

Complaint

IN THE MATTER OF

STANDARD REFERENCE LIBRARY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-1771. Complaint, July 17, 1970—Decision, July 17, 1970*

Consent order requiring a New York City publisher and distributor of various reference works by mail order to cease mailing reference volumes to persons who have failed to return their previously mailed rejection cards, deceptively pricing its books, and misrepresenting savings available to respondents' customers.

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 Standard Reference Library, Inc., a corporation, and Frank J. Keller, individually and as an officer of said corporation, and Mac Gache, individually and as former officer of Standard Reference Works Publishing Company, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Standard Reference Library, 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 53 East 77th Street, New York, New York.

Respondent Frank J. Keller is an officer of corporate respondent Standard Reference Library, Inc. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. He was also an officer of Standard Reference Works Publishing Company, Inc., as hereinafter mentioned.

Standard Reference Works Publishing Company, Inc., was a corporation which was organized, existed and did business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 53 East 77th Street, New York, New York. This corporation was engaged in the business hereinafter described for some time prior to September 9, 1968,

when its assets were sold to corporate respondent Standard Reference Library, Inc., and subsequently was dissolved.

Respondents Mac Gache and Frank J. Keller were officers of Standard Reference Works Publishing Company, Inc., when it was actively engaged in business. They formulated, directed and controlled the acts and practices of this corporation, including the acts and practices hereinafter set forth. Their address is the same as that of corporate respondent Standard Reference Library, Inc.

PAR. 2. Standard Reference Works Publishing Company, Inc., and respondents Mac Gache and Frank J. Keller for some time prior to September 9, 1968, had been engaged in the publishing, advertising, offering for sale, sale and distribution of various reference works by mail order to the general public. Among these works were "The Family Physician," "The Family Legal Adviser" and the "Standard Treasury of the World's Great Paintings." Since September 9, 1968, the same business activities have been carried on by respondents Standard Reference Library, Inc., and Frank J. Keller.

PAR. 3. In the course and conduct of their business as aforesaid, respondents Standard Reference Library, Inc., and Frank J. Keller now cause, and since September 9, 1968, have caused, and Standard Reference Works Publishing Company, Inc., and respondents Mac Gache and Frank J. Keller for some time prior to said date had caused, their said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States, and at all times mentioned herein have maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of "The Family Physician" and the other books hereinbefore named, respondents distribute and have distributed by mail to prospective purchasers sales promotional material in which the recipient is advised that the book will be mailed to him for free examination unless he stops shipment by returning an enclosed "Rejection Postcard" stating "I am not interested in examining your current offer" not later than three weeks from respondents' date of mailing indicated thereon. If the recipient fails to mail the rejection postcard, or fails to mail it in time, the book is sent to him with an invoice stating the amount due which includes the price of the book and postage.

Where the book is neither returned nor paid for, respondents send

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letters urging payment or its return. Among and typical of statements contained in such letters are the following:

Letter #1

Did you receive the volume of the STANDARD HOME LIBRARY which we shipped you, on approval, about six weeks ago? We ask this question because we have not received either payment for the book, nor did we get the book back.

If you did receive it, we must know as quickly as possible whether or not you wish to keep it. If your decision is "no", please send it back at once. The demand for books from other subscribers is much greater than the few copies we still have on hand.

* * * * *

In the event you decide to keep it, and are ready to remit payment, we have enclosed a duplicate invoice. Please return it with your remittance, so that your account can be properly credited.

* * * * *

Special Service Division.

Letter #2

We wrote you about three weeks ago, regarding the volume of the STANDARD HOME LIBRARY we sent you for free examination. As of today, we have not heard from you and I'm on the spot—I need the book badly for other subscribers.

Please—will you do me a personal favor and return the book?

Of course, you can still decide to keep the book even at this late date. If that is your decision, please return the enclosed duplicate invoice with your remittance.

* * * * *

Auditing Department.

Letter #3

Over a month ago, our Auditing Department advised you about the amount due on your account for the Standard Home Library.

As you have not taken care of the matter, we are again forwarding a statement and would appreciate your prompt action in sending the overdue payment. Please sent (sic) it at once, using the enclosed return envelope.

* * * * *

Collection Department.

Letter #4

We regret very much that it has become necessary to send you another reminder for payment of the current issue of the Standard Home Library.

You can understand that sending notices such as this, is costly to us as well as annoying to you. You can avoid this by remitting your payment today.

When remitting, be sure to return the invoice enclosed so that your account will be properly credited.

We look forward to receiving your attention and cooperation in this matter.

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Collection Department.

Letter #5

Once again we find it necessary to remind you of the unpaid balance due for your Standard Home Library account.

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We must settle this matter immediately right here and now.

There is no reason for disregarding this notice. If you have a good reason for not paying this bill, let us hear from you so that we can make any necessary adjustment.

In making your remittance, use the enclosed postage-paid envelope. Please also enclose the invoice, to insure that your account is credited properly.

* * * * *

Credit Manager.

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

1. The failure of a recipient of respondents' sales promotional material to return the rejection card within the time specified will constitute a request that respondents' book be sent for examination.
2. The prospective purchaser receiving the unordered reference book must either pay for it or return it to respondents.
3. By failing or refusing to return the unordered reference book, the purchase price and postage then become due and owing the respondents even though the prospective purchaser has no desire to keep or use the book.
4. The book is in short supply and great demand.

PAR. 6. In truth and in fact:

1. The failure of the recipient of respondents' sales promotional material to return the rejection card within the time specified cannot constitute a request that respondents' book be sent for examination as respondents have no legal right to unilaterally impose any such obligation on the recipients of their sales promotional material. Respondents' action in sending books to persons who fail to return the rejection cards constitutes the sending of unordered merchandise.
2. The prospective purchaser receiving the unordered reference book is under no obligation to pay for it or return it to respondents.
3. By failing or refusing to return the unordered reference book the purchase price and postage does not become due and owing even though the purchaser has no desire to keep or use the book.
4. The book is not in short supply or great demand.

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

PAR. 7. Respondents' practice of sending books to persons who have not ordered them and attempting to exhort payment for such books or suggesting that the books could be returned in lieu of payment now has, and has had, the capacity and tendency to create the

false and misleading impression that the mailee must pay for the books. The practice now has, and has had, the tendency and capacity insidiously to harass, intimidate and coerce persons into purchasing and paying for books sent by respondents.

Therefore, said practice is unfair and is false, misleading and deceptive.

PAR. 8. The promotional material referred to in Paragraph Four hereof contains numerous statements and representations respecting price and savings. Among and typical but not all inclusive of said statements and representations are the following:

Advertisement A

SEND FOR FREE EXAMINATION
—AND THEN, IF YOU WISH—
YOURS AT AMAZING LOW PRICE
[THE FAMILY PHYSICIAN]

This wonderful book, in its original edition, sold for \$9.00. We intend, when we are ready to sell it generally as part of the Standard Home Library, to price it at \$5.95—a low price indeed, but in line with our usual policy of bringing out valuable books at low prices.

But for you—as a member of the Special Group—we are granting a still further privilege. For you we are setting an even lower PRE-PUBLICATION PRICE on the book.

Advertisement B

SENT TO YOU FOR FREE EXAMINATION
—AND THEN, IF YOU WISH—
YOURS AT AN AMAZINGLY LOW PRICE

Medical books such as this one ordinarily sell for ten to fifteen dollars. However, because of special arrangements made with the original publishers and with the tremendous savings we are able to make through large printings, we can offer it to you for only \$4.98, plus a few cents mailing costs—an unheard of bargain.

PAR. 9. By and through the use of the aforesaid statements and representations and others of similar import and meaning, but not specifically set out herein, respondents represent, and have represented, directly or by implication:

1. That the amount of \$9 referred to in Advertisement A was the price at which the one volume edition of "The Family Physician" had been sold or offered for sale in good faith by respondents for a reasonably substantial period of time in the recent regular course of their business, prior to said advertisement.

2. That the amounts of "ten to fifteen" dollars referred to in Advertisement B was the range of prices charged by the principal re-

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tail outlets in respondents' trade area for the one volume edition of "The Family Physician."

3. That purchasers of "The Family Physician" save an amount equal to the difference between said higher prices and the corresponding lower prices referred to in the respective advertisements.

PAR. 10. In truth and in fact:

1. The amount of \$9 referred to in Advertisement A was not the price at which the one volume edition of "The Family Physician" had been sold or offered for sale in good faith by respondents for a reasonably substantial period of time in the recent regular course of their business prior to said advertisement.

2. The amounts of ten to fifteen dollars referred to in Advertisement B was not the range of prices charged by the principal retail outlets for the one volume edition of "The Family Physician" in respondents' trade area.

3. Purchasers of "The Family Physician" do not save an amount equal to the difference between said higher prices and the corresponding lower prices referred to in the respective advertisements.

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

PAR. 11. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of books and publications of the same general kind and nature as those sold by respondents.

PAR. 12. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief. Moreover, the use by respondents of the aforesaid acts and practices and particularly the practice of sending unordered reference books and the requests for payment for or return of the books in many instances has the tendency and capacity to cause doubt and confusion in the minds of maillees as to their legal obligations and to coerce them into paying for books sent to them by respondents.

PAR. 13. 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 Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; 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 complaint to issue herein, 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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Standard Reference Library, 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 53 East 77th Street, New York, New York.

Respondent Frank J. Keller is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

Standard Reference Works Publishing Company, Inc., was a corporation which was organized, existed and did business under and by virtue of the laws of the State of New York, with its principal

office and place of business located at 53 East 77th Street, New York, New York. This corporation was engaged in the business referred to in the complaint for some time prior to September 9, 1968, when its assets were sold to corporate respondent Standard Reference Library, Inc., and subsequently was dissolved.

Respondents Mac Gache and Frank J. Keller were officers of Standard Reference Works Publishing Company, Inc., when it was actively engaged in business. They formulated, directed and controlled the acts and practices of this corporation and their address is the same as that of the corporate respondent.

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 Standard Reference Library, Inc., a corporation, and its officers, and Frank J. Keller, individually and as an officer of said corporation, and Mac Gache, individually and as former officer of Standard Reference Works Publishing Company, Inc., a corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of books or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that the failure of recipients of respondents' sales promotional material to return a rejection card or take any other affirmative action not previously authorized expressly and in writing by the recipients will constitute a request that respondents' merchandise be sent for examination.
2. Misrepresenting, directly or by implication, the legal obligation, if any, that exists between respondents and the mailees to whom respondents send their publications.
3. Suggesting, exhorting, intimidating, coercing or otherwise attempting to compel respondents' mailees to perform or to refrain from performing any act that such mailees are under no legal obligation to perform or forego.
4. Misrepresenting the demand for or the supply or availability of respondents' products.
5. Sending any communication to, or making any demands or

requests of, any person that seeks to obtain payment for or the return of merchandise sent without a prior express written request by the recipient.

6. Representing, directly or by implication, that any price is respondents' former or usual price for said products when such amount is in excess of the price at which such merchandise has been sold or openly and actively offered for sale in good faith by respondents for a reasonably substantial period of time in the recent and regular course of their business and unless respondents' business records which shall be preserved for five years establish that said amount is the price at which such merchandise has been sold or offered for sale in good faith by respondents for a reasonably substantial period of time in the recent, regular course of their business; or misrepresenting, in any manner, the price at which such merchandise has been sold or offered for sale by respondents.

7. Representing, directly or by implication, that any amount is the price charged in respondents' trade area for merchandise unless substantial sales of such merchandise are being made at that or a higher price by principal retail outlets in respondents' trade area and unless respondents have in good faith conducted a market survey or other study which establishes the validity of the trade area prices; or misrepresenting, in any manner, the price at which merchandise is sold in respondents' trade area.

8. Falsely representing that savings are available to purchasers or prospective purchasers of respondents' merchandise; or misrepresenting the savings or the amount of savings available to purchasers or prospective purchasers of respondents' merchandise.

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

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

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.

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IN THE MATTER OF

TALENT RESEARCH BUREAU, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-1772. Complaint, July 17, 1970—Decision, July 17, 1970*

Consent order requiring a Chicago, Ill., distributor of photographs and photographic services to cease misrepresenting its capability to promote modeling or acting careers for 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 Talent Research Bureau, Inc., a corporation, and Henry H. Bloomfield and Irwin M. Bloomfield, 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 in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Talent Research Bureau, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois. Talent Research Bureau, Inc., is not now actively engaged in business, but from August 9, 1968, until about July 31, 1969, maintained its office and principal place of business at 2514 North Laramie Avenue, Chicago, Illinois.

Respondents Henry H. Bloomfield and Irwin M. Bloomfield are individuals and officers of the corporate respondent. They formulate, direct, and control the policies, acts, and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is 5401 West Chicago Avenue, Chicago, Illinois.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, and distribution of photographs and photographic services. Respondents have sold their products and services to purchasers thereof located in various States of the United States and now cause, and for some time last past have caused, their products, when sold, to be shipped from their place of business in the State of Illinois to purchasers thereof located in other States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said prod-