

to issue a new complaint or to take such further or other action against these respondents at any time in the future as may be warranted by the then existing circumstances.

IN THE MATTER OF

COWLES COMMUNICATIONS, INC., ET AL.

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

Docket No. 8831. Complaint, Jan. 15, 1971—Decision, Aug. 3, 1972.

Consent order requiring a New York City publisher and seller of books and magazines and its five magazine subscription agencies in Des Moines, Iowa, among other things, to cease misrepresenting the terms and conditions of contracts; misrepresenting the identity of solicitors or the firms they are representing; misrepresenting the savings which will be accorded or made available to purchasers; representing that any subscription contract can be cancelled and failing to cancel said contract upon request; misrepresenting the nature, kind or legal characteristics of any document; misrepresenting the action or results of any action which may be taken to effect payment of alleged indebtedness. Respondents are further required to allow purchasers a three day cooling-off period in which they may cancel their subscription contracts.

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 Cowles Communica-

tions, Inc., a corporation; Civic Reading Club, Inc., a corporation; Educational Book Club, Inc., a corporation; Home Reader Service, Inc., a corporation; Home Reference Library, Inc., a corporation, and Mutual Readers League, 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. Cowles Communications, Inc., hereinafter Cowles, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its principal office and place of business located at 488 Madison Avenue, in the city of New York, State of New York.

Cowles is engaged in various businesses such as the operation of radio and television stations; the publication and sale of books, newspapers, business and professional magazines, and consumer magazines, including LOOK a periodical of general interest. Its publications are widely distributed throughout the United States and in many foreign countries. It is also engaged in the sale by subscription, of magazines and other publications, throughout the United States.

Cowles' gross revenues during the period 1967 through 1969 averaged more than \$160,000,000 annually. A substantial portion of its income was, and is, derived from revenues attributable to the sale of advertising space in, and at rates based upon the circulation of, its various publications.

PAR. 2. The respondents Civic Reading Club, Inc.; Educational Book Club, Inc.; Home Reader Service, Inc.; and Mutual Readers League, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Delaware. Respondent Home Reference Library, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa. Each of said respondents has its principal office and place of business located at 111 Tenth Street, Des Moines, Iowa; each is a wholly-owned subsidiary of respondent Cowles Communications, Inc., and each is engaged in the sale, by subscription, of magazines and other publications.

The magazines and other publications which Cowles, through its above-named subsidiaries, sells nationwide pursuant to subscription sales contracts, include those published by others as well as itself. All such products, whether magazines, books or any other printed matter will hereinafter be referred to as "publications."

Subscription sales are made to consumers, members of the general public, hereinafter sometimes referred to as "customers," "subscribers"

or "purchasers," pursuant to contracts which generally run from two to five years and, depending upon the number and type of publications selected by the customer, vary in price from approximately \$72 to \$195, but generally range between \$100 and \$150.

Cowles' gross subscription sales of publications through its aforesaid subsidiaries have averaged in excess of \$55,000,000 annually during the years 1968 and 1969.

PAR. 3. In the course and conduct of its business of selling publications pursuant to subscription contracts, as aforesaid, Cowles, through its respective subsidiaries, respondents herein, has entered into agreements with numerous individuals located throughout the United States. Said individuals, referred to by respondents as "franchisees" or "dealers," through personnel variously designated as "openers," "salesmen," "closers," "solicitors," or otherwise, hereinafter referred to as "representatives," have induced substantial numbers of customers to subscribe to LOOK and other publications so offered for sale.

Respondents, through their said dealers and representatives, place into operation and, through various direct and indirect means and devices, control, direct, supervise, recommend and otherwise implement sales methods whereby members of the general public are contacted, by telephone calls and door-to-door solicitations, and by means of statements, representations, acts and practices as hereinafter set forth, are induced to sign subscription contracts which provide for the purchase of publications and payment therefor on an installment basis. Said contracts, among other things, make provision for the listing of publications chosen by the purchaser; the period of delivery and the terms and conditions for payment, by monthly installments, of the purchase price. This method of sale is referred to in the industry as "Paid-During-Service" (PDS).

The subscription contract, when signed by the subscriber, is thereafter returned by the representative to the dealer for processing. The dealer in turn forwards the contract and various forms, reports and other documents to the respondent subsidiary with which he is affiliated, for further processing.

Ultimately, the subscriber receives, among other things, a book of coupons, prepared by respondents, with instructions to detach and submit a single coupon with each monthly payment. Payments are made, as directed, either to the dealer or to the respondent subsidiary with which he is affiliated, depending upon whether or not the dealer is equipped to handle such deferred payments. If payment is made directly to the subsidiary, it pays the dealer the amount due him, by credit or otherwise. If the dealer receives payment from the sub-

scriber, he in turn remits to the subsidiary, the amount due it. In either event, respondents receive and accept the revenues from said sales of publications, either directly from the subscriber or indirectly from the dealer.

In the manner aforesaid, respondent Cowles, directly or indirectly through said respondent subsidiaries, dominates, controls, furnishes the means, instrumentalities, services and facilities for, condones, approves and accepts the pecuniary and other benefits flowing from the acts, practices and policies hereinafter set forth, of the respondent subsidiaries and their respective dealers and representatives, hereinafter collectively referred to as respondents' representatives.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 4. In the course and conduct of their subscription sales business, as aforesaid, respondents now cause, and for more than three years last past have caused said publications, when sold, to be shipped from their places of business or sources of supply by mail to purchasers thereof located in the same and various States of the United States other than the state of origination and have transmitted and received and caused to be transmitted and received in the course of selling, delivering, and collecting payment for said publications among and between the several states of the United States, contracts, invoices, checks, collection notices and various other kinds of commercial paper and documents. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in such products and commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their business, as aforesaid, and for the purpose of inducing members of the general public to sign subscription contracts, respondents directly or through their representatives utilize or display sales promotional materials or other means and instrumentalities furnished, approved or ratified by respondents. In conjunction therewith, they have made certain oral statements and representations concerning the terms and conditions of said subscription contracts, their renewal or cancellation, special offers, the nature and purpose of the solicitation, and the identity of an organization purportedly involved in the solicitation. In the foregoing manner, respondents and their representatives have represented, directly or indirectly:

(a) That they are conducting or participating in bona fide surveys, quizzes or contests.

(b) That they represent, or are performing services for bona fide

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non-commercial, educational, charitable, social or other organizations, such as "Welcome Wagon."

(e) That publications or other products will be given free, or for the cost of mailing, handling, editing or printing said publications, or at special or reduced prices.

(d) That subscribers will be allowed to cancel the subscriptions if they should decide to do so.

PAR. 6. In truth and in fact:

(a) Said representatives were not conducting or participating in bona fide surveys, quizzes or contests but, to the contrary, were engaged in inducing the general public to sign subscription contracts in the manner aforesaid.

(b) Said representatives neither represented nor performed services for bona fide non-commercial, educational, charitable, social or other organizations such as "Welcome Wagon," but, to the contrary, represented or performed services for respondents in the manner aforesaid.

(c) Publications or other products were not given free, nor solely for the cost of mailing, handling, editing or printing of said publications, nor at special or reduced prices. To the contrary, the subscription contracts provided for payment to cover respondents' regular or prevailing subscription contract prices.

(d) On a substantial number of occasions, subscribers were not allowed to cancel their subscription contracts or were allowed to do so only after extended delay.

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

PAR. 7. In the further course and conduct of their business, and in furtherance of their purpose of inducing the purchase of and payment for said publications by the general public, respondents and their representatives directly or indirectly, have engaged in the following additional acts and practices:

(a) In a substantial number of instances, they have stated approximate costs of a subscription contract on a weekly basis, in conjunction with statements of typical subscription periods as, for example, a cost of 50 cents per week and a period of 60 months. Respondents and their representatives falsely and deceptively fail to disclose, in connection with such statements, the material fact that their contracts seldom, if ever, provide for weekly installment payments, or for payments spread over 60 months. In truth and in fact, the contracts require monthly installment payments of substantially higher amounts over a substantially shorter period of time than stated during such oral presentations.

(b) In a substantial number of instances, they have induced customers to sign a subscription contract by falsely and deceptively representing or implying that all publications covered by said contract will be delivered over the same period of time, such as 60 months. In truth and in fact, subscription periods for different publications covered by the same contract, are frequently different.

(c) In a substantial number of instances they have induced customers to sign contracts by failing to fully inform the customers as to the cost, name and number of issues of each publication, the total cost of the contract, the amount of the downpayment, the amount and due date of each payment and the total number of such payments.

(d) In a substantial number of instances, they have induced customers to sign a subscription contract by falsely and deceptively representing it to be a preference list, a guarantee, a route slip, or a document of an import or nature other than a subscription contract.

(e) In their efforts to collect what respondents elect to treat as delinquent accounts of subscribers, they have resorted to telephone calls at unreasonable hours and other forms of harassment, including but not limited to those set forth below, by means of which they have unfairly, falsely and deceptively represented, directly or indirectly:

(1) That the general or public credit rating or standing of any such customer will be adversely affected unless payment is made.

(2) That the failure of a customer to remit money to respondents will result in the institution of legal action to effect payment.

In truth and in fact, respondents seldom if ever take any action, including legal action, which adversely affects the general or public credit rating of such subscribers.

(f) In a substantial number of instances where customers have discontinued making payment under subscription contracts, respondents have cancelled said contracts without arranging for the delivery of publications already paid for or without making cash refunds of payments made in advance.

Therefore, respondents' statements, representations, acts and practices, and their failure to reveal material facts, as set forth herein were, and are, unfair, false, misleading, and deceptive acts and practices.

PAR. 8. In addition to the foregoing statements, representations, acts and practices, respondents have engaged in door-to-door solicitations of the aforesaid subscriptions, either without prior invitations to solicit such sales from prospective purchasers or by using one or more of the deceptive means and methods aforesaid to gain access to prospective purchasers at times and under circumstances when such prospective purchasers were not otherwise considering the purchase of magazines or other publications, and without either:

(a) affirmatively stating and affording such purchasers the right to cancel any resulting subscription contracts for a period of not less than 72 hours following such solicitations, or

(b) by refusing to honor any such right purportedly given either orally or in writing, or thwarting the exercise of any right so given. The solicitation of subscription sales without permitting cancellation within a reasonable period of time constitutes an unfair, false, misleading and deceptive practice where such sale involves long-term obligations on the part of the subscriber and where it is made under the conditions and circumstances herein alleged.

PAR. 9. By and through the use of the aforesaid acts and practices, respondents place in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 10. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 11. The use by respondents of the aforesaid unfair and false, misleading and deceptive statements, representations and practices, and their failure to disclose material facts, as aforesaid, 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 complete, and into the purchase of substantial quantities of said products by reason of said erroneous and mistaken belief and unfairly into the assumption of debts and obligations and the payment of monies which they might otherwise not have incurred.

PAR. 12. 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 issued its complaint on January 15, 1971, charging the consenting parties named in the caption hereof with violation of the Federal Trade Commission Act, and the consenting parties having been served with a copy of that complaint; and

The Commission having duly determined upon motion certified to the Commission that, in the circumstances presented, the public interest would be served by waiver of the provision of Section 2.34(d) of its rules which provides that the consent order procedure shall not be available after issuance of complaint; and

The consenting parties and counsel for the Commission having executed an agreement containing a consent order, an admission by consenting parties of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by consenting parties that the law has been violated as set forth in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, and having accepted same, and the agreement containing consent order having been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Cowles Communications, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Iowa, with its office and principal place of business located at 488 Madison Avenue, in the city of New York, State of New York.

Civic Reading Club, Inc., Educational Book Club, Inc., Home Reader Service, Inc., and Mutual Readers League, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Delaware, and Home Reference Library, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Iowa. Each of these corporations has its office and principal place of business located at 111 Tenth Street, in the city of Des Moines, State of Iowa.

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

ORDER

It is ordered, That Cowles Communications, Inc., a corporation, and its officers, Civic Reading Club, Inc., a corporation, and its officers, Educational Book Club, Inc., a corporation, and its officers, Home Readers Service, Inc., a corporation, and its officers, Home Reference Library, Inc., a corporation, and its officers, Mutual Readers

League, Inc., a corporation, and its officers, consenting parties herein, their successors or assigns, employees, franchisees or dealers, agents, salesmen, solicitors or other representatives and the employees, franchisees, agents, salesmen, solicitors or other representatives engaged by or through the consenting parties' franchisees or dealers, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of magazines or any other publications or merchandise, hereinafter sometimes referred to as products, or subscriptions to purchase any such products or services or in the collection or attempted collection of any delinquent or other subscription contract or other account, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that any representative or other person calling upon a customer or prospective customer for the purpose or with the result of inducing or securing a subscription to, order for, or the purchase or agreement to purchase any products or services:

(a) is conducting or participating in any survey, quiz or contest, or is engaged in any activity other than soliciting business; or misrepresenting, in any manner, the purpose of the call or solicitation.

(b) represents, or is performing services for "Welcome Wagon" or any educational, charitable, social or other organization, or any individual or firm other than one engaged in soliciting business; or misrepresenting, in any manner, the identity of the solicitor or of his firm and of the business they are engaged in.

(c) will give any product or service free or as a gift or without cost or charge, or that any product or service can be obtained free or as a gift or without cost or charge, in connection with the purchase of, or agreement to purchase any product or service, unless the stated price of the product or service required to be purchased in order to obtain such free product or gift is the same or less than the customary and usual price at which such product or service required to be purchased has been sold separately from such free or gift item, and in the same combination if more than one item is required to be purchased, for a substantial period of time in the recent and regular course of business in the trade area in which the representation is made.

2. Failing, clearly, emphatically and unqualifiedly to reveal, at the outset of the initial and all subsequent contacts or solicita-

tions of purchasers or prospective purchasers, whether directly or indirectly, or by telephone, written or printed communication, or person-to-person, that the purpose of such contact or solicitation is to sell products or services as the case may be, which shall be identified with particularity at the time of each such contact or solicitation.

3. Representing, directly or indirectly, that any price for any product or service covers only the cost of mailing, handling, editing, printing, or any other element of cost, or is at or below cost; or that any price is a special or reduced price unless it constitutes a significant reduction from an established selling price at which such product or service has been sold in substantial quantities by consenting parties in the same combination of items in the recent and regular course of their business; or misrepresenting, in any manner, the savings which will be accorded or made available to purchasers.

4. Representing, directly or indirectly, that any subscription contract or other purchase agreement can be cancelled at the purchaser's option, or that the right to cancel will be accorded to any purchasers, when there is no provision in such contract or agreement for cancellation on the terms and conditions represented, and unless cancellation is in fact granted on such terms and conditions.

5. Refusing or failing upon request to cancel a contract when the representation has been made directly or indirectly that the contract will be cancellable.

6. Making any reference or statement concerning "50¢ per week," "60 months," or any other statement as to a sum of money or duration or period of time in connection with a subscription contract or other purchase agreement which does not in fact provide, at the option of the purchaser, for the payment of the stated sum, at the stated interval, and over the stated duration or period of time; or misrepresenting, in any manner, the terms, conditions, method, rate or time of payment actually made available to purchasers or prospective purchasers.

7. Failing to clearly reveal orally, prior to the time the subscription contract is signed by the customer:

(a) The name, the exact number of issues, and the exact number of months of service of each publication covered by the contract;

(b) The total cost of each publication and all the publications covered by the contract; and

(c) The downpayment required and the number, amount, and due dates of all installment payments.

8. Representing, directly or indirectly, that a subscription contract or other purchase agreement is a "preference list," "guarantee," "route slip" or any kind of document other than a contract or agreement; or misrepresenting, in any manner, the nature, kind or legal characteristics of any document.

9. Failing, clearly, emphatically and unqualifiedly to reveal orally and in writing to each purchaser or prospective purchaser before execution, the identity, nature and legal import of any document they are requested or required to execute in connection with the purchase of any product or service.

10. Attempting, by the use of telephone calls, printed matter, or any other means, to harass or intimidate customers in order to effect payment of any account, or representing directly or indirectly, that in the event of non-payment or delinquency of any account or alleged debt arising from any subscription contract or other purchase agreement, the general or public credit rating or standing of any person may be adversely affected, unless consenting parties refer the information concerning such delinquency to a bona fide credit reporting agency; or that legal action may be instituted unless consenting parties in good faith intend to institute legal action against each alleged debtor to whom such representation is made; or misrepresenting, in any manner, the action, or results of any action which may be taken to effect payment of any such account or alleged debt.

11. Cancelling subscription contracts for any reason other than (a) breach by the subscriber or (b) in the event of the discontinuance of publication or other unavailability of any publications subscribed for, without either arranging for the delivery of publications already paid for or promptly refunding money on a pro rata basis for all undelivered issues of publications for which payment has been made in advance.

12. Contracting for any sale in the form of a subscription contract or other purchase agreement which shall become binding on the purchaser prior to midnight of the third day, excluding Sundays and legal holidays, after the date of signing by the purchaser.

13. Failing to disclose, orally prior to the time of sale and in writing on any subscription contract or other purchase agreement signed by the purchaser, with such conspicuousness and clarity as likely to be observed and read by such purchaser, that the purchaser may rescind or cancel the sale by mailing a notice of cancellation to consenting parties' address prior to midnight of the third day, excluding Sundays and legal holidays, after the date of the sale.

14. Failing to provide a separate and clearly understandable form, showing the contract number, date signed by the subscriber and the name and address of the dealer or consenting party subsidiary, which the purchaser may use as a notice of cancellation.

15. Failing to furnish to each subscriber at the time of his signing of the subscription contract a duplicate original of the contract showing date signed by the customer and name of salesman together with his agency's address and telephone number and showing on the same side of the page, above or adjacent to the place for the customer's signature, the exact number and name of the publications being subscribed for; the number of issues for each; the downpayment required; the number, dollar amount and due dates of each installment payment; amount and rate of finance charge, if any; the charge, if any, for late payment and the conditions under which such charge shall be assessed, and the total price for each and all such publications.

16. Failing to furnish with each coupon book initially provided to each subscriber a copy of the contract showing all changes since the initial signing, and setting forth the final terms of the contract.

17. Failing to include on the cover of each coupon book furnished to a subscriber:

(a) a statement showing the total number of coupons in the book, the dollar amount of each such coupon, the total dollar amount of all such coupons, and

(b) a legend stating: "Check the number of coupons in this book and their amounts against your original subscription contract."

18. In the event of the discontinuance of publication, or other unavailability, of any magazines subscribed for, at any time during the life of the contract, failing to offer the subscriber the right to substitute one or more magazines or other publications, or the extension of subscription periods of magazines already selected.

19. Failing or refusing to cancel, at the subscriber's sole option, all or any portion of a subscription contract entered into after entry of this order whenever any misrepresentation prohibited by this order has been made.

20. Furnishing or otherwise placing in the hands of others the means and instrumentalities by and through which the public may be misled or deceived in the manner or as to things prohibited by this order.

It is further ordered, That:

(a) The consenting parties herein deliver, by registered mail, a copy of this decision and order to each of their present and future

dealers or franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors, or other representatives who sell, make or attempt to make, collections for the account of any consenting parties hereto, promote or distribute the products or services included in this order;

(b) The consenting parties provide each person so described in Paragraph (a) above with a form, returnable to the consenting parties and to the Commission, clearly stating his intention to be bound by and to conform his business practices to the requirements of this order;

(c) The consenting parties inform all such present and future dealers or franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors, or other representatives who sell, make or attempt to make collections for the account of any of the consenting parties hereto, promote or distribute the products or services included in this order that the consenting parties shall not use any third party, or the services of any third party unless such third party agrees to and does, file notice with the consenting parties and the Commission that it will be bound by the provisions contained in this order;

(d) If such party will not agree to so file notice with the consenting parties and the Commission and be bound by the provisions of the order, the consenting parties shall not use such third party, or the services of such third party to solicit subscriptions or make or attempt to make collections;

(e) The consenting parties so inform the persons so described in Paragraph (a) above that the consenting parties are obligated by this order to discontinue dealing with those persons who continue on their own the deceptive acts or practices prohibited by this order;

(f) The obligations of consenting parties as set forth in Paragraphs (a) through (e) above and in Paragraphs (g) and (h) hereafter of this order shall, with respect to persons engaged solely to make, or attempt to make, collections for the account of any of the consenting parties, apply only to compliance with those provisions of the order relating to said activity and that said persons so engaged be required under this order only to conform their practices to Paragraph 10 of this order;

(g) The consenting parties institute and continue for any period they are engaged in practices covered by this order a program of continuing surveillance adequate to reveal whether the business operations of each of said persons so engaged conform to the requirements of this order;

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(h) The consenting parties discontinue dealing with the persons so engaged, revealed by the aforesaid program of surveillance, who continue on their own deceptive acts or practices prohibited by this order.

It is further ordered, That the consenting parties herein shall notify the Commission at least 30 days prior to any proposed change in the structure of any of the corporate consenting parties 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 respective corporations which may affect compliance obligations arising out of this order.

It is further ordered, That the consenting parties 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.

Chairman Kirkpatrick not participating.