

Complaint

75 F.T.C.

the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

HEMPHILL ENTERPRISES, INC., ET AL.

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

Docket C-1507. Complaint, Mar. 13, 1969—Decision, Mar. 13, 1969

Consent order requiring a Los Angeles, Calif., distributor of books, reference services and teaching aids to cease misusing the words "Guild" and "Society," misrepresenting the savings, discounts, or prices of its products, that it is conducting tests or surveys, that any book or service is "free," that its teaching aids have been approved by school authorities, that any school or university has devised or approved its tests or programs, and that it will assist purchasers to obtain scholarships for their children.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Hemphill Enterprises, Inc., a corporation, and Jack L. Hemphill and Noel J. Gravino, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it and in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Hemphill Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware.

Respondent Jack L. Hemphill is chairman of the board, chief executive officer and principal stockholder of corporate respondent. Respondent Noel J. Gravino is president of the corporate respondent. Together they formulate, direct and control the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth.

The offices and principal place of business of both the corporate

and individual respondents are located at 601 North Alvarado Street, Los Angeles, California.

Respondents also do business under the trade names Consumer's Guild and Gerell Society, Incorporated.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the business of the offering for sale, sale and distribution of books, publications and services, including as examples thereof, Richard's Topical Encyclopedia (15 volumes), Personal Success Library (8 volumes), Child Horizons (5 volumes), "Univox" teaching aids and a question reference service.

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

PAR. 4. In the course and conduct of their business, as aforesaid, respondents sell said books, publications and services at retail to the general public. Sales are made by respondents' agents, representatives or employees, who contact prospective purchasers in their homes or at their places of business. These agents, representatives or employees operate in the usual and customary manner of door-to-door salesmen engaged in the direct sale of their products.

Respondents have formulated, developed and carried out various plans for selling said books, publications and services, including representations that they are introducing:

1. A discount buying service for consumers called variously "Consumer's Guild" or "Gerell Society Incorporated";
2. "Univox" teaching aids, a set of courses described as "an automated speed-learning method"; and
3. A question reference service.

Respondents supply their agents, representatives or employees with printed "sales pitches" and material for use in connection therewith and instruct them to use and follow the same. Said agents, representatives or employees use said printed sales pre-

sentations and material in orally soliciting the purchase of respondents' books, publications and services.

Respondents, in said printed sales presentations and printed material, and respondents' agents, representatives or employees, in the course of their sales talks, make many statements and representations concerning the offer, the trade status and organization of respondents' business, their own status and employment, free merchandise, cost savings, approval and administration by educational institutions, tests, surveys and research, and various educational benefits that will allegedly accrue to prospective customers if they purchase respondents' books, publications and services.

By and through the use of said statements and representations and others similar thereto, but not specifically set forth herein, respondents represent, and have represented, directly or by implication:

1. Through the use of the following trade names separately and in conjunction with various statements and representations made in connection therewith, that they are offering membership in a buying guild for consumers called "Consumer's Guild" or in a buying society for consumers called "Gerell Society, Incorporated"; and that they are a guild or association of persons organized for the mutual benefit of its members or a society of persons having a common interest.
2. That members of said Consumer's Guild or said Gerell Society, Incorporated could regularly purchase merchandise from catalogs supplied by respondents at savings or discounts from 20% to 60% below the prices at which such merchandise has been regularly offered for sale and sold in the recent regular course of business by a substantial number of the principal retail outlets in the same trade area.
3. That respondents' agents, representatives or employees are engaged in conducting tests, surveys or research programs.
4. That respondents' representatives, agents or employees are calling on families specially selected by the respondents to participate in educational programs.
5. That respondents' books, publications and services are given free in various combination offers, and any payment made by a customer is either for membership in the Consumer's Guild or Gerell Society, Incorporated, or for the maintenance and upkeep of the Univox teaching aids or for the financing or cost of administering reference services or educational programs.

6. That the Univox teaching aids have been approved by local school authorities, and that said courses would soon be widely distributed by respondents to local schools.

7. That children of families participating in said educational programs would be regularly tested by respondents to determine their scholastic progress; that local schools would assist respondents in the administration of said tests and counseling of participating children; that respondents are connected, affiliated or associated with local schools; and that respondents would review and evaluate the report cards of participating children and furnish materials to assist them in any area in which the child may be deficient.

8. That the tests administered to the children of families participating in the educational programs were devised by the Massachusetts Institute of Technology or other educational institutions of higher learning or by the government.

9. That respondents were responsible for administering the testing program which was the basis of and is referred to in a "Crest" toothpaste commercial.

10. That respondents' usual price of books, publications and the reference service supplied to respondents' customers would exceed \$1100.

11. That respondents are offering the reference service and educational programs at a reduced, special introductory price to selected test families; and that once the service and programs are made available to the general public, the price would be far in excess of the introductory price.

12. That respondents would assist in obtaining scholarships for children of customers, or that respondents would furnish two or four years of college education for all children of families participating in said educational programs who wanted to and were academically capable of attending college.

13. That respondents' books, publications and the reference service are offered for sale at a specified total amount, payable in annual installments over a ten-year period.

PAR. 5. In truth and in fact:

1. Respondents were not offering membership in a buying guild for consumers or buying society for consumers nor are they a guild or society of persons associated or organized for the mutual benefit of its members or having a common interest. On the contrary, their business is that of selling books, publications and a reference service for the sole profit of respondents.

2. Respondents' customers could not regularly purchase merchandise from catalogs supplied by respondents at savings or discounts from 20% to 60% below the prices at which such merchandise has been regularly offered for sale and sold in the recent regular course of business by a substantial number of the principal retail outlets in the same trade area. On the contrary, the prices listed in said catalogs for the merchandise are often higher than the said regular retail prices for such merchandise, and in instances when the catalogs do provide savings or discounts from the said regular retail prices, the discount amounts are usually below 20% and never as high as 60%.

3. Respondents' agents, representatives or employees, when calling on prospective customers, were not conducting tests, surveys or research programs but made such representations for the purpose of gaining entrance into prospects' homes with the ultimate objective of making a sale of respondents' books, publications and services.

4. Respondents' representatives, agents or employees were not calling on families specially selected to participate in any educational programs. Furthermore, respondents were not conducting or connected with any educational programs. Their sales agents, representatives or employees would generally go from door-to-door for the purpose of selling respondents' books, publications and services and sell to whomever would purchase the same.

5. The books, publications and services distributed by respondents are not given free in any of respondents' combination offers. The cost of all said books, publications and services are included in the contract price of each combination offer. Any charges respondents make for membership in the Consumer's Guild or Gerell Society, Incorporated, or for the Univox teaching aids or for the reference services are substantially less than the total contract prices, and any such charges were not for or related to any educational programs.

6. The Univox teaching aids have not been approved by local school authorities, nor have respondents distributed said machines to local schools. Said representations were made with the ultimate objective of selling respondents' books, publications and services.

7. Respondents have not tested the scholastic progress of children of respondents' customers; respondents have not made arrangements with local schools to obtain their assistance in the administration of any tests or counseling of the children of respondents' customers, nor are they in any manner connected,

affiliated or associated with local schools; nor have respondents reviewed or evaluated the report cards of children of respondents' customers or supplied materials to assist said children in any areas in which the children are deficient. Said representations were made for the ultimate objective of selling respondents' books, publications and services.

8. Neither the Massachusetts Institute of Technology, any other educational institution of higher learning nor the government, devised any educational tests for respondents.

9. Respondents were not responsible for administering any tests or obtaining data forming the basis for any "Crest" toothpaste commercial nor are respondents connected with any individual, firm, institution or government, in any survey, test, experiment or research program. Said representations were made for the sole purpose of gaining entrance into prospects' homes with the ultimate objective of making a sale of respondents' books, publications and services.

10. Respondents' usual price of all books, publications and the reference service received by respondents' customers would not exceed \$1100. Respondents have regularly sold said products or services for substantially less than \$1100.

11. Respondents do not offer the reference service and educational programs at a reduced, special or introductory price to selected test families; nor do respondents in good faith intend to increase the price of the reference service and educational programs at a later date. Furthermore, respondents have regularly offered their reference service and educational programs to the general public at prices substantially similar to those designated as reduced, special or introductory prices.

12. Respondents have not nor do they in good faith intend to assist customers in obtaining scholarships for children of respondents' customers, nor do respondents furnish any financial assistance or secure any amount of college education for the child of respondents' customers.

13. In a substantial number of instances, the purchase contract when completed and delivered to the purchaser requires the payment of a greater sum than that represented and contains a requirement that said amount be paid in consecutive monthly installments.

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

PAR. 6. In the course and conduct of their business, respondents have been, and now are, in substantial competition, in commerce, with corporations, individuals and firms in the sale of books, publications and services of the same general kind and nature as those sold by the respondents.

PAR. 7. The use by respondents of the aforementioned false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules and which agreement further provides that if it is accepted by the Commission the Commission may without further notice to the respondents issue its complaint and enter its decision in disposition of this proceeding; and

1. Respondent Hemphill Enterprises, Inc., is a corporation

organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 601 North Alvarado Street, Los Angeles, California.

Respondents Jack L. Hemphill and Noel J. Gravino are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Hemphill Enterprises, Inc., a corporation, and its officers, and Jack L. Hemphill and Noel J. Gravino, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of books, publications or question reference services, or any other products or services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents are offering membership in a guild or society of persons associated or organized for the mutual benefit of its members or having a common interest; or using the word "Guild" or the word "Society" or any word or words of similar import or meaning in or as part of respondents' trade or corporate name; or misrepresenting, in any manner, their trade or business status or the nature of their business.

2. Representing, directly or by implication, that discounts or savings are available to respondents' customers or prospective customers purchasing merchandise from any source or through any material or plan supplied by respondents: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented amount of discounts or savings are realized by respondents' customers from the prices at which such merchandise has been regularly offered for sale and sold in the recent regular course of business by a substantial number of the principal retail outlets in the same trade area.

3. Representing, directly or by implication, that respond-

ents' representatives, agents or employees are making or conducting a test, survey or research program or that the purpose of the call or interview by respondents' representatives, agents or employees relates to other than the sale of books, publications or services; or misrepresenting, in any manner, the purpose of the call or interview by respondents' representatives, agents or employees with prospective purchasers.

4. Representing, directly or by implication, that any prospective purchaser to whom an offer to sell respondents' books, publications, other products or services is made is specially selected, or is a member of a specially selected test family or is one of an otherwise limited or restricted group.

5. Representing, directly or by implication:

(a) That any books, publications, other products or services are given free or without additional cost or obligation to the purchaser.

(b) That any payment or the amount thereof, received from a customer is for:

1. Membership in any guild or society of persons associated or organized for the mutual benefit of its members or having a common interest;

2. The maintenance or upkeep of Univox courses or any other services or products: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that any payment or amount thereof, received from a customer is for the maintenance or upkeep of Univox courses or any other services or products;

3. The financing or cost of administering any reference service or educational program: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that any payment or amount thereof, received from a customer is for the financing or cost of administering any reference service or educational program.

(c) That any payment is for other than the purchase of respondents' books, publications, or other products or services.

6. Representing, directly or by implication, that "Univox"

teaching aids or other products, sold or offered for sale by respondents, are approved by local school authorities or will be distributed by respondents to schools.

7. Representing, directly or by implication:

(a) That respondents test or will test, review or evaluate the scholastic progress of children of respondents' customers.

(b) That schools or any board or committee thereof, will assist respondents in the administration of tests or the evaluation of the scholastic progress or counseling of children of respondents' customers, or that respondents are in any way connected, affiliated or associated with schools, or with any board or committee thereof.

(c) That respondents evaluate or will evaluate the report cards of participants' children or supply or will supply educational materials to customers designed to assist them or their children in any area in which they are educationally deficient.

8. Representing, directly or by implication, that the Massachusetts Institute of Technology or any other educational institution of higher learning or board or committee thereof, devised, approved or sponsored any test or educational program offered by respondents; or misrepresenting, in any manner, the persons or organizations which assisted or participated in the formulation of any tests or programs offered by respondents to prospective purchasers.

9. Representing, directly or by implication, that respondents are connected with any individual, firm, institution or government agency, in any survey, test, experiment or research program or have administered any survey, test, experiment or research program.

10. Representing, directly or by implication, that the respondents' regular price of any products or services when singly offered for sale is any amount in excess of the price at which such products or services have been sold by respondents in substantial quantities for a substantial period of time, in the recent regular course of their business; or that the regular price of any products or services offered in combination is any amount in excess of the price at which such products or services have been sold by respondents in combination for a substantial period of time in substantial quantities, in the recent regular course of their business.

11. Representing, directly or by implication, that any price for respondents' products or services is a reduced or special price or an introductory price: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that any price designated by the words "special" or "reduced" or by words of similar import or meaning is in fact significantly less than the price at which respondents have openly and actively offered such products or services for sale, in good faith for a reasonably substantial period of time, in the recent regular course of their business or to establish that any price for the products or services designated by the word "introductory" price or by words of similar import is less than the price to which respondents in good faith intend to increase the price in the trade area at a later date and that within a reasonable period of time thereafter the reduced price was in fact so increased in each such trade area.

12. Representing, directly or by implication, that respondents will assist in obtaining any scholarship for children of customers or that respondents will provide or assist in arranging financial assistance for the education of the child of a customer; or misrepresenting, in any manner, the financial assistance offered or furnished by respondents.

13. Misrepresenting, in any manner, the price of respondents' products or services, the amount or number of installment payments or the period of time during which a contract of purchase may be discharged.

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

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

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

Order

IN THE MATTER OF

CONSUMERS PRODUCTS OF AMERICA, INC., ET AL.

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

Docket 8679. Complaint, Mar. 1, 1966—Decision, Mar. 14, 1969

Order modifying an earlier order, 72 F.T.C. 533, dated September 7, 1967, which charged a seller of encyclopedias with certain deceptive practices, pursuant to a decision of the Court of Appeals, Third Circuit, 400 F. 2d 930, dated September 12, 1968, by eliminating from paragraph 10 the provisions requiring respondent to dismiss or withhold commissions from its salesmen.

MODIFIED ORDER TO CEASE AND DESIST

Respondents having filed in the United States Court of Appeals for the Third Circuit a petition to review and set aside the order to cease and desist issued herein on September 7, 1967 [72 F.T.C. 533], and the court on September 12, 1968, having issued its opinion modifying paragraph 10 thereof and as modified, affirming and directing enforcement of the Commission's order and on October 11, 1968, having issued its judgment enforcing the Commission's order as modified and a petition for certiorari having been filed by respondents and denied by the United States Supreme Court:

Now, therefore, it is hereby ordered, That the aforesaid order of the Commission to cease and desist be, and hereby is modified to read as follows:

It is ordered, That respondents Consumers Products of America, Inc., a corporation, and its officers, Eastern Guild, Inc., a corporation, and its officers, Keystone Guild, Inc., a corporation, and its officers, and Jack Weinstock, Nat Loesberg, Jack Gerstel and Louis Tafler, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of encyclopedias, books or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, in any manner, a sales plan, scheme or de-