

AMERICAN BOOK CLUB, ET AL.

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

Docket C-1888. Complaint, Apr. 1, 1971—Decision, Apr. 1, 1971

Consent order requiring a Philadelphia, Pa., mail-order book club to cease misrepresenting that its customers will save money on the purchase of books from respondents, listing remainder books with original prices, misrepresenting that respondents have automatic data processing connections with publishers of books, misrepresenting that certain of its printed matter is limited to certain purchases, failing to make refunds or shipments of books within a reasonable time, and failing to keep adequate records to back its savings claims.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal

Trade Commission, having reason to believe that American Book Club, a partnership, and American Book Club, a corporation, and Cletus P. Lyman and J. Roger Williams, Esq., 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 American Book Club, hereinafter sometimes referred to as ABC, is a partnership organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its office and place of business located at 1612 Latimer Street, in the city of Philadelphia, Commonwealth of Pennsylvania. The individual partners are L Club Corp. and American Book Club, both of which are corporations organized, existing and doing business under and by virtue of the laws of the State of Delaware.

Respondent American Book Club (corporation) is the managing partner having complete authority and responsibility with respect to the conduct of the business of the said partnership. Its office and place of business is the same as that of the said partnership.

Cletus P. Lyman and J. Roger Williams, Esq., are officers of the corporate respondent American Book Club. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their business addresses are the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the operation of a mail-order book club and in the advertising, offering for sale, sale and distribution of memberships, books and other printed matter to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused the sale of memberships in said book club to purchasers thereof, located in various other States of the United States, and have caused their books and other printed matter, when sold, to be shipped from their place of business in the Commonwealth of Pennsylvania to purchasers thereof, located in various other States of the United States, and maintain, 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 business, and at all times mentioned herein, respondents have been and now are in sub-

Complaint

78 F.T.C.

stantial competition in commerce with corporations, firms and individuals engaged in the sale of books and other printed matter of the same general kind and nature as that sold by respondents.

PAR. 5. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their memberships, books, and other printed matter, the respondents have made, and in most cases are now making, numerous statements and representations in advertisements inserted in newspapers, magazines and other publications of general interstate circulation, and by means of such statements and representations in direct mail solicitations. Typical and illustrative of the foregoing, but not all inclusive thereof, are the following:

Order any and all books in print at discounts up to 81%. Even newest releases, NO EXCEPTIONS! Your discount always based directly on wholesale price. You never pay list price for any book, ever! . . . , the price you formerly paid for just *one* book can now get you up to *five*.

Order any book in print through club from warehouse. No exceptions. No middleman.

Never the 5- to 6-week delay that is standard with other clubs. Even ('special requests') are processed as fast as best sellers. And that means—the same day received.

We just programmed those 100 booklovers into our IBM-S/360 computer. Connected that to our new Computer Control Network. And connected *that* to just about every publisher in the continental United States. Electronically . . . we just punched a button. And got it for him straight from the publisher Direct.

You just have to have \$5. That's your Registration Fee. We don't pocket it. It goes to defray the (considerable) cost of programming your name and order number into our Computer Control Network.

Please request your complimentary Master Catalog at once. Quantities earmarked for trade houses, publishers, schools and libraries are *severely limited*.

----- Initial here. I am not a book dealer, and will not resell books purchased through this service at a higher price. All-Book/All-Publisher Discount Card. Not available to dealers, wholesalers, retail book establishments or their representatives or sales agents.

But we never give you ('club editions.') Never give you cheaper paper, smaller type, or bindings that stain your hands and fall apart. You receive only the GENUINE PUBLISHER'S EDITION, brand-new and bindery fresh.

Money-back guarantee is unconditional. If after joining you don't agree the American Book Club is all we said and more—or even if you've simply changed your mind—just let us know within 10 days after receiving your catalog and your membership will be cancelled without obligation. Your membership fee, of course, will be refunded at once.

DATED MAIL, FIRST CLASS DATED MAIL. Must be answered by addressee within twenty-one (21) days of U.S. Post Office Meter Date stamped at right.

No orders accepted at enclosed PDOL prices unless mailed and postmarked within twenty-one (21) days of U.S. Post Office Meter Date shown above.

PAR. 6. By and through the use of the above-quoted statements and representations, and others of similar import and meaning not expressly set out herein, respondents have represented and are now representing, directly or by implication, that:

1. A substantial number of books is available at the 81 percent discount rate, and that there are at least five books available at that rate.

2. A member will never pay the full price for any book.

3. ABC has warehouse facilities within which every book in print is stocked.

4. Books will be shipped to the purchaser within 24 hours from the time ABC receives the purchaser's order.

5. ABC owns an IBM-S/360 computer which in some manner is directly connected to almost every publisher in the continental United States.

6. That the \$5 membership fee is used entirely for computer programming.

7. That the available number of Master Catalogs is limited.

8. That book dealers, wholesalers, and retail book establishments cannot purchase books at the same prices or from the same sources which are available to ABC.

9. That a member will receive only the original publisher's edition of books and not a reprint edition.

10. That a member who is not satisfied with the services of the book club may immediately receive a cancellation of his membership and an automatic return of his fee providing he communicates such request to the book club within 10 days of the receipt of his membership card or other notification that his application has been accepted.

11. That a member cannot order books from the PDOL [Publisher's Discount Option List] after 21 days from the date stamped on the envelope.

PAR. 7. In truth and in fact:

1. There were only two books available at the 81 percent discount rate during the year 1969. There are not at least five books available at the 81 percent discount rate;

2. Respondents fail to initially disclose a \$.40 charge for the handling and postage of each book ordered, which charge results in a number of books costing more than the list price;

3. ABC has only limited storage space available and does not stock every book in print.

4. A large percentage of books ordered must be obtained from the

publisher, and such books cannot be shipped to the purchaser within 24 hours from the time ABC receives the purchaser's order. In fact, deliveries of books frequently take five to six weeks and even longer.

5. ABC pays for automatic data processing services and does not own an IBM-S/360 computer. There is no direct connection between ABC and any publisher other than through the usual means of communication;

6. Only a small part of the \$5 membership fee is used for computer programming of a member's name and order number;

7. The available number of Master Catalogs is not limited;

8. Book dealers, wholesalers and retail book establishments can purchase books from the same sources and at the same prices as ABC;

9. A number of books offered to ABC members are reprint editions and not the original publisher's edition;

10. In numerous instances membership fees are not refunded upon demand of the purchaser, or are refunded only after a delay of several months and after repeated requests to American Book Club and pleas for assistance to Better Business Bureaus and governmental agencies and substantial inconvenience; irritation and hardships to the purchaser;

11. A member can order books from the PDOL [Publisher's Discount Option List] at any time as long as the books are available.

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

PAR. 8. In the course and conduct of their mail-order business, as aforesaid, respondents, on numerous occasions and in a substantial number of instances either have failed altogether to deliver prepaid books or have delivered such books after a long lapse of time and after several demands therefor have been made to respondents and pleas for assistance have been made to Better Business Bureaus and to governmental agencies. Such practices have resulted in substantial inconvenience, hardship and irritation to purchasers.

Therefore, the said practice was, and is, unfair and is misleading and deceptive.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial numbers of memberships and books from respondents by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of the 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 Washington Area Field Office 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 violate an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its Rules, now, in further conformity with the procedure prescribed in such Rule, 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 American Book Club is a partnership organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its office and place of business located at 1612 Latimer Street, Philadelphia, Pennsylvania.

Respondent American Book Club is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and place of business located at 1612 Latimer Street, Philadelphia, Pennsylvania.

Respondents Cletus P. Lyman and J. Roger Williams, Esq., are individuals and officers of said corporation. They formulate, direct and control the acts and practices of said partnership and corporation and their address is the same as that of the partnership and 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 American Book Club, a partnership, and American Book Club, a corporation, and its officers, and Cletus P. Lyman and J. Roger Williams, Esq., individually and as officers of said corporation, and respondents' agents and employees, directly or indirectly, by corporate or any other device, in connection with the advertising, offering for sale, sale or distribution of book club memberships, books, printed matter, or any other articles of merchandise or services in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that customers will save money or be able to purchase books at prices below the regular price of such books without disclosing in immediate conjunction therewith, the basis for such savings representations.

2. Representing, directly or by implication, that purchasers of respondents' memberships or books will save any stated dollar or percentage amount unless in fact the amount represented applies to a substantial number of available books and accurately reflects the average savings for all books sold by respondents.

3. Failing to disclose in connection with any representations concerning discounts, reduced prices, or savings, that postage, handling, shipping and/or other charges must be paid by the purchaser.

4. Representing, directly or by implication, the list price of reprints or remainders without clearly disclosing that the list price was that of the original publisher and is not the current retail price of such reprints or remainders.

5. Representing, directly or by implication, that respondents' warehouse or otherwise stock books unless the average number of books actually stocked or warehoused by respondents is disclosed in immediate conjunction therewith.

6. Representing, directly or by implication, that books or

other printed matter will be received by purchasers within a stated period of time unless in fact the stated period is the maximum length of time within which the majority of such books are received by purchasers.

7. Representing, directly or by implication, that respondents own or employ automatic data processing equipment which provides a direct channel of communication linking them with publishers of books.

8. Representing, directly or by implication, that membership fees or other charges are used solely for computer programming, advertising, or any other specified purpose.

9. Representing, directly or by implication, that the sale or distribution of catalogs, books, or other printed matter is limited to certain purchasers or unavailable to certain classes of persons unless such represented limitation was actually imposed and in good faith adhered to.

10. Representing, directly or by implication, that book dealers, wholesalers, and retail book establishments cannot purchase books at the same price or from the same sources which are available to respondents.

11. Representing, directly or by implication, that a purchaser will receive only the original publisher's edition of books when any of such books are not the original publisher's edition.

12. Failing to insure that employees, when requested pursuant to a guarantee of satisfaction for a full refund, refund the purchase price in full of books membership fees, or other merchandise together with all charges paid by purchasers in connection with such purchase voluntarily and within the time specified in respondents' advertisements, or if no time specified, within a reasonable time not to exceed 10 working days; or failing to insure that employees make any other refunds to which a purchaser is entitled within 10 working days from the date of the receipt of the request for such refund.

13. Representing, directly or by implication, that offers of catalogs, books, or other printed matter are limited in point of time or available quantities, unless such represented limitation or restriction was actually imposed and in good faith adhered to.

14. Failing to insure that employees make shipments of advertised books, catalogs, printed matter, or other merchandise within the time specified in respondents' advertisements, or if no time specified, within a reasonable time or to return the full purchase price therefor to the purchaser.

Decision and Order

78 F.T.C.

15. Failing to maintain adequate records (a) which disclose the facts upon which any savings claims, including comparable value claims, and similar representations of the types described in Paragraphs 1, 2, 3, and 4 of this order are based, and (b) from which the validity of any savings claims and comparative value claims, and similar representations of the types described in Paragraphs 1, 2, 3, and 4 of this order can be determined.

It is further ordered, That respondents shall forthwith distribute a copy of this order to each of its operating divisions, and to any agency or individual employed by respondents for the purpose of originating or otherwise preparing advertising of any nature.

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

It is further ordered, That respondent maintain for at least a two (2) year period, copies of all advertisements, direct mail solicitations, and any other such written representations made to secure the sale of memberships, books, or other printed matter.

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

IN THE MATTER OFHARRY STROIMAN TRADING AS EMPIRE BUILDERS
COMPANY