

Complaint

86 F.T.C.

IN THE MATTER OF  
MARSHALL CAVENDISH CORPORATION

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

*Docket C-2679. Complaint, July 14, 1975—Decision, July 14, 1975*

Consent order requiring a New York City seller and distributor of encyclopedia and other educational material, among other things to cease distributing any product through the use of a continuity program that provides for the delivery on approval any product at intervals with the balance being sent in one or more multi-unit shipments.

*Appearances*

For the Commission: *Edward D. Steinman.*

For the respondent: *Peter D. Standish, Weil, Gotshal & Manges,*  
New York City.

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 Marshall Cavendish Corporation, a corporation, hereinafter referred to as respondent, has 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 Marshall Cavendish 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 110 E. 59th St., New York, N.Y.

PAR. 2. Respondent 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 material 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.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent now causes, and for some time last past has caused, said publications or other items of merchandise to be shipped or distributed from its places of business or from its 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 were shipped or distributed. Furthermore, respondent disseminates, and has 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, respondent causes and has 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. Respondent maintains, at all times mentioned herein has 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 its business, respondent has and is 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 respondent is both voluminous and verbose. The recipient of such material is advised 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 respondent's continuity book program. While placing extensive emphasis on the virtues of the program and on the minimal obligation of the recipient, respondent's 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 International Wildlife Encyclopedia*

[Return coupon mailed by recipient to respondent]

As a subscriber you will be notified in advance of all future shipments. You may reject any shipments simply by notifying us. Also, if not completely delighted with any volume after FREE examination in your home, you may return it at our expense and owe nothing.

\* \* \* \* \*

You may cancel AT ANY TIME after taking as many or as few volumes as you like -

even none at all if you so choose. The magnificent FIRST VOLUME is yours to keep ABSOLUTELY FREE in any case.

*Family, Life and Health Encyclopedia*

[Advertising piece]

As publishers of the FAMILY, LIFE AND HEALTH ENCYCLOPEDIA, we are frankly puzzled!

You see, we can't imagine why *everyone* doesn't send in for their *free* copy of volume one - a big, deluxe library volume, filled with pictures - and all absolutely *free*, with no obligation to buy another book ever!

\* \* \* \* \*

You will *not* receive a bill. You will *not* receive another volume, *unless you wish*. If you decide that you do not want any more volumes simply tell us.

Perhaps you say to yourself; "I know all about buying books by mail. They will send me 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.

*Man, Myth and Magic*

[Advertising piece]

There is absolutely no need for you to decide now whether or not you would like additional volumes of Man, Myth and Magic. *You do not obligate yourself in any way by sending for your free first volume.* It is our complementary gift to you!

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

(a) That subscribers to respondent's 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 respondent to cancel their subscriptions to the programs.

(c) That persons who subscribe to respondent's continuity programs do so without risk or obligation.

PAR. 6. In truth and in fact:

(a) Subscribers to respondent's 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. Respondent does 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 respondent's continuity programs, in many instances, continue to receive volumes of books after notifying respondent to cancel their subscriptions to the programs.

(c) Subscribers to respondent's continuity programs are subject to risks or obligations. Once a person subscribes to the continuity programs, respondent imposes the following duties or obligations on the subscribers: must notify respondent to prevent shipment of additional books; must return to respondent all books found unacceptable, must pay for all books not returned to respondent. 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 respondent or for books that have been shipped to subscribers after said subscribers cancelled their subscription to the continuity programs.

Therefore, respondent's statements, representations, acts and practices, and its 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 its business, as aforesaid, a substantial majority of the persons who initially subscribe to any of respondent's continuity book programs subsequently cancel or otherwise terminate their relationship with respondent prior to shipment of all of the volumes of books contained in said continuity programs. Respondent has failed to establish and implement adequate procedures to insure that subscribers who subsequently cancel or otherwise terminate their relationship with respondent will not receive volumes of books from respondent after their severance from the continuity programs.

As a result of respondent's failure to establish and implement adequate cancellation procedures, subscribers have received unauthorized, unwanted shipment of books and have received repeated, unrelented 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 respondent's erroneous billing notices.

Therefore, respondent's failure to establish and implement adequate cancellation procedures were and are unfair acts and practices.

PAR. 8. In the course and conduct of its business, and at all times mentioned herein, respondent has been, and now is, 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 respondent.

PAR. 9. The use by respondent of the aforesaid unfair, and false, misleading and deceptive statements, representations and practices and the failure to disclose material facts, have had, and now has, 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 respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's 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 respondent named in the caption hereof, and the respondent 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 respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has 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 for a period of sixty (60) days, 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 Marshall Cavendish 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 110 E. 59th St., New York, N.Y.

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

### ORDER

*It is ordered*, That respondent Marshall Cavendish Corporation, a corporation, its successors and assigns, and its officers, and its agents, representatives, employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale or sale, inducing or collecting payments for, and distribution of any encyclopedia or educational series of books, or of any merchandise, hereinafter such books and merchandise sometimes collectively referred to as products, through the use of a continuity program that provides contractually for the delivery, on an approval basis, of any of said products to any person at intervals, with the balance of the program sent in one or more multi-unit shipments, 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:

(a) Any person has the option to receive each product, separately and individually, and to accept or reject same, unless such representation is true.

(b) Any person will not receive any further products after the respondent has received and processed a properly identified notice of his cancellation of any such continuity program, unless such representation is true; or misrepresenting, in any manner, the consequences resulting from any person's cancellation of his participation in any such continuity program.

(c) Any person incurs no risk or obligation by joining any such continuity program unless such representation is true; or misrepresenting, in any manner, any condition, right, duty or obligation imposed on said person.

2. Disseminating, or causing the dissemination of, any advertisement for such continuity program 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 and conspicuous manner a description of the material conditions and terms of any such continuity program, and the material duties and obligations of any subscriber thereto, including:

(a) A description of each product, the billing charge to be made therefor, the anticipated total number of products included in any such

continuity program, the number of products included in each shipment, except that as to the last two shipments, respondent may instead disclose the approximate number of volumes in the second to last shipment and the fact that the last shipment contains the balance of the products to be sent, and the number of and the approximate intervals between each such shipment.

(b) A description of the procedures, including any time limitations, for cancellation prior to delivery, and for rejecting after examination by returning any product, and the fact that the respondent will grant an allowance or credit against billing charges for any unwanted product that has been rejected or returned pursuant to the terms of the continuity program; and

(c) That in order for any communication, including any cancellation, to be processed by the respondent prior to the shipment of any product, such communication must be received by the respondent within the time period provided to the subscriber in accordance with Paragraph 4, *infra*.

3. Failing to disclose, clearly and conspicuously, on any return coupon, order form or any other document used for responding to any such continuity program offered, and, in magazine or newspaper advertising, in immediate and close conjunction with any return coupon, order form or any other document used for responding to any such continuity program offered, the following information:

(a) The anticipated total number of products included in any such continuity program;

(b) The number of products included in each shipment, except that as to the last two shipments, respondent may instead disclose the approximate number of volumes in the second to last shipment and the fact that the last shipment contains the balance of the products to be sent; and

(c) The number of and the approximate intervals between each such shipment.

4. Failing to notify the subscriber subsequent to enrollment, clearly and conspicuously, in conjunction with the delivery of products sent to any subscribers, of the time period or periods after which the respondent will initiate processing of any future shipment or shipments.

5. Failing to establish and implement adequate procedures so that the subscriber will be provided with any such notifications required by Paragraph 4, *supra*, at least 15 days prior to the anticipated processing date of any subsequent shipment.

6. Failing to advise the subscriber, clearly and conspicuously, in close conjunction with the notification required in Paragraph 4, *supra*,

that the subscriber must advise the respondent prior to the anticipated processing date if any change is desired in the status of the subscriber's account.

7. Preparing shipping labels for any shipment of any product in such continuity program for which the recipient will incur a monetary obligation, until at least four days after the anticipated processing date established pursuant to Paragraph 4, *supra*, in connection with that shipment.

8. Failing to establish and implement adequate procedures to credit, for the full invoiced amount thereof, any properly identified return of any product sent to a subscriber to any such continuity program, and to guarantee to the postal service or the subscriber postage adequate to return such product to the respondent, when:

(a) The product is sent to a subscriber after the respondent has received and processed such notice of cancellation prior to the anticipated processing date established in conjunction with the shipment of such product as required by Paragraph 4, *supra*; or

(b) Such notice of cancellation is received by the respondent within 4 days of the anticipated processing date established 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.

9. Failing to establish and implement adequate procedures to prevent the sending of any product to any subscriber to any such continuity program, or mailing any bill or invoice therefor, after the respondent has received and processed any properly identified notice of cancellation from said subscriber prior to the date upon which the respondent may initiate the processing for the shipment of said product pursuant to Paragraph 7, *supra*.

10. Failing to establish and implement adequate procedures to do the following, after receipt of any properly identified claim for adjustment in connection with any bill or invoice or any defense raised by any alleged debtor in connection with any such continuity program;

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

(b) Acknowledge the receipt of the claim or defense within 14 days of receipt by the respondent and suspend all collection procedures with such alleged debtor until 25 days after complying with the procedures set forth in (c), below; and

(c) Make the requested adjustment within 60 days, or, within said period, inform the alleged debtor in writing of the respondent's understanding of the facts alleged in the claim or defense.

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

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*It is further ordered,* That respondent notify the Commission at least 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 respondent herein shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

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