actually place the complete 24 volumes of their new library in your home as an absolute advertising premium, mark the price of 539 dollars off to advertising, naturally in exchange for your letter and your name, and then turn right around and further guarantee to keep the set up to date with both the yearbook and reference service for the first

ten years, and ten years only, at the company's own current production cost of a dime a day, or \$36.95 a year, well then, do you think either one of you folks could have any possible objections in going along with the company in this program, and writing a good letter of comment for the set?

On cross-examination, the witness was not questioned in any particular as to the sales representations he was instructed to give, which is the meat of his testimony. None of the four witnesses called by the defense at the hearing at Miami for the purpose of rebutting Mr. Grumette's testimony gave any evidence that is contradictory or worthy of discussion.

Dennis Allen Kendig, of Dayton, Ohio (whose testimony appears on pages 4215 through 4277 of the transcript), a 20 year old student at DePaw University, entering his junior year, testified that in answer to an ad appearing on June 1, 1967 in the Dayton Herald, he went on Friday (probably June 2) to an office at 510 Commercial Building, Dayton, which said on the door "Warren Fishman Personnel" (Tr. 4215-17). He talked to Mr. Fishman, who explained to him and to a large group of college students (Tr. 4217-18):

* * * we would be seeking employment with Crowell-Collier-MacMillan Corporation and he proceeded with listing the assets and impressing upon us the magnitude and size of the corporation. He mentioned, for example, the Collier people were the ones who used to publish the Collier Magazine and the MacMillan people published 65 per cent of the nation's textbooks * * *.

Mr. Garsonic was introduced to them as a national trainee and he proceeded

to go through a presentation showing us the Collier Encyclopedia, presenting to us the entire program, telling us how Collier had quit the magazine field a decade or so ago and gone into the manufacturing and publishing of encyclopedias. He went through the entire presentation as someone would do in a home. He gave us perhaps additional details. He went through the entire program explaining costs and all, and asked if we had any questions (Tr. 4219-4220).

Mr. Kendig was told he would be notified "one way or the other about employment with Crowell-Collier and MacMillan Corporation" (Tr. 4221). Later that evening, he was told over the phone that he had been accepted and that he would be participating in a seven-day training program, the first four days to be in the classroom (Tr. 4221). He reported the next day (Saturday) and took down word for word a part of a sales presentation which was dictated to him. Over the week he typed up his handwritten notes which he memorized, and, on Monday morning when asked to run through the presentation, he was able to do it with only a slight flaw (Tr. 4223). On Monday, his

second day of training, he was required to copy from a notebook that was placed before him more of the presentation, and on the third and fourth days a similar procedure was followed. Each day Mr. Kendig took home his handwritten notes which he typed and memorized (Tr. 4223-26). On the fourth day he also was taken out in the field and he heard Mr. Mike Zimmerman give two full presentations, on the second of which he placed a set (Tr. 4226-27). Mr. Fishman told him, "Tomorrow is the big day for you, Dennis, you will be on your own to see if you can place a set" (Tr. 4227). The next day "they had me run through the whole presentation before all the other students in the office" (Tr. 4228). In the afternoon a group went to a town in Pennsylvania which was about 60 or 80 miles from Dayton. Mr. Kendig testified:

Between 4:30 and 6 o'clock we set up appointments with families for between 6 and 9:30. * * * I set up an appointment with Mr. and Mrs. Witham for about 6 o'clock. I went back to the house about 6 o'clock. For the first time in my life I went through the presentation for a family and I placed a set of Collier Encyclopedias (Tr. 4228-29).

On the following day, Friday, the witness was again in the field and he placed two sets. He stated (Tr. 4246):

On Saturday I found my anger rising. I had been told we only worked until noon. When I got there I was told we would work until 4 o'clock. I also objected in principle to the falsification of the working hours. I spent most of the day in a bowling alley. I didn't attempt to place any sets. I didn't go through the presentation I was supposed to do. Also I became a little curious about the company. On the preceding Friday evening two fellows had been picked up by the police in the community in which they had been.

On the following Monday he terminated his services, at which time he talked to Mr. Fishman, testifying (Tr. 4247):

I mentioned to him at the beginning of the program he told us there were six keys to being a good salesman. You have to have faith in this, faith in yourself, faith in the company. I said the one that intrigued me was faith in the company. I said I agreed you had to have this and I didn't have it and the reason I didn't have it is because I don't think you people were using the letters you asked the people for in the manner in which you say you use them.

He replied, "We do use these letters."

I said, "The Better Business Bureau said you didn't."

The witness continued:

* * * I don't think you have sales ladies. I don't think the set retails for \$539 (Tr. 4247-48).

* * * * *

At the time I was questioning him [Mr. Fishman] about the entire presentation he mentioned he had sanction, of something, in his desk from the

Federal Trade Commission. He said it indicated that the entire sales presentation was sanctioned by them (Tr. 4249).

The sales presentation which Mr. Kendig was taught, which he copied, typed, memorized, and used in the field, reads (CX 460 A-G; Tr. 4244-45):

To further introduce myself, Mr. and Mrs. Jones, I represent the Crowell-Collier-MacMillan Corporation.

Recently my company has been running a series of advertisements on television, newspapers, and magazines bearing the company name. My job is to find out the effects of this advertising. Does the name Crowell-Collier-MacMillan bring to mind any products you have seen advertised?

To bring you up to date, we have spent the last ten years and several million dollars publishing the only major reference library to be introduced in more than forty years. However, before we can successfully market this library, we must effectively publicize it. This is one of our national ads. (Show ad) Have you possibly seen it?

Now in addition to running national ads, other companies like Procter and Gamble have sent out soap samples and coupons. You have probably received several, right? Well, this creates the best advertising money can buy—word of mouth good will. Colliers want the same thing fo[r] this prod[uct] so they have set in motion a 4-point co-operative program whereby if you can qualify under our standards we could pay you, not in cash, but in merchandise. Briefly, we could do two things for you if you could do two things for us:

1) We will send you the entire 24-volume set as a premium. This set has a retail value of as much as \$539.00. We even pay the postage and you would have full ownership of it.

2) We would further help you keep you[r] set current and up to date. This is done with a yearbook and another special revision service. We do ask that you would maintain our cost on these two services. It runs about the same as your newspaper, a dime a day.

However, in order to get the set as a premium, we do ask two things of you:

1) After you have examined the set and used it we ask that the letter-writer of your family would write a one-page testimonial letter about your set.

2) We must have written permission to use your name in our sales material. You see, experience has taught us that one of the first questions asked of our salesladies is: "Who in the neighborhood owns a set like this? What do they have to say about it?" Well, if our salesladies can truthfully turn to a letter and say "The Joneses over here or the Browns over there have a set," and show a letter of recommendation, I'm sure you can see the psychology behind it.

That's the two minutes I've asked for: I would like to add that Collier's is 100% sincere about this offer. They back up the entire program with a written guarantee. We also realize that you could not say yes or no about endorsing this product until you have seen and examined it. But just on the basis of how I have explained the program to you, how does it sound to you?

If no immediate answer or to any rebuttal say: "Well, I've only been

doing this a short time, but most families say the program sounds too good to be true, or something like that. Does it sound that way to you?

If everything I've said is true, would you have any objections to writing a letter about this set? Fine.

In order to qualify for this program I am required to give you a brief reaction test about the set. It takes about 5 minutes. Could I get you together on the couch?

Reply to any question: "I'm glad you brought that up. The Company insists that I make that crystal clear to you and I'm sure you also want it made crystal clear, right? It would [be] much easier to explain this visually than verbally—takes about 5 minutes—Could we get you together on the couch?"

Doing this work is a job to me. The same as your job. My job is not to convince anyone they should accept this offer. My job is merely to explain this program and make it crystal clear. During the course of this, I will have to ask several questions. If you do understand something, just say yes. On the other hand, if there is something you don't understand, please allow me to make it crystal clear. I don't work on a percentage or commission basis, so if you are invited into the program, it will not be because I like you or dislike you, it will be because you actually qualify. If you are invited into the program, I will let you know this evening and leave a company guarantee with you.

I. Stretcher

This will give you a bookcase view of the entire library. A through Z, or 1 through 23, the 24th volume is the bibliography and index.

II. Prospectus

We have taken a few pages from each of the 24 volumes and placed them in here to give you an appreciation of the set. (Talk-less than 5 minutes)

COMMITMENT: Do you like what you've seen?

Do you feel this set would be appreciated and used by your family?

III. Endorsement

When our salesladies come through the community, they will be equip[p]ed with endorsements from "The Library Journal," "The Saturday Review," etc. (Show one or two) These endorsements hold a lot of weight, but you might recall that when you purchased [y]our last major appliance, you weren't as nearly as impressed by an expert's opinion as by what you heard from a friend, neighbor, or relative. That's where your letter comes in—it must be one page in black ink, so that we can make an attractive copy of it. (Show letter)

COMMITMENT: Do you see the psychology behind the letter?

IV. Requalify

In addition to placing the set in your home, as I have mentioned, we would keep your set up to date for you at our cost of a dime a day. For this, you will receive two services:

V. Yearbooks

First, we will add a yearbook to the set each year. (Show stretcher) Something happens almost every day that causes the set to grow out of date. (Cite recent events of importance) Each yearbook has a correlation index which refers back to the set. This means that 2, 5, even 10 years from now, your set would be as up to date as it is now.

COMMITMENT: Do you see why yearbooks are necessary?

VI. Reference Service

COMMITMENT: Do you ever have questions come up that you couldn't find an answer to?

Obviously, all of man's knowledge can't be contained in the 24-volume set. We will send you a booklet of 100 coupons which will enroll your entire family in the Collier Reference Service. (Read top and bottom of brochure) When a question arises simply clip out a coupon and send it in with your question. Within 3-5 days your answer will be returned in report form like this: (Show) (Read off numbers 1,2,3,5,8,10,12.

COMMITMENT: I am certain you will both agree that this would be a wonderful service if it stopped by just answering all the questions that might come up, right?

Well, it goes quite a few steps further:

1. Speeches and reports, number 7
2. Home study, number 4
3. Do-it-yourself projects, number 6
4. Assistance with childrens' school work, number 11
5. Recipes-number 6
6. Scholarships, number 9.

COMMITMENT: Everyone has told me because of its vast scope that this is the most important part of the entire program. Do you see how this will benefit your family?

VII. Price Verification

Allow me to give you an appreciation of this offer in black and white. Our set normally retails for as much as \$539.00; I hope I've made it clear that you don't pay that. The yearbook retails at \$15.00 per year, plus \$4.95 for royalties, postage, and handling. Do you know what royalties are: that's the same thing Bing Crosby gets for a record and what we pay to the contributors of the yearbooks. Everyone, including you, must pay the \$4.95 once each year after you receive your yearbook. The reference service retails for \$60.00 per year. \$60 plus \$15 totals how much? \$75, right. You don't pay \$75 a year to keep your set up to date. All you maintain is our cost, a dime a day. In a whole year this amounts to only \$39.95. I'm sure you can see the discount there, RIGHT?

VIII. Ten-Year Regret

We regret that we cannot keep the set up to date at this cost forever. Our manufacturing cost will go up each year. So we had to put a 10-year limit on these services.

COMMITMENT: Do you feel this is a fair amount of time to keep this set up to date?

IX. Verbal Close

If Colliers will place this 24-volume set in your home as a premium, and then further obligate themselves to keep it up to date for the next ten years, not only with the yearbook, but also the reference, and guarantee never to bill you more than a dime a day, or \$39.95 a year, could you have any possible objection to going along with the program and writing the letter? Sir? Maam? Do you have any questions?

(Show memorandum-costs, etc)

Most families look at this program from an investment standpoint. The

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beautiful part of this program is that a family actually has less invested in this program over the entire 10 years, than the set itself costs. Plus, they have the use of the set for the 10 years. Plus, in 1978 your set would be more modern and up to date because it would be a 34-volume set then. So do you feel that a dime a day or newspaper money would be a good educational investment for your family?

If I commit my company to send you the set on this program, can we definitely count on your letter? This card gives us permission to use your letter—please look this over now. (take back)

Who will be doing the actual letter-writing? Fine. Mr. Jones, can we count on your views being expressed in the letter also? Fine. Will you fill out this card, Mrs. Jones.

X. Conversion

Folks, we have 2 ways to handle the dime a day. I'll explain them both to you and you can take your pick. Under each plan, we send you a coin calendar bank. You can put a dime each day in the bank. At the end of the week, we will have a boy stop by and pick it up. (pause) Some families have asked if they could possibly put a little more in the bank each day and handle the program faster. Others have asked if they could mail it in * * * so we devised an alternate plan. If you want to, you can put a quarter each day in the bank, plus 50¢ extra on weekends. At the end of the month, convert the coins to check or money order and simply mail it. This is strictly an honor system; instead of a collector, we send you a coupon booklet. This might be a real convenience for you, but it's also a money saver for Colliers. By the time you've received the third yearbook, the program would be taken care of; Colliers saves 7 years of bookkeeping and 10 years of collection expenses. Since you're advertising for us, we pass on the savings to you in the form of additional premiums. (Show Classics) (Show bookcase) Which plan do you prefer? A boy to stop by each week, or do you prefer to mail it in under the honor system? Which color bookcase do you prefer?

The witness was shown certain Collier's forms which had been received in evidence and testified that they were the same or similar to those he had used or seen during his period of selling. These included CX 432 A-B, an owner's registration card; CX 433 A-D, a contract form; CX 434 A-B, a salesman's identification card; CX 435, a copy of a page advertisement in Time magazine depicting a set of Collier's Encyclopedias; CX 436 A, a copy of a page advertisement in Life magazine picturing Collier's Encyclopedias and setting forth the price of \$539; and CX 423 A-D, a contract form. On cross-examination, he reiterated that he worked for Crowell-Collier and MacMillan, Inc., but, when shown the aforementioned exhibits, he admitted that there was no mention of "Crowell-Collier and MacMillan, as such" (Tr. 4263) and that CX 433 says "I agree to pay P. F. Collier, Inc." (Tr. 4264). Although the witness was told and

he believed that he was employed by the parent company, the record is convincing that he was in the employ of P. F. Collier, Inc. The witness was not questioned on cross-examination with respect to the sales representations nor were any witnesses called by the defense to rebut any of his testimony.

There was received in evidence a certified copy of a stipulation, dated May 25, 1967, entered into by and between P. F. Collier, Inc., and the Attorney General of the State of California for the entry of a permanent injunction and judgment in the matter of *The People of the State of California, Plaintiff v. P. F. Collier, Inc., et al.*, in the Superior Court of the State of California for the County of Los Angeles, No. 894,934 (CX 489 A-C). There was also received in evidence a certified copy of the judgment and permanent injunction entered by the Court on May 26, 1967 pursuant to the stipulation (CX 490 A-B) as follows:

A. IT IS ORDERED, ADJUDGED, AND DECREED that:

1. Defendant, P. F. Collier, Inc., its agents, employees, and representatives, and any and all persons acting in concert or in participation with them, or any one of them, are hereby permanently enjoined from directly or indirectly uttering, disseminating, or making or causing to be made, uttered or disseminated, in the State of California, any advertisement or statement, written or oral, which contrary to fact represents that:

(a) Persons coming to the door are with the Promotional Advertising Department of Collier.

(b) Such persons are presenting a program that is not yet on the market, and/or that the offer being made is not generally available.

(c) The books shown are not for sale at this time, and/or that the purpose of the call is not to make a sale.

(d) The books shown, including Collier's Encyclopedia, will be placed in the home at no cost, and/or that Collier will in any way pay for the help or cooperation of the person talked to.

(e) The price of the combination offer to the purchaser is only Collier's actual cost of the revision service.

B. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that: defendant P. F. Collier, Inc., pay to plaintiff the sum of ninety-five thousand dollars (\$95,000); and that plaintiff shall not receive any civil penalty under Corporations Code section 6408.

Although it is recited in the stipulation that it was entered into by P. F. Collier, Inc., "without admitting that the allegations of the Complaint on file herein are true" (CX 489 A), it is the opinion of the hearing examiner that the proceedings are a further indication of the continuation by the said subsidiary of some of the acts and practices which are the basis of the Commission's order entered herein.

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CONCLUSIONS

It is the opinion of the hearing examiner that the evidence herein clearly established that the parent company, the respondent The Crowell-Collier Publishing Company, now Crowell-Collier and Macmillan, Inc., dominated and controlled the acts of its wholly owned respondent subsidiary, P. F. Collier & Son Corporation, so as to render the said subsidiary a mere tool of the parent company and to compel the conclusion that the corporate identity of the subsidiary was a mere fiction; that the acts and practices of said subsidiary found by the Commission in this proceeding to constitute violations of the Federal Trade Commission Act should be treated as the acts and practices of the parent company and accordingly the latter should be subjected to the cease and desist order issued heretofore in this proceeding.

It is the opinion of the hearing examiner that the evidence herein established that P. F. Collier, Inc., is in fact the successor to respondent P. F. Collier & Son Corporation; and that P. F. Collier in carrying on its business has continued the illegal acts and practices of the respondent subsidiary and accordingly should be subjected to the cease and desist order issued heretofore in this proceeding.

OPINION OF THE COMMISSION

FEBRUARY 4, 1969

BY JONES, *Commissioner*:

This matter is before the Commission for the second time. Upon its original consideration of the matter, the Commission entered an order against one of the two respondents, P. F. Collier & Son Corporation¹ (hereinafter sometimes called "respondent subsidiary") and remanded the case to the examiner for the taking of additional evidence on the issue of liability of the other respondent, the Crowell-Collier Publishing Company¹ (hereinafter sometimes called "Crowell-Collier" or "respondent parent"). The Commission's remand also directed the examiner

¹ The correct title of this respondent, as shown by its answer, was The Crowell-Collier Publishing Company. In 1965 the name was changed to Crowell Collier and Macmillan, Inc. R. CX 402B (For clarity, citations to the original transcript and exhibits are indicated throughout this opinion with the abbreviations "O. Tr.," "O. CX" [Complaint counsel exhibit] and "O. RX" [Respondents' exhibit], and citations to remand materials are indicated by the abbreviations "R. Tr.," "R. CX" and "R. RX." Similarly, the initial decisions are cited "O. I.D." and "R. I.D.").

to receive evidence and make findings of fact as to whether a new corporation not named as a party to these proceedings, P. F. Collier, Inc. (hereinafter sometimes called "the new subsidiary"), is the successor corporation to respondent subsidiary and should be subject to an order in these proceedings.

In ordering the remand the Commission expressly reserved its determination as to the responsibility of the respondent parent and the applicability of the cease and desist order to the new subsidiary. Findings as to the facts, conclusions and order to cease and desist were entered with respect to the respondent subsidiary. No conclusions were made with respect to the remand issues "until the hearing examiner certifies the record and his findings in accordance with the remand order * * *" (Comm. Op., 18) [70 F.T.C. 977, 1017].

The matter is now before us on cross appeals from the Initial Decision on Remand, filed January 4, 1968, in which the hearing examiner concluded that both respondent parent and the new subsidiary should be subjected to the Commission order previously entered against the respondent subsidiary.

I

The Original Appeal and Decision

The complaint, issued January 18, 1960, charged that the respondent Crowell-Collier "is a holding company and as such it dominates, controls and dictates the acts, practices and policies of respondent P. F. Collier & Son Corporation, a wholly owned subsidiary * * *" (Complaint, par. 1) and that both parent and subsidiary respondents violated the Federal Trade Commission Act (15 U.S.C. §§ 41 *et seq.*) by the use of false, misleading and deceptive statements and representations in connection with the sales in commerce of respondents' books, including Collier's Encyclopedia (Complaint, pars. 2-7).

Almost eleven months to the day after the complaint issued, respondent parent absorbed respondent subsidiary, by an agreement to merge dated October 14, 1960. On December 22, 1960, the new subsidiary, P. F. Collier, Inc., was created, and the respondent subsidiary was liquidated by merger into respondent parent eight days later (R. CX 247).

The Commission, in its original opinion of September 30, 1966 [70 F.T.C. 977, 1005], held that respondent subsidiary had engaged in "lengthy and blatant use of deception" in the sale

of books, including Collier's Encyclopedia, and other articles to the general public in commerce (Comm. Op., 5) [70 F.T.C. 977,1008]. The Commission further held that it retained jurisdiction over respondent subsidiary, notwithstanding the voluntary dissolution of the company, and that an order against it would be in the public interest (Comm. Op., 5-6) [70 F.T.C. 1008]. Accordingly, an order against respondent subsidiary was issued. The Commission further determined, however, that the case should be remanded for the limited purpose of taking additional evidence on the issues of the responsibility of the respondent parent and the applicability of the order to the new subsidiary (Comm. Op., 7-8, 18) [70 F.T.C. 977, 1009-1010, 1017].² Because of the decision to remand, the Commission provided that the order against respondent subsidiary should not become effective until further order (Comm. Findings as to the Facts, Conclusions and Order, p. 23) [70 F.T.C. 977,1033]. It also provided that the new subsidiary should be given notice of the remand and an opportunity to participate in the proceedings (Comm. Op., 8) [70 F.T.C. 977,1010]. Such notice was served on November 2, 1966.

The hearings on remand took place from August to October, 1967. Respondents appeared through their attorneys, who also appeared specially on behalf of the new subsidiary "to object to the receipt of any evidence intended to predicate a cease and desist order against it" (R. Tr. 3715).

The hearing examiner on remand, after making detailed findings of fact encompassing some forty-seven pages, concluded that (1) Crowell-Collier, respondent parent, so dominated and controlled the acts of respondent subsidiary as to compel the conclusion that the corporate identity of the latter should be ignored and the parent should be held liable for the subsidiary's conduct; and (2) the new subsidiary was in fact the successor to respondent subsidiary, and accordingly should also be subjected to the order (R. I.D., 274).

Respondents have appealed from the remand decision arguing that the evidence does not prove that the parent controlled its former subsidiary prior to the dissolution of the latter (Appeal Brief of Respondents ("R. Ap'l. Br.") 6-23), that the second hearing examiner erroneously failed to consider evidence from

² The hearing examiner who had presided at the original hearings had died since the conclusion of those proceedings. The Commission stated that in view of the limited nature of the remand, neither party should be prejudiced by reason of the remand being to a different hearing examiner (Comm. Op., 8) [70 F.T.C. 977, 1010].

the original record regarding the two remand issues (*id.*, 34-35), and that the new subsidiary is not a successor, that evidence of its continuation of illegal practices was improperly admitted and that in any event it cannot be subjected to an order because it was never named as a respondent in this proceeding (*id.*, 24-34).

Counsel supporting the complaint has also appealed from the initial decision on remand and argues that while the evidence summarized in the initial decision on remand is sufficient to support the examiner's conclusions, the decision nevertheless failed to give adequate recognition to other specified portions of the remand record which provided further support for the conclusions reached by the examiner (Brief of Counsel Supporting the Complaint ("CSC Ap'l. Br."), 4-5).

The two principal issues before us for decision now, therefore, are whether the respondent parent dominated and controlled the acts and practices of the respondent subsidiary and whether the new subsidiary can be properly subjected to an order in this case. Preliminarily we will consider the issues raised by respondents with respect to the propriety of the remand proceedings.

II

The Scope of the Remand and of the Commission Review

In the present appeal from the Initial Decision on Remand, respondents expressly preserve their contention, urged by them in an interlocutory appeal from the remand examiner's denial of their motion to quash subpoenas, that the remand directive and hearings were illegal because all of the evidence should have been offered during the original hearing and because the issues of the remand had already been tried and determined in respondents' favor by the original hearing examiner. Respondents do not urge this argument again upon the Commission, since the Commission has already decided the point against them and has been sustained in this by the District Court (R. Ap'l. Br., 6).³ They do, however, urge as a separate argument on this

³ The Commission denied this appeal on the ground that the discretionary right of an administrative agency to return a matter to a hearing examiner for additional evidence is well settled, that such a procedure does not constitute prejudgment of an issue already tried before the examiner and that it is not necessary to show that such evidence could have been adduced at the original hearing (Comm. Op., March 3, 1967, pp. 3-6) [71 F.T.C. 1648, at 1649-53]. The United States District Court for the District of Columbia denied respondents' motion for a preliminary injunction restraining the remand proceedings (*P. F. Collier, Inc. v. Johnson*,

appeal that the nature of the remand order "forced him [the hearing examiner] to violate the Administrative Procedure Act which requires consideration of the whole record" (*id.*, 5).

We find no merit in this contention, which is based on a misconception of applicable law and the respective responsibilities of the hearing examiner and the Commission in these proceedings. By statute, the Commission is charged with the duty to make findings as to the facts and to issue cease and desist orders in appropriate cases (§ 5(b), Federal Trade Commission Act, 15 U.S.C. 45(b)). The Commission in its rules has provided that hearings may be presided over by a duly qualified hearing examiner (Commission's Rules of Practice for Adjudicative Proceedings, § 3.42(a)); the rules further provide that the hearing examiner has the power and duty to take any action in conformance with the provisions of the Administrative Procedure Act (*id.*, § 3.42(c)(10)). The Administrative Procedure Act in turn provides that the presiding officer should initially decide the case or the agency in specific cases may require the officer who presided at the hearing to certify the record to it for initial decision (§ 8(a); 5 U.S.C. 557(a)). Thus, although the Commission may delegate the responsibility to decide the case, it is empowered alternatively to specify more limited duties for the hearing examiner.

The Commission availed itself of this alternate procedure in ordering the present remand, directing the examiner only to receive certain specified evidence and such other evidence as he might consider appropriate on the two remand issues and then expeditiously to certify his findings of fact on these issues to the Commission for final disposition (Comm. Op., 8, 18 [70 F.T.C. 977, 1010, 1017]; Order Reopening Proceedings and Remanding Case to Hearing Examiner) September 30, 1966) [70 F.T.C. 1770]. The Commission thus expressly circumscribed the duties of the hearing examiner and reserved to itself the responsibility to review and consider the full record upon completion of the hearings, in conformity with the law, the rules of the Commission and the Administrative Procedure Act. Respondents' objection to the Commission-imposed limitation upon the hearing examiner's responsibilities is without merit.

It should also be noted that in making this contention, re-

U.S.D.C., D.C. No. 3251-66, May 26, 1967). An appeal to the United States Court of Appeals for the District of Columbia Circuit was dismissed by agreement of the parties on October 30, 1967 (D.C. Ct. App., No. 21,069, October 30, 1967).

spondents are not arguing that in some way their rights to adduce testimony and to cross examine were in any way circumscribed by the examiner or that they were prejudiced in any other manner by the procedure. Nor did respondents ever raise this aspect of the scope of the remand order prior to the hearing.⁴ We conclude, therefore, that respondents' rights have not been prejudiced and that the remand proceeding was not illegal.

Both parties assert that the Commission must consider the record of both the original and the remand proceeding in making its findings and conclusions on the issues involved on the remand (R. Ap'l. Br., 34-35, Answering Brief of Counsel Supporting the Complaint ["CSC Ans. Br."], 9). In this, they are clearly correct, *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951); *NLRB v. Pittsburgh S. S. Co.*, 340 U.S. 498 (1951), and we shall do so.

III

Liability of Parent Crowell-Collier

The Crowell-Collier enterprise originated in 1919 when "The Crowell Publishing Company," a New Jersey corporation incorporated in 1906, acquired all of the publications of "P. F. Collier & Son, Inc.," a New York corporation incorporated in 1912. From this acquisition emerged a united Crowell-Collier association which has continued without interruption to the present day.

The principal business of respondent parent, Crowell-Collier, and its respondent subsidiary, P. F. Collier & Son Corporation together with a second Canadian subsidiary not named as a respondent, has been the publication and sale of reference books and magazines, with its main focus after 1950 being on the sale of a new Collier's Encyclopedia which was first introduced to the market in that year (R. CX 409, pp. 3-5, 7; O. Tr. 1549). Its magazine sales were apparently abandoned after 1956.⁵ From

⁴ Respondents' interlocutory appeal from the remand order sought clarification by the Commission of the remand order, to indicate whether it involved only the issue of respondent parent's control, or the issue of successorship as well. See Respondents' Motion Requesting Certification to Clarify Remand Order. Nov. 15, 1966, and Interlocutory Appeal from Order of Hearing Examiner, Nov. 25, 1966. This appeal was denied on grounds that the order was clear on its face. Comm. Order, Dec. 6, 1966. Their appeal from the order denying their motion to quash subpoenas issued by the examiner asserted that the entire remand was illegal, but here again respondents directed their arguments to the alleged impropriety of admitting any evidence on certain issues; they did not suggest that the examiner's consideration of the relevant issues was improperly curtailed. See *supra*, p. 277.

⁵ Remand evidence shows that the respondent parent listed itself as engaged in "printing and publishing of magazines" in its annual reports filed with the State of Delaware from 1949

1950 down to the present, the undisputed evidence shows that this Collier reference book business was carried on alternately by a prior subsidiary, by respondent subsidiary, by the post-complaint new subsidiary and, from 1952-1954, directly by Crowell-Collier, respondent parent, through a division established for that purpose (Findings as to the Facts filed in connection with Comm. Op., FF 2, 4-6 [70 F.T.C. 977, 1018, 1019]; R. RX 68 A-D; R. Tr. 3898-3900 and R. I.D. 252-3).⁶

The various changes in the corporate form of the Crowell-Collier enterprise apparently were designed for purposes quite unrelated to the essential business being performed by the parent and its subsidiaries. For example, the 1952 corporate reorganization was stated by respondents to have taken place primarily in order to eliminate overlap and create greater efficiencies for the enterprise as a whole (R. Tr. 4464-68). Respondents' witness Mr. McCaffrey, an auditor and for 11 years an officer of respondent parent, explained this reorganization in these words:

through 1956 (R. CX 259-66); thereafter, the reference to magazines was deleted. R. CX 267-275 (1957-65). Moody's Manual of Investments for the period 1950-56 affirms that during those years the company owned and published various magazines and in addition owned and published "Collier's Encyclopedia" and "Collier's" books before respondent subsidiary became operational (R. CX 387-94). Moody's reports that respondent parent has been a holding company and subsequently a "management and holding company" at all times after 1958 (R. CX 395-406). By the time these hearings commenced, respondent parent also owned three subsidiaries which operate radio stations and continued to lease a building in New York, in which it sublet office space to its subsidiaries (O. Tr. 97, 99, R. CX 403B, O. I.D., 14) [70 F.T.C. 977, 994]. Renamed "Crowell Collier and Macmillan, Inc." in 1965 following its 1960 merger with Macmillan Company, respondent parent has continued to expand its holdings both by the creation of other related subsidiaries and through acquisition of unrelated companies. In 1966 the company, with some of its subsidiaries, moved from the premises they had been occupying in the Crowell-Collier Building at 640 Fifth Avenue, New York, to a new location, the Crowell Collier & Macmillan building, at 866 Third Avenue, New York (R. CX 405). In 1959, the sales volume of respondent subsidiary P. F. Collier & Son Corp. was about \$32,000,000, the radio stations accounted for about \$3,000,000 and the respondent parent's rental income was around \$750,000 (O. Tr. 113-14).

⁶ Since the start of the Crowell-Collier enterprise, there have been two Crowell parents (1906-1921; 1920-present) which have borne three different but similar names and at least five Collier subsidiaries which have borne 8 different but similar names (R. CX 183, 257; 204-06, 210-13, 217, 236, 240-42, 244-45, 247, 249, 276-77; R. RX 69; R. I.D. 244, 245). These alterations of corporate form have apparently occurred for reasons independent of any changes in the substance of corporate affairs carried on by these various units. For example, respondents asserted that the 1939 dissolution of the Collier subsidiary was for the purpose of avoiding New Jersey taxes, the 1952 merger was designed to effect revision of the sales organization or the accounting policies of the two companies and the 1960 merger was made for financial reasons (Respondents' Answering Brief ["R. Ans. Br."] 4, 6-8; R. Ap'l. Br. 21; R. I.D. 247-250; see also *infra* pp. 292, 293). In all instances the corporate disappearance and re-emergence of the subsidiaries responded to parental decision. For example, the decision to liquidate the respondent subsidiary in 1960 by merging it into the parent was made by the board of directors of the parent (R. RX 69J-L, reprinted R. I.D. 246, 247). A previous Collier subsidiary had been extinguished in the same manner (R. CX 491A-B (1934)); others were ended by means of certificates of voluntary dissolution, but in those cases as well liquidation of the subsidiary was a decision made by the officers of the parent (See R. RX 67 (1939 dissolution); R. RX 68B-D (1952 dissolution)).

His [the new president of respondent parent] thought was that the magazine-selling organization—that is, the organization responsible for the circulation of the magazines—should be completely under the control of the circulation director, and the book-selling organization should be completely under the control of the president of the book company.

However, the way the company was organized, Crowell-Collier Publishing Company [the parent] had a magazine subscription selling organization and P. F. Collier & Son Corporation [the subsidiary which was dissolved in 1952, just prior to the incorporation of the respondent subsidiary] had a combined magazine-selling organization and book-selling organization.

Mr. Stouch, the name of the president [of respondent parent] at that time, considered that it would be better organization if the magazine selling done by the P. F. Collier & Son Corporation [the former subsidiary] were transferred to the circulation director's control [apparently, an employee of the parent], and if a third organization were put into existence to act as a collection agency for the two selling organizations * * * .

* * * So we developed a plan of merger of the two organizations which enabled us to separate the selling of magazines to one sales manager's control, and collection for the two organizations under the control of a collection manager (R. Tr. 4467-68).⁷

Similarly, the 1960 merger and liquidation was designed, according to McCaffrey, to provide financing for the combined companies, to permit the companies to report taxes on an installment basis and to permit organization of "the various components of the corporate group" into functional lines (R. Tr. 4461; see generally R. Tr. 4460-63).

Along with creating and abolishing a series of look-alike subsidiaries, the Crowell-Collier parent shifted various business functions back and forth among itself and its various subsidiaries. For example, at the time of the 1920, 1934, 1952 and 1960 dissolutions, the then-current Collier subsidiaries assigned the copyrights which they held to the current Collier encyclopedia and other reference books to the Crowell parent (R. CX 308-15, 463). The record shows that the parent subsequently assigned the copyrights to the next-formed subsidiaries, in 1934 and 1954 (R. CX 463).⁸

⁷ The 1960 merger involved similar manipulation of the component parts of the Crowell-Collier enterprise by the parent in order to fulfill some overall corporate objectives of the parent. On that merger, respondent subsidiary declared a dividend to respondent parent of all of the subsidiary's stock in a third company owned by the subsidiary. That third company, Collier Securities Corporation, in turn owned a controlling interest in a fourth company, The Macmillan Company. Following Crowell-Collier's receipt of the dividend from P. F. Collier, the former merged with Collier Securities which by then had changed its name to The Macmillan Company (R. CX 283-84, 294, R. RX 69, R. I.D. 246, 247).

⁸ In 1960, respondent parent did not reassign the copyrights to the new subsidiary but retained even the copyrights covering the subsidiary's publications, which it used as loan security in 1962-63. R. CX 317-18, 463, 464G-H. Supplemental copyrights continued to be registered in the name of respondent parent through 1966 (R. CX 463-64). Significantly, in 1967, during the course of the instant proceedings, neither the Chairman of the Board of the

Another function performed usually but not always by the subsidiary relates to collections. Thus, the respondent subsidiary during its existence used to perform its own billing and collecting on accounts, through its field offices. Following the 1960 dissolution of the respondent subsidiary, however, the respondent parent retained the subsidiary's outstanding accounts receivable. This collection function was subsequently shifted to the new subsidiary, but under a different arrangement pursuant to which the new subsidiary performed the collection service on behalf of its parent, receiving therefor a fee from the parent (R. Tr. 3919-20).

The interrelationship of the respondent parent and its subsidiaries is also reflected by the subsidiary's use, in its representations to the public, of the parent's name and reputation. By identifying itself with the more familiar parent, the subsidiary could avail itself of the public recognition of the parent's name and former products. Accordingly, respondent subsidiary's sales managers were instructed to recite to applicants for sales positions with the subsidiary (O. CX 119 (2)):⁹

Now to begin with this is the House of Collier. I don't know how many of you fellows know of the company; but for over eighty years, the Collier company was best known as one of the world's largest publishing houses. This is the company that made famous Collier's, American, and Women's Home Companion magazines. However, over two years ago as you probably know, the company discontinued the sale and publication of magazines. Now at that time many people were under the impression that the Company was going out of business. Actually, nothing could be further from the truth because today Collier is one of the fastest growing organizations in the country.

Respondent subsidiary's interview forms also referred to the rising quoted stock value of "the company" (respondent subsidiary was wholly owned by respondent parent and only the parent's stock had a quoted value), stated that "we" own and operate radio stations (respondent subsidiary was not involved with the radio stations) and noted that "we" have a "Crowell-Collier [the parent's name] Record Club" (see O. CX 119, 122, R. CX 395-97, 409, see also *supra* n. 5, pp. 279-80).

The salesmen on their part continued to make the same type of

new subsidiary, created to continue the business of the respondent subsidiary, nor its president had any firm idea as to who owned these copyrights covering the Collier encyclopedia, the primary source of their business (R. Tr. 3901; 3932).

⁹ While the record as to the dates is not wholly clear, it appears that this particular form of group interview was employed during the late 1950's, shortly before the liquidation of respondent subsidiary. See O. Tr. 1251-52, 1262-64, 1266-67, O. CX 122.

identification between the respondent parent and subsidiary in their door-to-door sales presentations. They, too, were instructed to refer to the Collier magazines which the parent had formerly published. As we found when this case was previously before us (Findings of Fact, Conclusion and Order, F. 7) [70 F.T.C. 977, 1020]:

7. The prestige and good standing of the name "Collier" was widely used by P. F. Collier & Son Corporation in its sale and distribution of Collier's encyclopedias (CX 10, 38-A and 113-C). Many consumer witnesses testified that the salesmen, in approaching them, used a reference to Collier's magazine to establish an association. As an example, Mrs. Robert Garoutte testified in part:

"Then he asked us if Collier meant anything to us and my husband said, 'Yes, magazines'. I said, 'Encyclopedias.'" (Tr. 44)

Another instance of this is in the testimony of Robert W. Harper, who stated in part:

"I remember he asked me if I had ever heard of Collier's Magazine and I told him I had; and he wanted to know what I thought of it." (Tr. 650.)

Similarly, the order blanks employed during the early 1950's expressly referred to the long publishing record of "the parent company, The Crowell-Collier Publishing Company" (R. CX 411-13, R. I.D. 258-259). Respondent subsidiary's order blanks dated September 1965, omitted the explicit reference to the parent but continued to refer to a long history of publishing reference books "plus * * * such outstanding magazines as Colliers, The Woman's Home Companion and The American Magazine"—magazines which were published by the parent and never by respondent subsidiary (R. CX 417D; R. CX 249-56; compare R. CX 417D (September 1955) with R. CX 418D (November 1958); R. CX 387-94).

Over the decades the Crowell parent has interchanged personnel with its Collier subsidiaries, whatever their current corporate name or structure, and has generally maintained common or overlapping officers and directors.¹⁰ For example, in the 1950-53 period, Ralph G. Smith was at once a director of the parent and a director and president first of the then existing subsidiary, until its dissolution in 1952, and thereafter president of the Collier division which the parent then established (R. CX 243 B-C; 259C, 261C, 262C, R. RX 68C). In this same period, also at the time of the 1952 dissolution, Clarence F. Norsworthy was

¹⁰ In the original initial decision it is stated that the corporations shared but a single officer, the secretary O. I.D., 14 [70 F.T.C. 977, 993-994]. The evidence clearly indicates that this statement was erroneous. The hearing examiner on remand took note of the further overlapping of personnel between subsidiary and parent. R. I.D., 245-6.

treasurer both of the parent and of the dissolving subsidiary (R. CX 243C, 261C). He became the first treasurer of the respondent subsidiary when it was established in 1952, and he maintained that position and also became president and a member of the board of directors when the new company commenced operations two years later (R. CX 250A, R. RX 68C).

This overlapping of personnel has been a continuing phenomenon over the years from 1955 through 1966 (*e.g.*, compare R. CX 251 with R. CX 265 (1955) and CX 275 with CX 282 (1966), and see R. I.D., 245-6). When the present complaint was filed, this overlapping of the officers of the respondent parent and respondent subsidiary was as illustrated in the following table: (R. CX 256, 270).

Officer	Positions held, 1960	
	Crowell-Collier (Resp. parent)	P. F. Collier, Inc. (Resp. subsidiary, 1960)
John Boe	Vice president	President, Board of Directors.
Norman Bennett	do	Vice President, Board of Directors.
E. J. McCaffrey	Treasurer	do.
J. M. MacDonald	Secretary	Secretary.
Wm. J. Sief	Controller	Treasurer, Controller, Board of Directors.
Raymond C. Hagel	President, Board of Directors.	(Chairman) Board of Directors.
W. D. Cole	(Chairman) Board of Directors.	Board of Directors (member).
Sumner Blossom	Board of Directors (Vice Chairman).	do.

In addition to maintaining constantly overlapping personnel, the parent has always exercised active supervision over the operations of its subsidiaries, including the respondent subsidiary. Wilton Cole, Chairman of the Board of Directors of respondent parent and a director of respondent subsidiary, acknowledged that the parent maintained weekly and sometimes daily contacts with respondent subsidiary's president:

Q. Does Mr. Hagel make a report to you and/or to Mr. Blossom at specified intervals relative to his operations of P. F. Collier & Son Corporation?

A. We get the regular monthly reports, and any major matter that he thinks should be called to our attention, but he has no regular or periodic reports that he makes to us.

Q. Do you see him frequently there in the same building? He is in the same building, is he not?

A. That's right.

Q. Does he frequently see you and vice versa?

A. Yes. I see him frequently. But in addition to being president of P. F. Collier & Son Corporation, Mr. Hagel is also executive vice president of the parent company. In that capacity, he is a member of the planning committee. We call it the management committee, comprising Mr. Hagel, Mr. Blossom and myself. In this area, why, I am in constant—not constant, but I have repeated meetings with him in this area.

Q. Do you see him daily, except Sunday, perhaps, when you are in the office?

A. Well, when we are both in New York, I would see him certainly several times a week. We have a regular meeting on Fridays, at which we discuss the long-range planning, the three of us [Hagel, Blossom and Cole] (O. Tr. 125-26).

The maintenance of such informal contacts provided Crowell-Collier with one opportunity, of which it consistently availed itself, to remain intimately familiar with its subsidiary's overall present and future movements and outlook. However, respondent parent employed several additional channels for communication with, and supervision and control over, its subsidiary. One of the most important of these devices was a joint management group — which at one point was formalized into a regular committee — that the Crowell-Collier parent maintained with its P. F. Collier subsidiaries during the late 1950's and in the early 1960's. This informal group consisted of officers of both the parent and the subsidiary (see generally, R. I.D. 253-256). One function of the group, as Sumner Blossom, president and subsequently vice chairman of respondent parent's Board of Directors, expressed it, was to discuss "company affairs" (R. Tr. 4418). The company affairs discussed were those of the respondent subsidiary (R. Tr. 4037-38; R. CX 254). Another of its purposes was, in Mr. Blossom's words:

* * * [T]o keep the officers of the parent company advised as to the intent of the subsidiary company and its estimates of budgets and its future operational practices. That is to say its financial—of their estimate of sales and such things as that (R. Tr. 4420-21; reprinted R. I.D. 255).

Cole also testified as to the work of the informal committee and stated that it was to consider overall long-range planning and objectives, including consideration from time to time of the competence of the head of each of the subsidiaries (O. Tr. 99-100; 124-25; and see *infra*, pp. 286-7).

In 1960, further to assure unity among the separate corporations, respondent parent apparently attempted to convert this "informal group" into a formal operating committee (Tr. 4419-20). Established by the president of the parent corporation, the

functions of this committee were described in the 1960 annual report of Crowell-Collier as follows:

To coordinate the activities of the subsidiaries and to establish uniform policies. Crowell-Collier last year established a 14-man operating committee composed of the principal officers of each subsidiary as well as those of the parent organization (R. CX 409, p. 5).

Blossom testified, with respect to the formal committee:

Its purpose was to exchange ideas and to coordinate the activities of the several subsidiaries and the parent company. Its general purpose was to keep from duplicating expenditures, to keep the officers of the subsidiaries abreast of the salaries paid, and similar financial items; and also to consult with and exchange opinions with the officers of the parent company who are members of the committee (R. Tr. 4420; reprinted R. I.D. 255).

When respondent's counsel asked Blossom whether the formal committee was intended or used to dictate the acts and practices of any subsidiary, the witness replied:

A. No, quite the contrary. It was to let the subsidiaries know that they had behind them a parent who was willing and able to help them if required or requested. It was also to give—have the officers of the subsidiaries give information to the officers of the parent company as to their financial status and budgets and similar things (R. Tr. 4420).

However, this formal coordinating committee apparently failed to take hold. Blossom explained that it accomplished nothing and “rather petered out” (R. Tr. 4430). This committee, however shortlived, is another example of respondent parent's supervision and control over its subsidiaries.

Still other practices were developed to enable respondent parent to control and override the operations of respondent subsidiary. Cole testified that the plans of each subsidiary in the Crowell-Collier organization, after being formulated by the management of that subsidiary, were submitted to the management of respondent parent for review and reformulation and ultimately to the parent's board of directors for approval (O. Tr. 126–27). Assuring financial supervision by respondent parent over respondent subsidiary, a single 50 to 60 person accounting department was maintained by the parent (O. Tr. 110–11). This single department served all of the companies in the Crowell-Collier group, providing the parent ready access to the subsidiary's figures and relieving the subsidiary of the need—or the power—to maintain an accounting staff of its own.

All in all, the respondent parent obviously maintained such interest in and kept such close watch over the potential and actual results of its subsidiary's operations that whether or not it chose to direct these daily operations, it remained poised and

ready actively to dominate, dictate and control the subsidiary's business in whatever areas appeared to require its attention.

What is more, the record shows that respondent parent did not hesitate to exercise its available power as it believed necessary. Thus, in 1959 the parent fired and replaced John G. Ryan, president of the subsidiary (R. Tr. 4038-40, 4430-33; see R. I.D. 253, 256). Ryan testified that the news of his termination was delivered to him by Cole, acting in his capacity as chairman of the parent's board of directors. Complaint counsel asked Ryan whether Crowell-Collier's chairman Cole had given him any reason for the termination. The witness replied:

A. I suspect he was not satisfied with the progress of the P. F. Collier Company.

Q. Did they tell you that?

A. Yes.

Q. Did Mr. Cole tell you that?

A. Yes. Mr. Cole fired me (R. Tr. 4039-40).

Respondents do not challenge but rather confirm this testimony. Indeed, their witness, Crowell-Collier president Blossom, explained that the management of the parent corporation terminated Ryan's employment:

* * * [B]ecause of the lack of results and because of Mr. Ryan's belief that the sale of encyclopedias, in this country at least, had reached the saturation point, and that we were on the sales plateau from which he could see no promise. * * * (R. Tr. 4431).

After firing Mr. Ryan, the parent respondent placed Cole, its own chairman of the board, in charge of the subsidiary. Cole remained in this position of command until the parent selected a new president for the subsidiary (O. Tr. 120-24). Cole testified that he did not, as the subsidiary's chief executive, involve himself in the daily operations of that company. He instead charged two of the subsidiary's key personnel with running the business, concerning himself with respondent subsidiary's "final figures" and "long-range planning," such as the five-to-fifteen-year outlook, possible acquisitions and long-range projects (O. Tr. 120-21).

Respondents vigorously deny that these facts evidence any of the elements of control which the courts have required must be shown in order to support holding parents liable for the activities of their subsidiaries.

They contend that "the adjudicated cases require far more than some overlap of officers and directors, the same mailing address, and officing in the same building" in order to conclude

that the parent should be held responsible for the acts of its subsidiary by reason of dominance, dictation and control (R. Ap'l. Br., 22).

In determining liability for misrepresentations and other false and deceptive practices engaged in during the course of a business conducted by interrelated corporations, the courts are clear that the "pattern and framework of the whole enterprise must be taken into consideration," *Art National Mfgs. Distr. Co. v. F.T.C.*, 298 F. 2d 476, 477 (2d Cir. 1962), *cert. denied*, 370 U.S. 939 (1962) and the pattern and framework revealed by the record here is replete with evidence of the control and domination by the respondent parent Crowell-Collier over the practices of its subsidiary.

The basic test was laid down by the Supreme Court in *Chicago, Milwaukee & St. Paul Ry. Co. v. Minneapolis Civic & Commerce Assn.*, 247 U.S. 490 (1918). There, the Court noted that considerations of formal corporate structure will be disregarded where a subsidiary company is being used "as a mere agency or instrumentality of the owning company or companies" (247 U.S. at 501). The Court stated that:

In such a case the courts will not permit themselves to be blinded or deceived by mere forms or [sic] law but, regardless of fictions, will deal with the substance of the transaction involved as if the corporate agency did not exist and as the justice of the case may require (*Ibid.*).

The test, whether employed for purposes of determining personal or interstate commerce jurisdiction or for purposes of determining whether a seller-purchaser relationship exists, is whether there is such substantial identity between the entities as to render the activities of one the activities of the other. *Bowater S. S. Co. v. Patterson*, 303 F. 2d 369, 372-73 (2d Cir. 1962), *cert. denied*, 371 U.S. 860 (1962); *United States v. Watchmakers of Switzerland Information Center, Inc.*, 133 F. Supp. 40, 45 (S.D.N.Y. 1955). In making this determination, the courts have stated that it is the reality of the business enterprise as it was conducted by the companies, not the invocation of mechanical word formulas based on corporate structure, which must govern. *Bowater S. S. Co. v. Patterson*, *supra*. The courts have also pointed out that in addition to considering the overall corporate pattern and framework, account must be taken of the policy underlying the statute involved in the case in order to determine the significance of the corporate relationships in terms of the objective intended to be reached by the statute. *Delaware Watch Co. v.*

F.T.C., 332 F. 2d 745, 746 (2d Cir. 1964); *Bowater S. S. Co. v. Patterson*, *supra*; *Reines Distr., Inc. v. Admiral Corp.*, 256 F. Supp. 581, 585-86 (S.D.N.Y. 1966).

We believe that the record clearly demonstrates that the various parts of the Crowell-Collier enterprise have never dealt with each other as independent commercial enterprises. Rather, it indicates that respondents have interchanged business functions as the circumstances seemed to warrant in a manner wholly inconsistent with any purported corporate separation between the respondent parent and respondent subsidiary. Therefore, far more is present here than the mere personnel overlapping and common headquartering urged by respondents—important as these features may be in illustrating the overall relationship between parent and subsidiary.

Respondents also contend that the formal and informal group management committees by which representatives from the parent and subsidiary met and conferred do not show that Crowell-Collier dominated its subsidiary or dictated or controlled its sales practices, because the parent's interest was shown to be limited to the long-range plans of the subsidiary. While they concede respondent parent's watch over these long-range policies, they strongly deny that the parent checked on or interfered with its day-to-day operations. We do not view the record in such a narrow way, nor do we believe the test depends on the precise form and scope of the supervision maintained over the subsidiary's activities.

We have carefully considered the testimony of the officers or respondent parent and subsidiary, given both during the original proceedings and during the remand proceeding. We have no doubt that much of this testimony evidences the existence of an honest desire on the part of the respondent parent's management to vest the respondent subsidiary's management with responsibility for overseeing the minutia of the encyclopedia sales operations. However, while this testimony shows no desire to take over the management details of the respondent subsidiary, it also shows no absence of power to do so. Ultimate control was clearly lodged in respondent parent's chief executive officer, Mr. Cole; delegation of any portion of the commercial responsibilities in no way altered that basic power. Nothing in Cole's testimony rebuts the clear inference that the parent company, acting through Cole, could have reprimanded or replaced any personnel of the sub-

sidiary whenever the subsidiary's actions failed to conform with the parent's wishes.

Moreover, the Courts are primarily concerned with the extent to which the elements in the corporate enterprise are either wholly independent or strongly interdependent on each other, viewed against the realities of their relationships. In a slightly different but analogous context involving the question of whether a parent-subsidiary enterprise should be looked at as separate or as a part of the larger whole, the Supreme Court has held that the lack of active intervention on the part of a parent in the operational policies of the subsidiary was "not decisive." *North American Co. v. SEC*, 327 U.S. 686 at 692-93 (1946). As the Supreme Court there pointed out, this lack of active intervention "appears to have resulted in large part from North American's satisfaction with the local managements of the subsidiaries and from the fact that the local managements have often included men selected by or historically related to North American." In that same case the Supreme Court also noted that:

Historical ties and associations, combined with strategic holdings of stock, can on occasion serve as a potent substitute for the more obvious modes of control. (Citing cases.) (*Id.* at 693.)

Upon consideration of the entire record in the present case, we find ample cogent evidence to support the remand hearing examiner's conclusion that respondent parent, Crowell-Collier, dominated and controlled its subsidiary, respondent P. F. Collier & Son Corp., and that for all intents and purposes the respondent parent and respondent subsidiary—and later the new subsidiary—were an integral part of a single common enterprise. The preponderance of the evidence, in our judgment, clearly demonstrates that respondent parent was a pervasive presence throughout the subsidiary's existence. The parent wholly owned the respondent subsidiary as well as the subsidiary's predecessors going back for a period of almost 40 years; during that time many officers and directors of the subsidiary were associated with or were selected by the parent. The companies were in intimate contact, contact begat cooperation, and plans carried out by the total operation were for the parent to announce and the subsidiary to follow. The subsidiary employed the prestige of its parent's name in conducting its sales program; the parent was significantly involved in the corporate organization and the scope of commercial activities of the subsidiary; Crowell-Collier kept close

supervision over the results of respondent subsidiary's operations by means of an on-going active, informal committee, a short-lived formal intercorporate committee and a single shared accounting staff; and when the parent saw fit, it dictated changes in the subsidiary's executive personnel and even effected dissolutions, mergers and new incorporations of its Collier subsidiaries, including respondent subsidiary.

Possessing the demonstrated power to compel fundamental changes, Crowell-Collier cannot continue to avoid responsibility for the practices by retreating behind the screen of nominally separate identities. It would be a vain act indeed, in light of the facts in this case, to issue an order solely against respondent subsidiary, leaving respondent parent, the dominant force in this enterprise, without any comparable obligations. The enterprise is clearly a unitary one, regardless of the particular corporate structure adopted at any given time through which to carry out the Crowell-Collier business. The public interest in preventing false and deceptive sales practices requires that an effective remedy be found, and "we cannot think Congress would have meant this to be defeated by the fragmentation of an integrated business into a congeries of corporate entities, however much these might be properly respected for other purposes." *Bowater S. S. Co. v. Patterson, supra*, 303 F. 2d 369, 373 (2d Cir. 1962), *cert. denied*, 371 U.S. 860 (1962).

We find the argument of nonliability by reason of separate entities particularly unpersuasive where, as here, the parent has from time to time revised the existence of the subsidiary and even operated it as a division of the parent (*General Electric Co. v. Masters Mail Order Co. of Washington, D.C.*, 145 F. Supp. 57, 64 (S.D.N.Y. 1956), *rev'd on other grounds*, 244 F. 2d 681 (2d Cir. 1957), *cert. denied*, 355 U.S. 824 (1957); *Reines Dist., Inc. v. Admiral Corp., supra*, 256 F. Supp. 581, 586 (S.D.N.Y. 1956). We will not, for our order, unwind these convoluted respondents.

An examination of the original initial decision of the hearing examiner indicates that no detailed findings of fact were made by the examiner bearing on the issue of the liability of the respondent parent, although the facts which are recited there are not inconsistent with the findings of fact on remand. The conclusions and inferences which the original examiner drew from the facts which he did find, however, are contrary to the conclusions which we have reached on the basis of our considera-

tion of the whole record including the remand record. The examiner failed to take any note of the use of the parent's name and reputation in the sales promotion activities of the subsidiary, nor did he attribute any significance to the two corporate committees and their role in the supervision and control of the subsidiary.¹¹

The evidence on remand furnished a much fuller picture of the relationship of the two respondents. The original and remand records together form an overall consistent picture of these relationships which in our judgment support the conclusions of the hearing examiner on remand that the respondent parent must be held liable with its subsidiary for the misrepresentations and deceptive acts and practices found to have been engaged in by the respondent subsidiary. We, therefore, vacate and overrule the conclusions of the original hearing examiner on the issue of the liability of the parent under the complaint and enter our own findings, conclusions and order, and we hold that the order previously entered in this case against respondent P.F. Collier & Son Corporation must be enforced as well against respondent The Crowell-Collier Publishing Company (now Crowell Collier & Macmillan, Inc.).

IV

Applicability of Order to New Subsidiary

The second issue which the Commission required the hearing examiner on remand to consider was "whether P. F. Collier, Inc. [the new subsidiary], is the successor to [respondent subsidiary] P. F. Collier & Son Corporation" (Comm. Op., 8) [70 F.T.C. 977, 1010]. After the remand proceeding, the examiner concluded that the evidence established that the new subsidiary is in fact

¹¹ The evidence in the original record showing the extent to which the subsidiary's sales effort was organized in cooperation with the parent was sparse, and the examiner evidently failed to consider the significance of the portion of the sales presentation which employed a suggestion of identity between parent and subsidiary. He appears not to have focused upon the two corporate committees and the opportunity for supervision and control which they provided. He erroneously understood the two respondents to share but a single officer. There was no opportunity for the original examiner to appraise the significance of some of the facts which had been testified to at the first hearing, such as Cole's delegation of operating authority to subsidiary personnel, in the light of the overall situation as it was more fully developed on remand. In short, the conclusions in the original initial decision were not, nor indeed could they have been, based upon a full appraisal of all of the now-developed facts showing the relationship between the respondent parent and its subsidiary, the commonality of the entire enterprise and the parent's usually latent but always real opportunity for domination and control of its subsidiary.

the successor of respondent subsidiary and that it has continued the illegal acts and practices of the respondent and should be subjected to the cease and desist order which the Commission has entered (R. I.D. 274).

In our view, the evidence overwhelmingly demonstrates that the new subsidiary, P. F. Collier, Inc., is the successor to respondent subsidiary and as such must be bound by the order so as to ensure the cessation of the deceptions and misrepresentations found to have been engaged in, in the sale of respondents' encyclopedia and other reference books.

P. F. Collier, Inc., the new subsidiary, is the current form under which the promotion and sale of the Collier encyclopedia and other reference books—the basic business of the respondent parent—is now being conducted. It is the identical business which was formerly carried on by the respondent subsidiary.

The new subsidiary was incorporated during the pendency of these proceedings—eleven months after the complaint was filed. The dissolution of the respondent subsidiary and the establishment of the new subsidiary were decided upon by the respondent parent and effectuated as a single item of business at the parent's board of directors' meeting (R. RX 69J–L, reprinted R. I.D. 246, 247). Indeed, counsel representing respondent parent and respondent subsidiary, and who also appeared specially for the new subsidiary, offered testimony to show that the only purpose of the change in the corporate structure of the respondent subsidiary was to effect certain changes in its accounting methods, which apparently could be accomplished more easily by formally dissolving the old subsidiary and establishing the new one (R. Tr. 4460–66; R. Ap'l. Br. 24–25).

The last annual report which respondent subsidiary filed with the Secretary of State of the State of Delaware on December 30, 1960 (CX 256), and the first annual report which the new subsidiary filed at the same office one year later, on January 18, 1962 (CX 278), showed that the officers and directors of the respondent subsidiary immediately prior to its dissolution were identical to the officers and directors of the new subsidiary just following its incorporation. The managerial and sales personnel of the new subsidiary, with normal turnover, also were identical to those of the respondent subsidiary (R. Tr. 3896–98). The new subsidiary occupied the same quarters, had virtually the same name and, like the respondent subsidiary, was wholly-owned by the

respondent parent (R. CX 247A, 256, 276D, 278; R. RX 69K-L; O. I.D. 18[70 F.T.C. 977, 997-998]; R. I.D. 245, 246).¹²

Like respondent subsidiary, the new subsidiary's existence was an integral part of the respondent parent's business. This is aptly illustrated by the motion adopted by the respondent parent's board of directors to merge respondent subsidiary into respondent parent and to create the new subsidiary. The board there expressly provided that the new subsidiary would purchase from the respondent parent the Collier publications which it sold, it would act as collection agent for the accounts receivable which the parent acquired from respondent subsidiary and it would have the right to use the parent's mailing lists and keep them up to date (R. RX 69, R. I.D. 247).

The new subsidiary utilizes the same sales methods as were used by the respondent subsidiary in its sales of the Collier Encyclopedia and other reference books. The new subsidiary's methods, just as the respondent subsidiary's, relied upon door-to-door sales and upon sales presentations which included the solicitation of testimonials, the offer to place the basic volumes in a home as an advertising premium and the request for a 10-year commitment by the purchaser to keep the set up to date by purchasing Collier yearbooks at a nominal cost per day (R. Tr. 4066, 4070-75, 4230-40; R. CX 419-24, 427-30, 433; R. I.D. 262, 272); compare Comm. Op., F.F. 11-16 [70 F.T.C. 1021-1025] and op., pp. 10-11 [70 F.T.C. 1011-1012], R. CX 417-18). Testimony at the remand hearing indicated that the salesmen of the new subsidiary were taught to use the same oral sales presentation that was used by the respondent subsidiary. They, too, used the parent's name—even going so far as to include references to the newly established connection with the prestigious Macmillan Company—and its national advertising to assist them in the sale of the Collier encyclopedia (see R. I.D. 264, 267, 269 and portions of record cited therein; compare Comm. Op. F.F. 7[70 F.T.C. 977, 1020] and portions of record cited therein).

The hearing examiner on remand made detailed findings on the identity of the business operations of the respondent subsidiary and the new subsidiary and also on the identity of the business practices followed by the new subsidiary (R. I.D. 261, 272). He concluded that the new subsidiary was not only carrying on the same business but was also engaging in the same misrepre-

¹² More recently, the subsidiary, together with the respondent parent, have moved into the new Crowell Collier and Macmillan building. See fn. ~~5~~ *supra*, pp. 279, 280.

sentations which the respondent subsidiary was found to have employed (*id.*, Conclusion, 274).

Respondents vigorously protested the admissibility of this evidence and press the objection on this appeal, on the ground that the Commission's opinion expressly limited the remand to the issues of corporate liability and therefore no misrepresentation evidence should have been received.

For purposes of this opinion it is immaterial whether the business activities of the respondent subsidiary which the remand evidence demonstrates were continued by the new subsidiary were those which gave rise to the finding of a Section 5 violation. Evidence as to the business carried on by the new subsidiary was offered by counsel supporting the complaint to show a continuation of sales methods, " * * * whether the record from that point would show misrepresentations or not, * * * " (R. Tr. 4064), and it was received by the hearing examiner "for such consideration as the Commission may wish to give to it" (R. Tr. 4065). In our opinion, the evidence was properly admitted not to show continuation of illegal activity but to show the objective identity of the business operation and practices engaged in by the two subsidiaries. Whether this evidence also demonstrated that unlawful misrepresentations were carried on by the new subsidiary we do not consider. Accordingly, we reject respondent's contention that these findings of the hearing examiner were improperly received, and we specifically incorporate them as relevant to the issue of successorship, as supplemented with the additional references to the record contained in this opinion.

Upon careful review of the entire record, we hold that the new subsidiary, P. F. Collier, Inc., is the successor to respondent subsidiary, P. F. Collier & Son Corporation. The respondent subsidiary was liquidated and the new subsidiary established to carry on its work as a single item of the business of respondent parent. The record shows their names, addresses, personnel and practices to be largely identical and the basic function of them both to be the sale of Collier's Encyclopedia and other reference books. In short, the two subsidiaries, first respondent and then the new, have occupied the identical niche in the Crowell-Collier organization, and the conclusion is inescapable that the latter is successor to the former. *NLRB v. Weirton Steel Co.*, 135 F. 2d 494, 498-99 (3d Cir. 1943); *Kobe, Inc. v. Dempsey Pump Co.*, 198 F. 2d 416, 423 (10th Cir. 1952), *cert. denied*, 344 U.S. 837 (1952); *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14-15 (1945).

The question which must be next determined is whether the order against the respondent subsidiary should be enforced against its successor.

The Supreme Court has affirmed many times that injunctions can be enforced against persons "to whom the business may have been transferred whether as a means of evading the judgment or for other reasons." *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14-15 (1945); *Walling v. James V. Reuter Inc.*, 321 U.S. 671, 674 (1944); *Southport Petroleum Co. v. NLRB*, 315 U.S. 100, 106 (1942). In determining whether a successor corporation should be bound by an outstanding order, the courts have been concerned essentially with whether application of the order's prohibitions to the successor corporation is fair and necessary. Thus, courts have evinced some reluctance to bind successor corporations which were strangers to the predecessor's business where there was neither evidence of a compelling need to do so nor evidence of a continuation of the challenged activities giving rise to the previous order. See, e.g., *McComb v. Row River Lumber Co.*, 177 F. 2d 129, 130 (9th Cir. 1949). On the other hand, courts have caused successor corporations to be bound by orders previously entered against their predecessors where the same business was being carried on, the same stockholders controlled both predecessor and successor companies and, in sum, the advent of the successor was primarily a change in form and not in substance. *Southport Petroleum Co. v. NLRB*, *supra*; *Kobe, Inc. v. Dempsey Pump Co.*, *supra*; *NLRB v. Weirton Steel Co.*, *supra*; *General Electric Co. v. Masters Mail Order Co. of Washington, D.C.*, *supra*, 145 F. Supp. 57, 63-64 (S.D.N.Y. 1956).

Our responsibility under the statute is to fashion a remedy which will prevent future deception and close all roads to the prohibited goal. *F.T.C. v. Ruberoid Co.*, 343 U.S. 470, 473 (1952); *Jacob Siegel v. F.T.C.*, 327 U.S. 608, 611 (1946); *Waltham Precision Instrument Co. v. F.T.C.*, 327 F. 2d 427, 431 (1964), *cert. denied*, 377 U.S. 992 (1964). In the instant case, we have already found that respondent subsidiary pursued a course of lengthy and blatant deception. We have found that its successor is engaged in the identical business formerly conducted by respondent subsidiary. In no sense is the new subsidiary an independent stranger newly embarking in the field formerly occupied by the respondent subsidiary. Rather, although in 1961 the corporate form was freshly recast, in fact the business operations and the men directing them had been carried over without a break from

those that prevailed at respondent subsidiary at the time it was liquidated. In these circumstances the order must be carried forward along with the essential structure and operation.

Nor is this conclusion impeded by any issue of due process or of lack of opportunity to defend. The new subsidiary has been in existence since December, 1960, during almost the entire period when the original hearings which named the respondent parent and the new subsidiary's predecessor were being conducted.¹³ The same counsel represented both respondent parent and respondent subsidiary. Although this counsel entered his appearance formally as counsel only for respondent subsidiary, he was careful to advise the hearing examiner of the dissolution of that subsidiary and of the establishment of the new one (see R. Tr. 4519-20). On the remand of this matter, the Commission expressly directed that the new subsidiary was to have the opportunity to submit evidence in rebuttal to that which might be submitted by complaint counsel (Comm. Op., 7-8) [70 F.T.C. 977, 1009-1010]. As already noted (*supra*, p. 276), counsel for respondent subsidiary and for respondent parent actually entered a formal special appearance on behalf of the new subsidiary, to object to the receipt of evidence against it. Thus the same counsel representing the respondent parent and subsidiary was present at both hearings and vigorously defended on all issues respecting the liability of these respondents as well as on the issues involved in the remand proceeding.

The crux of this case, indeed, rests on the basic identity which we have found to exist among the component parts of the Crowell-Collier enterprise—the parent and its operating branches, whether they be a division of the parent or a wholly owned subsidiary. In the context of this basic commonality and in the light of the evidence showing the identity of interest and of business operations—both between the respondent subsidiary and its parent and between the respondent subsidiary and its successor—it is essential to look through paper form to commercial substance. The whole record compels us to conclude that the order heretofore entered against the respondent subsidiary must now be made applicable to the new, successor subsidiary. Manifestly, the entity which we have found is the successor of the respondent subsidiary and is carrying on the business which gave rise to the deceptions in this case must be bound by the

¹³ The original hearings commenced in August 1960, about five months before the new subsidiary was incorporated, but were not completed until June 23, 1965.

terms of the order entered against the respondent subsidiary, its predecessor. *NLRB v. Weirton Steel Co.*, 135 F. 2d 494, 498-99 (3rd Cir. 1943). Any other conclusion would work a grave injustice against the public interest and the essential purposes of the Federal Trade Commission Act.

Having drawn our own conclusions as to the significance of the evidence contained in the entire record, we reject the form of the conclusion reached by the remand examiner. We vacate all findings and conclusions in both the original and remand record which are inconsistent with this opinion.¹⁴

V

Conclusion and Order

Respondent subsidiary, P. F. Collier & Son Corporation, was, at the time complaint herein issued, a corporation engaged in interstate commerce and subject to the jurisdiction of the Federal Trade Commission (Findings of Fact in connection with Comm. Op., F. 8) [70 F.T.C. 977, 1020]. In its prior consideration of this matter, the Commission concluded that this respondent had engaged in unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act; an appropriate order was entered against it, not to become effective, however, until further order of the Commission.

Consistently with our determination that the respondent parent Crowell-Collier Publishing Company (now Crowell Collier & Macmillan Inc.) bears responsibility for the unlawful conduct of respondent subsidiary, P. F. Collier & Son Corporation, and that the new subsidiary, P. F. Collier Inc., is the successor to respondent subsidiary and should have the order applied to it, we are providing that the order previously entered and now made effective against P. F. Collier & Son Corporation be enforced as well against Crowell Collier & Macmillan Inc., P. F. Collier, Inc., and their successors and assigns.

With respect to that order, respondent urges that paragraph 1(f) is not supported by the record because the only evidence is that the yearbook did regularly sell for \$10 when sold alone, as represented (R. Ap'l. Br., 35-36). This contention is fully an-

¹⁴ On the issue of successorship, the first hearing examiner's initial decision makes it clear that he regarded the evidence before him on this issue as incomplete. See O. I.D., 18 [70 F.T.C. 977, 997-998]. Since that evidence was supplemented on remand, this view of the original proceedings is now irrelevant.

swered by Finding 22 [70 F.T.C. 977, 1029] of our September 30, 1966 Findings of Fact. There, we observed that it was a reasonable inference from the evidence that few, if any, of the books were sold outside of the combination offer, and we found that the combination offer price of \$3.95 therefore constituted the usual and regular selling price. Accordingly, the Commission's order properly requires respondents to cease and desist from representing that the book regularly sells for an amount in excess of its actual regular price.

Respondent also argues that the affirmative disclosure requirement of Paragraph 3 of the 1966 order is discriminatory because the Commission has not imposed a similar requirement in its orders against competing encyclopedia companies (*id.*, 36). It is, of course, well settled that the Commission has wide discretion in framing its remedies to cope with the unlawful practices before it, see *F.T.C. v. Ruberoid Co.*, *supra*, 343 U.S. 470, 473 (1952); *Jacob Siegel Co. v. F.T.C.*, *supra*, 327 U.S. 608, 611 (1946), and that its discretion encompasses the decision whether to proceed equally against all participants in an industry. *F.T.C. v. Universal-Rundle Corp.*, 387 U.S. 244, 251-52 (1967); *Moog Industries v. F.T.C.*, 355 U.S. 411 (1958); *In re L. G. Balfour Co.*, Dkt. 8435, July 29, 1968, 43-45 [74 F.T.C. 345, at 522-3]. The Commission should not, of course, enter orders which would unreasonably single out and hamstring one among various competitors, but neither will it refrain from entering and enforcing an order properly designed to bring an end to proven unlawful, anticompetitive practices. When the present case was previously before us, we found that a principal component of the unlawful sales methods employed by salesmen for respondent subsidiary involved misrepresenting the purpose of the salesman's call and deceptively failing to disclose that the caller was simply attempting to sell respondent's encyclopedias (Findings of Fact 11, 14, 19-20, 27) [70 F.T.C. 977, 1021, 1025, 1026-1029, 1031]. It was therefore fully appropriate for the Commission to include in its 1966 order a provision requiring affirmative disclosure of this information at the time admission is sought to the premises of the prospective purchaser. We will not at present modify that order, which, of course, is only now being put into effect.

Because our earlier decision reserved determination as to the responsibility of the parent respondent and the applicability of the order to cease and desist to the new subsidiary, it also

reserved findings as to the facts and conclusions in respect to those issues (Comm. Op., 18) [70 F.T.C. 977, 1017]. We believe that the great preponderance of the evidence presented to and received by the two hearing examiners during the full course of these proceedings and reviewed by us in connection with our former and the instant opinion clearly supports our decision and order entered against respondent parent, respondent subsidiary and the new subsidiary.

Complaint counsel urges that we should modify the remand examiner's initial decision in order to make additional findings on the two issues considered on the remand. We believe that the remand decision is fully supported by the facts found by the remand examiner and see no reason to supplement those findings as complaint counsel suggests. Accordingly, we deny complaint counsel's appeal on this point.

Except as to the specific areas noted in our opinion, we adopt the findings of the remand examiner which together with this opinion and the findings adopted by us in our original opinion constitute our findings of fact in this case. To the extent that they are inconsistent with the findings expressed in the original initial decision, that decision and conclusions are set aside and vacated. The initial decision on remand is adopted except as noted in the present opinion and as supplemented by the citations in the present opinion to additional evidence from both the original and the remand records.

FINAL ORDER

This matter having been heard by the Commission upon cross appeals of respondents and complaint counsel from the hearing examiner's initial decision and upon briefs in support of and in opposition to said appeals; and

The Commission having determined for the reasons stated in the accompanying opinion that the appeal of counsel supporting the complaint should be granted in part and denied in part and that respondents' appeal should be denied; that the Initial Decision on Remand should be adopted to the extent stated in the opinion being issued herewith; and that the order to cease and desist issued on September 30, 1966 [70 F.T.C. 977], by the Commission in these proceedings should now be made effective against both respondents and against their successors and assigns, specifically including, as one such successor of P. F. Collier & Son Corporation, P. F. Collier, Inc.

It is ordered, That the order issued September 30, 1966, be, and it hereby is, effective this date.

It is further ordered, That said order be, and it hereby is, effective against respondent The Crowell-Collier Publishing Company, under this or any other name, its successors or assigns.

It is further ordered, That P. F. Collier & Son Corporation or any successor or assign of the business thereof which may now be in existence, and The Crowell-Collier Publishing Company shall both, within sixty (60) days after the effective date of this order, file with the Commission, a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.
