

CADENCE INDUSTRIES CORPORATION, ET AL.

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

Docket C-2508. Complaint, Mar. 25, 1974—Decision, Mar. 25, 1974

Consent order requiring a New York City, seller and distributor of encyclopedia and other educational materials and its wholly-owned subsidiary in Philadelphia, Penna., among other things to cease using misrepresentations to sell their publications or other merchandise offered in continuity programs; and to make specific factual disclosures in connection with their subscription solicitations. The order also requires the companies to establish and implement procedures relating to advance notification, rejection and return of merchandise, adjustments, and cancellation of subscriptions.

Appearances

For the Commission: *Edward D. Steinman.*

For the respondents: *Pro se.*

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 Cadence Industries Corporation, a corporation and Curtis Books, 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 public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Cadence Industries Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 641 Lexington Avenue, New York, N.Y.

Respondent Cadence Industries Corporation dominates, controls, and furnishes the means, instrumentalities, services and facilities for, and condones and approves the acts and practices of its subsidiary corporation, Curtis Books, Inc.

Respondent Curtis Books, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 841 Chestnut Street, Philadelphia, Pa. It is a wholly-owned subsidiary corporation of the respondent Cadence Industries Corporation, and sells and distributes publications or other items of merchandise through advertisings and mailings. Its volume of business has been, and is substantial.

PAR. 2. Respondent Cadence Industries Corporation through its subsidiary corporation, Curtis Books, Inc., is now, and for some time last past has been, engaged in the advertising, offering for sale, sale or distribution of encyclopedias, reference or educational materials and other publications or other items of merchandise to the general public, and in the inducement and collection of payments for said publications or other items of merchandise from members of the general public. Its volume of business has been, and is substantial. In addition, respondent Cadence Industries Corporation, directly and indirectly, profits and benefits by and through the acts and practices of its wholly-owned subsidiary, Curtis Books, Inc., including the acts and practices hereinafter set forth.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause, and for some time last past have caused, said publications or other items of merchandise to be shipped or distributed from their places of business or from their sources of supply to purchasers and prospective purchasers thereof located in the various states of the United States other than the state where such publications or other items of merchandise was shipped or distributed. Furthermore, respondents disseminate, and have disseminated through the U. S. Mail advertising material for the promotion of such publications or other

items of merchandise to recipients located in states other than the state of origination of such mailings. In connection with such publications or other items of merchandise, respondents cause and have caused the mailing of invoices, collection notices and various other commercial papers or documents, for the purpose of inducing and collecting payment for said publications or other items of merchandise, among and between the several states of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in such publications or other items of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, respondents have disseminated and are disseminating promotional material relating to continuity book programs. Such promotional material is distributed in mass through the U.S. Mail for the purpose of inducing the recipient of such material to become a subscriber to said continuity book programs. A continuity book program is a method of distribution whereby persons receive individual volumes of a set of publications on an approval basis.

The promotion material disseminated by respondents advises the recipient of such material of the availability of obtaining the first volume of a set of publications without cost in return for the recipient's agreement to become a subscriber to respondents' continuity book program. While placing extensive emphasis on the virtues of the program and on the minimal obligation of the recipient, respondents' promotional material does not contain adequate material disclosures of the fact that only the first few volumes of the set of publications are mailed to subscribers singly and individually with the remaining volumes being mailed to subscribers by means of bulk shipments. Among and including the statements and representations set forth in said promotional material, but not all inclusive thereof, are the following:

The Audubon Nature Encyclopedia

[Return coupon mailed by recipient to respondents]

Please send me Free, without any obligation of any kind, VOLUME ONE OF THE AUDUBON NATURE ENCYCLOPEDIA.

If I do not wish to see later books in the series, I will notify you within ten days after my free volume arrives. Otherwise, I understand that you will send me a new volume every four weeks for my free examination. I am under no obligation to purchase any minimum number of volumes, and may request that you discontinue future shipments at any time. For any book I decide to keep after the free-examination period, you will bill me at the low bargain rate of just \$3.98 plus shipping. Regardless of whether I elect to see later volumes in THE AUDUBON NATURE ENCYCLOPEDIA, Volume One is mine to keep without charge.

* * * * *

[Advertising Piece]

Let me assure you that Volume I is *actually free*. If you decide that you do not want any more volumes, you simply tell us. You will never receive a bill—you will never receive another volume—no salesman will ever call on you—you *will never* have to return your free volume.

Perhaps you say to yourself: "I know all about buying books by mail. They will send books that I have not ordered and then send me bills for these unordered books."

This cannot happen because this is *not* a Book Club. There are no monthly cards to return. Once you tell us to CANCEL, we CANCEL. You never receive another book.

The United States Encyclopedia of History
[Advertising Piece]

Accept Volume One FREE—Without Obligation of Any Kind!

Then, if you wish to own the volumes that follow, you will enjoy a superbly attractive bargain. Elsewhere, you might expect to pay upwards of twice as much for books of similar value. But you are privileged to examine each new volume as soon as it is published—one every four weeks—*completely on approval* * * * and to purchase, if you're impressed, for *just \$3.98* plus shipping.

Remember, *your first book is free*—our gift to you. After that, *you do not commit yourself* in any way! You enjoy the option of buying *only* those books you really want to buy—as many or as few as you choose! And you will never be asked to decide until *after* you've had ten days to approve them.

PAR. 5. Through the use of said statements or others of similar import and meaning but not specifically set forth herein, respondents have represented, and are continuing to represent, directly or by implication:

a. That subscribers to respondents' continuity programs are accorded the option of receiving a single book at a time, and thereby are afforded the opportunity to receive and review on approval each book separately and to reject or accept same, until the expiration of the continuity programs.

b. That no further volumes of books will be received after said subscribers have notified respondents to cancel their subscriptions to the programs.

c. That persons who subscribe to respondents' continuity programs do so without risk or obligation.

PAR. 6. In truth and in fact:

a. Subscribers to respondents' continuity programs are not accorded the option of receiving a single book at a time, and thereby are not afforded the opportunity to receive and review on approval each book separately and to reject or accept same, until expiration of their continuity programs. Respondents do not adequately advise subscribers of the material fact, when the subscribers initially receive promotional material concerning the continuity programs, that all but the first few books are shipped in mass by means of single bulk shipments.

b. Subscribers to respondents' continuity programs, in many in-

stances, continue to receive volumes of books after notifying respondents to cancel their subscriptions to the programs.

c. Subscribers to respondents' continuity programs are subject to risks or obligations. Once a person subscribes to the continuity programs, respondents impose the following duties or obligations on the subscribers: must notify respondents to prevent shipment of additional books; must return to respondents all books found unacceptable; must pay for all books not returned to respondents. Subscribers also incur the risk that due to delays in mailing delivery or computer error, they will receive unordered merchandise or incorrect billings for books that have either been returned to respondents or for books that have been shipped to subscribers after said subscribers cancelled their subscription to the continuity programs.

Therefore, respondents' statements, representations, acts and practices, and their failure to adequately disclose material facts, as set forth in Paragraphs Four through Six, hereof, were and are, false, misleading, deceptive and unfair.

PAR. 7. In the further course and conduct of their business, as aforesaid, a substantial majority of the persons who initially subscribe to any of respondents' continuity book programs subsequently cancel or otherwise terminate their relationship with respondents prior to shipment of all of the volumes of books contained in said continuity programs. Respondents have failed to establish and implement adequate procedures to insure that subscribers who subsequently cancel or otherwise terminate their relationship with respondents will not receive volumes of books from respondents after their severance from the continuity programs.

Furthermore, respondents have failed to adequately advise their subscribers of the possibility of mail delivery delays or computer errors which make it necessary and imperative for said subscribers to exercise due care in effecting cancellation so as to prevent shipment of volumes of books after said subscribers have attempted to cancel their subscriptions to the continuity programs.

As a result of respondents' failure to establish and implement adequate cancellation procedures and their failure to adequately inform subscribers as aforesaid, subscribers have received unauthorized, unwanted shipment of books and have received repeated, unrelenting mailings of bills, dunning letters, and similar correspondence relating to such books. Due to receipt of such books, bills and dunning letters, subscribers have had to expend their time and energies to dispose of the books sent to them and to attempt to correct respondents' erroneous billing notices.

Therefore, respondents' failure to establish and implement cancella-

tion procedures and their failure to adequately disclose material facts, as set forth hereinabove, were and are false, misleading, deceptive and unfair.

PAR. 8. 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 publications and other items of merchandise of the same general kind and nature as sold by respondents.

PAR. 9. The use by respondents of the aforesaid unfair, and false, misleading and deceptive statements, representations and practices and the failure to disclose material facts, have had, and now have, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that such statements and representations were, and are, true and complete, or into the purchase or retention, and payment for, substantial quantities of said publications and other items of merchandise by reason of said erroneous and mistaken belief.

PAR. 10. 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 Consumer Protection 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

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 hereupon accepted the executed consent

1504 FEDERAL TRADE COMMISSION DECISIONS

Decision and Order

83 F.T.C.

agreement and placed such agreement on the public record for a period of thirty (30) days, and now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Cadence Industries Corporation 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 641 Lexington Avenue, New York, N.Y.

2. Respondent Curtis Books, 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 841 Chestnut Street, Philadelphia, Pa.

3. 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 Cadence Industries Corporation, a corporation, and Curtis Books, Inc., a corporation, their successors and assigns, and their officers, and respondents' agents, representatives, employees, independent contractors, directly or through any corporation, subsidiary, division, franchisee or other device, in connection with the advertising, offering for sale, sale or distribution of any encyclopedia, reference or educational material or any other publication or other item of merchandise through the use of any program, or method of sale or distribution through the mail, that provides or purports to provide for the delivery of any of said publications or other items of merchandise to any person at regularly scheduled intervals on an approval basis, and in connection with the inducement or collection of payments for such publications or other items of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, orally or in writing that:

(a) Any person has the option to receive each publication or other item of merchandise, separately and individually, and to accept or reject same, unless such person is allowed in all instances to purchase or reject each such publication or other item of merchandise separately and individually.

(b) Any person will not receive any further publication or other item of merchandise after respondents receive a clear and unambiguous notification of his cancellation of any such

program, method of sale or distribution unless such are the facts; or misrepresenting, in any manner, any consequence resulting from any person's cancellation of his participation in any such program, method of sale or distribution.

(c) Any person incurs no risk or obligation by joining or participating in any such program, method of sale or distribution, unless such is the fact; or misrepresenting, in any manner, any condition, right, duty or obligation imposed on said person.

2. Disseminating or causing the dissemination of, any advertisement, which is accompanied by a return coupon, an order form, or any other method by which the recipient can subscribe to such program, method of sale or distribution, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which fails to disclose in a clear, unqualified and conspicuous manner:

(a) A description of the conditions and terms of any such program, method of sale or distribution, and the duties and obligations of any subscriber thereto.

(b) A description of each publication or other item of merchandise, the billing charge to be made therefor, the anticipated total number of publications or other items of merchandise included in any such program, method of sale or distribution, the number of publications or other items of merchandise included in each shipment of such items, and the number of and the intervals between each such shipment.

(c) A description of the procedures, and the time limitations for refusing to accept delivery, and for rejecting after examination and for returning any publication or other item of merchandise, and a description of the procedures for the application of allowances or credits against billing charges for any unwanted publication or other item of merchandise that has been rejected or returned; and

(d) That in order for any communication, including any cancellations, to be processed by respondents prior to the next shipment of any publication or other item of merchandise, such communication must be received by respondents no later than the date stated on the invoice as the date on which respondents will initiate processing of such shipment; and that this procedure is necessitated by delays in mail delivery and in computer processing.

3. Failing to disclose, clearly and conspicuously, on any return coupon, order form or any other document used for responding to

any such program, method of sale or distribution, the following information: (a) the anticipated total number of publications or other items of merchandise included in any such program, method of sale or distribution; (b) the number of publications or other items of merchandise included in each shipment of such items; and (c) the number of the intervals between each such shipment.

4. Failing to disclose, clearly and conspicuously, in conjunction with delivery of any publication or other item of merchandise sent to any subscriber, the anticipated date on which respondents will initiate processing of the next shipment of any such item.

5. Failing to establish and implement a procedure whereby respondents will provide each subscriber with the notification set forth in Paragraph 4, *supra*, at least 15 days prior to the anticipated processing date and any subsequent shipment.

6. Failing to credit, for the full invoiced amount thereof, the return of any publication or other item of merchandise sent to a subscriber, and to guarantee to the postal service or the subscriber postage adequate to return such publication or other item of merchandise to the respondents, when:

(a) The publication or other item of merchandise is sent to a subscriber after the respondents have received a notice of cancellation prior to the date disclosed in conjunction with the immediately preceding shipment as required by Paragraph 4, *supra*; or

(b) The notice of cancellation is received by the respondents after the date disclosed pursuant to Paragraph 4, *supra*, but has been mailed by the subscriber and postmarked at least three days prior to the date disclosed as aforesaid.

7. Sending any publication or other item of merchandise to any subscriber, or mailing any bill or invoice therefor, after respondents have received notification of cancellation from said subscriber prior to the date upon which respondents may initiate the processing for shipment of said publication or other item of merchandise pursuant to Paragraph 6, *supra*.

8. Failing to do the following, after receipt of a claim for adjustment in connection with any bill or invoice or any defense raised by any alleged debtor:

(a) Make any such adjustment within fourteen (14) days of receipt of such claim; or

(b) Acknowledge the receipt of the claim or defense within fourteen (14) days of receipt by respondents and suspend all collection procedures with such alleged debtor until twenty-

five (25) days after complying with the procedure set forth in (c) below.

(c) Make the requested adjustment and acknowledge the validity of the claim or defense raised within sixty (60) days, or within said period, inform the alleged debtor in writing of respondents' version of the facts alleged in the claim or defense.

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

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents 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 corporations 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 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

HOLIDAY MAGIC, INC., ET AL.

Docket 8834. Interlocutory Order, Mar. 26, 1974

Order deferring ruling on complaint counsel's motion to amend complaint by substituting for decedent respondent William Penn Patrick the executor of his estate; parties instructed that Commission will hear oral argument on merits of this matter and such additional arguments on the motion as the parties might like to present.