

Complaint

IN THE MATTER OF
GROLIER, INCORPORATED, ET AL.

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

Docket 8879. Complaint, Mar. 9, 1972 — Final Order, Mar. 13, 1978.*

This order, among other things, requires a New York City publisher and seller of encyclopedia and other educational materials and services, and its subsidiaries to cease misrepresenting, failing to make relevant disclosures, or using any other unfair or deceptive method to recruit door-to-door sales personnel, sell merchandise and services, and collect delinquent accounts.

Appearances

For the Commission: *Edward D. Steinman, David C. Fix and Robert D. Friedman.*

For the respondents: *Frederick P. Furth, Thomas R. Fahrner and Robert C. Cagen, Furth, Fahrner & Wong, San Francisco, Calif.*

[2] 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 Grolier, Incorporated, American Peoples Press, Inc., Americana Corporation, Americana Interstate Corp., Career Institute, Inc., Federated Credit Corp., Grolier Enterprises, Inc., Grolier Interstate, Inc., Grolier New Era Corp., Grolier Reading Programs, Inc., Madison Enterprises, Inc., R.H. Hinkley Company, Spencer International Press, Inc., The Grolier Society, Inc., and The Richards Company, Inc., corporations, 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 Grolier, Incorporated 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 575 Lexington Ave., New York, New York.

Respondent Grolier, Incorporated dominates, controls, and furnishes the means, instrumentalities, services and facilities for, and condones and approves the acts and practices of the corporations hereinafter referred to below.

* Complaint reported as amended by the administrative law judge's order of Jan. 10, 1973.

Respondent American Peoples Press, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at Sherman Turnpike, Danbury, Connecticut. It is a wholly-owned subsidiary corporation of respondent Grolier, Incorporated and sells and distributes books or other merchandise through advertising and mailings. Its volume of business has been, and is substantial. [3]

Respondent Americana 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 575 Lexington Ave., New York, New York. It is a wholly-owned subsidiary corporation of respondent Grolier, Incorporated and recruits persons by means of various methods of advertising, as hereinafter set forth, and trains said persons to work as door-to-door sales personnel. It sells and otherwise distributes encyclopedias, yearbooks, and other publications, merchandise or services to the general public, through various methods, including door-to-door canvassing, as hereinafter set forth. Its volume of business has been, and is substantial.

Respondent Americana Interstate Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 501 East Lange St., Mundelein, Illinois. It is a wholly-owned subsidiary corporation of respondent Grolier, Incorporated, and sells and distributes books or other merchandise through advertising and mailings. Its volume of business has been, and is substantial.

Respondent Career Institute, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 555 East Lange St., Mundelein, Illinois. It is a wholly-owned subsidiary corporation of respondent Grolier, Incorporated, and sells and distributes books or other merchandise through advertising and mailings. Its volume of business has been, and is substantial.

Respondent Federated Credit Corp. 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 575 Lexington Ave., New York, New York. It is a wholly-owned subsidiary corporation of respondent Grolier, Incorporated, and collects and induces payment of accounts for the subsidiary corporations of respondent Grolier, Incorporated by various meth-

ods, as hereinafter set forth. Its volume of business has been, and is substantial. [4]

Respondent Grolier Enterprises, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at Sherman Turnpike, Danbury, Connecticut. It is a wholly-owned subsidiary corporation of respondent Grolier, Incorporated and sells and distributes books or other merchandise through advertising and mailings. Its volume of business has been, and is substantial.

Respondent Grolier Interstate, 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 575 Lexington Ave., New York, New York. It is a wholly-owned subsidiary corporation of respondent Grolier, Incorporated and recruits persons by means of various methods of advertising, as hereinafter set forth, and trains said persons to work as door-to-door sales personnel. It sells and otherwise distributes encyclopedias, yearbooks, and other publications, merchandise or services to the general public, through various methods, including door-to-door canvassing, as hereinafter set forth. Its volume of business has been and is substantial.

Respondent Grolier New Era Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 575 Lexington Ave., New York, New York. It is a wholly-owned subsidiary corporation of respondent Grolier, Incorporated, and recruits persons by means of various methods of advertising, as hereinafter set forth, and trains said persons to work as door-to-door sales personnel. It sells and otherwise distributes encyclopedias, yearbooks, and other publications, merchandise or services to the general public, through various methods, including door-to-door canvassing, as hereinafter set forth. Its volume of business has been, and is substantial. [5]

Respondent Grolier Reading Programs, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at Sherman Turnpike, Danbury, Connecticut. It is a wholly-owned subsidiary corporation of respondent Grolier, Incorporated, and sells and distributes books or other merchandise through advertising and mailings. Its volume of business has been, and is substantial.

Respondent Madison Enterprises, Inc. is a corporation organized,

existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 635 Madison Ave., New York, New York. It is a wholly-owned subsidiary corporation of respondent Grolier, Incorporated, and recruits persons by means of various methods of advertising, as hereinafter set forth, and trains said persons to work as door-to-door sales personnel. It sells and otherwise distributes encyclopedias, yearbooks, and other publications, merchandise or services to the general public, through various methods, including door-to-door canvassing, as hereinafter set forth. Its volume of business has been, and is substantial.

Respondent R. H. Hinkley Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business located at 575 Lexington Ave., New York, New York. It is a wholly-owned subsidiary corporation of respondent Grolier, Incorporated, and recruits persons by means of various methods of advertising, as hereinafter set forth, and trains said persons to work as door-to-door sales personnel. It sells and otherwise distributes encyclopedias, yearbooks, and other publications, merchandise or services to the general public, through various methods, including door-to-door canvassing, as hereinafter set forth. Its volume of business has been, and is substantial. [6]

Respondent Spencer International Press, 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 575 Lexington Ave., New York, New York. It is a wholly-owned subsidiary corporation of respondent Grolier, Incorporated, and recruits persons by means of various methods of advertising, as hereinafter set forth, and trains said persons to work as door-to-door sales personnel. It sells and otherwise distributes encyclopedias, yearbooks, and other publications, merchandise or services to the general public, through various methods, including door-to-door canvassing, as hereinafter set forth. Its volume of business has been, and is substantial.

Respondent The Grolier Society, 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 575 Lexington Ave., New York, New York. It is a wholly-owned subsidiary corporation of respondent Grolier, Incorporated, and recruits persons by means of various methods of advertising, as hereinafter set forth, and trains said persons to work as door-to-door sales personnel. It sells and otherwise distributes encyclopedias.

yearbooks, and other publications, merchandise or services to the general public through various methods, including door-to-door canvassing, as hereinafter set forth. Its volume of business has been, and is substantial.

Respondent The Richards Company, 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 635 Madison Ave., New York, New York. It is a wholly-owned subsidiary corporation of respondent Grolier, Incorporated, and recruits persons by means of various methods of advertising, as hereinafter set forth, and trains said persons to work as door-to-door sales personnel. It sells and otherwise distributes encyclopedias, yearbooks, and other publications, merchandise or services to the general public, through various methods, including door-to-door canvassing, as hereinafter set forth. Its volume of business has been, and is substantial. [7]

PAR. 2. Respondent Grolier, Incorporated through its various organizational divisions and wholly-owned subsidiary corporations publishes, sells and otherwise distributes, throughout the world, textbooks, encyclopedias, reference or educational materials, training courses and teaching machines, or other publications, merchandise or services. It has established, acquired and operated a number of wholly-owned corporate subsidiaries as aforesaid, for the purpose of promoting, selling, or otherwise distributing, and collecting monies expended for said publications, merchandise or services from the trade or from the purchasing public. Its volume of business has been, and is substantial. In addition, respondent Grolier, Incorporated, directly and indirectly, profits and benefits by and through the acts and practices of its wholly-owned subsidiaries, 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, merchandise or services to be shipped and distributed from their places of business or from their sources of supply to purchasers and prospective purchasers thereof located in various States of the United States other than the state of origination, distribution or storage of said publications, merchandise or services. Respondents transmit and receive, and cause to be transmitted and received, invoices, checks, collection notices and various other commercial papers or documents in the course of advertising, selling, or otherwise distributing and collecting payment for said publications, merchandise or services 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, merchandise or services in commerce, as "commerce" is defined in the Federal Trade Commission Act. [8]

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two and Three hereof are incorporated by reference in Count I with respect to respondents Grolier, Incorporated, and its wholly-owned subsidiaries Americana Corporation, Grolier Interstate, Inc., Grolier New Era Corp., Madison Enterprises, Inc., R. H. Hinkley Company, Spencer International Press, Inc., The Grolier Society, Inc., and The Richards Company, Inc., as if fully set forth verbatim:

PAR. 4. In the course and conduct of their business, and for the purpose of recruiting persons for door-to-door solicitations, respondents disseminate advertisements in various publications of general circulation which contain statements concerning the nature of the advertised positions. In addition, during subsequent interviews with persons responding to said advertisements, respondents and their representatives or agents provide further details concerning the type of positions and the method of payment of persons engaged in such positions. Through the use of the aforesaid advertisements and by oral statements of respondents and their representatives or agents, respondents have represented, directly or by implication that:

1. Respondents are offering positions in such fields as "market research analysis," "public relations" or other non-selling fields.
2. Respondents are offering to train persons as "management trainees," "junior executives" or other positions of responsibility concerned principally with administrative office functions. [9]
3. Respondents are offering persons a guaranteed weekly or monthly salary in excess of \$100 per week or in excess of \$350 to \$500 per month, or other similar salaries.
4. Persons engaged by respondents contact other persons in their homes or places of business primarily for the purposes of conducting surveys, advertising promotions or for other non-selling purposes.

PAR. 5. In truth and in fact:

1. Respondents are not offering positions in the fields represented. To the contrary, respondents are recruiting persons, in the main, as salesmen and saleswomen in the door-to-door sale of respondents' publications, merchandise or services.
2. Respondents will not train persons for the positions represented. Persons hired by respondents are sent out to sell and are not trained to conduct administrative functions in an office.

3. Respondents do not, in all instances, reimburse persons in the amounts or in the manner represented. Due to the conditions or limitations imposed upon such persons, few if any, receive the guaranteed salary. Furthermore, respondents, in some instances, refuse to permit persons to be engaged under any arrangement other than a pure commission basis.

4. Persons engaged by respondents do not contact prospects in their homes or places of business primarily for the purposes represented by respondents. Such persons, in most instances, canvass neighborhoods in an attempt to solicit orders for respondents' publications, merchandise or services. [10]

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

PAR. 6. In the course and conduct of their business as aforesaid, and for the purpose of inducing members of the general public to purchase respondents' publications, merchandise or services, respondents through their sales representatives utilize various forms of promotional materials in conjunction with oral sales presentations containing statements concerning the purpose of the initial contact with the prospect, the identity of the solicitor, the nature of the offer and the terms of respondents' contracts or other agreements. In the foregoing manner, respondents and their sales representatives have represented, directly or by implication, that:

1. Respondents' sales representatives are contacting persons in their homes or places of business primarily for the purpose of conducting a survey, or a brand identification analysis relating to the marketing of respondents' publications, merchandise or services, or for purposes other than the sale of such merchandise.

2. Respondents' sales representatives will take only a few minutes to complete their presentations inside prospects' homes or places of business.

3. Persons contacted by respondents' sales representatives have been specially selected to receive respondents' offers.

4. Respondents are offering certain of their publications, merchandise or services without cost to persons agreeing to do any one or more of the following acts or similar acts:

a. Display the publications in a conspicuous location in their homes;

b. Write a letter evaluating the merits of the publications which may be used in advertising; [11]

c. Provide respondents with the names of persons interested in purchasing respondents' publications;

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d. Keep the publications current by purchasing respondents' yearbooks for a 10-year period or by purchasing respondents' Fact Research Service for 10 years;

e. Complete all installment payments for publications, merchandise or services, other than the publications, merchandise or services provided without cost, in a period less than 10 years; and

f. Pay a membership fee in order to participate in the Consumer Buying Educational Service which provides an opportunity for participants to purchase merchandise at a savings from the general retail prices for such merchandise.

5. The encyclopedias being offered by respondents' sales representatives to prospects are new publications; are publications which have not been previously available to the general public; or are editions which contain substantial editorial revisions from prior editions of the same publications.

6. Persons who purchase respondents' publications, in combination with other publications will realize a significant savings from the stated higher prices at which such publications have been sold by respondents in substantial quantities to the general public.

7.* The claimed retail prices of their publications are the prices at which such publications have been sold by respondents in substantial quantities to the general public. [12]

8. The various offers made available to prospects are of limited duration and prospects will not be given another opportunity to accept such offers.

9. Respondents' publications, merchandise or services have, in each instance when so represented, received bona fide endorsements or recommendations in the recent past from Better Business Bureaus, or from educational, religious, private or governmental institutions or from private persons.

10. Respondents provide financial terms to purchasers of their publications, merchandise or services such as annual payments for "10 years" or payments of "10¢ per day."

11. Persons subscribing to respondents' Fact Research Service receive answers to questions regarding any subject.

12. The answers provided by respondents' Fact Research Service are the product of detailed, exhaustive or original research generated by the specific questions asked by subscribers to said Service.

13. The answers provided by respondents' Fact Research Service can be used as suitable or acceptable substitutes for term papers, themes or other reports that may be required of students.

* Published as amended by the ALJ's order of Jan. 10, 1973.

14. All answers, supplied by respondents to subscribers to the Fact Research Service, will arrive within a few days after the date of submission of the subscribers' questions.

PAR. 7. In truth and in fact:

1. Respondents' sales representatives are not contacting persons in their homes or places of business primarily for the purpose of conducting a bona fide [13] survey, or a brand identification analysis relating to the marketing of respondents' publications, merchandise or services. To the contrary, the principal purpose for contacting such persons is to sell respondents' publications, merchandise or services.

2. Respondents' sales representatives do not ordinarily complete their presentations inside prospects' homes or places of business within only a few minutes. In actuality, a completed sales presentation frequently requires several hours.

3. Persons contacted by respondents' sales representatives have not been specially selected. Respondents, in fact, offer and sell their publications, merchandise or services to all members of the general public on a regular basis.

4. Respondents are not offering certain of their publications, merchandise or services without cost to any person who agrees to any one or more of the conditions set forth in Paragraph Six, subparagraph 4 herein. To the contrary, such conditions are not bona fide. Respondents, in many instances, do not require strict adherence to the agreed conditions. Furthermore, such conditions are used in an attempt to confuse persons into the erroneous belief that the amount of their monetary obligations to respondents does not include the cost of all the publications, merchandise or services obtained from respondents.

5. The encyclopedias being offered by respondents' sales representatives to prospects are not new publications. Such encyclopedias have been marketed to the general public for many years. Furthermore, in some instances, the only changes from earlier editions are minor editorial revisions. [14]

6. Persons who purchase respondents' publications in combination with other publications will not realize a significant savings from the stated higher prices at which such publications have been sold by respondents in substantial quantities to the general public. To the contrary, respondents have made only isolated or insignificant sales at the stated higher prices.

7.* The claimed retail prices of respondents' publications are not

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the prices at which such publications have been sold by them in substantial quantities to the general public. Furthermore, respondents have made only isolated or insignificant sales at the represented retail prices.

8. The various offers made available to prospects are not of limited duration and prospects, in most instances, can receive other opportunities to accept such offers.

9. Respondents' publications, merchandise or services have not, in each instance when so represented, received bona fide endorsements or recommendations in the recent past from Better Business Bureaus, or from educational, religious, private or governmental institutions or from private persons.

10. Respondents do not provide financial terms to purchasers of their publications, merchandise or services as represented. To the contrary, respondents, in most instances, require monthly installment payments of amounts which are substantially greater than "10¢ per day" or require payments to be made within a time period less than "10 years." [15]

11. Persons subscribing to respondents' Fact Research Service do not receive answers to questions regarding all subjects. To the contrary, respondents do not, in most instances, provide answers to questions concerning such subjects as medical, legal or financial matters.

12. The answers provided by respondents' Fact Research Service are not the product of detailed, exhaustive or original research generated by the specific question asked by the subscriber to said Service. For the most part, such answers are form responses containing general information not related to the specific inquiry.

13. The answers provided by the Fact Research Service, in most instances, are not suitable or acceptable substitutes for term papers, themes or reports that may be required of students.

14. The answers, supplied by respondents to subscribers to the Fact Research Service, in many instances, do not arrive within the period of time represented.

Therefore, the statements, representations, acts and practices set forth in Paragraphs Six and Seven hereof were and are unfair, and false, misleading and deceptive.

PAR. 8. In the further course and conduct of their business, respondents have conducted various contests and utilized other promotional devices for the purpose of obtaining leads to persons who will allow respondents' sales representatives into said persons' homes or for the purpose of inducing said persons to attend meetings held by respondents. The inducements used to achieve the above

purposes are purportedly free merchandise, receipt of informational brochures obtained upon return of reply cards contained in promotional material, gift certificates entitling recipients to all expense paid vacations at resorts of their choice or other valuable considerations. [16]

Persons who enter any such contest, or who receive informational brochures, or who are told that they have been awarded a valuable gift are not informed by respondents of the material fact that as a result of entering the contest, receiving the informational brochures, or as a prerequisite to receiving a valuable gift or award, such persons will be subjected to a lengthy sales presentation for respondents' publications, merchandise or services. In many instances, such persons would not have accepted such inducements if respondents' actual purpose had been made known.

In addition, respondents have misrepresented the actual value of the aforesaid gift certificates. Persons are led into the erroneous belief that the certificates will enable such persons to have an all expense paid vacation at a resort of their choice. Respondents fail to advise such persons that the certificates do not include expenses such as transportation and meals. Such limitations and other restrictions imposed on the use of the certificates severely limit their actual value.

Therefore, the statements, representations, acts and practices, and the failure to disclose material facts as aforesaid were and are unfair and false, misleading and deceptive.

PAR. 9.* In the further course and conduct of their business, and for the primary purpose of promoting the sale of their encyclopedias or similar publications or services, respondents, through their sales representatives have utilized programs or other promotional selling devices which appeal to the emotional concerns of individuals for their own educational or intellectual development or of parents for the proper educational development of their children.

Through the use of "The Child Development Program," the "New Era Young Mothers Club," and "Programmed Learning" or other similar programs, [17] respondents' sales representatives contact prospects with young children and falsely represent, directly or by implication, that said programs or devices will provide tangible or intangible educational benefits or services such as periodic teaching guides designed to meet each child's educational or academic needs, or periodic questionnaires evaluating the child's progress in the claimed educational program.

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By appealing to the emotional concerns of said persons through the use of false representations, as aforesaid, respondents persuade said persons to purchase respondents' publications, merchandise or services based on the aforesaid false representations of respondents, in some instances, confuse, confound or mislead such persons as to the purpose of said programs or devices which is to promote the sale of respondents' encyclopedias or similar publications or services in the regular course of respondents' business.

Therefore, the statements, representations, acts and practices as aforesaid, were and are false, misleading, deceptive and unfair.

COUNT II

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two and Three hereof are incorporated by reference in Count II with respect to respondents Grolier, Incorporated and its wholly-owned subsidiaries American Peoples Press, Inc., Americana Corporation, Americana Interstate Corp., Career Institute, Inc., Federated Credit Corp., Grolier Interstate, Inc., Grolier New Era Corp., Madison Enterprises, Inc., R.H. Hinkley Company, Spencer International Press, Inc., The Grolier Society, Inc., and The Richards Company, Inc., as if fully set forth verbatim:

PAR. 10. In the further course and conduct of their business and for the purpose of collecting debts allegedly due and owing respondents pursuant to contracts or other agreements relating to the purchase of respondents' publications, merchandise or services, respondents and their representatives or agents, in numerous instances, have attempted to induce payment of accounts, either due or delinquent as the case may be, by the sending of dunning letters, [18] notices or similar instruments in the United States mail which contain statements and representations in the form of harassment or threats, including but not limited to the representations set forth below. Through such means, respondents have represented to the aforesaid members of the public, directly or indirectly, that:

(a) The respondent companies sending such instruments are divided into separate bona fide functional departments or divisions such as collection departments or legal departments.

(b) Employees of the federal government who fail to pay debts are subject to dismissal from federal service pursuant to the Civil Service Code of Federal Regulations.

(c) Purchasers of respondents' publications or services who utilize the United States mail to obtain such items and who fail to pay

respondents or become delinquent in paying respondents are subject to prosecution for mail fraud under federal law.

(d) The respondents utilize the services of collection agencies, credit reporting companies or attorneys who disseminate credit information in a manner which will adversely affect the public or general credit rating of persons who have become delinquent in paying debts owed respondents.

(e) Letters or notices on the letterheads of attorneys or credit reporting companies are prepared or mailed by those individuals or concerns. [19]

(f) Respondents regularly transfer accounts to attorneys with instructions to institute suit or to take other legal steps to collect an outstanding debt.

PAR. 11. In truth and in fact:

(a) The respondent companies sending such instruments do not in each instance when so represented, have separate bona fide functional departments or divisions such as collection departments or legal departments.

(b) The Civil Service Code of Federal Regulations does not provide that federal employees are subject to dismissal from federal service for failure to pay outstanding debts. To the contrary, federal employees will not ordinarily be subject to dismissal unless it is demonstrated that the debt is just and the employee, after repeated attempts to arrange a satisfactory method of payment of the debt, has failed to pay said debt.

(c) Persons who have become delinquent in paying debts to respondents for publications or services received or ordered through the mail are not ordinarily prosecuted for mail fraud under federal law.

(d) The respondents, in some instances, do not utilize the services of collection agencies, credit reporting companies or attorneys who disseminate credit information in a manner which will adversely affect the public or general credit rating of persons who have become delinquent in paying debts owed respondents. [20]

(e) The letters or notices on the letterheads of attorneys or credit reporting companies are not prepared or mailed by said individuals or concerns. Said letters or notices are prepared or mailed, in many instances, by respondents. Replies or responses to said such mailings are forwarded unopened to respondents.

(f) Respondents do not regularly transfer accounts to attorneys with instructions to institute suit or to take other legal steps to collect outstanding debts.

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

COUNT III

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two and Three hereof are incorporated by reference in Count III with respect to respondents Grolier, Incorporated and its wholly-owned subsidiaries, American Peoples Press, Inc., Americana Interstate Corp., Inc., Career Institute, Inc., Grolier Enterprises, Inc. and Grolier Reading Programs, Inc., as if fully set forth verbatim:

PAR. 12. In the course and conduct of their business, respondents have and are disseminating advertisements in various publications of general circulation or in promotional materials mailed to members of the general public. By and [21] through such advertisements, respondents attempt to induce persons to become subscribers to continuity book promotion programs. A continuity book promotion program is a procedure whereby persons receive a single book on an approval basis. The aforesaid advertisements place emphasis on shipment of books, singly at intervals, without containing the material disclosure that all but a few of the books are mailed to subscribers by means of a bulk shipment. Among and including the statements and representations set forth in said advertisements, but not all inclusive thereof, are the following:

Step-Up Book Program

Accept your free book today. There's no obligation! When the book arrives, turn it over to your child and watch his reaction. If he's as pleased as I think he'll be, fine and dandy. You'll then be entitled to receive as many (or as few) additional STEP-UP BOOKS as you please, for the modest price of \$1.65 each, plus delivery. Books will be sent to you on *approval*, and you'll have 10 days to decide whether to keep a book or return it at my expense.

Companion Library

As a subscriber to the Companion Library you are not obligated to take any minimum number of selections—take as many as you wish, or none at all, and cancel your membership whenever you like by mailing any invoice with the simple word "CANCEL" written across it.

Dandelion Library

Your free Twin Book edition of PETER PAN and ALICE IN WONDERLAND is your introduction to this delightful and important program. It is also the first in a series of exciting DANDELION LIBRARY Twin Books that you and your child will greet with

PAR. 13. 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: [22]

(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 program.

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

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

PAR. 14. 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 the continuity programs. Respondents do not advise subscribers of the material fact, when the subscribers initially receive promotional materials concerning the continuity programs, that all but the first several books are shipped in mass by means of single bulk shipments. Furthermore, respondents, in some instances, have refused to continue shipping a single volume at a time when so requested by subscribers.

(b) Subscribers to respondents' continuity programs, in many instances, continue to receive volumes of books after notifying respondents to cancel their subscriptions to the programs. [23]

(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 mail delivery or computer error they will receive unordered merchandise or incorrect billings in the manner set forth in Paragraph Fifteen hereinafter.

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

PAR. 15. In the further course and conduct of their business,

respondents have attempted to promote the sale of substantial quantities of their publications through the manner and form set forth in Paragraph Twelve hereof. Respondents' material alteration of the conditions and terms of the continuity programs, as initially represented, from shipment of a single book at intervals to shipment of all the books in mass, places an unfair and undue burden on subscribers to notify respondents affirmatively in order to prevent shipment of books not expressly authorized by said subscribers. Furthermore, respondents have, in numerous instances, shipped the books in mass after subscribers have notified respondents within a reasonable time that the altered method of distribution was unacceptable. As a result of the unwanted, unauthorized mass shipment of books, subscribers have expended their time or energies to dispose of the books sent to them.

In addition, such subscribers are subject to repeated and unrelenting mailings of bills, dunning letters and the like for unwanted, unordered [24] merchandise which, in many instances, has been previously returned to respondents. It is evident that respondents' bulk method of distribution, as aforesaid, attempts to or has the effect of causing the purchase of respondents' books in a manner and quantity not contemplated by subscribers when the continuity programs were first offered by respondents.

Therefore, the acts and practices as aforesaid, were and are, unfair and false, misleading and deceptive.

COUNT IV

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Fifteen hereof are incorporated by reference in Count IV with respect to respondents Grolier, Incorporated and its wholly-owned subsidiaries American Peoples Press, Inc., Americana Corporation, Americana Interstate Corp., Career Institute, Inc., Federated Credit Corp., Grolier Enterprises, Inc., Grolier Interstate, Inc., Grolier Reading Programs, Inc., Madison Enterprises, Inc., Grolier New Era Corp., R. H. Hinkley Company, Spencer International Press, Inc., The Grolier Society, Inc., and The Richards Company, Inc., as if fully set forth verbatim:

PAR. 16. 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, merchandise and services of the same general kind and nature as that sold by respondents.

misleading and deceptive statements, representations and practices, and their failure to disclose material facts, as [25] alleged in Counts I through III, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, or into the purchase or retention of, and payment for substantial quantities of said publications, merchandise and services by reason of said erroneous and mistaken belief.

PAR. 18. 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.

Chairman Kirkpatrick did not participate.

INITIAL DECISION BY THEODOR P. VON BRAND,
ADMINISTRATIVE LAW JUDGE

OCTOBER 12, 1976

PRELIMINARY STATEMENT

The Commission issued a complaint on March 9, 1972, charging Grolier, Incorporated and 14 of its subsidiaries with violation of Section 5 of the Federal Trade Commission Act in connection with the sale of encyclopedias and other reference or educational materials, products or services. Respondents' answers denied the material allegations of the complaint.

Count I charges that Grolier, Incorporated and its wholly-owned direct selling subsidiaries have misrepresented: [2]

1. The nature of the positions and the compensation to be paid in connection therewith to prospective sales representatives;
2. The nature and purpose of consumer contacts;
3. The length of time a complete sales presentation will take in a prospective customer's home;
4. That prospective customers have been specially selected to receive respondents' offer;
5. That certain publications, merchandise or services are to be made available without cost if prospective customers agree to perform certain acts as, for example, to display the merchandise in a conspicuous place in their homes, write evaluation letters, furnish the names of other prospects or keep such publications current by

purchase of respondents' yearbooks or Fact Research Service for 10 years;

6. That the encyclopedias offered for sale are new or substantially revised editions;

7. That the claimed retail prices are the prices at which their publications have been sold in substantial quantities to the public;

8. That the offers made available to prospective customers are of limited duration;

9. That their merchandise had received certain bona fide endorsements;

10. The nature of the financial terms available;

11. The subject matter limitations on the Fact Research Service;

12. That the answers provided by the Fact Research Service are the product of detailed, exhaustive or original work generated by the subscriber's request; [3]

13. That Fact Research answers can be used as acceptable term papers, themes or other reports required of students; and

14. The time within which the Fact Research Service will respond to inquiries.

The complaint under this Count also charges as deceptive, respondents' use of contests or other promotional devices as a means of obtaining leads to prospective customers. It is alleged that there has been no disclosure that by participating therein, a customer will subject himself to a lengthy sales presentation.

Finally, Count I charges that, through the use and misrepresentation of programs such as "The Child Development Program," respondents have appealed to the emotional concerns of parents for their children and have misled customers as to the purpose of such programs, which is to promote the sale of encyclopedias or similar publications in the regular course of business.

Count II charges various unfair, deceptive and misleading acts and practices in connection with debt collection procedures.

Count III relates to the mail order operations. It alleges that respondents have misrepresented that subscribers to their continuity programs have the opportunity of receiving a single book at a time, with the option of receiving and reviewing each book separately until expiration of the continuity program; that no further volumes will be received after respondents have been notified by subscribers of their intention to cancel; and that persons who subscribe to the continuity program do so without risk or obligation. The complaint alleges in this connection that the subscribers are not initially advised of the material fact that all but

concludes with the allegation that "respondents' bulk method of distribution. . . attempts to or has the effect of causing the purchase of respondents' books in a manner and quantity not contemplated by subscribers when the continuity programs were first offered by respondents." [4]

The administrative law judge originally assigned to this proceeding supervised the pretrial hearings and presided over the evidentiary hearings up to his retirement in December 1974. His successor recused himself at respondents' request, and the case was assigned to the undersigned in February 1975. Much of the case was reheard in view of respondents' contention that the demeanor evidence of witnesses previously appearing had to be preserved. The record was closed on May 14, 1976.

This initial decision is based upon the entire record* including proposed findings of fact and conclusions of law and briefs and supporting memoranda filed by the parties, as well as their responses. The undersigned has also taken into account his observation of the witnesses who appeared before him and their demeanor. Proposed findings not herein adopted, either in the form submitted or in substance, are rejected either as not supported by the evidence or as involving immaterial matters.

FINDINGS OF FACT

I. IDENTITY OF RESPONDENTS AND THE NATURE OF THEIR BUSINESS

1. Respondent Grolier, Incorporated (Grolier, 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 575 Lexington Ave., New York, New York (Complaint, ¶ One; ¶ Two, Ans. of Grolier, Inc.). Respondent Grolier, Inc. publishes, sells and otherwise distributes textbooks, encyclopedias, reference or educational materials, training courses, teaching machines, and other publications, merchandise, and services (Complaint, ¶ Two; ¶ 20, Ans. of Grolier, Inc.). Its volume of business has been, and is, substantial (¶ 22, Ans. of Grolier, Inc.).

2. Respondent American Peoples Press, Inc. (American Peoples Press) is a wholly-owned corporate subsidiary of Grolier, Inc. (Complaint, ¶ One; ¶ 2, Ans. of American Peoples Press). Respondent American Peoples Press is a corporation organized under the laws of the State of Illinois (Complaint, [5] ¶ One; ¶ 2, Ans. of American

* Certain portions of the record were stricken where a witness ordered recalled did not appear or where the record of the recall hearings duplicated that compiled under the first administrative law judge.

Peoples Press). Its principal office and place of business was in Mundelein, Illinois (Tr. 16678-79). American Peoples Press sold and distributed books and other merchandise through advertising and mailings (Complaint, ¶ One; ¶ 2, Ans. of American Peoples Press). American Peoples Press ceased doing business by December 23, 1974 (Tr. 16679, 16711). Its volume of business has been substantial (¶ 2, Ans. of American Peoples Press).

3. Respondent Americana Interstate Corporation (Americana Interstate) is a wholly-owned corporate subsidiary of Grolier, Inc. (Complaint, ¶ One; ¶ 2, Ans. of Americana Interstate). Respondent Americana Interstate is a corporation organized under the laws of the State of Illinois (Complaint, ¶ One; ¶ 2, Ans. of Americana Interstate). Its principal office and place of business was at 501 East Lange St., Mundelein, Illinois (Tr. 16678-79). Americana Interstate sold and distributed books and other merchandise through advertising and mailings (Complaint, ¶ One; ¶ 2, Ans. of Americana Interstate). Americana Interstate ceased doing business by December 23, 1974 (Tr. 16679, 16711). Its volume of business has been substantial (¶ 2, Ans. of Americana Interstate).

4. Respondent Career Institute, Inc. (Career Institute) is a wholly-owned corporate subsidiary of Grolier, Inc. (Complaint, ¶ One; ¶ 2, Ans. of Career Institute). Respondent Career Institute is a corporation organized under the laws of the State of Illinois (Complaint, ¶ One; ¶ 2, Ans. of Career Institute). Its principal office and place of business was at 555 East Lange St., Mundelein, Illinois (Tr. 16678-79). Career Institute sold and distributed books through advertising and mailings (Complaint, ¶ One; ¶ 2, Ans. of Career Institute). Career Institute ceased doing business by December 23, 1974 (Tr. 16679, 16711). Its volume of business has been substantial (¶ 2, Ans. of Career Institute).

5. Respondent Grolier Enterprises, Inc. (Grolier Enterprises) is a wholly-owned corporate subsidiary of Grolier, Inc. (Complaint, ¶ One; ¶ 2, Ans. of Grolier Enterprises). Respondent Grolier Enterprises is a corporation organized, existing and doing business under the laws of the State of New York (Complaint, ¶ One; ¶ 2, Ans. of Grolier Enterprises). Its principal office and place of business is at Sherman [6] Turnpike, Danbury, Connecticut (Complaint, ¶ One; ¶ 2, Ans. of Grolier Enterprises). Grolier Enterprises sells and distributes books through advertising and mailings (Complaint, ¶ One; ¶ 2, Ans. of Grolier Enterprises; Tr. 16661). Its volume of business has been, and is, substantial (¶ 2, Ans. of Grolier Enterprises).

6. Respondent Grolier Reading Programs, Inc. (Grolier Reading

(Complaint, ¶ One; ¶ 2, Ans. of Grolier Reading Programs). Grolier Reading Programs is a corporation organized under the laws of the State of New York (Complaint, ¶ One; ¶ 2, Ans. of Grolier Reading Programs). Its principal office and place of business was at Sherman Turnpike, Danbury, Connecticut (Complaint, ¶ One; ¶ 2, Ans. of Grolier Reading Programs). Until 1971, Grolier Reading Programs sold and distributed books through advertising and mailings (Complaint, ¶ One; ¶ 2, Ans. of Grolier Reading Programs; Tr. 16643). Grolier Reading Programs has made no mailings on continuity book programs since the late summer of 1971 (Tr. 16644). Its volume of business has been substantial (¶ 2, Ans. of Grolier Reading Programs).

7. Respondent Americana Corporation (Americana) is a wholly-owned corporate subsidiary of respondent Grolier, Inc. (Complaint, ¶ One; ¶ 2, Ans. of Americana). Respondent Americana is a corporation organized under the laws of the State of Delaware (Complaint, ¶ One; ¶ 2, Ans. of Americana). Its principal office and place of business was at 575 Lexington Ave., New York, New York. Until 1972, Americana sold encyclopedias and other publications, merchandise, and services to the general public through various methods, including door-to-door canvassing (Complaint, ¶ One; ¶ 2, Ans. of Americana). After 1972, Americana ceased all business operations (RX 549). Its volume of business has been substantial (¶ 2, Ans. of Americana).

8. Respondent Spencer International Press, Inc. (Spencer) is a wholly-owned corporate subsidiary of respondent Grolier, Inc. (Complaint, ¶ One; ¶ 2, Ans. of Spencer). Respondent Spencer is organized under the laws of the State of Delaware (Complaint, ¶ One; ¶ 2, Ans. of Spencer). Its principal office and place of business was at 575 Lexington Ave., New York, New York. Until 1972, Spencer sold encyclopedias and other publications, merchandise, and services to the general public through various methods, including door-to-door canvassing [7] (Complaint, ¶ One; ¶ 2, Ans. of Spencer; Tr. 15233). After 1972, Spencer ceased all business operations (RX 549). Its volume of business has been substantial (¶ 2, Ans. of Spencer).

9. Respondent The Grolier Society, Inc. (Grolier Society) is a wholly-owned corporate subsidiary of respondent Grolier, Inc. (Complaint, ¶ One; ¶ 2, Ans. of Grolier Society). Respondent Grolier Society is organized under the laws of the State of Delaware (Complaint, ¶ One; ¶ 2, Ans. of Grolier Society). Its principal office and place of business was at 575 Lexington Ave., New York, New York. Until 1972, Grolier Society sold encyclopedias and other publications, merchandise, and services to the general public

through various methods, including door-to-door canvassing (Complaint, ¶ One; ¶ 2, Ans. of Grolier Society). After 1972, Grolier Society ceased all business operations (RX 549). Its volume of business has been substantial (¶ 2, Ans. of Grolier Society).

10. Respondent R. H. Hinkley Company (Hinkley) is a wholly-owned corporate subsidiary of respondent Grolier, Inc. (Complaint, ¶ One; ¶ 2, Ans. of Hinkley). Respondent Hinkley is organized under the laws of the State of Maine (Complaint, ¶ One; ¶ 2, Ans. of Hinkley). Its principal office and place of business was at 575 Lexington Ave., New York, New York. Until 1972, Hinkley sold encyclopedias and other publications, merchandise, and services to the general public through various methods, including door-to-door canvassing (Complaint, ¶ One; ¶ 2, Ans. of Hinkley). After 1972, Hinkley ceased all business operations (RX 549). Its volume of business has been substantial (¶ 2, Ans. of Hinkley).

11. Respondent Grolier New Era Corporation (Grolier New Era) is a wholly-owned corporate subsidiary of respondent Grolier, Inc. (Complaint, ¶ One; ¶ 2, Ans. of Grolier New Era). Respondent Grolier New Era is organized under the laws of the State of Illinois (Complaint, ¶ One; ¶ 2, Ans. of Grolier New Era). Its principal office and place of business was at 575 Lexington Ave., New York, New York. Until some time prior to January 1, 1971, Grolier New Era sold encyclopedias and other publications, merchandise, and services to the general public through various methods, including door-to-door canvassing (Complaint, ¶ One; Tr. 15234). While in business, Grolier New Era did business only in the northeast area of the United States (Tr. 5884-85). Prior to January 1, 1971, Grolier [8] New Era had ceased all business operations (Tr. 15233-34). Its volume of business has been substantial (¶ 2, Ans. of Grolier New Era).

12. Respondent The Richards Company, Inc. (Richards) is a wholly-owned corporate subsidiary of respondent Grolier, Inc. (Complaint, ¶ One; ¶ 2, Ans. of Richards). Respondent Richards is organized under the laws of the State of Delaware (Complaint, ¶ One; ¶ 2, Ans. of Richards). Its principal office and place of business was at 635 Madison Ave., New York, New York. Until June 1972, Richards sold encyclopedias and other publications, merchandise, and services to the general public through various methods, including door-to-door canvassing (Complaint, ¶ One; ¶ 2, Ans. of Richards; Tr. 15998-99). Richards ceased direct sales in June 1972, with the exception of sales from the Dallas office, which ceased in August 1972 (Tr. 15998-99). Its volume of business has been substantial (¶ 2, Ans. of Richards).

13. Respondent Madison Enterprises, Inc. (Madison) is a wholly-

owned corporate subsidiary of respondent Grolier, Inc. (Complaint, ¶ One; ¶ 2, Ans. of Madison). Respondent Madison is organized under the laws of the State of California (Complaint, ¶ One; ¶ 2, Ans. of Madison). Its principal office and place of business was at 635 Madison Ave., New York, New York. From May 1969 to December 1970, Madison engaged in direct sales of encyclopedias and other publications, merchandise and services to the general public, primarily within the State of California (Complaint, ¶ One; ¶ 2, Ans. of Madison; Tr. 5820, 6464). Madison ceased selling by the beginning of 1971 (Tr. 6464). Its volume of business has been substantial (¶ 2, Ans. of Madison).

14. Respondent Grolier Interstate, Inc. (Grolier Interstate) is a wholly-owned corporate subsidiary of respondent Grolier, Inc. (Complaint, ¶ One; ¶ 2, Ans. of Grolier Interstate). Respondent Grolier Interstate is a corporation, organized, existing and doing business under the laws of the State of Delaware (Complaint, ¶ One; ¶ 2, Ans. of Grolier Interstate). Its principal office and place of business is at 575 Lexington Ave., New York, New York. Grolier Interstate sells encyclopedias and other publications, merchandise, and services to the general public through various methods, including door-to-door canvassing (Complaint, ¶ One; ¶ 2, Ans. of Grolier Interstate). Grolier Interstate is the sole [9] domestic subsidiary of Grolier, Inc. presently engaged in direct sales (Tr. 16211-12). Its volume of business has been, and is, substantial (¶ 2, Ans. of Grolier Interstate).

15. Respondent Federated Credit Corporation (Federated Credit) is a wholly-owned corporate subsidiary of respondent Grolier, Inc. (Complaint, ¶ One; ¶ 2, Ans. of Federated Credit). Respondent Federated Credit is organized under the laws of the State of Delaware (Complaint, ¶ One; ¶ 2, Ans. of Federated Credit). Its principal office and place of business was at 575 Lexington Ave., New York, New York. Until early 1973, Federated Credit collected and induced payments on accounts for subsidiary corporations of Grolier, Inc. (Complaint, ¶ One; ¶ 2, Ans. of Federated Credit; Tr. 14726). At various times, Federated Credit has operated as a financing company for companies other than subsidiaries of Grolier, Inc. (Tr. 6436). In early 1973, Grolier Interstate assumed the previous functions and operations of Federated Credit (Tr. 14726). Its volume of business has been, and is, substantial (¶ 2, Ans. of Federated Credit).

16. The record shows that respondents' direct selling or subscription book subsidiaries had the following sales volume in the period 1968 to 1972:

	Initial Decision			91 F.T.C.	
	1968	1969	1970	1971	1972
GROLIER SOCIETY, INC.	11,636,459	11,946,044	10,417,301	6,324,311	(1,250,418)
AMERICANA CORPORATION	14,538,083	16,348,360	16,192,541	14,277,336	459,525
R. H. HINKLEY COMPANY	5,886,812	7,178,210	8,030,933	5,007,165	(838,635)
THE RICHARDS COMPANY	17,621,778	17,112,754	13,384,215	10,378,015	4,925,591
SPENCER INTERNATIONAL PRESS, INC.	12,550,945	12,794,249	10,527,857	4,923,672	(816,882)
GROLIER NEW ERA CORP.	213,437	238,292	13,662	(1307)	---
GROLIER INTER-STATE, INC.	---	4,371,704	4,075,449	4,892,462	29,921,994
MADISON ENTERPRISES, INC.	---	57,633	715,796	40,629	(16,965)

(Respondents' Proposed Finding IV 10).

[10] 17. In terms of dollar volume, the record shows that certain of the respondent mail order subsidiaries had the following approximate gross sales for the periods indicated:

	<i>Americana Institute</i>	<i>Career Institute</i>	<i>Grolier Enterprises, Inc.</i>
1969	\$20 million	\$1 1/2 million	\$20 million
1970	\$22 million	\$2 million	\$25 million
1971	\$27 million	\$2 1/4 million	
1972	\$30 million	\$4 million	\$29 million
1973	\$27 million	\$5 million	\$34 million

(Green 1707-09)

18. In the course and conduct of their business, as aforesaid, respondents now cause, and for some time past have caused, said publications, merchandise or services to be shipped and distributed from their places of business or from their sources of supply to purchasers and prospective purchasers thereof located in various States of the United States other than the state of origination, distribution or storage of said publications, merchandise or services. Respondents transmit and receive, and cause to be transmitted and received, invoices, checks, collection notices and various other

commercial papers or documents in the course of advertising, selling, or otherwise distributing and collecting payment for said publications, merchandise or services among and between the several States of the United States. Respondents maintain, and at all times have maintained, a substantial course of trade in such publications, merchandise or services in commerce, as "commerce" is defined in the Federal Trade Commission Act (Ans. to Complaint submitted by respondents; CX 5, 8). [11]

II. THE PARENT COMPANY AND ITS SUBSIDIARIES

A. Organization

19. In mid-1960, Grolier, Inc., as parent company, assumed publishing and financing functions for a number of respondents' subsidiaries, both in the United States and abroad (Murphy 5709).

20. Respondents operate their business through their subscription book subsidiaries and mail order subsidiaries. The subscription book subsidiaries¹ are engaged in the sale of encyclopedias, and other reference works and services by the door-to-door, installment sales method. The Domestic Mail Order Subsidiaries are engaged in the sale of publications and merchandise through mail solicitations and have no retail sales except through mail presentations (McKean 6405). The stock of the mail order and home subscription companies, prior and subsequent to the 1971 reorganization, was owned by Grolier, Inc. (Murphy 5708, Veras 6190).

21. There has been an extensive overlap in the positions of the officers and directors of Grolier, Inc. and its subsidiaries (McCabe Deposition 13-20; CX 5A-5E, 6A-7S). This is demonstrated by the following tables showing the positions held by certain key officials in the parent company and its subsidiaries as of April 21, 1970:

W. J. Murphy

Director, President, Grolier, Inc.
Director, Americana
Director, Americana Interstate
Director, Chairman of the Board, Federated Credit
Director, Grolier Enterprises
Director, President, Grolier Interstate
Director, Hinkley
Director, Chairman of the Board of Directors, Spencer
Director, Grolier Society [12]

¹ The term "subscription" is historical. Originally, many publications were sold in advance of their publication date to customers who would subscribe to the publication when completed. Now the term refers to Reference Book sales on a door-to-door, installment basis (McKean 6393-94).

G. W. McKean

Director, Vice President and General Counsel, Grolier, Inc.
Secretary, Americana
Director, Secretary, American Peoples Press
Director, Career Institute
Director, Grolier Enterprises
Secretary, Grolier Interstate
Director, Secretary, Grolier Reading Programs
Director, Secretary, Grolier Society

H. G. Veras

Vice President, Director of Accounting, Grolier, Inc.
Treasurer, Secretary, Director, Federated Credit
Director, Treasurer, Grolier Interstate
Director, Vice President, Treasurer, Grolier New Era
Director, Hinkley
Director, Spencer

S. S. Ball

Director, Treasurer, Grolier, Inc.
Treasurer, Americana
Director, Americana Interstate
Director, Career Institute
Treasurer, Richards

E. S. Howell

Director, Vice President, Grolier, Inc.
Director, Secretary, Americana Interstate
Director, Secretary, Career Institute
Director, Grolier Enterprises
Director, Grolier Reading Programs

(CX 5A-E, 6A-S)

22. The parent company, Grolier, Inc., directs and controls the financial policy, the overall sales policies, and administrative and personnel policies of its subscription and mail order subsidiaries (CX 5H; Special Report in Response to Federal Trade Commission Order, dated March 13, 1970). Grolier, Inc. exercises control over its subsidiaries in the following manner: [13]

... Grolier directs and controls the overall financial, sales, administrative and personnel policies of each of its subsidiaries through directives, both written and oral, promulgated by the President of Grolier (with respect to the Subscription Book Companies); the Grolier Vice President, Director of Mail Order Divisions (with respect to the Mail Order Division); and the President of Grolier Educational Corporation (with respect to Grolier Educational Corporation). Company matters and policies affecting both Grolier and the subsidiaries are normally submitted by the President of

the subsidiary to one of the above described officers who, if he deems it appropriate, will submit the matter for the review and direction of the Executive Committee which in turn promulgates directives through such officer. . . In addition, both oral and written communications are promulgated by Grolier's Vice Presidents of Accounting, Personnel Programs, Marketing Services, Customer Relations and Insurance. In general, oral and written directives promulgated by Grolier are relayed to the Presidents of the subsidiaries who are responsible for relaying such directives to the appropriate department heads and branch offices, field offices and sales representatives

(CX 118B-C; see also, CX 5J).

23. Members of the Executive Committee were in charge of the operations of various of the subsidiaries. On April 21, 1970, the Executive Committee of Grolier, Inc. consisted of the following individuals: Fred P. Murphy, Elsworth S. Howell, E. J. McCabe, Jr., Gordon W. McKean, William J. Murphy and F. B. Taussig (CX 5J-K). In addition to being members of the Executive Committee and occupying key positions in Grolier, Inc., most of these individuals occupied top management positions in various subsidiaries of Grolier, Inc. (Finding 21, *supra*; CX 5b-e, 6a-s). The Executive Committee generally met at least once a month (McCabe Deposition 20). William J. Murphy was in charge of the operations of the domestic home subscription subsidiaries (McCabe Deposition 12-13). Elsworth Howell was charged with the supervision of the mail order subsidiaries until his retirement at the end of 1973. Since that period of time, the mail order companies have been under the jurisdiction of William J. Murphy (McCabe Deposition 21-23). [14]

*B. Parent Company Services and Support for its
Subsidiaries*

24. Prior to the 1971 reorganization, Grolier, Inc. provided the following services to its mail order and book subscription subsidiaries, *viz.*, publication of certain of the products, financial assistance, and miscellaneous headquarters functions such as insurance, legal work and general accounting (Murphy 5716-17). Such services performed for the subsidiaries by Grolier, Inc. would be construed as a charge credited to the parent company (Murphy 5718).

25. The Vice President and Controller of Grolier, Inc. is the Chief Accounting Officer for the parent company and all its subsidiaries (Veras 6160). The Grolier, Inc. Accounting Department sets the procedures which the accounting offices in the subsidiaries are required to follow (Tr. 6163-64, 6167). The individual subsidiary companies send monthly reports to Grolier, including balance sheets and profit and loss statements. Such information is consolidated by Grolier, Inc. into the final figures (Tr. 6163).

26. Grolier, Inc. files a consolidated federal income tax return for all of its United States corporations (Veras 6168), and, in some cases, Grolier, Inc. will file a consolidated state and local income tax return for its subsidiaries (Veras 6169-70). The individual sales transactions of the subsidiaries are also ultimately reflected in the parent company's public financial reports (Murphy 5713).

27. The subscription book companies, prior to the formation of Grolier Interstate, received operating funds through the company account between them and the parent company in the form of books that were shipped on their accounts or direct remittances from the treasurer (Murphy 5713).² Grolier, Inc. maintains a line of credit with banks; the individual subscription book companies do not (Tr. 5715). The subscription book subsidiaries and the mail order subsidiaries have not obtained their own financing separate and apart from the parent company (Murphy 5716). [15]

28. The profit-sharing or retirement plans in which the subsidiary companies participated emanated from the parent company, Grolier, Inc. (Veras 6192).

In the period 1967-1972, the subsidiaries were charged a management fee by the parent company of 4 percent of sales (Veras 6186).

29. Grolier, Inc.'s Marketing Services Department provides national advertising and sales promotional material for respondents' domestic sales organization, and engages in public relations for Grolier, Inc. (Waller 5785). Grolier, Inc. pays for the advertisements put into national publications. The subsidiaries of Grolier, Inc. selling door-to-door do not run their own national advertising (Waller 5793). The purpose of the coupons in certain of the advertising placed by the Marketing Services Department is to develop leads (Waller 5793-94).³ Grolier Interstate pays the department for such leads (Waller 5795). The Marketing Services Department also runs institutional ads to explain Grolier's policies (Tr. 5797; CX 1606).

The Marketing Services Department prepares a broad spectrum of sales promotional materials, including contest materials, broadsides, flyers, prospectuses and materials to be handed out at booths. In addition, it prepares recruiting materials such as booklets outlining the company history and benefits (Waller 5797-98). Managers of the

² *E.g.*, a subsidiary such as Americana would obtain funds to pay commissions to its salesmen either from accounts already being collected, an additional advance from the treasurer of Grolier, Inc. or its own central treasury (Murphy 5715).

³ For example, in advertisements for the *New Book of Knowledge*, the reader is invited by the coupon to send for a free copy of a booklet, "The Magic Carpet." The names of those responding are sent to the manager of the

sales subsidiaries purchase such materials direct from the warehouse of the Marketing Services Department (Waller 5801).

All sales promotional material is to be cleared through the Director of Marketing Services who, in turn, checks with the parent company's Legal Department (Waller 5802). The majority of the material used in the field is prepared by the Marketing Services Department (*id.*).⁴ [16]

30. The sales representatives of the home subscription subsidiaries rely in their sales presentations to the consumer on the name, reputation and goodwill of the parent company, Grolier, Inc. (*e.g.*, see CX 973A-B, 809A, 439B, 971B, 969A; Johnson 9516; Nesper 9784-86; Kolkhurst 10023; Hanke 10425).

C. Parent Company Control Over Subsidiary Employment and Recruiting Practices

31. Grolier, Inc. has exercised its power to control the hiring practices of its subscription book subsidiaries (CX 1910, 1924A-B). In one instance, the subsidiary corporations were forbidden to hire or interview present or former employees of another encyclopedia company without clearance of parent company officials in New York. On another occasion, the transfer of personnel from one subsidiary to another was forbidden unless the individual had been away from the first company for twelve full months. Elaborate procedures to ensure that such directives were followed by the subsidiaries were set up by the parent company (CX 1924).⁵ [17]

32. In the period 1967-69, the subscription book subsidiaries sent copies of their recruiting advertising to Grolier, Inc.'s Customer Service or Legal Department (Murphy 16442). The record further shows that in the period 1965-67, a Vice President of the parent company had been responsible for reviewing the recruiting advertisements of the Americana Corporation (Mawle 3483).

In addition, "shoppers" were retained to be hired by subsidiaries to determine the facts with respect to their recruiting practices (Murphy 5726, 16442).

⁴ The subsidiaries have on occasion prepared their own sales materials but they are not supposed to (Waller 5801-02).

⁵ By memorandum dated May 5, 1969, the subsidiaries were instructed in pertinent part that:

"Working papers on all new people must be in the New York Personnel office's hand within a week of their first accepted order.

"There will be no transfer of personnel from one company to another unless the individual has been away from the first company for twelve full calendar months.

"Any person found using a flag, or some relative's name, or different social security or tax numbers will be suspended from the Grolier companies.

"Any transfer must be approved in writing by the President of the releasing subsidiary company and accepted by the President of the receiving subsidiary company."

(CX 1924A.)

33. In compensating salesmen, the subsidiaries must stay within the range prescribed by the parent company (McCabe Deposition 31-32).

D. Parent Company Control Over and Involvement in the Sales Practices and Operations of Its Subsidiaries

34. The executive Committee of the parent company decided whether a particular subsidiary should have distribution rights to certain publications (Murphy 5719-20). The prices charged by the respondent subsidiaries for the publications sold by them were approved by the Executive Committee of the parent company. In this connection, the parent and subsidiary attempted to achieve a consensus on such prices (Murphy 5721).

35. In the middle of 1967, Grolier, Inc. began to set up procedures for the Customer Service Department whose purpose it was to apprise headquarters of developing problems (Murphy 5727).⁶ In the year 1967, 1968 or 1969, as part of this attempt to ensure conformance with the Assurance of Voluntary Compliance accepted by the Commission in 1967, sales materials and presentations of the subsidiaries were brought to headquarters and reviewed (Murphy 5726). The Customer Service Department, through review of these materials and field research, was to find out what sales persons were [18] actually doing in the field and to take care of customer problems (Tr. 5727). In the period 1969-January 1, 1971, the Customer Service Department also handled relations between Better Business Bureaus and Grolier subsidiaries, as well as contacts with Attorneys General and the Federal Trade Commission on behalf of such subsidiaries (Trachtenberg 5673).

36. Grolier, Inc.'s Director of Customer Relations, Norman Trachtenberg,⁷ had overall supervision of the Customer Relations Department of the subsidiaries, including the mail order subsidiaries, Grolier Enterprises and Americana Interstate (Tr. 5667). His immediate supervisor was William J. Murphy, the President of the parent company (Tr. 5668). Mr. Trachtenberg made periodic visits to the field and went out with sales representatives. These activities would be reported to Mr. Murphy (Tr. 5675).

37. To ensure that consumers with problems were taken care of, customers were sent a letter from the subsidiary with the receipt of their order encouraging them to respond to the Customer Service

⁶ "... I, as president of Grolier Incorporated, had some people doing some field research, trying to determine whether or not what we were being told was in fact going on." (Tr. 5726).

⁷ Mr. Trachtenberg held this position when he testified on June 18, 1974 (Tr. 5665). He is also a Vice President of Grolier Interstate, handling new types of sales operations (Tr. 5665).

Department with complaints Murphy 5727-28). In 1969 or 1970, respondents added a "cool line" urging customers to call the Customer Service Department directly with their problems. The Customer Service Department also had the function of reviewing case histories to determine the nature of sales problems (Murphy 5728).

38. In the period 1967-1969, Grolier, Inc. instituted telephone surveys of sales to monitor the efforts of the Grolier subsidiaries' management to implement parent company policy (Murphy 16438). Memoranda summarizing such surveys were sent to the President of the parent company for his review (Murphy 5728). Such telephone surveys were made of 5 to 10 percent of recorded sales (Murphy 5729). [19]

39. Around November 1970, respondents commenced operation of the telephone verification system (Trachtenberg 5674).⁹ Under this procedure, after January 1, 1971, employees in respondents' fiscal offices were to call the consumer, question him concerning his understanding about the contract, and ask questions about the sales presentation within 48 to 72 hours of execution of the contract (Trachtenberg 5676).⁹ Such verifications would be supervised and checked by Norman Trachtenberg, Vice President and Director of Customer Relations for Grolier, Inc. (Trachtenberg 5665, 5677).¹⁰

40. Mr. Trachtenberg, prior to January 1971, had authority to adjust or cancel contracts of all Grolier, Inc.'s door-to-door subsidiaries (Tr. 5675-76). He had the power to cancel contracts without consulting the direct selling subsidiary involved (Trachtenberg 5680).

In addition, if a salesman appeared to be intractable in refusing to follow company sales policies, further orders would not be accepted from him (Murphy 5729-30).¹¹ [20]

E. *The Grolier Interstate Reorganization*

41. In the fall of 1970, William Murphy, President of Grolier, Inc., "made a trip around the country and found that problems were just

⁹ After January 1, 1971, the function of the Customer Relations Department changed only insofar as the new verification procedure was implemented (Trachtenberg 5676).

⁹ In this time period, the fiscal offices in question belonged to Grolier Interstate; at times, such calls might also be made by an office of Federated Credit (Trachtenberg 5677).

¹⁰ "A. Well, as I told you before, we take these verifications with the customers' permission and with an approved beep connector, we sample 10% of the tapes around the country, send them into New York and listen to them, to make sure the verification is being done properly.

"And, my staff makes periodical visits around the country and listens to the actual tapes being made" (Trachtenberg 5678).

¹¹ An Americana office in Minnesota and a Spencer Press office in St. Louis were closed down prior to 1971 for similar reasons (Murphy 5731). A Richards' office in the Philadelphia area was closed down because of difficulties with the Better Business Bureau in that city (Murphy 5733-34).

as rampant" (Murphy 5735). In late November or early December 1970, key management people were informed that door-to-door sales operations were to be put together under one roof as Grolier Interstate so as to effectuate supervision and control by the first of 1971 (Murphy 5736). Grolier Interstate officially came into being in 1971 (Tr. 5737-38) becoming the one subscription book subsidiary of Grolier, Inc. for the entire United States in January of that year (Murphy 16396).¹² Grolier Interstate was created because Grolier, Inc. was unable to secure the five door-to-door sales subsidiaries' compliance in the field with the sales practices and procedures established by the parent company (Murphy 5734). Over a two to three-year period, the management of the parent corporation had become persuaded that it would not be possible to get the domestic selling organizations under control in the face of four to five separate sales subsidiaries competing with each other (Murphy 5735).

42. Under the reorganization, eight regional managers were to take all responsibility for all home field subscriptions in their territory and it was their duty to integrate the formerly separate organizations of Grolier, Inc.'s subsidiaries into one business enterprise (Murphy 5740). The former subscription book subsidiaries such as Americana still exist as legal entities but they do not function operationally (Murphy 5741, 16435). It was decided not to include Richards in the Grolier Interstate reorganization because of the differences in its operation methods as compared to other subsidiaries and because "we had had—by that time too many complaints and too many sales problems" (Murphy 5736, 5749, 16405-06).¹³ [21]

43. The parent company Grolier, Inc. ran an institutional advertisement in its name on October 28, 1971, in some 43 newspapers (CX 1606; Waller 5796). The advertisement was entitled "After you've said yes to our salesmen you can still say no to the company." In pertinent part, the advertisement stated:

After our salesman has left your home, you can still change your mind about the encyclopedia you've bought. No matter what you've signed, no matter what you've said. And no matter what you may have heard to the contrary.

* * * * *

Yet we know that doubts and second thoughts sometimes arise. So we have instituted a consumer protection program which not only provides many means by

¹² A pilot program of this nature under the Grolier Interstate name had previously been conducted in the Pacific Northwest commencing in 1968 (Murphy 16393-94, 16398).

¹³ According to Grolier, Inc.'s chief officer "the Richards' sales practices were causing as much of our problems as — or more than some of the others, and I wasn't sure that we could go through the lengthy period of time of

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which the customer can communicate directly with the company, but guards him against dissatisfaction and misunderstanding.

The "Cool Line"

Grolier's "Cool Line," a special telephone number printed on the contract, allows a customer to call collect our Vice President of Customer Service in New York. It provides direct access to someone with authority to solve a problem, whatever it might be.

Cancellation Privileges

Our standard sales contract stipulates a "cooling-off" period and states how a customer can cancel an order. The contract also states that this is not a special offer; that there are no items that are free. It discloses all terms, including finance charges, so there is no confusion as to what the customer is buying or how he is paying for it. It lists prices so the customer won't be misled. [22]

Double-Check Phone Call

When an order is received, but before it's accepted, every customer receives a phone call from someone in no way connected with our sales department. We discuss the entire transaction with the customer to find out if there has been any misunderstanding or misrepresentation. That way, the customer is given every opportunity to reveal any dissatisfaction either with the product or method of sale. If there is any misunderstanding and it is not cleared up to the customer's complete satisfaction, we'll cancel the order and return the down-payment.

When an order is accepted, we write and thank our customer. Enclosed with this letter is a copy of the contract, an envelope addressed to the company president inviting comments, and the "Cool Line" phone number should he wish to call.

Call From Headquarters

Eight weeks after the order has been shipped, we telephone from New York to a random ten percent of our customers to make a broad sampling of their reactions to our publications, our sales personnel—particularly their conduct and presentations—and to make sure that the company's customer protection policies have been thoroughly carried out.

Admittedly, we've had problems. We've discovered most of them ourselves, and where necessary, dismissed personnel . . . and closed sales offices.

Customer Satisfaction Guaranteed

What all this means is that we at Grolier have a particular way of thinking about our customers: we value their trust and goodwill. [23]

Someday a Grolier salesman may call on your family. We hope you'll feel confident about welcoming him into your home. And that would be good for us both.

GROLIER INCORPORATED

575 Lexington Ave., New York, N.Y. 10022

44. Through the foregoing, the parent company has represented to the consuming public that it is responsible for the actions of the

salesmen of its direct selling subsidiary; that it has taken the necessary steps to prevent consumer deception and if necessary to ameliorate its effects. The advertisement further represents to the public that the parent company has the power to dismiss personnel and close sales offices to assure consumer protection. Through such representations, Grolier, Inc. invites the public to place its confidence in the salesmen selling Grolier products in reliance on the parent company name. This advertisement demonstrates that the parent-subsidary operation is inter-related, constituting one enterprise. The use of terms such as "our salesman," "our standard sales contract" and "our customer" represents that the parent-subsidary distinction has no meaning as far as the consumer is concerned.

45. Divisions of Grolier Interstate, after the reorganization, still used contracts bearing the names of certain of the subsidiaries in those areas where they had prior sales strength (Murphy 5743). At the time of Grolier Interstate's creation, the former door-to-door sales subsidiaries were designated as divisions of Grolier Interstate (Murphy 5741). These division offices, since the 1971 reorganization, have been organized by the products sold (McKean 6469).

46. After the formation of Grolier Interstate and after January 1, 1971, Federated Credit offices still handled accounts as part of the Grolier Interstate organization (Murphy 5746-48).

47. Subsequent to the reorganization, retail sales [24] contracts passed through¹⁴ the Grolier, Inc. headquarters' legal offices for approval (Murphy 5742, 5764).

When a new sales presentation is formulated by a district manager, it is reviewed by the Legal Department of Grolier, Inc.¹⁵ and sales presentation materials are developed by the Marketing Services Department headed by Irene Waller (Trachtenberg 5670-71). Grolier, Inc. had final okay on sales presentations used by all of its sales organizations (Trachtenberg 5679).

48. After the formation of Grolier Interstate, William J. Murphy, as President of Grolier Interstate,¹⁶ reviewed recruiting ads obtained from the field and established policy relating to the content of such advertisements, which were disseminated to the various managers of Grolier Interstate. In the same capacity, Mr. Murphy also reviewed sales presentations which had been brought to his attention (Murphy 5745).

¹⁴ Grolier Society, Spencer and Americana were the primary names carried forward and, as of 1974, there were Grolier Society and Spencer divisions (Murphy 5743). No one, however, has worked as a Hinkley representative since the summer of 1971 (*id.*).

¹⁵ Testimony pertains to period after formation of Grolier Interstate.

¹⁶ Mr. Murphy, at the same time, was chief officer of the parent company, having held this position since 1967.

49. Mr. Murphy, in January and August 1971, sent directives to regional managers of Grolier Interstate to assure uniform pricing of the combinations of encyclopedias and other products sold (Murphy 5760-63; CX 1870A-B, 1871A-B).

F. Parent Company Knowledge of Subsidiary Sales Practices Occurring in the Field and Difficulties Experienced in Controlling Field Management

50. The parent company had and still has the power to control the recruiting and sales practices of its subsidiaries (Findings 19-49). And it has exercised that power. Such [25] power has, however, not been always effectively exercised to prevent misrepresentation (See *infra*). The history of respondents' business has been such that field management has not been responsive to directives from the head office. "A system of management evolved where each local, regional or branch manager took total control of his operation and on many occasions just refused to obey any kind of a directive from New York" (Toman 16233-34,¹⁷ 16237-39).

51. Nor did respondents achieve satisfactory control of the sales organization at the time of the Grolier Interstate reorganization in January 1971 because "the machinery to exercise the control was not set up at the proper time" (Toman 16234) and "while Grolier was put together on paper in the beginning of 1971, it was far from reorganized" (Toman 16235).

The actual buildup of the headquarters staff deemed necessary to achieve control over the sales organization in the field commenced in 1973, when John Toman succeeded William Murphy as President of Grolier Interstate (Toman 16239-41).

52. The officials of the parent company, Grolier, Inc., through the telephone survey, were aware that the respondent book subscription subsidiaries were engaging in the types of misrepresentation challenged by the complaint. As a result of such surveys, executives of the parent company were aware in 1969 that the subscription book subsidiaries had misrepresented that salesmen are conducting a survey; that books are free; that customers are just paying for the research service; [26] that books are not yet on the market; that the prospective customer had been specially selected; that the customers'

¹⁷ E.g., see the response by one of respondents' executives:

"...The organization was not being controlled by New York because it was not responsive to New York, and it was very difficult for New York to exercise any control because you had four separate corporations with four separate Presidents with probably eight or nine branch vice presidents in each of the operations; and this hierarchy had developed and it became impossible to control — to exercise control over the operations because if corporate management would say, 'Let's lean on Americana Corporation,' the people from Americana would go over and work for Grolier society and they were getting — they were almost like sharks eating each other up. It was an impossible situation to control." (Tr. 16234.)

home was to be used as a showcase; and the amount of savings available if the offers were accepted (e.g., CX 110, 113, 77A-D, 79A-D, 82A-Q, 85A-K, 90A-J, 96A-J, 97A-J, 106A-K).

53. The executives of Grolier, Inc., moreover, were aware that the incidence of such misrepresentations by the direct selling subsidiaries were substantial. Consider, for example, the report to the parent company's chief executive, dated October 29, 1969, for the week ending October 25, 1969, stating as follows:

During the above week, we checked 198 orders and completed interviews with 158 customers. We came up with a 17% violation rate.

In the special summary sheet enclosed, you will find that our special problem areas are Chicago, which is now really St. Louis, Houston and Los Angeles showing 22%, 20% and 18% respectively.

If I ran the same check a week later it might be much higher. However, I think that those three areas are the areas we must concentrate on.

This special survey idea enables us to get a larger sampling and verify the results of the standard weekly survey for all subsidiaries. With your approval, I will continue it on a spot basis. [27]

The violations that we are uncovering are still selectivity, price buildup and free merchandise.

(CX 110F.)¹⁸

54. Grolier, Inc.'s problems, generated by its inability to make its subsidiaries conform in the field to the parent company's announced practices and policies, were still evident in 1970 (Murphy 5734-35). These problems persisted, even after the Grolier Interstate reorganization. Field management officials on the vice presidential level were being dismissed for failing to prevent consumer misrepresentations as late as 1973-1974 (Toman 16357-60). [28]

III. RECRUITMENT OF SALES PERSONNEL¹⁹

A. Advertisements

(1) Dissemination of Advertisements

55. In the regular course and conduct of their business and for the purpose of recruiting personnel for solicitation of door-to-door sales, local offices of respondents have disseminated, and have caused to be disseminated, advertisements in various publications of general circulation (Mawle 3452, 3456, 14786; Kotler 5059-60;

¹⁸ The report dated November 5, 1969, disclosed an "alarming 35% violation rate." A total of 63 violations was found for 237 orders contacted of which 197 were checked for the week ending November 1, 1969 (CX 111C).

On December 18, 1969, a violation rate of 13 percent was reported, which was described as "now down to where it belongs" (CX 116C).

¹⁹ Throughout this section, the term "respondents" refers to the parent company and those respondents identified in Section I, *supra*, as having engaged in subscription book sales.

McClearey 13826-27, 13831; Goldstein 14123; Stearns 14603; Basilici 14926-27; Toman 16300). These publications include the *Oakland Tribune*, *Boston Globe*, *Denver Post*, *Orange County Reporter*, *Buffalo Evening News*, *Rockey Mt. News*, *Daily Oklahoman*, *Milwaukee Journal*, *Seattle Times*, *Peoria Journal Star*, *Kansas City Star*, *Des Moines Register* and *Los Angeles Times* (Havas 9199; Tepker 9436; Johnson 9511; O'Hara 9978; Kellogg 10925; Russell 10375; Thorn 11158; Walker 11213; McNamara 11270; McWilliams 11994; Miller 12791; Howard 12892; Hanna 13189; McClearey 13826; Loots 14668).

56. No single type of recruitment advertisement was used by the respondents; ads placed by the respondents would vary considerably in content (Covens 13645, 13653). Recruitment advertisements used by respondents' local offices were reviewed by the various subsidiaries of respondent Grolier, Inc. or approved for use prior to publication by respondent Grolier, Inc., which disseminated to the local offices a manual containing such approved advertisements (Stearns 2613-15, 14603; Mawle 3452, 14786; Covens 13645; McClearey 13827, 13974-75, 13997).

57. Respondents placed recruitment advertisements in various columns of the classified sections of newspapers, including "Direct Sales" or "Sales Help Wanted" (CX 2085, 2100B); "Help Wanted" (CX 1033, 1557, 1649Z-7, 1650F, 1696B, 2096D, 2104B, 2107B); "Employment" (CX 1677C); "Jobs of [29] Interest" (CX 1669B, 1674C); and "Miscellaneous" (CX 2103B). Placement in columns not designated "Sales" was sometimes necessitated by the lack of such column in a given newspaper (Havas 9199). In other instances, although a "Sales Help Wanted" column existed, recruitment advertisements were placed in other columns (CX 1557, 1650F). In addition to column designations, recruitment advertisements sometimes had job designations such as "sales", "Educ. Sales," "MGMT." or "INTERVIEWERS" in the upper corner of the ad (CX 1669B, 1674C, 1696B, 1703A).

(2) Blind Advertisements

58. In seeking to attract applicants for sales work, respondents placed various "blind" recruitment advertisements which did not disclose the nature of the position offered, the company name, or the product involved (CX 1557, 1568A-B, 1569, 1573, 1574, 1649Z-7, 1650F, 1669B, 1698B, 1701C, 1703B, 1704B, 2085; Mawle 3453, 14786; Kotler 5065; Vaughn 5879-80; Will 9596; Gilbow 12192, 12195, 12201-03, 12408; McClearey 13975; Goldstein 14076, 14124; Basilici 14927).

59. The following "blind" recruitment advertisements are illustrative of those placed by respondents:

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91 F.T.C.

\$115 WK. SALARY

Young women (18-25) now being hired for interesting work with local office of world wide company. No previous exp. required as full on the job training will be given. Excellent advancement opportunities & unrivaled security. Applicants must be able to start immediately, should telephone 258-3319 between 9:30 a.m. & 2:30 p.m. for interview appointment.

(CX 22E)**INSTRUCTORS NEEDED**

WILL be trained for stimulating work in field of linear programm-[sic] ming, good speaking voice and appearance req. high school and college graduates pref. First year expected earnings \$8000-\$15,000, no experience nec., car req. For interview call MR. DAVIDSON between 12-2 p.m. 893-7140

(CX 779) [30]

Female

BUSINESS OPPTY!!

Have 5 immediate openings for right person - single, under 25. No experience necessary, will train and salary in field of sales administration and personnel. \$450 beginning salary in our book order dept. with our rapid growing firm. Before 2 p.m. EX 2-2123

(CX 1033)**SALES****COLLEGE STUDENTS—EVERY STUDENT WILL RECEIVE ONE SCHOLARSHIP**

YES. EVERY STUDENT THAT WE EMPLOY BEFORE JULY 17th WILL RECEIVE A CASH SCHOLARSHIP IN ADDITION TO REGULAR EARNINGS, PROVIDING THEY REMAIN IN OUR EMPLOY FULL TIME FOR THE ENTIRE SUMMER.

Students will do promotional interview work in our educational tool department.

NO EXPERIENCE NECESSARY. OPENINGS LOCALLY AND IN SOME RESORT AREAS.

Guaranteed Salary \$500 per mo.
Call our nearest branch office:
Hayward office 582-2414

* * * * *

(CX 1677C.) [31]**MGMT.**

Opportunity for Men and Women Local division of international firm will hire 10

all training. Earning in excess of \$550 month, bonus and incentives. Must be high school graduate, neat in appearance, converse intelligently. Rapid advancement available. Start work immediately. For interview appt. call 623-0720

(CX 1696B).

(See also CX 20, 22A, 1557, 1649Z-7, 1650F, 1669B, 1674C, 2096C, 2100B, 2104B.)

60. Frequently, blind recruitment advertisements used by respondents affirmatively misrepresented that the positions offered were non-selling in nature. The employment offered was characterized as: public relations work (Thorn 11158), including marketing and promotions (CX 22C, 2110B, 2111B, 2112B; Havas 9199); conducting interviews (CX 22D, 1674C, 1677C, 2096D, 2108B; Howard 12892; Loots 14668) and opinion poll surveys (Miller 10167; Kellogg 10295); "instructors" in linear programming (CX 779; Hanna 13189-90); inventory work (Tepker 9436); advertising work (Williams 9938; Hanke 10416); sales administration and personnel (CX 1033); and management (CX 22D).

61. Due to the high turnover rate of sales employees, respondents continually concentrated on recruiting new sales personnel (McClearey 13898, 14018; Basilici 14946, 14949). Use of blind recruitment advertisements were successful in eliciting a large response by applicants (Gilbow 12408, 12410; McClearey 13975) and were, therefore, the major, if not exclusive, recruiting tool used by respondents.

62. Respondents' corporate officials and management agree that an accurate description in recruitment advertisements of the position offered would result in few, if any, applicants (Covens 13658; McClearey 13836; Goldstein 14125-26; Stearns 14606-07; Mawle 14789; DeLucia 15057-58; Ryan 15928; Toman 16300-03). If recruitment advertisements disclosed that door-to-door encyclopedia sales positions were offered, "nobody [32] would answer such an ad" (Ryan 15928) because "[n]ot too many people want to be door to door salesmen" (DeLucia 15058).

63. When interested persons called the phone numbers given in respondents' recruitment advertisements, an interview was set up, but even if requested, they were given no additional information as to the nature of the employment offered (Snyder 8718; Havas 9200; Will 9596; O'Hara 9979; Kolkhurst 10017; Kellogg 10296; Hanke 10417; Evans 10608; Thorn 11159; Walker 11214, 11231; Davenport 11704-05; Latasa 11801-02; McWilliams 11995, 12023; Miller 12824-25; Hanna 13189). It was respondents' policy not to disclose on the

phone exactly what the job involved (Kotler 5064-65; DeLucia 15058-59; Toman 16303; Murphy 16419-20).

64. Numerous applicants who responded to blind recruitment advertisements placed by respondents would not have done so had they been informed by the recruitment advertisements or during the phone call setting up an interview that the positions offered were in the field of door-to-door sales of encyclopedias and other educational materials (Havas 9200; Kellogg 10295; Waugh 10497; Walker 11214; Westheimer 11437, 11471; Davenport 11745; Nelson 12671; Miller 12792; Gribbin 13119; Goldstein 14125).

(3) Advertisements Offering "Management Training"

65. Respondents also placed advertisements in local papers which offered employment opportunities for "management trainees" (Mawle 3455; Kotler 5063; Westheimer 11466; Gilbow 12202-03; Covens 13658, 13735, 13750; Stearns 14605; DeLucia 15054). Representations contained in such advertisements imply that formal management programs are offered and that advancement within the organization is dependent upon the successful completion of such programs. These recruitment advertisements did not disclose the company or products involved or that door-to-door sales were inherent in the positions offered (CX 1570, 1571, 1572, 1696C, 1698B).

66. The following "management trainee" advertisement is illustrative of those placed by respondents:

APPRENTICES — HIGH SCHOOL GRADS Recently discharged vets [33]

18-25

No Experience Necessary
\$141 SAL. PER WEEK

Work where your age is an asset, not a liability. International corporation hiring 5 men for a management training program in our book sales dept. For personal interview call: Mr. Rudd, 362-7213

(CX 22D).

67. Applicants responding to "management trainee" advertisements were, in fact, hired to work as door-to-door salesmen and received training which was identical to that given applicants who responded to non-management recruitment advertisements (Mawle 3455-56; Johnson 9526; Miller 12799; DeLucia 15054, 15083; Toman 16999, 92). As is evidenced by the following testimony, respondents

had no formalized management training program at the time management trainee advertisements were disseminated:²⁰

Q. Mr. Gilbau, during the time that you were associated with Americana Corporation and on the occasions that you used a recruiting advertising that contained the phrase management training to recruit sales personnel, did you ever have a formal management training program in existence?

A. No.

Q. Did you have any management training program in existence?

A. Well, per se, no.

(Gilbow 12205.)

[34] Q. What type of management training program was set up by Spencer in Los Angeles?

A. After a person got in the sales production and showed that he could sell, that he knew the presentation and showed an aptitude for the business, we would give him his first responsibility which would be a crew manager . . ." (Kotler 5063)²¹

* * * * *

Q. Was the training of people who responded to that advertisement [not referring to management training] any different from the training for the people who responded to the management training ad?

A. No.

(*Id.* at 5064.)

Advancement from sales into management was based on a demonstrated ability to sell rather than the fact that an applicant had responded to a management training advertisement (Covens 13661-62, 13738; DeLucia 15057).

(4) Compensation Guarantees in Recruitment Advertisements

68. Recruitment advertisements placed by respondents frequently contained compensation guarantees for the positions offered (Stearns 2616, 14625; Mawle 3452; Kotler 5060; Vaughn 5880; Covens 13647, 13723-24; McClearey 13931; Basilici 14928). These compensation guarantees were usually expressed in terms of an hourly (e.g., \$3.00/hr.), weekly (e.g., \$145/wk.) or monthly (e.g., \$550/mo.) salary (CX 20, 22A, D, E, 967, 1033, 1564, 1565, 1567, 1569, 1570, 1571, 1572,

²⁰ There is some testimony in the record that various types of informal management training occurred at different times at the regional or local levels (Covens 13662; McClearey 13977, 13997-98, 14010-11; Stearns 14626-27; Toman 16306, 16322). The record also shows that certain of respondents' local offices utilized management training recruitment advertisements at times when no management training program was being offered at such offices (Gilbow 12205; Kotler 5063-64; Miller 12799; Johnson 9526; Westheimer 11466-67).

²¹ Formalized management training for new recruits appears to be a relatively recent development (see Toman 16322).

1573, 1574, 1577, 1649Z-7, 1650F, 1677C, 1696B, 2085, 2096D). In other recruitment advertisements, representations of potential or average yearly earnings (e.g., \$10-12,000) for the position offered were made (CX 21, 779). [35]

69. Offering salary or compensation guarantees was an excellent tool for recruiting sales personnel (McClearey 13934-35). Respondents' rationale for making guarantees was that they ostensibly assured income security to applicants and provided a mechanism for controlling training of new employees since the job performance of individuals seeking to obtain the guarantees were more closely scrutinized (McClearey 13934-35; Basilici 14930-31).

70. Conditions which were later placed on obtaining the offered "guarantees" were either entirely absent in recruitment advertisements (CX 779, 967, 1033, 1557, 1574, 1649Z-7, 1650F, 1677C, 1696B, 2085, 2096B) or were impliedly made by an "if qualified" addendum appearing in the advertisements without any explanation or amplification as to the nature of such qualifications (CX 20, 22A, 1564, 1565, 1567, 1569, 1570, 1571, 1572, 1573, 1674C). Respondents' officials confirmed that it was respondents' policy not to disclose in their recruitment advertisements the conditions which applicants would be required to meet in order to receive the offered guarantees (Stearns 2617-18; Covens 13725-26; McClearey 13931; Mawle 14788; Ryan 16050).

71. The income guarantees made in respondents' recruitment advertisements were a critical factor in some individuals' decisions to apply for the positions offered (Walker 11230-31; Davenport 11704; Latasa 11799; Nelson 12671; Miller 12792; Culver 12940; Gribbin 13148).

72. Neither the recruitment advertisements placed by respondents nor information given over the telephone when interested individuals called in response to such advertisements disclosed that:

- (1) the positions offered were for door-to-door salesmen;
- (2) no formal management training program existed nor would applicants responding to management training advertisements necessarily receive an opportunity to advance into management;
- (3) conditions were placed upon receipt of the guaranteed income or salaries mentioned in recruitment advertisements. [36]

The fact that the position offered involved door-to-door sales; that management training was not readily available; and that conditions were placed on receipt of the guaranteed salaries or income were all material facts which would have an effect on a prospective employee's decision to respond to respondents' recruitment adver-

tisements. Failure to disclose these material facts was, therefore, false, misleading and deceptive.

B. Disclosures Made during Initial Interviews and Training

(1) Characterization of Employment

73. During their initial interviews, prospective employees responding to blind recruitment advertisements were given varying descriptions of the employment offered. Respondents' official disclosure policy was to give a full and accurate description of the jobs offered during an applicants' initial interview (Toman 16303-04; Murphy 16419-20; see also McClearey 13837-38; Mawle 14788; DeLucia 15058-59; Ryan 15929). In accord with this policy, some applicants were informed during their initial interview that the job offered involved encyclopedia sales (Snyder 8719, 8772; Johnson 9512; Gilbow 12119; Miller 12821-22). Other applicants ascertained that selling would be involved during their initial interviews although the products to be sold were not fully identified, and they were not explicitly told that selling would be involved (Havas 9203; Waugh 10498-99; Westheimer 11499; Hanna 13200-01).

74. Despite the official policy of full disclosure, many applicants were not aware at the conclusion of their initial interviews that the employment offered by respondents encompassed sales. The employment descriptions given these applicants reiterated the mischaracterizations of employment made in respondents' recruitment advertisements. Inaccurate job descriptions given during initial interviews included: public relations work (Kolkhurst 10017-18); promotional advertising, which included placing encyclopedias or other educational materials in the homes of individuals selected to participate in an advertising campaign (Dennen 9270, 9289; Williams 9340; Tepker 9438-39, 9441; O'Hara 9998; Miller 10167-68; Hanke 10419, 10447; Evans 10609; Thorn 11160-61; Walker 11216, 11235-36; McNamara 11271; Davenport 11707; 11711; McWilliams 11995-98); discussing educational plans with families and awarding [37] prizes (Will 9596); distributing free vacation certificates and taking an opinion poll (Kellogg 10296-97); or, interviewing prospective members of a Mothers' Club (Gribbin 13120-21).

75. Many of respondents' new sales employees did not realize that their job was to sell encyclopedias until training was actually in progress or had been completed (Dennen 9289, 9292-93; Williams 9369; O'Hara 9998; Kolkhurst 10035; Miller 10192; Kellogg 10319-20; Russell 10387; Thorn 11184; Walker 11214-15, 11235-37; Latasa 11802-03; Howard 12906). Their misconceptions as to the nature of

their employment persisted despite the fact that a "sales" presentation, which they were to use, was frequently given at their initial interviews and taught to them during training (Hanke 10419, 10447-48; Walker 11235-36). Rather than dispelling new employees' misconceptions, the content of these sales presentations reinforced the impression that new employees were engaged in work other than door-to-door sales of respondents' products (Evans 11707).

76. Many of respondents' new employees were explicitly told that their jobs did not involve selling (Dennen 9289-90; Hanke 10419, 10447; Evans 10646; McWilliams 12036; Gribbin 13120, 13159). In other instances, although affirmative misrepresentations were not made, the words "sales" or "selling" were never used during training, and new sales employees remained uninformed as to the true nature of their employment (Tepker 9446; Will 9597; Walker 11234; Westheimer 11499).

(2) Compensation Guarantees

77. As discussed *supra*, blind recruitment advertisements placed by respondents frequently contained income or salary guarantees (see Finding 68). Although respondents maintain that salary "guarantees" were fully discussed with all applicants during their initial interviews (Covens 13726; McClearey 13931-32; Loots 14671), many new employees did not receive a full explanation as to the availability of or conditions placed upon receipt of a "guarantee" until they had begun training or were actually selling in the field (Kolkhurst 10018, 10041-42; Thorn 11161-62, 11187; Westheimer 11438; Gribbin 13129-30; see also, Dennen 9294; Williams 9344; Miller 10172-73; Kellogg 10303). [38]

78. Commissions on accepted sales and "guarantees" were the two compensation formulas used by respondents for new sales representatives (Dennen 9294; Williams 9340; O'Hara 9981, 10005; Kolkhurst 10042; Latasa 11803; Howard 12897). Under the commission plan, a stipulated sum or percentage per placement was paid (Will 9555; Waugh 10498; Evans 10610). The operation of the "guarantee" plan varied. Under the terms of some guarantees, sales representatives were paid the difference, if one existed, between sales commissions earned and the amount guaranteed (Culver 12943, 12964; Mawle 14810). Other "guarantees" were represented as being a straight salary plan which bore no relationship to placements made. Under this plan, if a salesman's commissions exceeded the guarantee, he was paid only the sum guaranteed (McNamara 11272).

79. Applicants responding to blind recruitment advertisements

between the two compensation plans after they had been discussed (Kolkhurst 10042; Miller 10173; Evans 10610; McNamara 11272; Latasa 11803). In other cases, despite the advertisement representations, new employees were informed during their initial interview or training that straight commissions was the only method of compensation available to them (Will 9596; O'Hara 10005; Kellogg 10303, 10320-22). In cases where new employees were given a choice as to the method of compensation, a written employment agreement setting forth their choice was sometimes executed (CX 968; RX 31, 41 Tepker 9471; Miller 10173; Hanke 10420; Culver 12943; Covens 13651; McClearey 13936; Loots 14677; McKean 15082; Toman 16296).

80. If new employees were given a choice between commissions and a guarantee, subtle persuasion and "encouragement" was frequently applied to talk them out of choosing guarantees (Vaughn 5925; Dennen 9294-95; Williams 9345; Kellogg 10303, 10321; Hanke 10421, 10456-57; Evans 10679; Latasa 11803-04, 11875). If they resisted this "encouragement," increased pressure was applied to ensure that the chosen method of compensation was the commission plan (Russell 10388; Howard 12897, 12904).

81. An additional impetus to ensure that most new employees would opt for the commission plan was representations made by respondents that commissions due on sales almost always exceeded the guarantee (CX 563T; Havas 9202, 9229; Williams 9345; O'Hara 10006; Kellogg 10322; Russell 10388; Westheimer 11479; McWilliams 12001; Covens 13727; Basilici 14929). New employees were assured [39] that they could *easily* earn more under the commission plan (Dennen 9294; Johnson 9530-31; Waugh 10498; Evans 10610). Some new sales representatives under the commission plan, did, in fact, exceed the amount of the guarantee (Gilbow 12221; Loots 14677-78). The majority of new sales employees, however, did not earn commissions which approximated the income they had been led to anticipate (Havas 9229-30; Kolkhurst 10046; Miller 12794; Culver 12973).

82. When new sales employees commenced work under a guarantee, receipt of such guarantee was normally conditioned on giving a specified number (*e.g.*, 48), of complete, authorized presentations per month²² (Thorn 11162; Westheimer 11439; Miller 12794; Culver 12943; Covens 13647, 13651, 13724; McClearey 13932-33; Loots 14671, 14677, 14681; Mawle 14787). Cards which reflected presentations given were filled out and turned in by sales representatives seeking to qualify for a guarantee (Williams 9345; Tepker 9451;

²² At times, a minimum number of placements, *i.e.*, 3/wk., was the condition placed on receipt of a guarantee (Latasa 11804; Storms 13331-34).

Kolkhurst 10019, 10042; Thorn 11162; Walker 11226; Miller 12794; Culver 12943; McClearey 13933-34; Loots 14677).

83. Respondents maintain that the number of presentations required to qualify for a guarantee was realistic and that new employees could easily fulfill this condition (Evans 10610; Davenport 11712; Covens 13651-52; McClearey 14004; Loots 14681; Basilici 14929-30). In actuality, giving the required number of complete presentations proved extremely difficult due to the length of time required for each presentation. Failure to fulfill this condition was the major reason many new employees did not qualify for guarantees (Tepker 9451-53; Walker 11226-27, 11239; Westheimer 11439-40; Davenport 11713-14; Gilbow 12196-98; Miller 12795; Culver 12975). In lowering the set number of presentations required to qualify to 40, respondents cited the difficulty encountered in trying to make 48 presentations (McClearey 13932-33).²³ [40]

84. Respondents' official policy was to pay the advertised guarantees when the conditions attached thereto had been met and, in accord with this policy, some guarantees were paid (RX 60, 504; Covens 13648-49, 13652; McClearey 14005; Mawle 14787-88; Basilici 14929; Ryan 15941, 15943, 15951).²⁴

85. In addition to omitting conditions placed on guarantees, no time limit on the duration for payment of such guarantees was expressed in the blind recruitment advertisements placed by respondents (see Finding 59). However, respondents' practice, which apparently reflected corporate policy, was generally to make such guarantees for only the first month (CX 960; Covens 13728-29; Mawle 14810; Basilici 14947; Ryan 16036, 16049).

86. Under the commission plan, a reserve for cancelled orders was created by deducting a set sum from each commission (CX 784B; Snyder 8792, 8796-97; Hanna 13193). Other deductions were also made for sales kits and materials and increased publication costs (Williams 9357; O'Hara 10037; Hanna 13208). Many new sales representatives were not informed that such deductions would be made from commissions until training had been completed and they were working in the field. They also were not advised that amounts withheld would not be refunded upon termination of their employ-

²³ "Q. What was wrong with the 48?

A. We felt that it was too many presentations for the man to be able to make without having to force him to work on Sunday or something straight through seven days a week.

Q. They had a difficult time making 48 presentations?

A. Yes" (McClearey 13932).

²⁴ RX 504, a chart of guaranteed salaries paid by Richards from 1967-1971, lists paid guaranteed earnings totalling \$252,544. The fact that some payments were made under a guarantee program, however, does not preclude a finding that such guarantees were not available to all individuals responding to "guarantee"

ment (Snyder 8726-27; Kellogg 10316; Thorn 11193). In fact, affirmative misrepresentations were made to some new employees that they would be paid such withholdings when they left respondents' employ (Vaughn 10519, 10527; Miller 12796, 12821; Hanna 13193, 13209).

87. In the course of their work, some sales representatives incurred expenses for travel, motels and food. Although they had been led to believe such expenses would be paid by respondents, they were not reimbursed for these expenses (Kolkhurst 10046; Walker 11228, 11250-51; McWilliams 12018, 12052, 12056; Miller 12812). [41]

88. Representations regarding "guarantees" made by respondents during the initial interviews and training of new employees were deceptive in that:

(1) guarantees were not available to all new employees nor were they usually paid for more than one month;

(2) the conditions placed upon receipt of guarantees were not easily fulfilled;

(3) pressure to convert to commissions was frequently exerted; and

(4) representations that earnings under the commission plan would exceed guarantees did not reflect the usual experience of new sales representatives.

The limitations and conditions placed upon receipt of a guaranteed salary were material facts which would have affected a prospective employee's decision to respond to respondents' recruitment advertisements. Failure to disclose these facts was, therefore, false, misleading and deceptive.

IV. SALES PRACTICES

A. *Introduction*

89. Respondents' sales representatives are trained to sell the publications and services retailed by respondents in combination rather than individually. A combination usually consists of a single major publication (encyclopedia) and various premium items (CX 9C). The respondents distribute standard combination schedules to their respective sales representatives which set forth the various publications to be included in each combination and the price for each such combination (CX 9-13B). As additional items are included in the combination offer, the combination price increases (CX 9A).

90. The Executive Committee of Grolier, Inc. designated which direct selling subsidiaries would have distributional rights to each

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publication sold (see Finding 34). The following table sets forth the publications sold by respondents for the calendar year 1969: [42]

<i>Products</i>	<i>Major Sets</i>	<i>Respondents Who Sold Products</i>
²⁵ 1.*	Encyclopedia Americana 30 Volumes	Americana, Grolier Interstate
2.*	Encyclopedia International 20 Volumes	Grolier Society, Spencer, Grolier Interstate, Grolier New Era
3.*	New Book of Knowledge 20 Volumes	All named respondents
4.*	World's Greatest Classics 50 Volumes	Americana, Grolier Society, Spencer, Hinkley, Grolier Interstate, Grolier New Era
5.*	Collegiate Encyclopedia (Exactly same as Encyclo- pedia International except in different binding for students) 20 Volumes	Hinkley, Grolier Interstate
6.*	Grolier Universal Encyclo- pedia, 10 Volumes, based on information gathered for Encyclopedia International	Grolier Society, Spencer, Hinkley, Grolier Interstate, Grolier New Era
7.*	American People's Encyclopedia	Richards, Madison
8.**	Harvard Classics	Americana, Grolier Society, Grolier Interstate, Grolier New Era, Hinkley, Spencer [43]
<i>Premiums</i>		<i>Respondents Who Sold Products</i>
²⁶ 1.*	Our Wonderful World 18 Volumes	Americana, Grolier Interstate, Grolier Society, Spencer, Hinkley
2.*	The Book of Art 10 Volumes	All named respondents
3.*	Basic Home Library	All named respondents
4.*	Book of Popular Science, 10 Volumes	All named respondents

* Where one asterisk is shown, the product is published by Grolier, Inc.; where two asterisks are shown, the product is not published by Grolier, Inc.

** Where one asterisk is shown, the product is published by Grolier, Inc.; where two asterisks are shown, the product is not published or manufactured by Grolier, Inc. (CX 8a-0)

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*Products**Respondents Who Sold Products*

5.*	Lands and Peoples 7 Volumes	All named respondents
6.*	Thru Golden Windows 10 Volumes	Richards, Madison
7.*	Children's Hour 16 Volumes	Grolier Society, Spencer, Hinkley, Grolier Interstate
8.*	Grolier Classics 10 Volumes	Grolier Society, Spencer, Hinkley, Grolier Interstate
9.*	Yearbooks	All named respondents
10.*	Research Service	All named respondents
11.**	Teaching Machine - Min/Max and Programmed Courses	Americana, Grolier Society, Grolier Interstate, Hinkley, Spencer, Richards
12.**	Bookcase	All named respondents
13.**	Medical Encyclopedia	Americana, Grolier Society, Grolier Interstate, Hinkley, Spencer, Richards, Madison
14.**	Bible	Americana, Grolier Society, Grolier Interstate, Hinkley, Spencer, Richards, Madison
15.**	Dictionary	Americana, Grolier Society, Grolier Interstate, Hinkley, Spencer, Richards, Madison [44]
16.**	Hammond Atlas	Americana, Grolier Society, Grolier Interstate, Hinkley, Spencer, Richards
17.**	Bookshelf for Boys and Girls	Americana, Grolier Society, Grolier Interstate, Hinkley, Spencer

*B. Lead-Generating Activities**(1) Parochial and Private School Promotions*

91. In the course and conduct of its business, a primary technique used by respondent Spencer to obtain leads to potential customers was to contact parents of parochial schoolchildren through the private schools they attended. This technique spread from Boston and New York through the south, central and southwest United States as early as 1968 (Basilici 14907, 14940-41).²⁷

92. Initial contact seeking permission to give various materials to

²⁷ Respondent Grolier Interstate currently uses a lead-getting technique in parochial, private schools and
[Basilici 14907, 14940-41; Mawle 14793; Toman 16243].

the schoolchildren to take home to their parents was made with the principal of a parochial school by telephone. Spencer salesmen followed a standard "telephone talk" which they had been instructed to use verbatim during this call (CX 787A; Snyder 8732-33; Havas 9210). The caller identified himself as being with the National Institute of Programmed Learning, which is engaged in work of a public service nature designed to foster the use of programmed learning in the schools. This avowed affiliation was intended to elicit a favorable response from individuals contacted. Respondents submitted no evidence that such an institute actually existed or that, if it did, Spencer had any affiliation with it (Snyder 8817-18; Havas 9211-12, 9258-59). In some instances, Spencer Salesmen stated they were working for the National Catholic Educator's Association (Roepke 9178, 9186). Reference was also made to "rave reviews" for respondents' programmed learning received [45] from sisters attending the National Catholic Educators convention (CX 787A; Snyder 8818-19).

93. Spencer salesmen contacting parochial school principals would inform them that:

a letter has been composed by many of your leading educators, explaining the benefits of Programmed Learning which we have just distributed free, as a public service, to the public school children and we are presently distributing these announcements through the Parochial Schools.

They would further represent that these announcements were being distributed by volunteers from Catholic universities or local colleges (CX 787A; Snyder 8736).

94. Arrangements were sometimes made for a personal meeting with the school's principal prior to distribution by volunteers of Spencer's materials (Roepke 9179-80). In other instances, no such meeting was set and arrangements for volunteers to drop off the materials to be sent home with the schoolchildren were made during the initial phone call (CX 787A; Dominic 8876, 8884-86). The volunteers who delivered distributional materials to the schools were, in fact, Spencer salesmen who had been instructed to fend off inquiries by stating that, as volunteers, they knew nothing about the program or materials they were distributing (Snyder 8736; Havas 9210, 9252-53).

95. As a result of the initial phone call or meeting, principals of parochial schools believed that the purpose in contacting pupils' parents was to take a poll or develop interest in getting Federal support to obtain Spencer's programs for use within the parochial schools (CX 1544; Roepke 9182, 9188, 9192-96). The official response

to any objections or questions by a principal questioning whether sales or solicitation was the underlying motive for contacting the parents was:

Oh no, sister, this is completely different. Nobody would be contacted directly or indirectly as a result of our work.

(CX 787B.)

[46] (See also Roepke 9180, 9191). Implicit representations that Spencer's contact with the school had been cleared or approved by the archdiocese were also made (CX 787B; Roepke 9188-89; Gaffney 13003, 13029-32). For example, when asked whether diocesan approval had been given, respondents' representatives were instructed to say:

Oh no, Sister this is completely different. As a matter of fact, because this program is of such an unusual nature, naturally they wouldn't send a letter out directing you to distribute these announcements. However, we have been told that this is to be left up to the discretion of the individual principals.

(CX 787B.)

96. Parochial school principals who agreed to distribute Spencer's programmed learning and speedreading materials were not aware at the time of distribution that other products such as encyclopedias were involved nor did they intend to endorse any products sold by Spencer (CX 1544; Dominic 8875-76, 8892; Roepke 9179-80, 9183; Gaffney 13007-10).

97. The materials left with the schools for distribution to parents were enclosed in an envelope with the following legend:



**IF YOU PLAN ON SENDING
YOUR CHILDREN TO COLLEGE,
READ THIS IMPORTANT
INFORMATION.**

**THEN, RETURN TO CLASSROOM
TOMORROW—SIGNED OR UNSIGNED . . .**

(CX 788)

[47] The bold cross in the upper left-hand corner was used to make it appear that the packet had originated with the school or diocese so

that parents would be more inclined to examine it (Havas 9211). Included within the packet distributed to parents was a letter promoting either Spencer's programmed learning or automated speedreading programs (CX 789, 791) and a request card for a free demonstration to be filled out and returned by the parent (CX 790, 2086).²⁸ No mention of Spencer or encyclopedias is made in any of these materials.

98. Parents receiving the packets described in the preceding finding frequently thought such materials and the programs discussed therein had been reviewed and approved by the school prior to distribution (Tiburcio 8657, 8659, 8697; Canario 9122, 9180-81; Stasiunas 15823-25). Parents of parochial schoolchildren receiving commercial material sent home through the schools will frequently assume such material has been reviewed and endorsed by the school (Dominic 886-87; Gaffney 13008-09, 13015, 13033, 13039-40, 13043-44). No disclosures were made by Spencer's sales representatives to obviate such misunderstandings and, in fact, the content and format of the materials sent to parents tended to reinforce the impression that the school had endorsed respondents' products (e.g., CX 788; Finding 97).

99. After the cards (CX 790) had been filled out and returned to the schools, employees of Spencer, again posing as "volunteers" would pick them up (Dominic 8886; Havas 9214). Parents who returned these cards were subsequently contacted by phone to set up an appointment for a free demonstration. When parents asked if the schools had endorsed the programs presented, Spencer salesmen sidestepped with responses such as "Well, the material did come from the school, didn't it?" (Havas 9208.) [48]

100. CX 793 and 871V are representative of the telephone talks Spencer employees used when contacting parochial school leads. Salesmen were instructed that Spencer policy dictated that they follow these prescribed talks verbatim (Snyder 8737-38, 8845; Havas 9214-15; Hanna 13211-12). Contacts were told an "instructor" would be in their area that evening and that the caller wished to set up an appointment for a 10-minute free demonstration.²⁹ No mention was

²⁸ Spencer salesmen explained to principals that the discrepancy in stated purpose between CX 790 (to give a free demonstration) and their poll of parents for Federal support was because they had not had time to develop new forms and were using CX 790 in the interim (Roepke 9180).

²⁹ CX 871V stated in part: "... AS YOU KNOW, WE AGREED TO GIVE EACH FAMILY A FREE DEMONSTRATION ON PROGRAMMED LEARNING AS A PUBLIC SERVICE, AND THE REASON I'M CALLING NOW IS THAT OUR INSTRUCTORS WILL BE IN THE (Name) AREA TONIGHT. I THOUGHT I'D CALL FIRST TO MAKE SURE BOTH YOU AND MR. _____ WILL BE IN THIS EVENING. IT TAKES AROUND 10 MINUTES, SINCE EACH INSTRUCTOR SEES ABOUT 6 OR 7 FAMILIES AN EVENING. NOW, WILL BOTH YOU AND YOUR HUSBAND BE IN THIS EVENING, BETWEEN SAY, 6:30 - 7:30, OR WOULD 7:30 - 8:30 BE MORE CONVENIENT? FINE. (Check address and nearest street corner.) OUR INSTRUCTOR WILL LOOK FORWARD TO SEEING YOU BOTH AT _____ (Mention the appointment time.) THANK YOU"

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made of Spencer encyclopedias or the underlying solicitation purposes of the demonstration. Irrespective of how the lead was generated, the sales presentation subsequently given was essentially the same.

101. Representations made by respondent Spencer in contacting parochial schools and the parents of children attending these schools were false, misleading and deceptive in that:

(1) the purpose of such contacts has been represented as something other than the solicitation of sales; and

(2) the method of transmitting promotional material to parents and the content of sales presentations had the capacity to lead parents to believe that the program offered had been reviewed, approved or endorsed by the parochial schools or archdiocese.

(2) National Advertising Promotions

102. In the course and conduct of its business, Grolier, Inc. has placed advertisements in magazines of national circulation in order to obtain leads who could be contacted by its home subscription subsidiaries for the purpose of sales [49] solicitation (Romano 682; Mawle 3474-75; Waller 5793-95). These advertisements were placed in such prominent magazines as *Life*, *Look*, *Redbook* and *Good Housekeeping* (CX 1612A-D).

103. The following are illustrative of the coupons contained in the national advertisements placed by respondents to generate leads:

The New Book of Knowledge Putnam Valley, New York 10579

Please send me my free copy of your color booklet, "The Magic Carpet." There are _____ children in my family, ages _____

Name _____

Address _____

(CX 1611H.)

The New Book of Knowledge Putnam Valley, New York 10579

Please send me my free copy of your booklet, "The Magic Carpet." There are _____ children in my family.

* * * * *

Also available: Free 16 page bonus booklet, "To the Moon and Beyond" (Supply limited)

(CX 1612E.)

[50] Encyclopedia Americana Putnam Valley, New York 10579

Please send me "Eyewitness to Achievement," your full-color booklet packed

with information that explains how the readable Americana helps children and adults to further knowledge.

* * * * *

Enter our Americana Poll. It might win you a set of the Encyclopedia Americana for free.

(CX 1613H.)

(See also CX 1611J-K, 1612F and 1613J-K.) Readers were requested to fill out and mail these coupons to get the free booklets offered.

104. Respondents' purpose in soliciting return of the above coupons was to obtain leads to prospective customers. After the booklets requested had been mailed, the coupons were sent to the sales office located nearest to the prospect (Waller 5793-94). Sales representatives thereafter contacted these individuals by phone to set up an appointment at which a standard sales presentation (discussed *infra*) was given (Romano 682; Long 2848; Mawle 3475).

105. Respondents' national advertising to generate leads was deceptive in that it failed to disclose the material fact that individuals submitting the appended coupons would be contacted by a sales person for the purpose of soliciting the sale of respondents' products.

(3) Store Promotions

106. In the course and conduct of their business and for the purpose of generating leads to prospective customers, respondents established booths in stores soliciting store customers to enter a drawing for a "free vacation" by filling out an entry card (Johnson 9514-15; Thorn 11169). [51]

107. All entrants in the drawing who qualified as prospective customers were subsequently informed by telephone they had won a free vacation and an appointment was made to award their vacation certificate. This representation was false, misleading and deceptive in that no drawing had been held and the real purpose in obtaining drawing entrants was to solicit the sale of respondents' products (Johnson 9515; Thorn 11169).

C. Telephone Solicitation

108. Respondents sometimes made initial contact with prospective customers via prepared "telephone talks" aimed at setting up appointments with such individuals. Although the content of these "talks" varied, they were all designed to convey the impression that

the purpose of the in-home appointment was something other than the sale of respondents' products or services.

109. Individuals contacted were frequently told they had won a free vacation (CX 448B; Johnson 9515; Miller 10174; Culver 12945), Min/Max Teaching Machine (Murphy 8850-51; Williams 15876), or art reproduction (CX 452; Mawle 3457-58; Will 9560-61) and that the purpose of the telephone call was to set up an appointment to award their prize certificate. Names of such "winners" were compiled from telephone directories (Will 9557-58; Kellogg 10302; Gilbow 12127) and from cards submitted as a result of national advertisements (Findings 102-05; Mawle 3457-58) or the contest display booths set up in department stores (Findings 106, 107; Johnson 9515).

110. Free vacation certificates were also given to individuals contacted by phone regarding respondents' Consumer Buying Service.³⁰ Prospective customers were told that, if they would attend a meeting to learn about how they could save money on purchases through Consumer Buying Service membership, they would receive a free vacation certificate or gift (Lay [52] 9733; Hatcher 10859-60; Larsen 11406; Kearns 11909, 11912; Clarke 12575). The fact that one of the main purposes of such meetings was to sell respondents' publications was not disclosed at the time the first contact was made with the prospective student customers (Lay 9733; Hatcher 10860).

111. Another form of "telephone talk" used by respondents informed prospective customers that they were being considered for or had been selected as a sponsor or promotional family and could receive new products marketed by respondents. An appointment was set up so that a company representative could explain the details of being a selected household to individuals contacted (CX 563I and O; Will 9558-59; Clarke 10335; Ford 10559-60; Evans 10625-27).

112. Respondents' "telephone talks" assured contacts that no obligation was incurred and that the appointment would not involve solicitation of sales of respondents' products (CX 563I and O; Murphy 8851; Johnson 9515; Will 9558).³¹

113. Such "telephone talks" used by respondents were false,

³⁰ In some instances, individuals received a card or letter in the mail with a telephone number to call to obtain the vacation certificate and information regarding the Consumer Buying Service (Larsen 11404; Krubsack 11943).

³¹ "... but please do not be alarmed Mr/Mrs _____ because I didn't call you to give you a sales talk! The purpose of my call is this:

"Grolier has approximately 7000 sales people across the country and we have to provide these sales people with prospects to call on. Right now we are getting some help from several families in each community and in return for that help we are paying these families in Grolier merchandise.

• • • • •

"If prospect says they are not interested - say 'That's fine - all I want to do is explain what we are doing and coming out there to give you a sales talk' " (CX 563I).

misleading and deceptive in that they affirmatively misrepresented that the purpose of the in-home appointment was *not* to solicit the sale of respondents' products and services.

D. Door-To-Door Solicitation

114. Standard introductory talks or "door-openers" were used by respondents in their initial contact with prospective customers in their homes. Although the precise language of these "door-openers" varied, the content and purpose, *i.e.*, to gain entry to the home, remained constant. [53]

115. "Cold canvassing" is a method whereby sales representatives make initial contact with prospective customers in their home without prior notification of their visit and where the persons contacted have not indicated a prior interest in respondents' products or services. This is a technique of establishing contact with prospective customers which respondents' home subscription subsidiaries used extensively (Ryan 16075). Various "door-openers" or door approaches were used in this endeavor.

116. When following up on appointments generated through telephone solicitation, respondents' sales representatives used standard door-openers which coincided with the telephone representations made, *e.g.*, delivery of a prize certificate (CX 419A, 446A, 448A; Kellogg 10298-99).

117. In one frequently used approach, prospective customers who had not previously been telephoned were informed at the door that the caller's purpose was to award a prize or certificate such as the vacation gift certificate. After the awarding of prizes, prospective customers were told that, in addition, they were eligible to enter an opinion poll contest to win a free set of encyclopedias or the New Book of Knowledge (CX 446A, 446C, 488A). Prospective customers were told that the purpose of the opinion poll contest was to ultimately use winners' names and opinions in an advertising campaign to publicize respondents' educational materials. In addition to being eligible to enter the opinion contest, a special opportunity was extended to individuals contacted to obtain the educational program described, without the usual costs, for additional help and cooperation (CX 419C, 446, 447B). This help and cooperation took the same forms discussed, *infra* (Findings 144-49).

118. Another prevalent theme used by respondents' sales representatives in "cold canvassing" characterized the purpose of the contact as an interview or survey in conjunction with a product promotion program (CX 821A, 871F, 964B; Dennen 9274-75).

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9442-43; Warwick 9670; Fjelstad 9821). Examples of these door-openers include phrases such as:

... I AM DOING PRODUCT PROMOTION WORK FOR SPENCER INTERNATIONAL ... MOST PEOPLE WE TALK WITH DON'T ASSOCIATE THE NAME INTERNATIONAL WITH ANY SPECIFIC PRODUCT AND THAT'S WHY WE ARE CONDUCTING THESE INTERVIEWS. ...

... WE'RE NOW WORKING ON A MORE DIRECT TYPE OF SALES PROMOTION TO BACK UP OUR NATIONAL ADVERTISING. IT IS GOING TO EFFECT FAMILIES IN EACH AREA, LIKE YOURSELF. IT IS A PRODUCT PROMOTION DESIGNED TO STIMULATE "WORD-OF-MOUTH" RESPONSE ... SO SPENCER HAS DEVELOPED A VERY UNIQUE AND UNUSUAL PROMOTION CAMPAIGN ON A MUCH MORE LIMITED SCALE. SPENCER IS ACTUALLY GOING TO BE OFFERING THE NEW INTERNATIONAL TO QUALIFIED FAMILIES IN EACH AREA ____ IT WOULD BE THEIRS TO KEEP FOREVER AND OF COURSE THAT'S PUT IN WRITING!

(CX 821B.)

... I've been asked to interview a few families on a new program about to be released in the area. It involves asking you and your wife a few impersonal questions and it just takes two minutes

(CX 958.)

Hi, I've been asked to call on you ... I have to interview everyone. ...

As I said, I am with the public relations and advertising division of my company ... Now we are setting up our local advertising in order to get local support. This is why I am here this evening. You see, the type of advertising we are interested in on a local level is letters of opinion and testimonial letters from satisfied owners telling us what they think of the product. ...

(CX 1023A.)

[55] 119. Following such introductions, potential customers were asked for their responses to a brief list of questions provided to salesmen by respondents (CX 821A, 871F). Dummy IBM cards following the questionnaire format were sometimes filled in by respondents' sales representatives (Miller 12800). When asked about the cards, sales representatives were instructed to say that the information would be fed into computers thus implying it would be used in a marketing research effort (Miller 12833). The record, however, demonstrates that the purpose of the questionnaire was to gain entry to the home and determine if the prospect met respondents' credit standards (Kotler 5069-70; Miller 12800-01). No other use was made of the information elicited through the

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"interview" or "survey" or recorded on the IBM cards (Waugh 10536-37; Westheimer 11441-42, 11481; Miller 12802, 12833).

120. After completing the questionnaire, respondents' sales representatives would discuss product promotion, the failure of national advertising to effectively promote respondents' "pre-school through college home reference library" and their endeavor to work on:

A MORE DIRECT TYPE OF SALES PROMOTION TO BACK UP OUR NATIONAL ADVERTISING A PRODUCT PROMOTION DESIGNED TO STIMULATE "WORD-OF-MOUTH" RESPONSE.

* * * * *

A VERY UNIQUE AND UNUSUAL PROMOTION CAMPAIGN . . . SPENCER IS ACTUALLY GOING TO BE OFFERING THE NEW INTERNATIONAL TO QUALIFIED FAMILIES IN EACH AREA ____ (CX 821E; for additional examples, see Finding 118).

121. Having gained access to prospective customers' homes through a survey/interview door approach, respondents' sales representatives would give one of the standard sales presentations described in subsequent findings.

122. In their initial contact with prospective customers, sales representatives of respondents' Grolier New Era and Grolier Society sought to enroll mothers in a "Mothers Club" (Gribbin 13121; Storms 13303). The stated purpose of this club was to provide middle class families with the necessary tools to ensure that their children would have a well-rounded [56] educational program (CX 618D). In actuality, respondents' sales representatives were not offering membership in a club since no bona fide club existed. This device was used solely for the purpose of selling respondents' publications and services (Vaughn 5877, 5897).

123. The survey door approach was also used in connection with the Mothers Club sales presentation (Vaughn 5876-79). The standard door-opener used in this presentation was:

Good morning, I am Jane Smith, a field counselor with the New Era Young Mothers Club assigned to your community. I am making a field report for the club and acquainting the mothers in this area with its work and explaining its benefits and privileges. As part of my work I am requested to send field reports to my office. I would very much appreciate your cooperation in answering just a few questions relating to child education.

(CX 2087D.)

(See also CX 618B; Gribbin 13123; Storms 13305.)

124. After delivering an introductory talk similar to that set forth above, the sales representative utilizing the Mothers Club presentation would fill out what was called a field report by asking the customer a series of questions concerning the prospect's family and children (CX 2044, 2091;³² Vaughn 5912; Gribbin 13123). The primary use of such survey was as a lead-in to the sales presentation (Storms 13305-06). [57]

125. At the conclusion of the field report, the Mothers Club sales representative would state: [58]

Mrs. Prospect, you have been very gracious spending this time answering these questions, they are important to us and will be forwarded to my company, whose headquarters are in New York. Are you at all familiar with the work of the New Era Young Mothers Club.

(CX 2087D; see also 618C.)

At this point, the sales representative began one of the standard sales presentations discussed *infra*.

E. Misrepresentation of or Failure To Disclose Purpose of Initial Contact

126. Respondents' official policy prohibited misrepresenting to a prospective customer the purpose of a telephone call or home visit (RX 63A, 69B; McKean 15490, 15492). In fact, some corporate directives explicitly provided that a full disclosure be made as to the purpose of the call or visit and the identity of the caller (RX 65A, 68A).

127. Experienced salesmen employed by respondents and their corporate officials expressed a reluctance to affirmatively disclose at

"NEW ERA YOUNG MOTHERS CLUB FIELD REPORT

"I'm with the Young Mothers Club, making a field report. How many people live here? _____

Children _____ Adults _____ Ages _____

School: Public _____ Parochial _____

"1. Which do you feel are the most impressionable years of a person's life? Childhood _____ Adolescent _____ Adult _____

2. Who do you feel has more influence on the children? Mother _____ Father _____ Teacher _____

3. Which area of environment do you feel has more basic influence on the children? Home _____ School _____ Church _____ Street _____

4. Are you familiar with the following. . . A. New Pre-School training methods? Yes _____ No _____ B. Modern Math: eg. Pyramid system or new math? Yes _____ No _____ C. Are you aware of a shortage of good teachers? Yes _____ No _____

5. Do you have the following materials in your home? Educational Toys? _____ Children's Magazines and Stories? _____ Dictionary? _____ Reference Materials? _____ Bible? _____ Educational Recordings? _____

6. Have you ever had any phone calls regarding this information? Yes _____ No _____

7. You do have a phone, don't you? Yes _____ No _____

8. I don't suppose you work, but what kind of work does your husband do? _____

9. How do you spell your last name? Name _____

10. I know we're on _____ Street, but what's the number? _____

11. Are you familiar with the work of the New Era Young Mothers Club?" (CX 2044, 2091.)

the outset, the sales purpose of such contacts (McClearey 14008-09; Goldstein 14132; Stearns 14624-25; Loots 14705-06; Basilici 14925-26). Aware of many prospective customers' aversion to dealing with door-to-door encyclopedia salesmen, respondents' representatives sought to delay disclosing the sales purpose of their contact until this natural resistance to being sold was diminished, the stage had been set and it would no longer be "too easy for [the] individual to say . . . [W]e have some" (DeLucia 15073; see also David 13559-61).

128. None of the standard "telephone talks," "door-openers" or sales presentations used by respondents' sales representatives used the word "sales" nor did they inform the prospective customers that the objective of the contemplated transaction was the sale of respondents' encyclopedias and other educational materials (CX 419, 446, 447, 448, 563H, 563I, 563"O", 786, 821, 871). [59]

129. Respondents' sales representatives were instructed not to mention encyclopedias at the door (Thorn 11170) and to avoid using the word "sale" during the sales presentation (Dennen 9289-90; Kolkhurst 10020; Westheimer 11497; Storms 13303, 13315). Sales representatives were trained to affirmatively misrepresent the purpose of their contact with prospective customers by characterizing such contact as an interview, survey or club enrollment. If questioned as to a sales motive, they were instructed to explicitly deny any intent to solicit sales of respondents' products or services (Havas 9206, 9218; Dennen 9279, 9302; Williams 9346-47; Tepker 9446; Johnson 9515; Will 9558; Evans 10707-10; Walker 11241; McWilliams 12000-03; 12075; Gilbow 12128, 12137, 12311; Storms 13303).

130. In some sales presentations, the retail installment contracts used by respondents' sales representatives were referred to as "receipts," "guarantees" or "shipping forms" (Dennen 9285-87; Will 9589; Miller 10185-86; Hanke 10433-34; McWilliams 12012-14). Such designations reinforced the erroneous impression conveyed to prospective customers that the purpose of the presentation was not the solicitation of sales of respondents' publications and services.

131. Some customers were able to discern, either from materials received through the schools, the content of telephone calls setting appointments or responses to their questions, the sales purpose of respondents' contact (Shaw 14576; Clapp 14635-36; Ferguson 14953-54; Connors 15324-25; Thompson 15589, 15602; McConnell 15783-84; Stasiunas 15834; Williams 15876-77). The representations utilized in connection with the initial contact with the consumer, nevertheless, had the capacity to mislead (Findings 91-130).

which is to sell, is a material fact in a prospect's decision to let such representative into their home. The failure to disclose at the outset, and in many instances, to affirmatively misrepresent, the purpose of contacting prospective customers was false, misleading and deceptive (see Findings 91-130). [60]

F. Representations as to Duration of the Sales Presentation

133. During the initial contact, whether made by telephone or at the door, respondents' sales representatives stated that the entire visit, whether characterized as a survey, interview or awarding of prize certificates, would take only a few minutes of the contact's time (English 531; Tiburcio 8660-61; Murphy 8851; Johnson 9525; Will 9559; Warwick 9670; Halsey 9691; Nesper 9784; Laundre 9954; O'Hara 9984; Kellogg 10301; Waugh 10506; Westheimer 11441; McWilliams 12000; Miller 12800; Ivaska 13227; Goldstein 14089; Basilici 14912). Similar statements as to the minimal time required for such visits were contained in the standard presentations used by respondents' sales representatives (CX 448B, 956A, 958).

134. In contrast to the above representations, the time required to give a standard sales presentation normally exceeded one hour (English 531; Snyder 8753; Canario 9134; Johnson 9545; Will 9589; O'Hara 10001; Kolkhurst 10034; Westheimer 11439, 11458; Miller 12811; Reames 13349; Goldstein 14090; Shaw 14578; Clapp 14640; Basilici 14913, 14925; Thompson 15603; Stasiunas 15806; Williams 15885).

135. In deciding to permit respondents' sales representatives into their homes, the time required for such visit was a material fact. Given the disparity between the time representation made to prospective customers and the anticipated time of a sales representative's visit, such representations as to the duration of the call were misleading.

G. Training in Use of Standard Presentations

136. Respondents disseminated prepared telephone talks, door-openers and sales presentations to new employees to use when contacting prospective customers (CX 419, 447, 618, 651, 821, 871, 958, 1023; Ryan 5814-15, 16026; Pardee 11103-04). Respondents' sales representatives were trained to use these materials (Miller 10168; Westheimer 11488). For example, respondent Spencer's Training Manual admonished new sales representatives to:

FOLLOW PRESENTATION - *Do not deviate* - It must be done our way, which is the successful way.

(CX 871B.)

[61] 137. During training, respondents' new employees were either given written versions of the presentations they were to use, given authorized presentations to copy over for their use, or instructed to copy down such presentations as they were given orally by trainers (Tepker 9441; Johnson 9513, 9538; Kolkhurst 10018; Miller 10168, 10170; Kellogg 10298-99, 10326; Russell 10376; Thorn 11163; McNamara 11272-73; Westheimer 11438; McWilliams 11996, 11999, 12030; Howard 12894-96; Culver 12944; Hanna 13190). Sales representatives were instructed to memorize these standard presentations and follow them verbatim in all future contacts with prospective customers (Havas 9234; Dennen 9288B; Johnson 9513-15; Kolkhurst 10047-48; Kellogg 10298-99; Thorn 11163-64; McNamara 11273-74; Westheimer 11438; Gilbow 12326-27; Howard 12897; Culver 12955; Hanna 13191; Mawle 14790).

H. Representation that Individuals Were Specially Selected for a Unique Offer

138. Various presentations used by respondents' sales representatives conveyed the impression to individuals contacted that the offer made to them was unique and that they were specially selected or qualified to accept it. Standard presentations informed prospective customers that qualified families were being accepted or invited to participate in an unusual offer being made in their area and that if they declined to participate, their opportunity would be passed on to another family (CX 821C-E, 871G).

139. Prospective customers were informed by respondents' sales representatives that they had been selected as one of a few families in the area to receive a unique offer or to participate as a research or test family in a new program developed by respondents (Warwick 9671; Halsey 9722-23; Schneider 9898; Leach 10253, 10269, 10272; Clarke 10335-36; Ford 10560, 10573; Demer 11300-02, 11314, 11321; Bruker 12089; Clay 12429, 12435-36; Ivaska 13214). The criteria or basis on which such selection had been made, if one existed, was not, however, disclosed to prospective customers (Warwick 9685; Halsey 9723; Schneider 9915; Leach 10269, 10272; Ford 10589; Demer 11314; Bruker 12089; Ivaska 13215). [62]

140. The impression that individuals contacted had been specially selected or qualified was reinforced throughout the presentation. In addition to oral representations, retail contracts used in some sales transactions bore the designation "College Student Program"

in the program were of a limited, select class (CX 405I, 405K, 405N, 1220A).

141. Respondents' official policy prohibited sales representatives from representing that individuals contacted had been specially selected for the program presented (RX 65A, 65B, 69A). Respondents also placed legends on contracts used by their sales representatives explicitly stating that individuals contacted had not been specially selected (RX 42-50). However, respondents were aware that, contrary to the avowed corporate policy and contract provisions, sales representatives frequently represented, directly or by implication, that the individuals contacted had been specially selected (CX 95G, 95I, 95 "O", 95M, 96D, 105H, 107D).

142. The above representations led prospective customers to believe they had been selected to participate in a program which was not available to the public at large. Such representations were false and misleading in that such individuals had not been specially selected and the program offered to them did not differ from that offered to all members of the general public on a regular basis.

I. Representations That Certain Merchandise Was Free or at Reduced Cost³³

143. Respondents' official policy prohibits representations by their sales representatives to prospective customers that any publications or products included within a particular combination package are "free" or without cost, unless such representations are true (McKean 15500; see also Goldstein 14119; Stearns 14615-16). As evidence of the existence of this policy, respondents cite policy directives issued by [63] respondent Richards in 1969 (RX 65A, 69A); testimony of two consumer witnesses that they knew none of the merchandise or services they received were "free" (Lay 9760-61; Pritchard 14037); and contract language that "... no item listed above is free" (RX 45). Despite their announced policy, however, respondents' sales representatives made representations that publications or products included within combination packages were free, at no additional cost, or bonuses. Respondents, as a result of their 1969 telephone surveys, were aware that such misrepresentations frequently occurred (e.g., CX 95E, G, I, M; 96F; 97D, F, H; 98D, F, H; 99H; 100E, K, R; 102F; 103D, H, J; 104E, G, I; 105D, F, H; 106E; 107F, I; 108F, G, J, K; 109D).

144. Once entry to a prospective customer's home was effected, most of respondents' sales representatives used a standard "advertis-

³³ See subsection K, "Representations of Available Payment Plans—Conversion," for findings regarding representations of free merchandise for paying off contract in under ten years.

ing talk." Respondents' sales representatives stated that Grolier or one of its subsidiaries had recently developed a new product and was currently involved in a promotional campaign. After discussing the expense and lack of success of a national advertising program, prospective customers were told that respondents were embarking on a program of local "mouth-to-mouth" advertising and were seeking individuals to provide "help and cooperation" in this endeavor.³⁴ Under the terms of a special "help and cooperation offer," it was represented that a participating individual would receive some or all of respondents' products free or at greatly reduced costs in return for their help and cooperation in one or more of the following ways:

- (1) Displaying of publications in a conspicuous location in their home;
- (2) Writing a letter evaluating or endorsing the publication which may be used in future advertising;
- (3) Providing respondents with referral names of individuals who might be interested in respondents' publications; and [64]
- (4) Giving permission to list and use individual's name as a local owner.

(CX 419C, 446B-C, 447B, 563J, 651C, 821B-C, 997C, 1023A; Halsey 9692; Thorn 11170-71; Goldstein 14093-94; Basilici 14921, 14934-35.)

145. Respondents' sales representatives gave varying explanations to prospective customers of what they would receive for their help and cooperation. Some prospective customers were told that they would be "paid" in educational materials and services for the help and cooperation rendered by them (CX 563P, 1023A; Will 9566; Gilbow 12146, 12171-72, 12388-89). Other prospective customers were told that in exchange for their cooperation, they would be offered an opportunity to purchase respondents' products at substantial savings over the established retail prices (CX 419C, 447B, 651, 821, 997; Dennen 9281; Williams 9354-55). Standard sales presentations explained this price reduction as follows:

... [I]n return for the help that we need, we'll cross all the retail price out completely (CROSS OUT PRICES). They will never apply to you. All you'll ever return to us, instead of all this, is the shipping once and the \$ _____ ten times, and if you're one of the opinion poll contest winners, we'll even cross this out (CROSS OUT), in other words, you'll own the entire program free (CX 419K, 651L).

... I HAVE BEEN AUTHORIZED TO DISREGARD EACH AND EVERY ONE OF THESE FIGURES I HAVE SHOWN YOU. NOT CHARGE THE FAMILY \$889.80 OR

³⁴ In fact, respondents' sales representatives' sole purpose in being in the home was to sell respondents' products and services (Murphy 16474).

EVEN \$88.98 A YEAR BUT ACTUALLY ENROLL THE FAMILY IN THE ENTIRE 10 YEAR PROGRAM — PROVIDING THEY QUALIFY FOR LESS THAN THE COST OF A DAILY NEWSPAPER. JUST \$39.95 A YEAR OR ABOUT A DIME A DAY AND MR. AND MRS. _____ THAT RIGHT THERE IS ABSOLUTELY ALL A FAMILY WOULD EVER INVEST IN THE ENTIRE 10 YEAR PROGRAM

(CX 821F.)

In other sales presentations, prospective customers were told they would pay for one or more components of the educational package but that the remaining components were bonuses or premiums given in exchange for their help and cooperation [65] (Tiburcio 8663-64; Canario 9128-31; Havas 9218 9244-45; Westheimer 11456).³⁵ Another variation of the "help and cooperation" theme represented that, if individuals provided such assistance, they were required only to pay to keep the program up to date for ten years via yearbooks and the Fact Research Service, but the initial program would be placed in their home without charge (CX 1023B; Will 9580-82; Warwick 9670; Halsey 9697; Nesper 9788; Schneider 9902, 9909; O'Hara 9988-89; Kolkhurst 10027; Walker 11223-24; McWilliams 12006-09, 12071-73; Clay 12431; Howard 12900; Reames 13343). Other prospective customers were told that, in addition to rendering the requested "help and cooperation," they would be required to pay only for shipping, publishing and royalties (Johnson 9522-23; Thorn 11176-77).

146. Although respondents' sales representatives were instructed not to use the word "free" in their sales presentations, euphemisms such as "premiums," "bonuses," "at no additional cost" and "at no extra charge" conveyed the impression that individuals providing help and cooperation would receive free merchandise (Tiburcio 8663-64; Canario 9128, 9131, 9149; Havas 9244-45). Offers of "free" merchandise or services which are deceptive:

may not be corrected by the substitution of such similar words and terms as "gift," "given without charge," "bonus," or other words or terms which tend to convey the impression to the consuming public that an article of merchandise or service is "Free" (Use of the Word "Free" and Similar Representations, 16 C.F.R.251).

147. During the sales presentations, promotional materials provided by respondents to their sale representatives added credibility to oral representations that respondents were actively seeking families to cooperate in local product promotion (CX 405D-E, 406B, 406G-H, 440, 996B-C, 996F). In many instances, respondents' sales representatives used a "co-op" card containing the following

³⁵ In these instances, the retail sales contract was sometimes referred to as a "receipt" which would assure that the participant was paid for the help and cooperation rendered (McWilliams 12014, 12064).

language, which purportedly set forth the obligation assumed by the customer under a help and cooperation offer: [66]

I will cooperate with you in your local advertising program by:

1. Allowing you to refer to me as a local owner. . .
2. Writing a brief letter stating my opinion of your program. . .
3. Recommending five educationally-minded families . . .

(CX 467B.)

(See also CX 435, 467B, 974, 1024.) The representation that participants would receive educational materials in exchange for their help and cooperation was also reinforced by the "Sponsor's Guarantee" used by respondent Spencer's sales representatives which read in part:

In return for all conditions shown above it is agreed the subscriber will:

- | | |
|--|---|
| ☐ Write letter of testimony | ☐ Allow name to be used by a local owner |
| ☐ Answer questionnaire evaluating the merchandise | ☐ Submit names of five prospects |

(CX 812.)³⁶

148. The representation that help and cooperation from participants was a condition of the transaction was also reiterated on the face of retail sales contracts used by respondents' sales representatives:

For which I agree to cooperate by expressing my opinion of the Americana Program, by permitting you to use my name as an owner, and by recommending the names of five prospects; and for which I promise to pay to your order. . .

(CX 1222A.)

[67] (See also CX 405I, 810A, 991A, 1004A, 1095, 1226, 2046.)

149. Although help and cooperation was ostensibly sought to be used in a product promotion campaign, no such use was made of such assistance if rendered, and respondents did not attempt to verify that letters and referral names were submitted (Stearns 2657-58; Gilbow 12218; McClearey 13968; Goldstein 14162-63). Despite contract provisions, which implied that an individual's help and

³⁶ This form was used before presenting customers with the retail sales contract to "ease the family into signing things" (Westheimer 11452). In some instances, the sales transaction was characterized as a "SPONSOR-OWNED" or "LOCAL OWNED" program (CX 4000).

cooperation was a condition of sale, contracts were not cancelled for failure to provide the promised assistance (Stearns 2657-58; Lay 9762; Schneider 9904; Ford 10580; Reames 13349; McClearey 13968; Basilici 14935; DeLucia 15079-80).

150. In addition to the "help and cooperation" theme, representations were made in other sales presentations that individuals would receive free merchandise for joining the Consumer Buying And Education Service and paying the contract off in three years (Geddeis 9924, 9928; Hatcher 10864, 10889; Larsen 11432-33; Krubsack 11976, 11978). As a result of such oral representations, the impression was conveyed to prospective customers that the payments they agreed to make applied only to the cost of the service and that all other merchandise received was at no additional cost (Hatcher 10864; Larsen 11411-12, 11432; Kearns 11930-31).

151. Representations were also made in sales presentations for the Mothers Club and respondents' Child Development Program that various publications would be included in the programs as bonuses for prompt enrollment (Leach 10255, 10257, 10284; Bricker 12095; Storms 13306).

152. Contrary to representations made by respondents' sales representations that "free" merchandise was included in the educational packages purchased, no publications or services were free (RX 45; CX 810A, 1004A, 1095A, 1222A). Such representations, therefore, were false, misleading and deceptive.

J. Representation of Retail Prices

153. A representation that a stated price is the list or retail price is a representation that a substantial number of sales of the article in question are made at that price (See Guides Against Deceptive Pricing, 16 C.F.R.233).

154. Respondents distribute promotional sales aids, attributing stated values to various package components, to their sales representatives for use in presenting educational packages to prospective customers. (CX 809H is one example of such memoranda: [68]

MEMORANDUM

INTERNATIONAL ENCYCLOPEDIA

PROGRAM* (70 VOLUME LIBRARY)

Including 50 volumes of the World's Great Classics.

A GUARANTEED VALUE OF \$650.⁰⁰



INTERNATIONAL YEARBOOK*

\$12.00 Retail x 10 Years \$120.⁰⁰

* Offered to Sponsors at Only \$6.95

FACT

RESEARCH SERVICE

\$35.00 Per Year* x 10 Years.... \$350.⁰⁰

* Based on Cost Plus Profit accounting of 10 reports

TOTAL 10 YEAR
PROGRAM VALUE _____

\$1,120.⁰⁰

[69] (See also CX 831H, 973.)

155. Beginning in the late 1960's, respondents, for the stated purpose of increasing customer awareness, also began printing a price list on retail installment contracts used by their sales representatives (Murphy 16384-85). There were variations in individual item prices and format, but CX 1222B is typical of the overall impact of such retail price lists:

RETAIL PRICE LIST	
Encyclopedia Americana	\$375.00
World's Great Classics	\$275.00
The New Book of Knowledge	\$250.00
Our Wonderful World	\$100.00
The Book of Art	\$125.00
Basic Home Library	\$125.00
The Book of Popular Science	\$60.00
Lands and Peoples	\$60.00
The Greater Holy Bible (Catholic or Protestant)	\$40.00
The New Greater Webster Dictionary	\$30.00
American Boy and Girl Book	\$25.00
Max/Max Teaching Machine	\$25.00
Atlas of the World	\$25.00

(See also 420D, 810D, 1193B, 1246B; RX 509-13.).

156. The retail price lists provided by respondents were referred to by sales representatives in the course of their presentations to demonstrate the costs savings customers could realize through combination purchasing (CX 419J, 447J, 651K; Murphy 8853; Will 9579-82; Halsey 9699; McWilliams 12012; Culver 12951-52, 12958-59; Covens 13704-08; McClearey 13903-06; Goldstein 14155-58; Duvall 14866; Basilici 14932-34). The total [70] of retail prices listed contrasted sharply with the standard combination prices (Finding 168) offered to prospective customers.

157. Respondents' sales representatives were frequently not authorized to make individual sales of respondents' publications (Snyder 8759-60; Dennen 9288A; Tepker 9465; Kolkhurst 10035, 10055-56; Kellogg 10314-15; Waugh 10518-19; McWilliams 12012; Gilbow 12207-10). Other salesmen, although authorized to make individual sales, were discouraged from doing so (Culver 12958; Hanna 13205). As a result of such policies in the local offices, salesmen generally made no, or extremely rare, individual sales of respondents' publications (Havas 9223; Will 9602; Hanke 10489-40; Westheimer 11465; Latasa 11833; Gilbow 12210, 12367; Hanna 13197, 13204; Storms 13315).

1967-1971, only a small percentage of respondents' sales were made at the retail prices (Stearns

2663, 2650; Long 2849; Kotler 5085; Lique 10938; Pardee 11065; Gilbow 12209; McClearey 14000; Goldstein 14161; Duvall 14899; Basilici 14924-25; DeLucia 15075-76; McKean 15565-66; Berry 15765-66; Toman 16317; Murphy 16424, 16464-65). This finding is corroborated by the insertion, in late 1973, of respondents' price advantage statement adjoining the retail price list on current contract forms. This insert reads:

Grolier publications and products may be purchased at any time at the individual prices on a cash or time basis. Because of the educational benefits and price advantage to subscribers of purchasing more than one set at a time, *only a small fraction of Grolier's sales of any of these products is on an individual basis.* A combination purchase of two or more of the products shown in bold face automatically entitles the customer to an approximate 30% price advantage from the individual prices. If, however, you purchase just one product you pay the full price shown (emphasis added; RX 44; Toman 16298).

(See also RX 49, 50, 514, 516).

[71] 159. Respondents do not maintain corporate records enabling them to determine what percentage of the sales of their products occurred at the individual retail prices printed on retail installment contracts (CX 5N).³⁷

160. The retail price lists disseminated by respondents did not correspond to the prices at which a substantial number of such publications were sold (Finding 158). The dissemination of such lists and their use by respondents' sales representatives was, therefore, false, misleading and deceptive. [72]

161. Respondents' use of retail price lists in conjunction with the combination price constitutes a direct or implied representation that the combination price is a reduction from the price at which a substantial number of sales of the articles in question have been made. The practice of making such price comparison claims without substantiating records is unfair and has the capacity to mislead.

³⁷ In June 1971, at the request of the staff of the Federal Trade Commission and with the authorization of the President, General Counsel and outside counsel of Grolier, Inc., a pricing survey was undertaken to determine the percentages of individual sales of respondents' publications compared to the sales of these publications in combination (Trachtenberg 5684). CX 1518-19, a survey of the Richard's Boston office for April, October, and November 1970, which shows no individual sales of respondents' products, reflects the only compiled data generated by the pricing survey (Trachtenberg 5689). Survey forms from other fiscal offices necessary to complete the study were gathered and retained by Mr. Trachtenberg, Vice President, Director of Consumer Relations of Grolier, Inc. These forms "were discarded in late June 1972 in the course of a routine cleaning out of his files" (Respondents' Reply to Complaint Counsel's Proposed Findings of Fact and Proposed Order, p. 42; see also, Trachtenberg 240-45, 5690-92). Consequently, no final tabulation of the percentage of retail sales on an individual basis was made. Respondents maintain that "[T]his pricing study was never completed, primarily due to the fact that the Commission, in July 1971, announced the proposed complaint in this proceeding and thereby moved the proceeding from the investigation stage into the litigation phase." (Respondents' Reply, *supra*, p. 41). The failure, without persuasive justification, to preserve the basic data necessary to complete the survey warrants the inference that the survey, if completed, would not have had results significantly different from the data recorded on CX 1518-19. (See *International Union (UAW) v. NLRB*, 469 F.2d 1329 (D.C. Cir. 1972).)

162. Respondents' sales representatives have also used various methods to substantially build up the alleged retail value or cost of the combination offered to prospective customers in order to increase the potential savings which would result through participation in the special offers advanced. One technique to increase the retail values was through the use of inflated retail costs or values, which were either printed in the sales materials distributed to respondents' representatives or which sales representatives were trained to use in their summary of the program's value. The following chart graphically illustrates the difference between the orally stated retail prices or values and the retail price shown on the contracts:³⁸

	<i>"Retail Price" Listed on Contract</i>	<i>Sales Representatives' Stated Price</i>	<i>Promotional Material's Stated Price</i>
Encyclopedia Americana	\$375.00 (CX 470D)	\$600.00 (Will 9578) \$535.00 (Miller 10179)	
New Book of Knowledge	\$200.00 (CX 470D)	\$350.00 (Will 9645) \$312.00 (Miller 10180)	
Encyclopedia International	\$275.00 (CX 810D)	\$419.00 (CX 821F; Westheimer 11441; Miller 12805)	\$419.50 (CX 406F.)

[73] 163. Inflated retail prices were also placed on the yearbooks included within respondents' combination offers. Sales materials disseminated to representatives during their presentations cited retail prices ranging from \$12.00 to \$26.75 per yearbook (CX 371, 809H, 831B, 973J, 996I). Oral representations made by respondents' sales representatives to prospective customers attributed prices ranging from \$34.95 to \$57.80 per yearbook (Warwick 9670; Halsey 9696-97, 9715; O'Hara 9988-89; Howard 12900-01; Ivaska 13220-22; Reames 13342-43). In fact, respondents' official 1969 list price was \$6.95-\$7.95 per copy (CX 8D). The current yearbook list price is \$7.95-\$8.95 per copy (RX 45).

164. Respondents' sales representatives, in conjunction with their presentation of the retail prices of the components of the

³⁸ The "Retail Price" listed on contracts in this chart refers to those prices printed on contracts used by respondents' sales representatives. During the same time period, oral representations of higher retail values than those printed on the contracts were made by sales representatives at the direction of respondents' local managers. Higher retail values were also printed on some promotional materials distributed to sales representatives by respondents for use in their presentations.

combination offered, discussed the "cost" or "liability" to the company of providing the Research or Information Service included in the package. A specific figure, *e.g.*, \$3.32 per report X 100 coupons, was set forth as the cost, liability or planned retail value (CX 447I, 477A, 651K, 997E; Will 9574, 9579; Haggerty 9874-76; Schneider 9900, 9909; Miller 10181; Hanke 10465; Evans 10637; Thorn 11173-74; Walker 11222-24; Gilbow 12171, 12383; Loots 14688-89; Duvall 14886; Basilici 14933-34).

165. Sales materials prepared by respondents and used by their sales representatives also attributed specific costs or values to the Fact Research Service, *e.g.*, CX 973K:

Each request receives personal service.

Service for One Year \$75.00
(Limit to One Request per Week)

For One Speech or Report \$10.00

Send Your Check and First Request to

RICHARDS INSTITUTE
595 Madison Avenue, New York, New York

(See also CX 428C, 485, 973K, 1023B.) In some sales promotional material, the cost of providing the Research Service was presented, and totaled with, retail prices for other components (see CX 809H, reprinted in Finding 154). The fact that the figure listed in that exhibit, \$350.00 per 10 years, is footnoted "Based on Cost [74] Plus Profit accounting of 10 reports" in much smaller type, does not lessen the impact of including this figure in the "Total 10 Year Program Value" of \$1,120.00. The net impression created is that the Information Service has a retail value.

166. Respondents do not sell individual research reports or the Research Service on an independent or retail basis. The Research Service can be obtained only through the purchase of one of respondents' combination offers (McDonald 5618, 5663-64). No charge is listed for the Research Service on respondents' official price list (CX 8D), and no price for the Research Service appears on the retail list printed on respondents' retail installment contracts (CX 8D).

167. The net impression created in the minds of prospective consumers by the use of cost or liability figures for the Fact Research Service in conjunction with other component figures is that the combination they receive has a substantially greater retail value than the Service. Such representation, either directly or by implication,

tion, has the capacity to mislead since there is no retail price for the Fact Research Service. The combination of cost figures for the Fact Research Service, which is not sold at retail, with retail prices or values for other products, has the capacity to mislead consumers into the belief that the total of such figures represents a combined retail value.

168. The great disparity between the represented retail value of the combination offered and the actual contract price, excluding finance and shipping charges, is apparent in the following chart:

<i>Sales Representative</i>	<i>Represented Retail Value of Combination</i>	<i>Contract Price of Combination</i>
Snyder	\$1200-1400 (Tr. 8996)	\$399.99 (Tr. 9102)
Dennen	\$1600-1700 (Tr. 9312-13)	\$489.50 (Tr. 9306)
Williams	\$1400 (Tr. 9354)	\$465.00 (Tr. 9354)
Johnson	Approx. \$1300 (Tr. 9522, 9547)	Approx. \$450.00 (Tr. 9522-23) [75]
Will	\$1800 (Tr. 9580)	\$449.50 (Tr. 9556)
O'Hara	Approx. \$1100 (Tr. 9992)	Approx. \$450.00 (Tr. 9989)
Kolkhurst	Approx. \$1200 (Tr. 10032)	\$489.50 (CX 370C; Tr. 10033)
Miller	Approx. \$1000 (Tr. 10184)	Approx. \$358.00 (Tr. 10194-95)
Hanke	\$1260 or \$1480 (Tr. 10465)	\$399.99 (Tr. 10438-40)
Waugh	Approx. \$2000 (Tr. 10540)	\$399.50 (Tr. 10538-39)
Evans	\$1000-2000 (Tr. 10729)	\$399.50 (Tr. 10716)
Thorn	\$1300 (Tr. 11185)	\$399.50 (Tr. 11177)
Walker	\$1300 (Tr. 11224)	\$489.50 (CX 957A; Tr. 11225)
Westheimer	\$1120 (Tr. 11457)	\$399-499 (Tr. 11457)
McWilliams	Approx. \$1500	\$470.00

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Miller	(Tr. 12066) \$889.80 (Tr. 12840-41)	(Tr. 12009) \$449.50 (CX 810A; Tr. 12809)
Howard	\$1500 (Tr. 12900)	\$579.00 (Tr. 12900)
Culver	Approx. \$700-800 (Tr. 12952)	\$449.50 or 499.50 (Tr. 12970)
[76] <i>Consumers</i>		
Murphy	\$1300 (Tr. 8853)	\$499.50 (CX 1193A; Tr. 8850)
Halsey	Approx. \$1100 (Tr. 9722)	\$474.50 (CX 1222; Tr. 9707)
Nesper	Approx. \$1000-1100 (Tr. 9794)	Approx. \$300.00 (Tr. 9800)
Haggarty	Approx. \$2000 (Tr. 9876)	\$499.50 (CX 1220; Tr. 9869)
Laundre	Approx. \$1000 (Tr. 9959-60)	\$299.50 (Tr. 9958)
Ford	Approx. \$1000 (Tr. 10572, 10597)	Approx. \$450.00 (Tr. 10573)
Ivaska	\$1400-1600 (Tr. 13225)	\$489.50 (CX 1326A; Tr. 13226)
Reames	Approx. \$1000 (Tr. 13347)	\$489.50 CX 1341A; Tr. 13338-39)

169. Through one or more of the techniques described, *supra*, (Findings 154-67), respondents' sales representatives represented to prospective customers that they would realize substantial savings through participation in respondents' offer. In truth and in fact, the regular and usual price of respondents' products was the combination price actually paid by the consumer. [77]

K. *Representations of Available Payment Plans—Conversion*

170. In many of the sales presentations used by respondents' sales representatives, the cost of the combinations offered was presented and discussed as if prorated over a ten-year period (CX

786J, 871N-P, 1715C; Kotler 5080-81; Havas 9217; Kellogg 10311-12; McWilliams 12009-10; Miller 12842-43; Culver 12952; Hanna 13206; McClearey 13914; Goldstein 14104; Basilici 14934). The following statements from sales presentations distributed to respondents' sales representatives are illustrative of such representations:

To make this a practical program it had to be something all families could afford. So what we did was this, we pro-rated the cost of the program over the ten years and found a family could have this entire program in their home for about the cost of a daily newspaper or \$48.79 per year. . . (CX 871N-O).

* * * * *

. . . This is all sent to you for the \$—— per year pro-rated over the ten years of the program. Now the \$—— per year can be handled any way a family cares to handle it. This is entirely up to you. The only thing the Co. does ask is that you don't take the entire ten years to handle it since the bookkeeping costs would be enormous, and besides most families have said that a dime a day for the next ten years would get to be a nuisance, it would be like putting a mortgage on a dog house. . . (CX 871P).

Conversion: Mr. & Mrs. Jones, at this point I have a bonus for you, there's no more money involved, forget money . . . You don't have to take ten years unless you want to, & of course nobody wants to. In fact the company encourages families not to because ten years of bookkeeping costs the company a fortune down in N.Y. If you will return the ten 39's to us on a systematic basis, six months, a year, two years, three years, whichever way you are most comfortable we will pay you to do it. We will send along at no extra cost. . . Isn't [78] that amazing!! Now I prefer to set you up on the same basis I have my other families in this area, which is on the three year plan & if you want to pay it off sooner later on, you can.

(CX 1715C.)

171. The main reason respondents' sales representatives used a ten-year time frame in their presentations was that by prorating the price of a combination over that period, the impact on the consumer of the total price of a combination was lessened, i.e., a "psychological cushion" was provided which minimized the shock of the total price (Havas 9262; Westheimer 11452; McClearey 13909-10, 13913).

172. Although the price of an educational program was represented as prorated over ten years, respondents' sales representatives were not authorized to offer or accept a ten-year retail installment sales contract (Snyder 8752; Havas 9222-23; 9262; Johnson 9523; O'Hara 9992; Kolkhurst 10030-31; Miller 10204; Evans 10641-42; Westheimer 11452, 11485; Latasa 11826-27; McWilliams 12011, 12070; Gilbow 12174; Miller 12807, 12842; Culver 12952).

173. The sales presentations used represented that the customer's conversion from ten years to a shorter payment period, e.g., three years would save the respondents considerable bookkeeping

expense (CX 871P, 1715C; Thorn 11177; McWilliams 12010). These savings were to be passed back to the customer in the form of premiums or bonuses of added merchandise which customers would receive "free" or at "no additional charge"³⁰ (CX 786J; English 528; Snyder 9005; Havas 9217-18; Will 9585-86; Halsey 9697-98, 9719; Nesper 9797; Schneider 9901; Laundre 9959; O'Hara 9991; Miller 10171; Kellogg 10312; Demer 11308; Westheimer 11449-51; Gilbow 12174, 12394-95; Miller 12808; Hanna 13197, 13210; Reames 13345).

174. By prorating over ten years the prices of combinations offered by respondents' sales representatives, either implicitly or explicitly, represented that customers could pay for such combinations over ten years if they desired (see Finding 170). In fact, the ten-year payment plan was non-existent and the "conversion" to a shorter period was illusory since a ten-year period was not, in actuality, an available alternative. Representations as to the cost of the combination prorated over ten years were, therefore, false, misleading and deceptive. [79]

L. Representations That Program Was a One-Time Offer of Limited Duration

175. Respondents' sales representatives were trained to impress upon prospective customers that the offer being presented to them was unique and would not be made available to them more than once (CX 786C, 871G, 871I). The Spencer Training Manual admonished sales representatives:

DO NOT ACCEPT CALL BACKS -

(CX 871B.)

and promotional materials used by some sales representatives also stated:

No call backs can be made, as these sets must be given out on first call basis only.

(CX 405G.)

The reason for adopting the policy against call backs was respondents' belief that if the prospect did not accept an offer the night it

³⁰ CX 871P states:

"... using this method saves us a tremendous amount in bookkeeping. We pass that savings back to you, not in the form of a bag of loose change, but in a much nicer way, in the form of added merchandise. ..."

was presented, it was unlikely that a sale to him would ever be made (Miller 12815; Culver 12958).⁴⁰

176. If prospective customers requested additional time to decide whether or not to purchase the program presented, respondents' sales representative represented that he would not be in the same sales area at a later time and that the prospective customer must accept or reject the special offer made at the conclusion of the sales presentation (English 530, 548; Canario 9132-33, 9152; Warwick 9672; Halsey 9699; Geddeis 9928; Kolkhurst 10033; Waugh 10518; Westheimer 11459; Bruker 12091-92; Miller 12815; see also Miller 10190-91; Kellogg 10301; Belson 10812; Hatcher 10870; McWilliams 12016; Culver 12958; Gribbin 13128). If prospective customers had any doubts, they were asked to pass the offer up so that their program could be placed with another family in the area (CX 786C, 871G, 871J). These representations conveyed to prospective [80] customers the impression that the offer being extended was special, only available to a limited number of participants and had to be accepted immediately.

177. Respondents have no programs containing special offers which must be accepted by the customer at the time the presentation is given. At any given point in time, respondents have a single regular combination price at which such products and services are offered (CX 9-13; Trachtenberg 16188). The representation that a customer must accept an offer at the time the presentation is given because it is a special or one-time offer was false, misleading and deceptive (Goldstein 14112, 14120-21; DeLucia 15083-84, 15064).⁴¹

M. Representations That Encyclopedias Offered Are "New" Editions or Publications Not Yet on the Retail Market

178. Respondents' sales representatives frequently represented to prospective customers that the major publications offered were "new" editions or publications not yet available to the general public (CX 964C, 969A, 1023A; Murphy 8853; Will 9558-59; Warwick 9688; Schneider 9898; O'Hara 9984; Kolkhurst 10027; Walker 11257; Ivaska 13214; Reames 13340). These representations were generally integrated with the help and cooperation pitch as such representations made this approach more credible⁴² (Findings 144-49).

⁴⁰ Despite this policy, some sales representatives did, in fact, revisit prospective customers' homes on occasion if they felt they could make a sale (Westheimer 11460; Miller 12816).

⁴¹ One of the respondents' witnesses has characterized representations of this nature as an "out and out lie" (Goldstein 14120).

⁴² CX 1023A states in part: "... We have spent 7 1/2 years and over 4 million dollars in building and perfecting a new product, that is not yet on sale in this area. . . . Now we are setting up our local advertising in order to get local support. This is why I am here this evening. . . . the type of advertising we are interested in on a . . . of opinion and testimonial letters. . . ."

179. In fact, the encyclopedias referred to as "new" in the sales presentations were already on the market and available [81] to the general public at the time such representations were made.⁴³ These encyclopedias, moreover, had been marketed for a number of years prior to the period 1967 to 1970, to which the evidence on this point pertains.⁴⁴ Although the encyclopedias in question are subject to a continual revision policy to keep them up to date, there is, nevertheless, considerable overlap in the editorial content of these publications from one year to the next (RX 423-55). Respondents' editorial director explained their revision program as follows:

. . . The changes are a matter of establishing priority and as far as I know, [in] no encyclopedias published by any company anywhere can everything be brought up to date every year, or else, from a financial point of view, the sets would be priced beyond the reach of virtually anyone, no it is [a] matter of priorities, and . . . it would be possible that the bulk of revision might go in a few volumes, if the most important things happened there. It might be possible some volumes would have relatively little done, but this would not be through a deliberate practice but simply because of the relative importance of the changes that were needed (Murray 16523.)

180. The representations made by respondents' sales representatives that the encyclopedias offered are new editions or publications not yet available to the general public, convey the impression to prospective customers that something more than revised editions of prior publications are offered and that such offer would not be available to all individuals seeking to purchase respondents' publications. Since these publications are neither new nor unavailable to the general public, such representations are false, misleading and deceptive. [82]

N. *The Contract, Presentations and Promotional Materials
Distributed by Respondents*

181. Most of the contracts used by respondents during the period 1969 to 1971, contained the following statement:

The publications, products and services listed above are offered at the standard combination price. This offer is not limited to any specially selected individual, group or locality and no item listed above is free (CX 810A).

(See also CX 405I; RX 43, 44, 382A, 383A, 401A, 403, 405A.) This language appeared on the face of the contract and was usually

⁴³ Although a new edition binding is used each year, the content of each such edition remains, for the most part, identical with the preceding edition.

⁴⁴ The newest of these encyclopedias, the Encyclopedia International or Collegiate Encyclopedia, was marketed for the first time in 1964 (Murray 16510-11, 16554). The Collegiate Encyclopedia is identical to the Encyclopedia International but is sold under a different binding. (*Id.*)

located between the payment section with the "Notice to Buyer" provision.

This statement conflicts with many of the oral representations made by respondents' sales representatives during their presentations (Findings 138-40, 144-46, 150-51, 156, 161-64, 168, 173, 176). The fact that the contract specially refutes such oral representations does not cure the original oral misrepresentations. It is unlikely that such language effectively dispels the erroneous impressions created in the consumers' mind that they were to receive merchandise or services "free" and that they had been specially selected to receive a unique offer.

182. Respondents' local offices trained their sales representatives in the method of contacting consumers and making sales presentations (Findings 136-37). These offices distributed to their sales representatives telephone talks, door approaches and sales presentations with the capacity to deceive (Findings 136-37). Promotional materials having the capacity to deceive, such as endorsement letters, were also distributed to such employees (Findings 183-94). Through such practices, respondents placed in the hands of their sales representatives the means of deception. [83]

O. Endorsements

183. Richards' personnel, in their sales presentations, used notebooks, known as Hot Shots, furnished to them by respondents containing among other materials various letters or pictures implying endorsement of the publications sold (Ryan 5850-52; O'Hara 9987-88; Kolkhurst 10022-24; Walker 11219). Hot Shots containing similar materials were also used by Spencer sales representatives (CX 809; Westheimer 11486; Miller 12803-04).

184. Among the promotional materials distributed by Richards to its sales personnel engaged in door-to-door selling was a picture of Pope Paul with the American Peoples Encyclopedia (CX 331E; Ryan 5853-54). Use of this picture constituted an implied representation that the publication was endorsed by the Pope. However, no permission had been granted for commercial use of the picture as this would have been contrary to the general custom of the Holy See. Pope Paul did not endorse the American Peoples Encyclopedia for commercial purposes (Powers 6143-44).⁴⁵

185. Also included among the materials utilized by Richards is

⁴⁵ In this connection, see also the testimony of John Ryan, President of respondent Richards:

"Q To your knowledge, has the Catholic Church or the Pope ever endorsed the American People's Encyclopedia?

A I don't think the Holy Father would endorse anything except against sin, or something like that." (Tr. 5856)

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the following letter signed by the President of the University of Notre Dame:⁴⁶

University of Notre Dame

Notre Dame, Indiana

Office of the President

Mr. Fred W. Barend
Office of the Manager
American Peoples Encyclopedia
925 South Holman Avenue
Chicago 7, Illinois

[84] Dear Mr. Barend:

On behalf of all at Notre Dame, I want to express genuine gratitude for the set of the American Peoples Encyclopedia which was recently presented to the University. We are honored and pleased to have this significant publication in our Library, and I feel sure that throughout the years the members of our teaching staff and thousands of students will find the volumes a constant source of assistance and help in their work.

Please convey to all associated with you our sincere appreciation for this generous gift, and accept for yourself assurances of my warmest, personal best wishes for continued success.

Cordially yours,

(Rev.) Theodore M. Hesburgh, C.S.C.
President

The circumstances surrounding the writing of this letter are as follows:⁴⁷

1. The Notre Dame Library contains only one set of the American Peoples Encyclopedia, and this is the 1953 edition. This edition was received in late 1953 as an unsolicited gift from the publisher, Spencer;

2. The Reverend Hesburgh has looked at but never personally evaluated this encyclopedia. The letterhead appears genuine but is no longer in use. Further, it is his practice to date all correspondence and this letter, apparently written in late 1953, bears no date;

3. The Reverend Hesburgh, at the time he wrote the letter, did not intend that it would be used in [85] connection with the promotion or sale of publications to the general public and he at no

⁴⁶ CX 379E, 1978E.

⁴⁷ The stipulation pertaining to the testimony of the President of the University of Notre Dame is dated

time intended to authorize Grolier, Inc., Richards or any other subsidiary of Grolier, Inc. to use the letter in promotional materials relating to the sale to the general public of such publications (CX 1978A-B).

On the basis of the foregoing, it is evident that the 1953 date was removed from Reverend Hesburgh's letter prior to its utilization by respondents in their promotional materials. The letter was still being utilized by Richards' sales personnel as late as 1969-1970 (Walker 11220; Kolkhurst 10023-24).

186. Respondent Richards has used, for promotional purposes, a letter from Glenn Overman, formerly Dean of the School of Business, Oklahoma City University, under the letterhead of that University (CX 414G). Mr. Overman, while Dean of the School of Business at Oklahoma City University, received a set of the American Peoples Encyclopedia with a publication date of 1953, from one of respondents' representatives (Overman 10906). He wrote a letter to express his appreciation and evaluation of the gift in the period 1953-1956 (Overman 10908-09). It was not his intention that the letter be used as a sales aid by respondents and he never authorized Grolier, Inc. or Richards to use his name or letter for sales purposes (Overman 10909).

The letter reproduced in the Hot Shot is essentially as written by Mr. Overman. Although it is his practice to date his correspondence, it contains no date (Overman 10907-08). The date was deleted from the letter prior to its use as promotional material.⁴⁸ The only edition of the American Peoples Encyclopedia seen by Mr. Overman was the 1953 edition and his letter pertains only to that edition (Overman 10909). However, the Hot Shot containing Mr. Overman's letter was shown to prospective customers as late as 1970 (Ivaska 13218). [86]

187. The prospectus for the Encyclopedia International contains a letter used for promotional purposes by respondents written by Ernest E. McMahon, formerly Dean, University Extension Division, Rutgers University (CX 692; McMahon 9496-97). Mr. McMahon was a member of the Advisory Committee for the Encyclopedia International until some time in 1964, when he wrote this letter (Tr. 9497-98). The letter was written in response to a request from Lowell Martin, respondents' editorial director, for an evaluation of the Encyclopedia International project (McMahon 9498).

There is no date on the letter reproduced in the prospectus, although it is Mr. McMahon's practice to date his correspondence

⁴⁸ In connection with the inference on this point, compare the stipulation concerning the testimony of Rev. Hesburgh, CX 1978.

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(McMahon 9498). Mr. McMahon was not consulted concerning the deletion of the date or other alterations in his letter (Tr. 9498-99).⁴⁹ Respondents did not ask Mr. McMahon's permission to use his letter in the prospectus for promotional purposes or inform him that such use would be made of his letter (McMahon 9500). Mr. McMahon did not intend to write the letter as an endorsement of this publication (McMahon 9498). Had this been his intention, he would not have used the University letterhead (*id.*).

188. A Hot Shot utilized by Spencer contained the following representation endorsing the Fact Research Service:

Roy, Lopatin & Ward
ATTORNEYS AT LAW
2050 PENOBSCOT BLDG.
DETROIT 26, MICHIGAN

Enclosed is \$10.00, please send complete report on the Tideland oil issue.

(CX 809F.)

[87] None of the members of the firm Roy, Lopatin & Ward either, individually or on behalf of the firm, has:

- (a) subscribed to, submitted questions to, paid for, or [in] any other way participated in the Grolier Fact Research Service or any other similar research service;
- (b) sent Grolier or any of its subsidiaries a check in the amount of ten dollars or in any amount;
- (c) requested or received a report on the "Tideland Oil Issue" as indicated in the first letterhead in CX 809F; or
- (d) authorized the use of the firm's name or letterhead for commercial or any other purposes by Grolier, Incorporated, Spencer International Press, Inc. or any of Grolier's subsidiaries or agents.

The firm members did not know that their former firm's letterhead was being used for such purposes until inquiries were made by a representative of the Federal Trade Commission in February 1971 (CX 1978C-D).

189. The same brochure also contained the following representation:

NORTH AMERICAN LIFE ASSURANCE COMPANY

10515 WEST McNICHOLS ROAD
DETROIT 21, MICHIGAN DIAMOND 1-820

THANK YOU FOR THE VERY COMPLETE AND HELPFUL REPORT, YOUR

⁴⁹ Some additional changes appearing in the letter as reproduced were in the salutation, the addition of some underlining, and his signature (McMahon 9499). The text of the letter is the same as in the letter Mr. McMahon

PROMPT ATTENTION WAS CERTAINLY APPRECIATED. KEEP US ENROLLED NEXT YEAR AND BILL US AS USUAL. A CHECK FOR \$10.00 IS ENCLOSED TO COVER THE LAST REPORT AND THIS SHOULD BRING OUR ACCOUNT UP TO DATE.

(CX 809F.)

However, in the case of the North American Life Assurance Company: [88]

(a) Neither the Company nor any of its offices have had any business dealings whatsoever with Grolier Incorporated, its subsidiaries, salesmen or representatives;

(b) Neither the Company nor any of its offices have ever subscribed to, paid for, requested or received reports from, participated in any way in, or endorsed the Grolier Fact Research Service or any other similar service;

(c) The Company has no records of any correspondence with Grolier Incorporated or any of its subsidiaries;

(d) Neither the Company nor any of its offices have ever authorized Grolier Incorporated, its subsidiaries, its salesmen or its representatives to use the Company's name or letterhead in connection with the promotion and sale of publications or services to the general public;

(e) Company regulations, which bind all Company personnel and representatives, provide that no employee or representative may use the Company's name or letterhead for other than Company business, . . . [U]pon this basis the Company believes that no Company employee or representative knowingly made available to Grolier, Incorporated or to any of its subsidiaries, salesmen or agents, the Company's letterhead for use in connection with the promotion and sale of publications and services to the general public

(CX 1981A-C.)

Although the fourth letterhead printed on CX 809F is an accurate reproduction of the letterhead used at one time by the company's Detroit, Michigan branch office, the company has not carried on business at the 10515 West McNichols Road address or used that particular letterhead, since October 31, 1967 (*id.*).

190. Respondents, in their sales presentations, have used a collage of University letterheads, including such Universities as Texas, Purdue, Alabama, Boston University, Fordham, and the College of William and Mary (CX 406N). The purpose of such materials was to show that these institutions had made use of the Information Service (Sampson 2466). The following legend appears under the Fordham University letterhead: [89]

Each report is prepared by a specialist—individually compiled, with a complete bibliography to authenticate the source of research material.⁸⁰

Through the use of such promotional materials, respondents have

⁸⁰ This material was evidently used by Hinkley in its Kansas City office (see CX 406).

represented that these Universities have used and endorsed their Information Service. Respondents have no information that any of these Universities have utilized the Information Service and they are unable to substantiate such use (Sampson 2466-67).

191. Respondents have utilized letters and pictures implying the endorsement of their publications and services by religious figures, educators and others when the authors of such letters or the subjects of such pictures had no intention of granting permission for their use as sales promotional material. Respondents' use of such materials represents that endorsements of their publications have been made by certain individuals and organizations when, in fact, there was no bona fide endorsement.

192. Respondents have used letterheads of organizations such as law firms, universities and insurance companies to represent that they had ordered Fact Research reports when the proprietors of the letterheads had never had any business dealings with respondents. The use of such letterheads in this manner is necessarily false, misleading and deceptive.

193. Respondents have used purported endorsements where the evaluation letter in question pertained to an edition for a specific year, in connection with subsequent editions not seen or reviewed by the authors of such letters. The use of such materials is misleading for that reason alone. Representations implying endorsement of editions of the publication not seen by the authors of such letters or the subjects of such pictures are inherently deceptive.⁵¹

194. The use of undated testimonials or endorsements implies that they have been recently executed. Utilizing undated endorsements many years after they have been written has the capacity to mislead. [90]

P. The Information Service

195. The Grolier Information Service⁵² is a service organization set up to provide an up-to-date supplementary source of information for the purchasers of respondents' publications. It is available to every individual who buys a major set of respondents' books (MacDonald 5618, 15616). The Service is under the direction of a Vice President of Grolier, Inc. who serves as its Director (MacDonald 5615). The Director of the Information Service reports to the Chairman of the Board of respondents' parent company (Tr. 5617).

⁵¹ For example, the use of Rev. Hesburgh's letter apparently continued for approximately 17 years after his courtesy letter for an unsolicited gift had been received and the date thereof excised by respondents.

⁵² This Service is sometimes referred to in the record as the Fact Research Service. Sometimes, the Service is

196. The Information Service provides service to all customers of Grolier's in-house subsidiaries who have purchased one of the combinations of respondents' publications (MacDonald 5618). It is available only to those customers who have purchased a combination (MacDonald 5618-19). The reports are never sold and can be secured only in exchange for a coupon (MacDonald 5653). The Service is also available to customers of companies not affiliated with respondents who purchase a package of Grolier publications (MacDonald 5618).

197. The Service handles a substantial number of inquiries. For example, the record shows the following number of requests handled in the years indicated:

1967 . . .	113,416
1968 . . .	111,415
1974 . . .	50,078

(MacDonald 15624.)

198. In 1974, the Service had 24 employees.⁵³ (MacDonald 5619.) This included six senior editors, six general editors and three administrative editors. The balance of the staff are clerical and production employees (MacDonald 5620). The salaries of the staff are paid by Grolier, Inc. (MacDonald 5622). The research staff must have a college degree and all of them have a master's degree. Some of the free-lance editorial employees are college professors (MacDonald 5619, 15618). [91]

The staff of the Information Service is divided into a general and a technical section. The general section deals with general knowledge categories such as English or History (MacDonald 5622). Such staff members are specialists in this subject field (MacDonald 5623).

199. The Information Service has 8,000-9,000 prepared form answers on file (MacDonald 5624). In most instances, a staff member will locate a report dealing with the subject matter identified in the subscriber's request and mail it out (MacDonald 5625).

Respondents' "Prepared Reports From the File" are also known as "Multilith Reports." They are reports researched on topics of a repetitive nature that are immediately of interest to a large portion of respondents' subscribers. They have a bibliography and generally run to about six pages of single-spaced typing. They are prepared by the Information Service staff of fulltime editors (MacDonald 15633). Usually, they run from 65 to 73 percent of the responses handled. It is respondents' goal to have as high a percentage of multilith

⁵³ In 1968, the number was 35 (MacDonald 5619); at present, the Service has 18 employees, including 13 editors. It also retains 10 to 15 free-lance editors (MacDonald 15618-19).

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responses as possible (MacDonald 15635). About 10 percent of the inquiries handled have been answered with "File Reports," another form of the prepared reports (MacDonald 15636).⁵⁴

The Information Service also sends out "Library Reports," which are xerox reproductions of pages from other publications (Tr. 15638). Sometimes, an additional paragraph is added to such reports to make them more responsive to an inquiry (MacDonald 15667-68).

About 4 percent of the inquiries for information in the period 1967-1976 were in the "no letters" category on the ground that the question asked was beyond the scope of the Service (MacDonald 15655). About 10 percent of the reports have been handled on an individualized basis (MacDonald 15636-37). [92]

200. The record shows the following breakdown of Information Service Reports for December 1973 and 1974, and the calendar years 1973-1974:

	December				Cumulative			
	1974		1973		1974		1973	
Inquiries Answered (Grolier Only):	#	%	#	%	#	%	#	%
Prepared Reports from File	2,239	72.1	2,422	68.7	36,408	72.7	47,737	73.7
Staff Research Answers	146	4.7	176	5.0	1,585	3.2	1,943	3.0
Answers from Ref. Libr. Sources	469	15.1	574	16.3	7,830	15.6	8,113	12.6
Inq. Refused & Spec. Corr.	151	4.9	170	4.8	2,546	5.1	3,688	5.7
Free Lance Answers	100	3.2	182	5.2	1,709	3.4	3,275	5.0
TOTAL ANSWERS (Grolier)	3,105	100.0	3,524	100.0	50,078	100.0	64,756	100.0

(RX 467.)⁵⁵

201. Customers, after signing the contract, received the coupons for the Information Service and a brochure outlining the limitations on the Service (CX 507A-B; MacDonald 5625).

⁵⁴ Respondents' "File Reports" are the same as "Multilith Reports" except that they are xeroxed. The only difference is one of reproduction (MacDonald 15635-36). If needed in greater quantity, a File Report will become a Multilith Report (*id.*).

⁵⁵ Staff Research Answers are individualized responses; Reference Library Sources are materials derived from the reference books in the Service's own library; and Free Lance Answers are answers prepared by outside editors.

202. The Information Service provides no professional advice of any kind, including subjects of a financial, legal or medical nature (MacDonald 5627). No medical advice will be given, but general information on a disease will be provided (MacDonald 5633).

The Service will not do legal research for lawyers or medical research for doctors (MacDonald 5635).⁵⁶ [93]

The Service will not supply original compositions, write speeches, or theses (MacDonald 5635). It may provide information for, but would not provide, a tailored speech (*id.*). It does not do original research and offers material from published sources only (MacDonald 5665).

203. The Information Service decides whether a request is within the scope of the service provided, and the questions not answered are generally those requesting professional advice (MacDonald 5629-30).

204. Respondents, in their sales presentations, have described the scope of the Information Service in the following terms:

... THE COMPANY ACTUALLY PUTS THE WORLD'S KNOWLEDGE AT A FAMILIES FINGERTIPS. ANY TIME A FAMILY HAS ANY QUESTION ABOUT ANY SUBJECT UNDER THE SUN ALL THEY HAVE TO DO IS DROP A LINE TO OUR HOME OFFICE IN NEW YORK AND IN A MATTER OF A FEW DAYS THEY'LL HAVE A COMPLETE REPORT IN THEIR LIVINGROOM. HERE'S HOW IT WORKS. ... YOU STATE THE QUESTION, THE EXPERTS DELIVER THE ANSWERS. ... THE GENERAL REACTION WE GET FROM MOST FAMILIES IS THAT THIS SERVICE COULD BE CONSIDERED THE MOST IMPORTANT AND VALUABLE PART OF THE ENTIRE PROGRAM. ...

NOW FOLKS, THIS SERVICE IS NOT NEW. WE HAVE SOLD IT TO BUSINESS AND PROFESSIONAL PEOPLE FOR YEARS. ... (emphasis added; CX 821E).

For this reason we make available a new and comprehensive method for keeping the library up-to-date which consists of much more than just a yearbook. You see, we know that all of man's knowledge cannot be contained in any one library so we enroll all our subscribers into our Research Institute. *It's a Complete question and answer service that will answer almost any question that could come into a person's mind.* ... (emphasis added; CX 1649K).

[94] There is only one way to keep a library like this up to date, through our INFORMATION SERVICE which actually brings your library completely up to date, up to ten times a year, and this makes up the most valuable part of your entire library. *Any problem you could have, any question you could come up with - all you do is write us and we will supply a complete and detailed report personalized for you, with your name on the cover.* EXAMPLES: Complete pre-school training programs; teaching methods and curriculum schedules for elementary, junior, and senior high schools, complete career and scholarship information; direct research on themes, term papers, and book reports; interior decorating, home design, child care; exterior

⁵⁶ It might, however, provide a doctor with a bibliography on a given disease (MacDonald 5635).

design and landscaping, hobbies and do-it-yourself projects (emphasis added; CX 1023B).

A broadside for the Grolier Information Service represented:

You state your question. . .
Experts deliver the answer

(CX 505.)

The broadside, which also contains a lengthy list of topics on which answers will be supplied, discloses no limitations on the Service.

A broadside for the Americana Information Service also contains a lengthy list of topics on which answers will be supplied under the legend "Furnishes Information and Sources of Information . . . A Storehouse of Knowledge on Practically any Subject." It discloses no limitations on the scope of the Service. In addition, this broadside contains the legend "Men — Business and Professional" (CX 661).

205. Statements such as "ANYTIME A FAMILY HAS ANY QUESTION ABOUT ANY SUBJECT UNDER THE SUN ALL THEY HAVE TO DO IS DROP A LINE TO OUR HOME OFFICE IN NEW YORK. . ." (CX 821E); "It's a Complete question and answer service that will answer almost any question that could come into a person's mind" (CX 1649L); and "You state your question . . . Experts deliver the answer" (CX 505); "Any problem you could have, any question you could come up with—all you do is write us and we will supply a complete and detailed report personalized for you, with your name [95] on the cover" (CX 1023B), represent that the Information Service will furnish answers with respect to questions on any subject.

The Research Service does not furnish answers on every subject (CX 507B). Representations to that effect are false, misleading and deceptive.

206. Certain of respondents' sales presentations containing general representations, such as "we have experts there in every field . . . anytime something new comes up and you want to know more about it right now . . . send in a letter with the coupon", were qualified with a disclosure that "we cannot supply Legal, Medical, or Investment advice" (CX 366E; see also CX 293Q).⁵⁷ Some broadsides setting forth a list of topics on which answers would be supplied did include limitations such as "exclusive business and professional research" (CX 374).

⁵⁷ "There are three things they won't get involved with

"1. Military (National defense secrets) Detrimental to National security

"2. Medical (your own personal health problems)

207. Certain of respondents' salesmen, in their presentation, did disclose limitations on the Information Service in that no legal or medical advice would be provided or no financial or real estate problems answered (Belson 10809; O'Hara 9990-91; Hanna 13198; Ivaska 13222; Dennen 9276). In other sales presentations, the sales representative would disclose no limitation of any kind on the service (Warwick 9685-86; Miller 10181).

208. The disclosure that no legal, medical or financial advice would be supplied did not disclose all the applicable limitations on the Information Service (see CX 507B). Such limited disclosure failed to inform the consumer, for example, that no original research would be done and that material would be furnished only from published sources (Finding 202). The complete explanation of limitations was not received by the consumer until some time after he had signed the retail installment contract. The failure to disclose all applicable limitations at the time of the sales presentation constituted the failure to disclose a material fact. [96]

209. Respondents, in their written sales promotional materials, have represented:

[Americana Research Institute's] large research staff will compile the information individually for you *in manuscript* form.

(CX 353H.)

Wouldn't it have been a great relief to have had authoritative help in writing your reports, reviews, speeches and in library research work while you were in college? We couldn't offer it then.

But now, even with a college degree and a staff of secretaries, it will be gratifying to have our trained research workers (with the sources of all information at their disposal) prepare your speeches — digest books — give technical reports — help with problems of business or the home.

Each request receives personal service

(CX 973K⁵⁸; 1649U.)

Each report is prepared by a specialist—individually compiled, with a complete bibliography to authenticate the source of research materials.

(CX 406N.)⁵⁹

The Grolier Research service works this way: You ask the questions and we find the

⁵⁸ This language also creates the net impression that the Information Service would respond to inquiries on any subject. The broad claims inherent in material such as CX 973K are not dispelled by, and are in conflict with, the salesman's oral disclosure that medical or legal information is not provided (Dennen 9276), and the potential subscriber is not put on notice by such disclosure that professional advice generally is not available through the Information Service.

⁵⁹ This representation appeared under a reproduction of the letterhead of Fordham University.

answers. The member sends in the questions; the questions are assigned to a specialist, *the specialist prepares a personal report based on your needs.* . . .

(Emphasis supplied; CX 293Q.)

[97] 210. Through the use of statements such as "[the] research staff will compile the information individually for you" (CX 353H, 406N); and "it will be gratifying to have our trained research workers . . . prepare your speeches—digest books—give technical reports—help with problems of business or the home. Each request receives personal service," respondents have represented that the answers furnished by the Information Service are the product of detailed, exhaustive, or original research generated by the specific question asked. Such statements are false, misleading and deceptive. The Information Service does not perform original research and the great majority of replies are not answers generated by the specific question of a particular subscriber (Findings 199-200, 202).

211. Respondents' promotional material affirmatively represents that the Information Service will prepare speeches, digest books and supply technical reports (CX 973, 1649U). Respondents' salesmen, in their sales presentations, have also represented orally that the Information Service reports could be utilized for theses or term papers satisfying school requirements (Ivaska 13222-23; Larsen 11412; Belson 10809; Hatcher 10866-67; Ford 10569-70; Geddeis 9926; Nesper 9790-91, 9811-12; Warwick 9672; Thorn 11173; Miller 10180-81; Kellogg 10309-10; O'Hara 9990-91).

In addition, respondents' salesmen have been provided with sales reports having the appearance of being originally researched and of meeting requirements for term papers. One report used for such purposes was "Characteristics Of The European Tourist Industries" (CX 394A-394Z-5). This report had not, in fact, been prepared by the Information Service and is not representative of the reports provided by the Information Service (MacDonald 15691).⁶⁰

The Information Service will not prepare speeches or reports suitable for school or college use as theses or term papers. Representations to the contrary are false, misleading and deceptive. [98]

212. Respondents, through the use of statements or phrases in their sales promotional materials such as:

. . . [I]t will be gratifying to have our trained research workers . . . help with problems of business or the home.

⁶⁰ This material was apparently used by the Hinkley's Kansas City office (CX 399 and 400). The printer's invoice, CX 400, documents that 300 sets of this 31-page report had been ordered by that office.

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(CX 973K, 1649V.)

NOW FOLKS, THIS SERVICE IS NOT NEW. WE HAVE SOLD IT TO BUSINESS AND PROFESSIONAL PEOPLE FOR YEARS.

(CX 821E.)

. . . Any problem you could have . . . and we will supply a complete and detailed report . . . Examples: Complete pre-school training programs; teaching methods and curriculum schedules for elementary, junior, and senior high schools. . .

(CX 1023B.)

Men-Business and Professional.

(CX 661.)

have represented that the Information Service will furnish business and professional advice.

Respondents have conveyed the same representation through sales promotional materials purporting to show that universities (CX 406N) and professional people and businesses (CX 809F) have ordered the Service when in fact such institutions, persons, and firms have neither ordered nor used the Service (Findings 188-90, 192).

Respondents' salesmen, in their in-home presentations, have used materials purporting to be sample requests for information from the Research Service and responses thereto. For example, salesmen of the Americana Corporation have utilized a letter under the letterhead of a Milwaukee attorney by the name of Charles H. Gorman requesting information in the following terms:

I have an action in which applicant's condition has been diagnosed as blastomycotic osteomyelitis.

[99] Applicant was employed as a hide staker handling sheep and lamb skins that had been tanned and milled before he handled them. At no time did he handle untreated hides.

Applicant contends that his condition was caused by his occupation. I am informed that no cases have been reported in similar industries and that there is no definite relationship between the disease and the age, occupation, nativity or habitat of the patients having blastomycosis.

Have you any information that: (a) Blastomycosis or blastomycotic osteomyelitis is an occupational disease, (b) The disease is common among tannery workers?

Any information that you can give me relative to the above will be appreciated. The original hearing will be held in four days.

(CX 431A.)

Attached to this letter is a 3-page report signed by Americana Institute relating to this disease (CX 431B-D). The report, on its face, is written in scientific technical terms and references are appended.

At the bottom of the letter requesting the information, there is the following notation:

MR. GORMAN LATER WRITES:

"I appreciate your report relative to blastomycosis and osteomyelitis. The thorough information is of great value to me. I had been unsuccessful in gathering information on the subject."

(CX 431A.)

To reinforce the net impression that professional advice has been requested and received, one sales presentation stated in connection with this sample report: [100]

Here's a rather unusual request from a law firm in Milwaukee. The lawyers had a client who had a very rare disease. The law firm was trying to sue the employer, claiming that the disease was an occupational hazard. The problem that they had, as you can see, was that the disease itself was so rare, they couldn't get enough information to take it into court. They wrote the Research Service, and we sent them back the information. . . .

(CX 292G.)

Through the use of such materials, respondents have impliedly represented that they will furnish professional advice or provide a consulting service to members of the legal profession.⁶¹

213. The direct or indirect representation, through statements and materials such as the foregoing, that the Information Service will provide business or professional advice or a consulting service to professionals is false, misleading and deceptive.

214. One of the limitations in the Information Service disclosed after the sale is that it "cannot guarantee to deliver answers on specific dates" (CX 507B). Reports not already prepared and requiring a personalized response may take from two weeks to a month and sometimes longer (MacDonald 15657-58). In view of respondents' emphasis on the personalized nature of the Service (Finding 209) and the value of such reports for students (Finding 210), this limitation is a material fact in evaluating the value of the Service. [101]

⁶¹ Certain presentations did state that "WE DO NOT SUPPLY LEGAL, FINANCIAL, MEDICAL, RELIGIOUS OR THE TYPE OF ADVICE THAT WOULD BE DEEMED PROFESSIONAL" (emphasis supplied;) (CX 439Z-4). Such disclosures do not vitiate conflicting representations in other sales presentations or promotional materials

V. CONTINUITY

215. In the period January 1968 to December 1971, the two primary companies involved in respondents' mail order operations were Americana Interstate and Grolier Enterprises.⁶² The principal officer of the parent company responsible for coordinating the sales of the respondent mail order subsidiaries was Elsworth Howell, Vice President of Mail Order Operations (Murphy 5774; Green 1744).

216. There is, to some extent, an interrelationship between the mail order subsidiaries and the operations of the subscription book companies which sell door-to-door. The mail order subsidiaries sell supplements to encyclopedia buyers (Clarke 16676), and people who purchase publications from the home subscription subsidiaries are put on the house list of a mail order subsidiary such as Grolier Enterprises (Clarke 16678; Green 1701-02).

217. A subsidiary such as Grolier Enterprises, which sells through the mail, has three main operations: the sale of annuals or supplements to encyclopedia sets; the operation of two children's book clubs; and conducting the Mail Order Division, which includes the continuity programs of which there are about 22 (Clarke 16612).

218. Respondents' sales under their continuity programs are substantial. The shipments under respondents' continuity programs for the period 1970 to 1975 are summarized as follows:

CONTINUITY SHIPMENTS 1970 - 1975

YEAR	NEW ORDERS	SINGLE SHIPMENTS	BULK SHIPMENTS	TOTAL SHIPMENTS	TOTAL BOOKS SHIPPED
1970	398,253	734,997	103,081	1,241,331	2,754,465
1971	1,017,749	2,417,168	200,816	3,635,733	6,647,973
1972	1,741,913	3,502,836	286,267	5,531,016	10,111,288
1973	1,667,742	1,596,499	282,116	3,546,357	8,060,213
1974	717,935	1,754,849	197,846	2,670,630	5,836,166
1975(EST)	735,000	1,027,000	172,000	1,934,000	4,686,000
TOTAL	6,278,592	11,033,349	1,247,126	18,559,067	38,096,105

(RX 548)

[102] 219. Continuity orders may be generated by direct mailing, solicitation, or space advertising (Clarke 16645). And, the language of the promotional materials used by the Grolier subsidiary mail

⁶² In 1969, the same individual, Howard Green, became Chairman of the Board of Americana Interstate and Grolier Enterprises, as well as certain other Grolier mail order subsidiaries (Green 1683-86).

order companies in their continuity programs is generally the same when they utilize the same programs (Green 1703-04).

220. A continuity book program generally involves the sale, on a trial basis, of a series of books ranging from 4 through 20 volumes in a particular subject area. Under such programs, the first volume is generally offered free or on trial; volumes 2 and 3 are shipped singly at intervals; and, if a cancellation has not been received, the balance of the set, usually 17 to 20 volumes, is then shipped to the customer in one shipment (Clarke 16612-13).

The shipping schedule and interval between the shipments under a continuity program may vary. At one point, the interval between shipments was monthly, then respondents went to a 6-week interval and, more recently, the shipments have been at 5-week intervals (Clarke 16613). The interval between shipments for the continuity programs in the period 1965 to 1970 was 4 to 5 weeks (Clarke 16618).⁶³

221. Since March 1, 1971, with two exceptions, respondents' initial mailings have explicitly disclosed that the customer would receive a bulk shipment of books after receipt of their third volume (Clarke 16622-23). In the period 1965 to 1970, the mailings or advertisements constituting the initial contact with the customer did not, however, contain this disclosure (Clarke 16667). In that period, such notice was sent out with the third volume in the series (Clarke 16681).

222. Prior to 1971, a typical initial mailing pertaining to a continuity program contained, in pertinent part, the following representations:

Here's a free animal book for your favorite 7 to 9 year old.

(CX 1385A.)

[103] I have affixed my FREE GIFT STAMP at right. Please send me the introductory volume, ANIMALS DO THE STRANGEST THINGS, to keep forever without cost or obligation. I will then be entitled to receive new Step Up selections, on approval, which I may keep for the subscriber's special price of only \$1.65 each, plus small mailing charge, or return to you in 7 days at your expense and owe nothing.

I understand I may cancel my subscription to the STEP-UP PROGRAM at any time, and you will send no more volumes after receiving my notice of cancellation.

(CX 1385B.)⁶⁴

⁶³ The shipments were on a monthly cycle in 1969 and part of 1970, according to another of respondents' officials (Green 1713).

⁶⁴ The CX 1385 and 1386 series, pertaining to Grolier Enterprises' Step-Up book program and featuring as a free volume *Animals Do The Strangest Things*, were mailed to consumers.

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This mailing also represented that the free volume "is yours with no strings attached" (CX 1385D), "Accept your free book today. There's no obligation!" (CX 1385F), and represented in addition:

But what if you're not completely sold on the program after receiving your free book? Well, in that case just write "cancel" across the membership card we'll send you, mail it to us, and keep the book as our gift. There'll be nothing to pay, and we'll simply forget the matter.

* * * * *

Nothing could be safer than the offer I'm making to you. The delightful *Animals Do the Strangest Things* is yours to keep no matter what, and you'll be under no obligation to receive any additional STEP-UP BOOKS.

(CX 1385G.)

223. An enclosure with the free volume made the following representation: [104]

If you and your youngster would like to have more STEP-UP BOOKS, you'll be entitled to receive — on approval — as many selections as you like for the low price of \$1.65 each, plus delivery.

(CX 1386A.)

As a member of the STEP-UP BOOK PROGRAM, you are not obligated to take any minimum number of books. Accept as many or as few as you please, and cancel your membership whenever you like by mailing any invoice back to me with "CANCEL" written across it.

(CX 1386B.)

224. A "Dear Parent" letter enclosed with the third volume in the series disclosed that a bulk shipment would be sent in the following terms:

... [We] have made special arrangements that will enable our good customers to receive all 15 remaining volumes in the STEP-UP LIBRARY, on approval, in one big exciting shipment!

(CX 1386C.)

But in case you prefer that your child continue to receive his books on a monthly basis, please write to me promptly. We'll wait thirty days before sending the complete STEP-UP LIBRARY to your home.

Please remember though, regardless of how you receive them — in one exciting shipment or, one at a time — your Step-Up Books come to you on trial. You may keep as many or as few as you choose.

(CX 1386D.)

225. The letter to the consumer enclosed with the bulk shipment made the following representation:

Please remember this added advantage: although your child has full use of all the volumes in the STEP-UP LIBRARY now, you may continue to pay at the same low, volume-a-month rate as before.

(CX 1386E.)

[105] 226. The representations contained in the Americana Interstate mailings pertaining to the Step-Up Program, a continuity program also distributed by that respondent, were essentially the same as those disseminated by Grolier Enterprises (Findings 222-25). For example, Americana Interstate's initial mailing offering the free volume, *Animals Do the Strangest Things*, contains certain representations identical to, or essentially the same as, those in the Grolier Enterprise mailings (Compare CX 1383B with CX 1385B). It too represents:

. . . Please send me the introductory volume . . . to keep forever without cost or obligation. I will then be entitled to receive new Step Up selections, on approval, which I may keep for the subscriber's special price of only \$1.65 each . . . or return to you in 7 days at your expense and owe nothing.

I understand I may cancel my subscription to the STEP-UP PROGRAM at any time, and you will send no more volumes after receiving my notice of cancellation.

(CX 1383B.)

The "Dear Parent" letter in the initial mailing states:

When the book arrives, turn it over to your child and watch his reaction. If he's as pleased as I think he'll be, fine and dandy. You'll then be entitled to receive as many (or as few) additional STEP-UP BOOKS as you please, for the modest price of \$1.65 each, plus delivery. Books will be sent to you on approval, and you'll have 10 days to decide whether to keep a book or return it at my expense.

(CX 1383G.)

That letter also states that the free book "is yours with no strings attached" (CX 1383E).

227. The letter enclosed with the free book states: [106]

If you and your youngster would like to have more STEP-UP BOOKS, you'll be entitled to receive — on approval — as many selections as you like for the low price of \$1.65 each, plus delivery.

As a member of the STEP-UP BOOK PROGRAM, you are not obligated to take any

membership whenever you like by mailing any invoice back to me with "CANCEL" written across it.

(CX 1384A & B.)

228. The letter enclosed with the third volume gives the following notice of the bulk shipment stating:

But now for the good news I promised you! Thanks to special arrangements we have made, we are happy to tell you that if your remittance has been received by us within the next 30 days, the remaining 15 volumes of the STEP-UP LIBRARY can be sent in your next shipment!

This means your little ones may have the complete 18-volume set NOW rather than waiting over a year to accumulate all volumes. But that's just PART of the good news . . . here's the rest:

This credit is extended at no added charge

and

Your monthly payments remain exactly the same!

Yes, in about a month, if your account is up to date, you should receive the balance of the set (volumes 4 through 18) in one single postage paid package. And remember, you may continue to pay for each book at the same low volume-a-month rate as before! That's just *\$1.65 per month* plus shipping and handling! [107]

There's no large sum to pay and no increased payments. Your child gets the benefits of full possession now, without altering your easy monthly payment schedule by even a penny!

However, if for any reason you do not wish all of these wonderful volumes delivered together, please write us promptly and we'll continue to ship on a monthly basis. We'll wait 30 days before we ship the rest of your STEP-UP LIBRARY books.

(CX 1384C.)

Yes, when the rest of your child's Step-Up Books arrive in a few weeks — on approval, of course — I'm confident you'll find them a unique contribution to your youngster's education.

But in case you prefer that your child continue to receive his books on a monthly basis, please write to me promptly. We'll wait 30 days before sending the full STEP-UP LIBRARY to your home.

Also remember, the remaining Step-Up Books will come to you on trial. You may keep as many or as few of them as you wish! In any event, you have 7 full days to examine the books without obligation of any kind.

(CX 1384E.)⁶⁵

⁶⁵ The letter enclosed with the bulk shipment states the following:

(Continued)

[108] 229. In the case of the Audubon Nature Encyclopedia, a continuity program distributed by Grolier Enterprises, the letter accompanying the free volume of that series stated:

Your free first volume entitles you and your family to see future volumes of the Encyclopedia as they are released — at the rate of about one a month — for 10 days free examination. You may take as many or as few volumes as you wish, and cancel whenever you wish. In any case, Volume I is yours to keep free.”

(CX 1398A-B.)

The customer subscribing to that program was, however, advised in the letter accompanying the third volume that he would be sent, on approval, the remaining volumes of the set in one shipment (CX 1398C).⁶⁶

230. The foregoing and other of respondents’ promotional materials⁶⁷ in the record constituting the initial contact with the consumer conveyed the net impression that the books offered under respondents’ continuity programs are to be shipped singly with the consumers having the opportunity to review and approve or reject the individual volumes shipped in that manner and that the program could be cancelled at any time. This finding is made upon the basis of a reading of the materials in question. (See also Allen 9939; Patzke 10065; Larcey 10135; Ray 10237; Stipulation of testimony re Mrs. Barbara Gilkinson contained in CX 1985; Hutton 10484; Fuller 11338; Bjerke 12682-83; Hudgins 12721; Hankinson 12747; Schmidt 12861.) Such representations are misleading since, in fact, customers are subject to receiving a bulk shipment if they do not successfully exercise the negative option provided. [109]

231. The customer’s understanding that single books would be shipped monthly and that the books could be accepted or rejected on an individual basis was an important factor in the decision to participate in the continuity programs (e.g., Larcey 10135; Ray 10236-37; Skwarlo 10400-01; Hudgins 12730-31). The failure to advise consumers on the first contact that they would, after the third

“Please remember this added advantage! Even though your youngster has received all of these books at once, you may continue to pay for them at the same low volume-a-month rate as before.

“You will note that the enclosed invoice is for Volume 4 only. This way, your youngster has the complete 18-volume set NOW - rather than waiting more than a year to accumulate all 18 books - yet your monthly payment of \$1.65, plus shipping and handling, has remained exactly the same! What’s more . . . there’s no charge for this credit!” (CX 1384G.)

⁶⁶ This letter also advises that the subscriber can continue to pay for the books at the rate of \$3.98 a month; that, if he does not wish to receive the bulk shipment, he should advise respondent promptly so that he would continue to receive the books on a monthly basis. The letter also represents that respondent would wait 30 days to ship the rest of the set (CX 1398C & E).

⁶⁷ E.g., CX 1387-8 (Dandelion Library); CX 1486-7 (Dandelion Library); CX 1468 (Step-Up Books); CX 1389

volume, receive a mass or bulk shipment of the remaining volumes constituted the failure to disclose a material fact.⁶⁸

232. It was respondents' policy to continue single shipments of books if the customer, subsequent to receiving notice of the bulk shipment, requested the continuance of shipments on an individual basis and if such request was received prior to mailing of the bulk shipment (Clarke 16681-82). However, if the letter requesting single shipments was delayed or, if there was a delay in respondents' processing of such request prior to sending out the bulk shipment, the customer would not continue to receive the volumes on an individual basis (Tr. 16682).

The record shows that certain customers who advised respondents that they did not want the bulk shipment, but did desire to continue receiving the books on a monthly basis, were not given that opportunity (Allen 9942-44).

233. Once the bulk shipment is received, the consumer does not have a realistic opportunity to accept or reject particular volumes. Less than 1 percent of the consumers receiving a bulk shipment made a choice between the books contained in such a shipment in determining whether to retain or return particular books (Clarke 16690).

234. As already noted, respondents' promotional materials repeatedly represented that customers incur no risks or obligations in embarking on the continuity programs (Findings 222-23, 226-27, 229-30). Subscribers to respondents' continuity programs are, however, subject to various risks and obligations if they decide to participate in such a program. The first and most obvious, if they do not desire certain books, is the duty to exercise [110] their negative option to notify respondents of that fact, particularly in the case of the bulk shipment (Finding 232). In addition, they have the obligation of returning the books rejected.

235. The customer, if he exercises the negative option to reject additional books, is also, as a practical matter, subject to certain additional risks. For example, if a subscriber cancels his account by means of rejecting the publication and there is a delay in respondents' receipt of the returned books, this triggers either the next shipment or a dunning letter (Clarke 16692). Moreover, respondents may experience delays in sending out books or delays in taking care of cancellations. Such occurrences are not uncommon even though they may constitute a small number of the transactions involved (Clarke 16694-95). The number of such occurrences was, in

⁶⁸ A number of the consumers testifying herein preferred monthly shipments because their children looked forward to getting the books in the mail (Ray 10236; Bjerke 12683-84).

fact, substantial. In the period 1965 to 1970, 8 to 12 percent of the correspondence received indicated that there had been crossing in the mail between the delivery of the books and the sending out of a cancellation (Clarke 16701-02).

Certain of the customers who participated in one of respondents' continuity programs on the understanding that books would be shipped singly on a monthly basis, promptly exercised their negative option to advise respondents that they did not want a bulk shipment. Nevertheless, they were mailed the bulk shipment they did not want, and were then obligated to return such books (Allen 9942; Patzke 10067-68; Larcey 10137-39; Hudgins 12723). Moreover, some customers who received the unwanted shipment and returned it were subjected in certain instances to a lengthy series of dunning letters⁹⁹ and the necessity of corresponding with respondents, at times unsuccessfully, to straighten the situation out (CX 1464A-C; Skwarlo 10394-95; Bjerke 12687; Hudgins 12724-25, 12738-39; Hankinson 12749-50; Patzke 10068-69).

236. The representation that those who participate in such continuity programs do so at no risk or obligation is deceptive. [111]

VI. DEBT COLLECTION PRACTICES

237. Beginning in the mid-1960's, Grolier, Inc. attempted to consolidate the credit and collection activities of its direct selling subsidiaries in Federated Credit (Walker 5931-32; Murphy 5739). Such consolidation, however, was not complete. Certain officers of the respondent's direct selling subsidiaries continued their own collection efforts (Walker 5936-37).

Richards collected its own accounts through a network of branch and regional offices and its headquarters in New York (Ball 2929-30; Lique 10923; Smith 4368; Ryan 5809, 5819). Richards, in its debt collection procedures, attempted to adhere to the policies of its parent, Grolier, Inc. (Ryan 5809).

The mail order subsidiaries, such as Americana Interstate, Career Institute and Grolier Enterprises, have engaged in their own collection efforts utilizing dunning forms mailed directly to their subscribers (Green 1734-39, 1741).

238. Respondents, in their debt collection procedures, utilized a

⁹⁹ Respondents' dunning letters in connection with the continuity programs usually go out on a 30-day cycle once they begin (Green 1717; CX 1423A-M; CX 2551(a)-2552-4). Such series ran the gamut from notices stating essentially that an account was past due to letters threatening that delinquent accounts would be reported to a credit index (CX 1423B, K; 1425), and threats such as "your name must appear on my 'delinquent customer' ", and "your credit rating is valuable and I know you will want to protect your good name by making payment promptly" (CX 955D). The CX 955 series pertains to Americana Interstate, while the CX 1423 series pertains to Career Institute.

billing sequence schedule whereunder a series of form letters, numbering 10, 15 or 20, would be sent out to customers. Normally, the sequence would start 10 to 15 days after a debt first became past due. If the debt remained unpaid, the letters and notices sent out would be varied. Every 10 days or each week, the customer would receive a different letter (Dierking 2335-36; see also Ryan 5819; Smith 4373; CX 163A).

239. The forms in a typical collection series utilized by Federated Credit, such as CX 151A-151-Z-15, run the gamut from past due notices, stating that payment would be appreciated, to threats that adverse credit reports would issue and that the accounts would be turned over to an attorney, as well as form letters under an attorney's letterhead threatening to institute suit (CX 151B, 151S, 151J, 151-Z-11).

240. Federated Credit has utilized debt collection letters represented as coming from the "Legal Department." For example, respondent has sent out notices as follows: [112]

LEGAL DEPARTMENT

Indicate the name and telephone number of your attorney on the bottom of this letter and return it to us. Your account has been referred to this department for suit and this information will make it easier for this department and your attorney to get together on the matter.

However, if you plan to handle the matter yourself, just make out your check for the full balance due and mail it to us.

BALANCE _____

Sincerely,

Legal Department

(CX 157G.)

(See also CX 157C, D, E; CX 280R, S, U, V, Z-4, Z-7, Z-8.)

241. The Federated Credit office in Los Angeles, in the period 1969-1970, operated a unit described as a "Legal Department" (Mercier 14742-43). It consisted of one clerical employee with no legal training, who acted as a liaison with an outside attorney handling collections for Federated Credit (Mercier 14763-65). This employee would sign the attorney's name to the stationery bearing an attorney's letterhead but with the address and telephone number of Federated Credit (Mercier 14763-65; CX 280Z-280-Z-2).⁷⁰ Tele-

⁷⁰ The decision to send the attorney letters would be made within Federated Credit and the outside attorney would not become involved unless there was a decision to sue (Mercier 14764).

phone calls generated by such attorney letters would be handled by the employee in the Legal Department who would try to adjust the account (Mercier 14764-65). This unit in the Los Angeles Federated Credit office had no one employed therein with [113] legal training (Mercier 14742-43, 14764-65).⁷¹ The operation was not a bona fide Legal Department.

242. Richards also used forms representing that a customer's account had been transferred to its Legal Department (CX 177M).

243. Richards and the local offices of the respondent subsidiaries engaged in collection had no Legal Department (Ryan 5819; Dierking 2342-43; Cooney 2570). The use of this terminology on such collection forms is false, misleading and deceptive.

244. Respondents' typical fiscal office did routine credit verifications prior to acceptance of an order, and conducted collection efforts once the account became delinquent (Mercier 14728). Once an account was verified and accepted, a predetermined billing and collection schedule would be used to handle the account (Bodkin 2578; Smith 4374; Mercier 14759-60, *e.g.*, dunning schedules CX 150A-B, 280Z-20, 1825-26). Clerical personnel select the appropriate dunning letter, depending on the stage of delinquency, and mail it to the alleged delinquent debtor (Mercier 14728, 14759-60). The difference between the credit and collection departments would be the extent of the delinquency of the account; the credit department handled accounts which were from 30 to 90 days delinquent and the collection department handled accounts which were from 120 days to 12 months delinquent (Mercier 14728). Often, the clerical personnel of both departments occupied space in a large room with different persons assigned to handle accounts in prescribed stages of delinquency (Mercier 14728, 14730, 14761). The files of the delinquent debtors are physically transferred automatically from credit personnel at the point of 90 days' delinquency to collection personnel who continue the attempted collection of the accounts (Mercier 14728, 14760-61). The mere fact that accounts were transferred from the credit department to [114] the collection department on a predetermined schedule will not sustain a finding that respondents did not have separate collection and credit departments.

245. Respondents routinely use forms representing that a delinquent account will be turned over to attorneys for collection (*e.g.*, RX 329T, 151Q, 151Z-3, 151Z-13). Such forms are followed by other forms in the same collection series going out under a lawyer's

⁷¹ The Legal Department in the person of a clerical employee also had instructions to phone "to Personnel Dept. at subscriber's job. Represent myself as attorney's office advising them of subscriber's delinquency. Call is very courteous and friendly and interested in resolving problem without running on attachment which could

letterhead, the so-called "attorney letters" (see *infra*, e.g., RX 330A-F; CX 151Z-11, 151Z-14-151Z-15).

246. Federated Credit's Bethesda, Maryland office used the letterhead of a Maryland attorney on certain of its collection forms in the period 1966-1970 (Tr. 9314-15). This attorney reviewed, with one exception, the forms which were to be used in connection with his name. This lawyer and respondents agreed that his name, but not his telephone number or address, were to be used in the letterhead of the collection forms going out under his name.⁷² He never signed such letters or saw such forms with the name of a debtor thereon (Tr. 9321-22); the files of delinquent debtors were not sent to him (Tr. 9322); he never asked for authority to file suit (Tr. 9323); and it was understood that he would not review responses to form letters sent under his name (Tr. 9329). In return for permitting such use of his name and signature, he received compensation of \$20 a month (Tr. 9332).

Letters going out under his name stated in pertinent part:

The Division Manager of Federated Credit Corporation has consulted me relative to your delinquent account and has instructed me to take action to protect his company's interests (CX 151Z-10).

* * * * *

This morning I received a telephone call from the Manager of Federated Credit Corporation, informing me that you still have not paid on your account. [115]

He requested that I immediately re-open this case and file suit in a local court to obtain a judgment against you for the full balance due on your account plus all court costs. In order to protect my client's interests, I am proceeding with this preparation of the necessary papers.

Despite the fact that this is the second time my client has found it necessary to have me act on this claim, I am writing to you to give you a final opportunity to make payment on this account.

Unless I hear from Federated Credit Corporation, that you have gotten in touch with them and made satisfactory arrangements for taking care of this account, I shall proceed as my client has directed.

Yours very truly,

Attorney at Law

(CX 151Z-14.)

247. In the period 1971 to March 1974, the Kansas City office of

⁷² There was an interval from late 1968 to 1969 when such agreement was not in effect (Tr. 9315).

Federated Credit used various forms threatening delinquent accounts with suit (*e.g.*, CX 1829Z-54, 1829Z-58; Cooney 2569).⁷³ This office, in the same period, also used collection forms under the letterhead of a local law firm (CX 1829Z-63-67). These attorney letters impliedly represent that suit would be filed against debtors failing to make payments.⁷⁴ Such forms were to be used for those accounts that were in "extreme arrears," namely, [116] at least six months' consecutive delinquency and eight months' contractual delinquency. The determination whether to send out the letters under the law firm's letterhead was made by the Fiscal Administrator for Federated Credit's Kansas City office or his collection supervisors. The form letters, but not the files of the customers, were sent to the law firm before the forms were mailed. This law firm has filed no suits in behalf of Federated Credit (Cooney 2571-72).⁷⁵

248. In 1970, the Los Angeles office of Federated Credit received instructions from the New York office that all legal action was to be discontinued. Pursuant to those instructions, no lawsuits were filed by that office from mid-1970 through 1975 (Mercier 14734-35).

249. Beginning in 1972, the Los Angeles Federated Credit office began using collection letters under the letterhead of a local attorney (Mercier 14752). The letters were approved by Federated Credit's head office in New York (Tr. 14753-54). One of these letters indicated that the lawyer had been requested by Federated Credit "if necessary, [to] take the proper steps to collect this debt" (RX 330A). Another of these letters stated:

I have afforded you every possible opportunity to make arrangements for satisfactory payment on your delinquent account with Federated Credit Corporation, but you have not responded.

Federated Credit Corporation has instructed me to proceed with forceful collection of your account for the entire outstanding balance. I will not continue the expensive procedure of writing to you. If you do not send the entire balance due by return mail, I shall have no alternative but to proceed per their instructions.

(RX 330E.)

[117] Such letters impliedly represent that suit will be filed or other legal process instituted if a satisfactory reply is not received.

Federated Credit's collectors determined when to send such

⁷³ "Legal action on your account can be postponed only if you forward a substantial payment at once" (CX 1829Z-58).

⁷⁴ "Federated Credit Corporation has instructed me to proceed with forceful collection of your account for the entire outstanding balance. I will not continue the expensive procedure of writing to you. If you do not send the entire balance due by return mail, I shall have no alternative but to proceed per their instructions" (CX 1829Z-66).

⁷⁵ The record is unclear in this instance whether the actual mailing was done by Federated Credit's personnel or that of the law firm (Cooney 2571).

letters. The letters would be sent to this attorney for signature along with certain records (Tr. 14754-55). Fifty to 300 letters under this letterhead could be sent in a month (Tr. 14755). The attorney, in return, received 50 cents a letter, postage and nothing else (Tr. 14755-56). These letters were sent out after the policy to stop filing suits had been put into effect (Tr. 14752). They were used because of their impact on the debtor (Mercier 14757-58).

250. In 1965, Richards entered into an agreement with a John Doe, Esq.,⁷⁶ of the Illinois Bar, which provided that Richards would be permitted to use his name on collection letters prepared by Richards in connection with the collection of delinquent accounts. This attorney initially approved the format of such collection letters. He never personally prepared or mailed such letters to customers of Richards for the purpose of collecting delinquent accounts. Pursuant to such agreement, this attorney was compensated by Richards in the period 1965 to 1969, and such forms utilizing his letterhead were mailed to delinquent debtors of Richards in that period.

The address and telephone number printed under John Doe's name in the letterhead of these forms were, at the time of the agreement, the address and telephone number of Richards. John Doe maintained no office and shared no space in that location.

John Doe never instituted, nor did he intend to institute, any legal action or suit on behalf of Richards at any time (CX 1982).

The letters in question threatened the delinquent account with legal action if no payment was made or reply received. One of the John Doe letters represented the following:

Dear Mr.

The Richards Company, Inc., has placed in my hands for immediate collection a claim against you for \$ ———, being the balance due from you on a legally binding contract made by you with my client.

It is hardly necessary to call your attention to the fact that the courts offer ample means for enforcing collection of moneys due under such contracts.

Will you mail the account indicated to me at once and thus make it unnecessary for me to institute a court action for its collection?

Very truly yours,

Attorney - at - Law

(CX 268.)

⁷⁶ His testimony was stipulated, the parties agreeing that his identity is not material to the allegations of the

(See also CX 267, 269A, 270A, 271A.)

John Doe terminated the agreement with Richards on November 24, 1970 (CX 1982B).

251. Richards also used attorney letters in the Los Angeles area pursuant to an agreement with a member of the California Bar commencing in 1966, and continuing for approximately four years (Tr. 11765, 11757). This attorney was shown four collection letters by a Richards' official and it was agreed that his name would be used in the letterhead, but that Richards' address and telephone number would be utilized (Tr. 11767, 11769). The arrangement between Richards and this attorney also provided that someone else would sign his name (Tr. 11767). Richards never sent this attorney any delinquent accounts, and he did not know which [119] customers would be sent such collection letters (Tr. 11771).⁷⁷ This lawyer had only one discussion with anyone at Richards concerning accounts to whom such letters had been sent, and this involved the friend of an acquaintance (Tr. 11772). He brought no lawsuits on behalf of Richards (Tr. 11772).⁷⁸ The letters sent out under his name directly or impliedly threatened legal action. For example:

As my recent letter regarding your long past due account with The Richards Company, Inc., has brought no reply, I hereby advise you that on _____, I intend to institute court proceedings to recover the amount of \$_____, plus all legal expenses.

Very truly yours,

File #
A-D

(CX 178I.)
(See also CX 178F-H.)

252. Similar letters were sent from Richards' Kansas City office in the period 1965-1974 (Liquie 10934). These letters, utilizing the letterhead of a Kansas City attorney, were mailed out by the Richards office and signed by Richards' billing clerk who usually initialled the letters (Tr. 10934-35). The address utilized on these forms was that of [120] Richards (Tr. 10935). Initially, this attorney received a list of the account numbers and the subscribers' names. After some time, this became too bothersome and was discontinued

⁷⁷ "They just said that they would pick out accounts that had not paid and would be sending them out, because it would be all too inconvenient to send over the accounts to my office and to review it and send them back to the Richards Company. So they said they would just be sending out the letters to those accounts which were delinquent" (Tr. 11771).

⁷⁸ Originally, there was some discussion that suits might be filed but none were ever sent to his office (Tr. 11172-73).

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(Tr. 10935). During the relevant period, this lawyer never brought suits on behalf of Richards to collect delinquent accounts nor was he ever authorized to bring suits during that time (Tr. 10935-36). The letters going out under his letterhead and signature also threatened legal action if respondents' claims were not met (CX 198-200).

253. Richards also, as part of its billing cycle, has sent out collection forms threatening delinquent accounts with suit in the following terms:

FINAL NOTICE is hereby given this day of _____

THAT, unless your delinquent account in the amount of \$ _____ is paid within five days from the date hereof, our attorney will proceed with immediate court action.

THAT you may be liable for interest at the legal rate for the period of delinquency of the above stated account and all costs incident to court action.

THIS NOTICE is sent so that you will have full knowledge of the intended action.

THE RICHARDS COMPANY INC.

(CX 172, 175H.)

254. Richards utilized forms having the appearance of a legal document representing that court action would be filed. For example:

THE RICHARDS CO., INC.

Creditor

File No. _____

vs

Amount Due, \$ _____

Debtor

[121] NOTICE TO _____ DEBTOR:

Repeated demands for payment of this obligation have been Ignored; THEREFORE, YOU are hereby notified that unless settlement is made within five days from date, legal proceedings will be instituted to recover this claim in full together with attorney fees, court costs, and such other relief as the court may deem proper.

THE RICHARDS CO., INC.

Creditor

Dated _____ this _____ day of _____, 19_____

(CX 188; see also CX 189, 176W.)

255. The basic policy of Grolier, Inc., which has been of long

standing, is not to sue delinquent accounts, and the filing of suit is an exception to the general policy (Murphy 16471-73).⁷⁹

256. Respondents' use of collection forms under attorney letterheads has represented, contrary to fact, that the attorney in question has prepared and originated such letters when he did not (Findings 246, 249-51).

257. Respondents' use of letters with the letterheads of attorneys who perform no legal work in connection with such accounts represent, contrary to fact, that the account has been turned over to that lawyer for collection (Findings 246-47, 249-51).

258. Respondents' use of attorney letters as a collection device has represented directly or indirectly, contrary to fact, that suit would be filed or legal steps taken by the lawyer named in such forms when in fact he had no authority to take such steps and no decision had been made as to whether [122] such steps would be taken at the time the form was mailed⁸⁰ (Findings 246-47, 249-52).

259. The use of forms simulating or depicting legal process, at a time when no decision to institute such steps had been taken, also had the capacity to deceive.

260. Federated Credit has disseminated notices to debtors indicating that they would be subject to having adverse credit reports disseminated absent a payment within a certain period. In this connection, Federated Credit has sent out notices under the letterhead of Merchants' Credit Guide Co. stating as follows: [123]

This company compiles information and issues reports concerning the manner in which individuals pay their just obligations.

* * * * *

We never issue a report without first giving the debtor an opportunity to pay the account, or to offer a reasonable explanation why payment should not be made as

⁷⁹ "We do not think it is in the best interest of this company to have a massive amount of lawsuits going on around the world or in the country" (Murphy 16472).

⁸⁰ The record shows that suspense accounts, namely, those where no payments had been made for nine months, were transferred from local branches to Federated Credit's New York office (Haber 16142F, G). This office would make the decision whether to send such accounts to outside attorneys or collection agencies for collection (Haber 16142L). The Grolier employee in charge of this office, an attorney, also made the determination whether such collection agencies or attorneys should be authorized to bring suit (Haber 16142-Z-14-16). The accounts, however, would be in the New York office a year before being sent out (Haber 16142-Z-16), and the request for authority to sue by the outside collection agency or attorney would come some three months after the account had been sent from New York (Haber 16142-Z-26). The record does not show how many suits were filed pursuant to these procedures. The witness testifying with respect thereto did not know approximately how many proceedings had been instituted, but testified there were "many" judgments and collections (Haber 16142-Y). This procedure, however, does not cure the deception inherent in the use of attorney letters or other collection forms, directly or impliedly threatening suit, emanating from local offices, which represented a decision to sue had been made by either the local office in question or the lawyer named on the attorney letters (e.g., see CX 150A & B, 151A-Z-15). There was, as far as can be determined from this record, no relationship between the decision in Federated Credit's New York office to refer accounts to outside attorneys or collection agencies or its decision to authorize suit and the prior use by Federated Credit's local offices of forms such as attorney letters.

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agreed. We believe the debtor is entitled to this courtesy as his credit may be seriously impaired by permitting his just debts to remain unpaid.

(CX 153-O; see also CX 153P and CX 153Q.)

261. These notices were purchased by respondents from Merchants' Credit Guide and would normally be mailed out by Federated Credit's office (Bodkin 2585). No credit reports were received from Merchants' Credit Guide (Tr. 2586). The implied threat of adverse credit reporting is misleading.

262. Among the collection forms used by Federated Credit was the following notice:

Why risk your job?

The Civil Service Code states that an employee who fails to pay his just obligations may be subject to dismissal.

Pay your full balance now and clear your account with us.

(CX 153F.)⁸¹

[124] 263. The threat of dismissal in the foregoing notice is misleading; the applicable Civil Service Commission regulation is specific with regard to the kind of financial obligation that may be the basis for any form of disciplinary action. Disciplinary action may range from counseling an employee to the extreme of removal. Further, the regulation expressly states that a "just financial obligation" within its scope is one reduced to judgment by a court or acknowledged by the employee. An employee cannot, under the applicable regulation, be dismissed on the basis of creditor-debtor correspondence (Myers 6028-29) as the form implies.

264. Respondents have also disseminated collection letters threatening criminal prosecution under the Mail Fraud Statutes. In this connection, a form letter under the letterhead Career Institute states as follows:

Dear Mr. Smith:

Your complete lack of interest in your past due account with us leads us to this conclusion: You have used the United States Mail to obtain merchandise without paying for it.

Unless we hear from you by October 18th, your name will be sent to the United States Postal Inspector with our request that he initiate an immediate investigation to determine if you have used the mails to defraud.

Enclosed is an excerpt from the U.S. Criminal Code "Title 18, Chapter 63, Section

⁸¹ Collection forms in the CX 153 series were used in the period 1965 through 1973 (Bodkin 2581).

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1341 & 1342" which describes the penalties that can be imposed on persons convicted of this criminal act. These penalties can include:

1. Fine of \$1,000.00
2. Imprisonment of five (5) years

OR BOTH

Your balance is \$10.00. Our action will be deferred until October 18, 1969.

J.W. McBurney
Credit Manager

(CX 258B.)

[125] 265. This form impliedly represents that the debtor may be investigated and prosecuted for mail fraud for debts as low as \$10.00. The representation does not take into consideration the discretion of the Department of Justice in determining whether to bring suit. It is unlikely that there would be a mail fraud prosecution for amounts as low as \$10.00 (Jenkins 6124-25).⁸² Moreover, the Department of Justice has never brought a prosecution for mail fraud where a disputed debt was involved (Jenkins 6125). Under the circumstances, the use of the form to make a blanket threat of criminal investigation and prosecution is misleading and deceptive. [126]

VII. RESPONDENTS' SALES THROUGH DISTRIBUTORS

266. Certain of respondents' publications and other products have been sold at wholesale, by subsidiaries of one or another of the respondent corporations, to distributors who resell such publications at retail to members of the public. The record identifies more than 250 such distributors. These distributors may be generally grouped into the following categories:

- (a) The "non-Grolier" wholesale customers of Lexicon Publications, Inc. (RX 386 a-f);
- (b) The "nonfinanced" wholesale customers of Excelsior Trading Corporation (*i.e.*, those wholesale customers who have not been financed by one of the jobbers of Bunker Hill Service Corporation) (RX 532 a-c);
- (c) Those distributors who have purchased products from, and have received financing from, one of the jobbers of Bunker Hill Service Corporation (RX 531 a-b); and
- (d) Hemphill Enterprises, Inc. and Jayhill Corporation.

⁸² A Justice Department attorney, who is the head of the Mail and Wire Fraud Unit of the Criminal Division and has been with the Department of Justice for 22 years, stated that he has no personal knowledge of mail

A. *The Lexicon Operation*

267. Lexicon Publications, Inc. (Lexicon) is now, and has been since 1965, a wholly-owned subsidiary of respondent Grolier, Inc., with its principal office and place of business in Chicago, Illinois. Since 1965, Lexicon has been engaged in the publication and wholesale distribution of reference publications and related products (Rothschild 14195, *et seq.*; RX 417).

268. The October 1974 list of non-Grolier wholesale customers of Lexicon (RX 386 a-f) includes more than 150 independent distributors from almost every state. Most of these distributors are engaged in the home solicitation sale of reference publications and related products (Tr. 14227). The only business relationship between these distributors and Lexicon is that of purchaser and seller—*i.e.*, Lexicon [127] sells publications at wholesale to such distributors, either on a “cash with order” or “cash within 30 days” basis (Tr. 14227). Lexicon has never financed any of its non-Grolier wholesale customers by acceptance of retail installment contracts or otherwise (Tr. 14230). Lexicon has not monitored, directed or controlled the sales or recruitment practices of any of its non-Grolier wholesale customers (Tr. 14230-31).

B. *The Jayhill-Hemphill Operation*

269. In July 1966, Federated Credit and Hemphill Enterprises, Inc. (Hemphill) entered into an agreement whereunder Federated Credit agreed to finance Hemphill's retail installment contracts involving sales of Grolier products to the general public (CX 118, 119). Hemphill's principal was one Jack L. Hemphill. Certain of the publications sold by, and the sales aids utilized by, Hemphill were purchased from Grolier, Inc. subsidiaries (CX 118A). Grolier, Inc. advanced Hemphill in excess of \$1 million in the form of cash and merchandise and, when Hemphill was forced into liquidation, respondents incurred a loss from the transaction (McCabe Deposition, pp. 60, 62).

270. On June 4, 1969, some time after the Hemphill liquidation, the Jayhill Corporation (Jayhill) was appointed as a distributor for Grolier Society's publications (CX 118 A-B). Jack L. Hemphill, also the principal of this corporation, was to devote his full time to selling Grolier Society publications at prices established by Grolier Society and to compensate sales representatives in accordance with the schedules established by this respondent (CX 121A-B).

The distributorship agreement between Grolier Society and Jayhill provided that the latter was to be subject to the former's

control "with respect to sales regulations, methods and terms" (CX 121C).

271. While the distributor agreement was in effect, Grolier Society paid a portion of Jayhill's monthly office rental and provided funds in the amount of \$500 per month plus commission to Mr. Hemphill (CX 2132A-B). Various respondents' officials visited the offices of Jayhill or Hemphill in the period 1968-1970 (CX 2132B-C). Grolier, Inc. terminated the distributor arrangement with Jayhill on May 11, 1970 (CX 118B). [128]

272. Jayhill's salesmen represented that prospective customers had been selected as a test family for a new program; that their cooperation was being solicited to promote the program (Joy 11357-58); that the prospective customer's opinion on the program was being sought (Margiotta 12451); and that extra or bonus publications would be thrown in if the prospect agreed to finish payments in three years rather than ten years (Joy 11361; Margiotta 12457). Jayhill's sales representatives, in their presentation, also invoked the Grolier name (Margiotta 12451; Joy 11357), and Jayhill's retail contracts contained a picture of the Grolier building (CX 2070A-B).

C. *The Excelsior-Bunker Hill Operation*

273. Excelsior Trading Corporation (Excelsior) is now, and has been since 1972, a New York Corporation engaged in the wholesale distribution of reference publications. Since its formation in 1972, Excelsior has been a wholly-owned subsidiary of respondent Richards (Ryan 5823, 5826).

274. Bunker Hill Service Corporation (Bunker Hill) is now, and has been since 1972, a New York corporation engaged in the business of financing certain jobbers or wholesalers of encyclopedias and other reference publications. Since its formation in 1972, Bunker Hill has been a wholly-owned subsidiary of respondent Richards (Ryan 5826).

275. Excelsior and Bunker Hill were created in 1972, as the basis for a distributor system which would convert the Richards business into a wholesale operation after it was determined that this subsidiary would no longer sell directly to the consumer.⁸³ The purpose of instituting this system was to permit certain Richards' employees to remain in the reference book business (Ryan 5826)⁸⁴ and [129] to preserve respondents' investment in the American

⁸³ Continental Publications Incorporated had been accepted as a distributor in 1970, as a pilot program to test the feasibility of such a distribution method (Hauswirth 11016).

⁸⁴ Financed distributors in this category will sometimes be referred to hereinafter as the "Richards' spinoff

Peoples Encyclopedia (Murphy 16467-68). The plan for the distributor network was presented to the Chairman of the Board of Grolier, Inc. and approved (Ryan 5826).

276. The primary problem in organizing the distributor program was to arrange financing.⁸⁵ Two companies were created by respondents: the first, a company to wholesale the books (Excelsior); the second, a company to finance the paper (Bunker Hill) (Ryan 5826). Under the distributor system, in any one transaction, four companies performed the functions Richards had previously performed, *viz.*, two Richards subsidiaries to wholesale the books and finance the transactions and, further down the chain, the jobber and the distributor (Pardee 11077).

277. Jobbers were envisaged as the key to the distribution system (Ryan 5837-38). They were selected for their experience in collections and to make sure that the sales being financed were quality sales which would be profitable (Kohen 14336-37).

278. Under this system, the distributor, who sells door-to-door to the consumer, buys his merchandise from the jobber and assigns the consumer retail installment contract or paper to the jobber. The distributor, when he assigns the paper, sends the sales contract to the jobber along with the check for the merchandise (Ryan 5838-39).

The jobbers, in turn, assign the orders to Bunker Hill which reviews the orders. Bunker Hill, if the order is accepted, sends the jobber a check for 60 percent thereof. The jobber transmits an advance to the distributor. The jobber sends a check to Excelsior for the merchandise (Ryan 5839). Excelsior drop-ships the merchandise to the subscriber (Kohen 14361). In short, Bunker Hill finances the jobbers, who, in turn, finance the distributors (Ryan 5837). [130]

279. The jobber does all the collecting for the distributor and the distributor is only charged on those accounts on which payment has not been made (Ryan 5833, 5839-40). Jobbers retain a certain percentage of each contract sold to the consumer as a reserve for bad debts. If an account becomes delinquent and is not collected by the jobber, the jobber returns the account to the distributor and charges the reserve (Pardee 11153t-u).⁸⁶

⁸⁵ There are many small book distributors in the United States. Some are successful; the failures to a considerable degree are attributable to financing which is very difficult to get (Ryan 5825-26).

⁸⁶ The mechanics of the collection process in the case of one jobber, American Acceptance Corporation, may be outlined as follows:

The contracts are payable in 35 months and American Acceptance collects thereon (Kohen 14319). It submits all collections to Bunker Hill as repayments on the loan (Kohen 14320). If an account becomes uncollectable, the distributor repurchases the contract from American Acceptance which repurchases the contract from Bunker Hill (Kohen 14320-21).

American Acceptance submits the total amount collected to Bunker Hill. At the end of the month, Bunker Hill charges an interest and service charge varying from \$2.55 to \$2.75 for every open account. Bunker Hill applies 60 percent of the collections to the advance previously given to American Acceptance. American Acceptance receives

(Continued)

280. Jobbers sell at cost to the distributors they finance and make no profits on such sales (Kohen 14358). The only profit made by jobbers with respect to financed sales is the amount withheld by the jobber from collections returned by Bunker Hill (Kohen 14359).

281. In the period from 1972 to 1976, Bunker Hill financed four different jobbers: Paragon Service Company of Atlanta, Georgia; American Acceptance Company of Milwaukee, Wisconsin; Columbia Financial Corporation of Springfield, Virginia; and Allied Acceptance Corporation of Los Angeles, California (RX 531 a-b). [131]

282. Officials of Richards, including its President, John Ryan, recruited and encouraged Richards' employees and former employees to become distributors and jobbers (Kohen 14335-36; Ryan 15998; Berry 15729, 15737; Pardee 11077-78, 11083).

In fact, most of Richards' key sales personnel became distributors (Ryan 15998).⁸⁷ And the individuals who became jobbers were basically Richards' personnel experienced in both sales and administrative work (Ryan 5837-38). Certain of the jobbers had previously supervised at Richards the personnel who later became distributors (Kohen 14346-47; Berry 15721).

283. Richards' personnel gave advice and help to former Richards' employees in setting up and operating their distributorships (Ryan 15998; Pardee 11117-19). In this connection, prospective distributors were provided with a document outlining the steps to be taken in forming such distributorships (Pardee 11085-87). In the case of one distributor, his retail contract was drawn up by a member of the Grolier, Inc. legal staff (Pardee 11093, 11119, 11154-a).

284. Distributors were offered a commission to collect old Richards accounts still outstanding and allowed to remain in the Richards office rent-free until the leases expired (Ryan 16002-03, 16057). Arrangements were also made to permit the distributors to acquire the furniture and fixtures in the Richards office under a rent purchase agreement (Ryan 16003). And sample forms were provided to the distributors for their use (Pardee 11119). The President of Bunker Hill helped one distributor to set up his accounting records (Pardee 11119).

285. A standard contract is in use between Bunker Hill and the jobbers (Ryan 5847). This contract was of the same format as that used between the jobbers and the distributors (Ryan 5848). The

⁸⁷ 40 percent less the \$2.55 to \$2.75 service charge per account. This gives the jobber approximately 23 percent of the amount collected of which the distributor receives 10 percent. The jobber retains approximately 13 percent (Kohen 14355-57).

⁸⁸ In one case, there was apparently a wholesale transfer of personnel from Richards to the new distributor

services of the Grolier Legal Department were utilized in developing this contract (Ryan 5848). [132]

286. Respondents and their officials have no equity interest in the distributor (Ryan 5838).

Every distributor was to set up his company with his own money. No money came from the President of Richards, Richards, or Grolier, Inc. (Ryan 5838; Caldwell 13399-400; Berry 15712).

Such distributors have paid the ordinary everyday expenses of their business, with the exception in some instances of short term rent-free occupancy of Richards' premises (Sander 14444; Berry 15723; Pardee 11153-w; Hauswirth 11033, 11048).

287. The sales and recruitment practices used by distributors were formulated by their own officials without outside direction (Pardee 11153-o-p-q; Hauswirth 11035-37, 11043; David 13534-35; Berry 15715-16; Sander 14447-50; Liquie 10972-73; Caldwell 13398). The recruiting practices followed by certain distributors were similar to those formerly utilized by Richards (Berry 15745; Caldwell 13419). The sales presentations were similar or essentially the same as those formerly utilized by Richards (Pardee 11154-f; David 13562-63; Sander 14491-93; Berry 15773; Caldwell 13421-30). The continuation of such practices by the distributors, however, may be ascribed to their prevalence in the industry (Caldwell 13427).

288. These distributors have not held themselves out as representing the respondents in their sales presentations (Pardee 11154-b; Liquie 10984; Sander 14455-57; David 13547-49; Berry 15715; Caldwell 13398). Such distributors were actual or potential competitors of Grolier Interstate (Pardee 11098). [133]

DISCUSSION

Jurisdictional And Procedural Issues

Respondents challenge the Commission's jurisdiction with respect to sales recruitment practices on the ground that they are local, not trade practices, and, therefore, not within the Commission's jurisdiction. The recruiting activities, however, are an integral part of respondents' interstate operations. The contention that such activities are local and not trade practices is without merit and is rejected. See *Encyclopedia Britannica, Inc.*, Dkt. 8908 (Commission Opinion and Order, March 9, 1976 [87 F.T.C. 421]).

Respondents also urge on the basis of procedural grounds that no initial decision should be rendered at this time. They contend that (1) the Commission erred in denying respondents' 1973 petition for the institution of Trade Regulation Rule proceedings; (2) the

administrative law judge erred in denying respondents' 1975 motion for stay of the present proceeding pending a reopening of the proceedings in *Americana Corporation*, Dkt. 5085; (3) the administrative law judge and the Commission erred in denying respondents' 1976 motion for disqualification and removal of the administrative law judge; (4) the administrative law judge erred in denying respondents' 1975 requests for discovery from the Commission; and (5) the administrative law judge and the Commission erred in denying respondents' 1972 motion to dismiss for failure to join indispensable parties.

The various rulings complained of and the reasons therefore are on the public record. Further discussion at this time is unnecessary. The initial decision will issue. The Commission will be in a position, where appropriate, to consider or reconsider these questions on appeal.

Substantive Issues

The allegations of the complaint have already been summarized (pp. 1-3, *supra*). Suffice it to say that the practices alleged unlawful have been considered countless times by the Commission in the past. The law in this area is well settled; it requires no extended discussion. A summary of the applicable general principles follows. [134]

Capacity to deceive and not actual deception is the criterion by which practices are tested under the Federal Trade Commission Act. *Goodman v. FTC*, 244 F.2d 584, 604 (9th Cir. 1957); *Regina Corp. v. FTC*, 322 F.2d 765, 768 (3rd Cir. 1963); *FTC v. Sterling Drug, Inc.*, 317 F.2d 669, 674 (2nd Cir. 1963)⁸⁸ *Charles of the Ritz Dist. Corp. v. FTC*, 143 F.2d 676, 680 (2nd Cir. 1944); *Progress Tailoring Co. v. FTC*, 153 F.2d 103 (7th Cir. 1946). The fact that some customers are not misled is irrelevant if the practices under consideration have the tendency to mislead. *Mohawk Refining Corp. v. FTC*, 263 F.2d 818, 821 (3d Cir. 1959), *cert. denied*, 361 U.S. 814 (1959); see also *Thiret v. FTC*, 512 F.2d 176, 180 (10th Cir. 1975).

In determining the meaning of an advertisement, a piece of promotional material, or a sales presentation, the important criterion is the net impression that it is likely to make on the general populace. *National Bakers Services, Inc. v. FTC*, 329 F.2d 365, 367 (7th Cir. 1964). In ascertaining the impression created, the Commis-

⁸⁸ "... In order best to implement the prophylactic purpose of the statute, it has been consistently held that advertising falls within its proscription not only when there is proof of actual deception but also when the representations made have a capacity or tendency to deceive, i.e., when there is a likelihood or fair probability that

sion need not look to the technical interpretation of each phrase but, rather, looks to the overall impression likely to be made on the buying public. *Murray Space Shoe Corporation v. FTC*, 304 F.2d 270, 272 (2nd Cir. 1962). A statement may be deceptive even if the constituent words may be literally or technically construed so as not to constitute a misrepresentation. *Kalwajtys v. FTC*, 237 F.2d 654, 656 (7th Cir. 1956), *cert. denied*, 352 U.S. 1025 (1957); *Sterling Drug, Inc. v. FTC*, *supra*. Advertisements which are capable of two meanings, one of which is false, are misleading. *Rhodes Pharmacal Co., Inc. v. FTC*, 208 F.2d 382, 387 (7th Cir. 1953), *modified on other grounds*, 348 U.S. 940 (1955). Such statements will be construed against the advertiser. *Murray Space Shoe Corporation v. FTC*, 304 F.2d, *supra* at 272. [135]

The Commission is not confined to proscribing affirmative misrepresentations. The literal truth employed in a particular context may be used to deceive and deception, moreover, may be accomplished by innuendo as well as by outright false statements. *Bockenstette v. FTC*, 134 F.2d 369 (10th Cir. 1943); *Bakers Franchise Corporation v. FTC*, 302 F.2d 258, 261 (3d Cir. 1962); *Regina Corp. v. FTC*, 322 F.2d, *supra* at 768.

Furthermore, "[r]epresentations can be contrived to mislead not only by what they contain but by what they omit." *Manco Watch Strap Co. Inc.*, 60 F.T.C. 495, 510 (1962). The Commission may utilize its expertise in determining what facts are material to consumers and thus determine the situations in which material facts have not been disclosed. *Pfizer Inc.*, 81 F.T.C. 23, 58 (1972). The Commission has ruled:

In order to prevent this type of deception, the Commission is often obliged in its orders to go beyond conventional negative prohibitions and to require disclosure of material facts previously not disclosed to prospective purchasers. If affirmative disclosure is the effective antidote to deception, it is a remedy the Commission may - even must - prescribe. *Manco Watch Strap Co.*, 60 F.T.C., *supra* at 510.

An order requiring affirmative disclosure, moreover, "is not an extraordinary or unusual remedy to be applied only in extreme cases." *S.S.S. Co.*, 73 F.T.C. 1058, 1088 (1968).

The Commission in evaluating the tendency of language to deceive "should look not to the most sophisticated readers but rather to the least." *Exposition Press Inc. v. FTC*, 295 F.2d 869, 872 (2nd Cir. 1961), *cert. denied*, 370 U.S. 917 (1962). Also applicable here is the principle that "[t]he likely impact on those who view the advertising even casually or distracted by other activities must be taken into account." *Giant Food, Inc.*, 61 F.T.C. 326, 346 (1962), *affirmed*, 322 F.2d 977 (D.C. Cir. 1963), *cert. denied*, 376 U.S. 967 (1964).

Finally, "[t]he law is violated if the first contact or interview is secured by deception . . . even though the true facts are made known to the buyer before he enters into the contract of purchase." *Carter Products Inc. v. FTC*, 186 F.2d 821, 824 (7th Cir. 1951); *Exposition Press Inc. v. FTC*, 295 F.2d, *supra* at 873. [136]

The significant issues in this proceeding relate to remedy. The issues requiring consideration are: (1) whether the violations proven are substantial; (2) whether no remedy should be imposed because of abandonment; and (3) if an order issues, what is the appropriate remedy.

Remedy

1. Parent Company Responsibility

The first question in considering the reach of the order is whether the parent company, Grolier, Inc., can be held responsible for the violations of law found herein. A parent company's liability for the actions of its subsidiaries is not governed by the common law rule restated in *National Lead Co. v. FTC*, 227 F.2d 825, 829 (7th Cir. 1955), *rev'd. on other grounds*, 352 U.S. 419 (1957).⁸⁰ The Commission need not find such complete control by the parent that the subsidiary is a mere tool and its corporate identity a mere fiction. The Commission has expressly rejected the contention that so stringent a standard applies holding:

Manifestly, where the public interest is involved, as it is in the enforcement of Section 5 of the Federal Trade Commission Act, a strict adherence to common law principles is not required in the determination of whether a parent should be held for the acts of its subsidiary, where strict adherence would enable the corporate device to be used to circumvent the policy of the statute."

(*Beneficial Corp., et al.*, CCH 1973-76 Transfer Binder, ¶20,959 (1975), *modified on other grounds*, Slip Op. (3rd Cir. 1976).)

In determining parent company liability, the Commission examines "the pattern and framework of the whole enterprise." *Art National Manufacturers Distributing Co. v. FTC*, 298 F.2d 476, 477 (2nd Cir. 1962), *cert. denied*, 370 U.S. 939 (1962); *Beneficial Corp., supra*. The applicable standard has been met if the facts demonstrate even latent control. *Beneficial Corp., supra*. As the Sixth Circuit has stated: [137] [W]here a parent possesses latent power, through interlocking directorates, for example, to direct the policy of its subsidiary, where it knows of and tacitly approves the use by its

subsidiary of deceptive practices in commerce, and where it fails to exercise its influence to curb illegal trade practices, active participation by it in the affairs of the subsidiary need not be proved to hold the parent vicariously responsible. Under these circumstances, complicity will be presumed.

P. F. Collier & Son Corp. v. Federal Trade Commission, 427 F.2d 261, 270 (6th Cir.), cert. denied, 400 U.S. 926 (1970).

Those criteria have been met here. Grolier, Inc., through interlocking directorates and management, controls its subsidiaries. It has actively intervened in their sales and employment activities.⁹⁰ In this connection, it is significant that the parent company could terminate a subsidiary's local sales office when it became an embarrassment, and that a parent official could cancel the sales contracts of subsidiaries without their acquiescence. In addition, the record shows that, through its surveillance activities, the parent company had actual knowledge of the law violations of its subsidiaries. The Grolier Interstate reorganization in 1971, terminating the operating life of the then direct-selling subsidiaries, is wholly inconsistent with respondents' assertion of corporate separation between parent and subsidiary. The parent-subsidiary operation constituted an interrelated enterprise. The financial support and services furnished by Grolier, Inc. were essential to the operation of the subsidiaries. Being responsible for their actions, Grolier, Inc. had the [138] responsibility of effectively preventing violations of law by the personnel of its subsidiaries.

Where the parent company is shown liable for the acts of its subsidiaries because of the power to control, it is unnecessary to demonstrate that the practices alleged illegal were expressly authorized by the parent or that it actively participated therein. See *P. F. Collier & Son Corp. v. FTC*, 427 F.2d, *supra* at 270. It is no defense that the misrepresentations of respondents' sales representatives may have been unauthorized or contrary to the announced policy of respondents. Respondents are bound by the acts of the salespersons and other employees they choose to retain if such acts are within the actual or apparent scope of their authority. When respondents put sales representatives on the street, they are clothed with apparent and, in fact, real authority to speak for their principals. This is equally true of local management officials in

⁹⁰ Consider, for example, the directive of Grolier, Inc.'s President to all subsidiaries, dated October 21, 1969:

"It has been decided that all subsidiaries will cease using the Vacation Certificate by December 31, 1969.

The time limit of December 31st was set to give you time to phase them out" (CX 127).

The directive clearly demonstrates the parent company's assertion of the right to control the details of its subsidiaries' sales operation.

charge of recruiting and training respondents' sales representatives. See *Goodman v. FTC*, 244 F.2d, *supra* at 592. The offending conduct of the sales representatives or local management may have been unauthorized and even condemned and discouraged by respondents. Such conduct, within the actual or apparent scope of their authority, nevertheless subjects the employers to the jurisdiction of the Commission and its cease and desist order. *Id.* at 592; see also *Parke, Austin & Lipscomb, Inc. v. FTC*, 142 F.2d 437, 440 (2nd Cir. 1944). Unsuccessful attempts to prevent misrepresentation by his authorized agents will not put the principal beyond the reach of the Federal Trade Commission Act. *Goodman v. FTC*, *supra* at 592.⁹¹ [139]

Respondents contend that no order may issue against any of them unless supported by separate findings as to the sales and recruiting practices of each respondent subsidiary.⁹² The contention is rejected. As already noted, the respondent subsidiaries are subject to the control of the parent company, which has actively intervened in their operations. The subsidiaries' operational lives may be cut short at any time by the parent and another subsidiary substituted in their place. The record, moreover, shows that the sales operations of the subscription book companies and the mail order subsidiaries in their respective spheres have followed the same basic themes.⁹³ As a

⁹¹ "Thus the courts take the view that the principal is bound by the acts of the salesperson he chooses to employ, if within the actual or apparent scope of his authority, even *when unauthorized*. As said by the Court of Appeals for the Second Circuit:

"But however unauthorized the offending conduct of the salesmen may have been and however condemned and discouraged by their superiors, it still was conduct which subjects the employers to the jurisdiction of the Commission and to its cease and desist order."

"In a later case the same court, in dealing with misrepresentations in conjunction with the sale of books, held the principal responsible because the salesmen *were his authorized agents*. This, despite the fact that the Commission found that the misrepresentations were made in *violation of direct instructions*. The Court summed up the matter in these words:

"They were nevertheless the authorized agents of the corporate petitioners * * * to sell the books. The misrepresentations they made *were at least within the apparent scope of their authority and part of the inducement by which were made sales that inured to the benefit of the corporate petitioner*. Unsuccessful efforts by the principal to prevent such misrepresentations by agents will not put the principal beyond the reach of the Federal Trade Commission Act." (Emphasis added.)" (*Id.* at 592-93).

⁹² Respondents' proposed findings, however, generally are not framed so as to assist in the kind of analysis which, in their reply memorandum, they consider essential.

⁹³ This is demonstrated by the following tables referring to certain sales presentations in the record and to respondents' 1969 telephone survey:

Sales Presentations					
	Spencer	Americana	Grolier Society	Richards	Hinkley
Misrepresent	871F, G	446A	563J, P	971B	1023A
Purpose of		447A-B		956A	
Contact or		448A			
Visit					
Help and	439C-D	446C	563J, M,	971C	1023A, B

result, findings going to the collective [140] operations of the subsidiaries are sufficient to bind the parent company. Indeed, if the Order is to have any meaning, it is the parent company and its successors which must be bound. Similarly, the subsidiaries, in view of their subservience to Grolier, Inc. and the fact that the parent-subsidiary operation must be viewed as a whole,⁹⁴ are also bound by findings going to the entire operation. [141]

2. The Practices Were Substantial

On the basis of the number of consumer and ex-salesperson witnesses appearing in this proceeding, respondents urge that the evidence of violation is *de minimis* and that the case should be dismissed for that reason. The argument is without merit. The number of such witnesses testifying is not the sole measure of the extent of the violations. In fact, the Commission is not required to produce any customers to testify as to their deception.⁹⁵ Respondents' 1969 telephone surveys show that the misrepresentations in connection with their in-home presentations were substantial, and that they were aware of that fact (Finding 52). The record shows that respondents' sales representatives were trained by local office management to use the prohibited practices such as disguising the

Savings	871N	447I	964K-L	1023B
Claims	439Z-8-9			
10-Year	871P	563N, R	964P-Q	
Conversion				
Representa-				
tions				

1969 Telephone Survey

	<i>Americana</i>	<i>Spencer</i>	<i>Grolier Society</i>	<i>Hinkley</i>
Excessive Savings	82K, 83E, 95E	77D, 79D, 83I, 94H, 106E, 116K,	77C, 79C, 81G, 83F, 90D, 103D, 115E	81J, 81N, 91H, 101F, 113G
Selectivity	85E, 117E, 117F	82G, 86H, 105H, 110C, 111M, 114I, 115"O"	77C, 82E, 92"O", 101D, 109D, 11F, 116G	105F, 108F, 111I
Free (Bonus) Merchandise	81E, 100E, 116E	87J, 87Q, 102F, 103H, 112J, 116K	84G, 86D, 94D, 95G, 97D, 104E, 112E	85I, 89H, 91H, 92K, 104G, 112H, 113D

Respondent Grolier Interstate, in 1971, became the successor of the former direct-selling subsidiaries.

⁹⁴ It is significant that Grolier, Inc. represented to consumers in its institutional advertising that the parent company assumed responsibility for the sales practices occurring in the field (Finding 44).

⁹⁵ "That the Commission did not produce consumers to testify to their deception does not make the order improper, since actual deception of the public need not be shown in Federal Trade Commission Proceedings." *Charles of The Ritz Dist. Corp. v. FTC*, 143 F.2d, *supra* at 680.

sales purpose of the contact with consumers by representing that they were interviewers, field counselors, advertising men, etc. The written sales presentations in this record, which respondents' sales representatives were trained to use, demonstrate that the practices under consideration were not the isolated practices of a few. (See generally Section IV-G, *supra*.)⁹⁶ The record further shows that as late as 1973 to 1974, respondents' regional vice presidents were being terminated for permitting continuation of, or for failure to, eradicate the violations under consideration here. The need to terminate management officials on this level further documents the fact that the violations occurring were not insubstantial. [142]

In the case of the continuity programs, the basic violation was the failure to advise the consumer that he would receive at one stage of the program a bulk shipment of books rather than the single volume expected. Respondents commenced giving an explicit disclosure of that fact in March 1971. The mailings in the preceding years did not carry such a disclosure. In 1970 alone, respondents had 398,253 new orders for their continuity programs (Finding 218). The number of attendant initial mailings without the disclosure must have been substantial.

The law violations in the debt collection area also were not insubstantial or *de minimis*. The record shows, for example, that the use of attorney letters, directly or impliedly threatening legal action by lawyers who had not originated the letters or reviewed the accounts, or who were not authorized to file suit, was pervasive.

Finally, the testimony of the Government witnesses appearing herein, both ex-salespersons and consumers, on their experiences with respect to recruitment practices, training and the type of sales presentation given is uncontradicted. In the case of the ex-sales representatives, no testimony from their superiors was presented to show that they had erred in their testimony as to the sales training received. Their testimony, moreover, is corroborated by the contemporaneous documents (*e.g.*, CX 563; see n. 93, *supra*).

The record establishes a pattern of unfair and deceptive acts and practices on the part of these respondents.

3. Discontinuance

Respondents also contend that no order should issue since the challenged practices have been discontinued. Respondents did send

⁹⁶ Consider, for example, CX 563A-V, a sales manual prepared by a Grolier Society Vice President which was in use for several years in the Los Angeles area and which salesmen were instructed to follow (Long 2835-39). The manual trained sales representatives in how to disguise the sales purpose of their contacts with the consumer. *E.g.*,

policy directives to their employees to stop various of the misrepresentations involved herein, including misrepresentation of the purpose of the salesman's call.⁹⁷ The [143] policy of prohibiting such practices was not, however, effectively executed. Substantial violations occurred at the time such directives were sent out and continued thereafter. The reason that such efforts at reform were not effective is that respondents' field management has historically not been responsive to direction from the head office (Findings 50, 51, *supra*).

Respondents' Assurance of Voluntary Compliance covering many of the recruitment and sales practices involved herein was accepted in July 1967.⁹⁸ Substantial violations by respondents nevertheless continued in the succeeding period (*e.g.*, Findings 50, 51, 101, 113, 135, 191-94).⁹⁹ By the end of 1970, some three years later, the situation was such that in order to control such violations, respondents deemed it necessary to have a complete corporate overhaul, reorganizing the activities of the direct-selling subsidiaries into one (Finding 41). This reorganization commenced in January 1971, but the buildup of the headquarters staff necessary to achieve the required control of the sales organization did not commence until 1973 (Findings 41, 51). And, as already noted, at least some of respondents' management continued to be unresponsive to policy directives in this area as late as 1973 to 1974. The formal complaint in this proceeding issued in 1972. Under the circumstances, the record does not support dismissal of the charges on the ground of abandonment. See generally, *U.S. v. Oregon State Medical Society*, 343 U.S. 326, 333 (1952); *Coro, Inc. v. FTC*, 338 F.2d 149, 153 (1st Cir. 1964), *cert. denied*, 380 U.S. 954 (1965). A cease and desist order is required to assure effective control by respondents over their field management and sales representatives to prevent repetition of the law violations within the scope of this proceeding. [144]

Respondents assert the evidence does not reflect current practices. The age of the evidence, however, does not preclude the issuance of

⁹⁷ *E.g.*, RX 63, Memo dated March 15, 1968; RX 65, Memo dated May 14, 1969; RX 66, Memo dated May 15, 1969; RX 68, Memo dated May 29, 1969; RX 69, Memos dated July 17 and 23, 1969. These memoranda, cited in respondents' posthearing memorandum, pp. 38-39, pertain to Richards. A major reason for not including Richards in the 1971 Grolier Interstate reorganization, however, was the fact that it had generated too many sales problems (see Finding 42 and n. 13).

⁹⁸ Respondents have with some frequency been involved in Commission proceedings. A cease and desist order was entered against the Americana Corporation in 1949, and a number of civil penalty suits have been filed thereunder. In 1964, a consent order relating to debt collection practices was accepted in the case of Grolier Enterprises, Dkt. C-753 [65 F.T.C. 901]. In 1966, the Commission issued a proposed complaint relating to many of the practices involved herein. That proceeding was resolved by acceptance of the Assurance of Voluntary Compliance in 1967.

⁹⁹ The evidence of violation in this proceeding relates primarily to the period 1968-1970.

an order. As the Sixth Circuit held in *P. F. Collier & Son Corp. v. FTC*, 427 F.2d, *supra* at 275:

. . . The fact that this evidence may be old, per se, does not mean that an order issued upon it is vitiated. Where an illegal trade practice is once proved against an enterprise, and is capable of being perpetuated or resumed, it may be presumed to have been continued, and an order may issue to prevent it, even upon a showing that it has been discontinued or abandoned. See *e.g.*, *Perma-Maid v. Federal Trade Commission*, 121 F.2d 282 (6th Cir. 1941).

The Order

Respondents contend that the imposition of any cease and desist orders in the encyclopedia industry is inherently inequitable and unworkable. They assert that insofar as an order seeks to regulate or restrain the activities of sales representatives by provisions directed against their employers, this simply results in the sales representatives transferring to unregulated companies. Respondents argue that, should an order issue, there would be a resultant serious erosion of their sales force leaving them at a competitive disadvantage with respect to companies not so regulated. They further contend that sales representatives transferring to other firms would simply continue the prohibited practices. Accepting the argument that no order should issue for that reason would preclude Commission action to prevent deception in door-to-door selling in any industry. The contention must be rejected. The fact that an order may restrict more severely a firm subject to its provision than its competitors does not justify the failure to take remedial action where warranted. At best, such a situation affords the basis for an argument that respondents' competitors should be dealt with likewise, not that respondents should escape. See *P. F. Collier & Son Corp. v. FTC*, 427 F.2d, *supra* at 276. [145]

The determination to proceed against particular members of an industry in an adjudicative proceeding is well within the Commission's administrative discretion. *Moog Industries, Inc. v. FTC*, 355 U.S. 411 (1958). In any event, the Federal Trade Commission Improvement Act has considerably broadened the reach of final cease and desist orders. As a practical matter, Section 205 of the Statute¹⁰⁰ gives such orders the effect of rules binding nonparties provided they have actual notice. To a considerable degree, this

¹⁰⁰ "(B) If the Commission determines in a proceeding under subsection (b) that any act or practice is unfair or deceptive, and issues a final cease and desist order with respect to such act or practice, then the Commission may commence a civil action to obtain a civil penalty in a district court of the United States against any person, partnership, or corporation which engages in such act or practice—

"(1) after such cease and desist order becomes final (whether or not such person, partnership or

diminishes the competitive disadvantage which may result from the imposition of a cease and desist order. Furthermore, pursuant to the provisions of Paragraph V of the Order to be issued herein, respondents' sales representatives will be furnished with a copy of the Order. Having received actual notice, such sales representatives will be liable, pursuant to Section 205, for violation of its provisions.

Turning to the specific provisions of the Order, it should be noted that the cease and desist order recently issued by the Commission in *Britannica, supra*, with some exceptions, covers the violations proven in this proceeding. Competitors similarly situated should be treated alike provided that the remedy imposed in each instance is effective. Sound administration dictates in this instance that the remedy imposed be consistent with the most recent Commission precedent in this area. Therefore, absent a compelling reason to the contrary where the violation is the same and the facts similar, the *Britannica* order should be followed herein. Furthermore, the provisions of the Federal Trade Commission Improvement Act, giving the force of rules to final cease and desist orders, if there is actual notice, also argue for uniformity of treatment. [146]

Respondents strenuously object that the affirmative relief provisions sought by the Commission's staff will be injurious to their legitimate business operations and ineffective in terms of preventing illegal practices. The Commission has authority to require affirmative undertakings or actions in its orders. "Remedies of this nature are often necessary to prevent recurrence of an illegal practice or to cure the ill effects of such a practice." *Curtis Publishing Co.*, 78 F.T.C. 1472, 1513 (1971). Whether such a remedy is appropriate in a particular proceeding depends on the facts and circumstances of each case.

1. Order Provisions Relating To Recruiting Practices

Respondents' recruiting practices have been challenged on the ground that they failed to disclose or misrepresented the nature of the position offered; that they misrepresented that prospective recruits were being hired as management trainees; and that they deceptively described the compensation offered. The proposed order would impose affirmative disclosure requirements on respondents' recruiting, both in the recruiting advertisements and at the time of the first personal interview. Respondents deny that their recruiting

subsection (a)(1) of this section.

In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than \$10,000 for each violation."

advertisements are deceptive. They object particularly to the imposition of affirmative disclosure requirements in the case of the recruiting advertisements stating that all relevant facts are disclosed at the time of initial interview.

Respondents utilize blind advertisements in their recruiting program which do not describe the nature of the position offered *i.e.*, door-to-door or in-home selling, the name of the employing company, or the product involved.

Certain advertisements have misstated the nature of the job offer with terms such as linear programming, instructor, public relations work, etc. (Findings 59, 60). The record demonstrates that a substantial portion of the public does not desire employment as an encyclopedia salesman selling in-home or door-to-door (Findings 62, 64). For that reason, respondents do not disclose in their blind advertisements that door-to-door selling is involved in the position offered. An advertisement making such disclosure, according to the testimony of respondents' officials, would not draw the type of applicant wanted (Finding 62). In short, respondents' advertisements were designed to draw responses from persons [147] who would not have answered such advertisements had they disclosed the type of position offered (Finding 64). For that reason, alone, the blind recruitment advertisements are deceptive. *Britannica, supra*.¹⁰¹

Subsequent disclosure of the relevant facts at the time of the first personal interview does not serve to cure the initial misrepresentation. See *Carter Products, Inc. v. FTC*, 186 F.2d, *supra*. Not all of respondents' recruits, moreover, were fully apprised of the nature of the position at the time of the initial interview (Findings 74-76). For example, certain of the less sophisticated trainees, on the basis of the sales presentation they were taught, believed that they were engaged in such fields as advertising or interviewing (Finding 75).

The foregoing demonstrates the need for requiring affirmative disclosure of the nature of the employment offered in the recruitment advertisements and at the initial interview.

Respondents did not have a formal management training program as such available to those who responded to advertisements offering such training. The offer of management training implies a specific program for that purpose and that those who are accepted will be placed in such program when hired. As far as can be determined

¹⁰¹ As stated in the *Britannica* initial decision adopted by the Commission:

"It is clear that the deception fostered by respondent's 'blind' advertisements is successful in bringing persons to respondent's offices who would not have come if they had known that the position offered involved door-to-door selling, which is the admitted reason respondent uses blind advertisements. Therefore, such advertisements have the tendency and capacity to deceive a substantial number of potential job applicants, and to cause applicants to invest time, energy and money in investigating job

from this record, many recruits responding to such offers were treated no differently than other trainees. Under the circumstances, such representations were deceptive.¹⁰² (Findings 65-67.) [148]

Respondents' recruitment advertisements have utilized offers of guaranteed monthly incomes (Finding 68). The advertisements containing such representations, however, do not spell out the conditions which must be met before such compensation will be paid (Finding 70). Sometimes, such conditions were not fully disclosed at the initial interview (Finding 77). In addition, respondents' trainees were frequently discouraged by local management from insisting on the guaranteed income advertised and were pressured to accept commissions instead (Finding 80).¹⁰³ Some guaranteed salary payments were made (Finding 84). However, the guaranteed or stated salary was not available for an open-ended period as the advertisements implied. It was respondents' policy to make such guaranteed payments available only for a limited period, generally not exceeding a month (Finding 85). The unqualified representation that a guaranteed income was being offered was misleading.

The use of the management training and guaranteed income representations were interrelated with respondents' use of blind advertisements. These representations reinforced the deception inherent in the failure to disclose the nature of the position offered. As a result, an Order should issue in this case, as in *Britannica*, prohibiting further misrepresentations in these areas and requiring disclosure of the conditions and qualifications applicable to any offers of management training or compensation.

The recruiting practices found illegal in this proceeding are essentially identical to those prohibited by the Commission in *Britannica*. The provisions in that order pertinent to recruiting practices will be applied herein. Complaint counsel propose, in a departure from the *Britannica* order, that respondents be prohibited from making any representations in their recruiting advertisements that the compensation consists [149] of a stated salary or guaranteed income unless 30 percent of the persons holding similar positions in the office making the offer of employment have received an equivalent or greater income during the preceding 12 months. A

¹⁰² Paragraph I A(2) of the Order prohibits representations that persons will be trained as management trainees "unless, in fact, a formal management training program is available to persons accepting employment on the basis of such representations." The prohibition of such representations is qualified in the Order since respondents are apparently now instituting a formalized corporate sales management training program (Toman 16306).

¹⁰³ Many trainees responding to advertisements promising guaranteed incomes were unable to earn commissions equal to the advertised guarantees. This is not surprising. The blind advertisements under consideration here may be expected to recruit a large number of people with little or no aptitude for direct selling or ability to get in the door to make a presentation.

similar provision was rejected by the Commission in *Britannica* (at p. 7). In rejecting that provision, the Commission stated:

... We have deleted this provision. The modified order bans misrepresentations of guaranteed income. A related order provision requires affirmative disclosure, prior to the time respondent enters into a guaranteed income employment contract, of the percentage of persons employed in similar positions who earn the stated income. The ban on misrepresentations, coupled with the disclosure, should suffice to correct respondents' guaranteed income deceptions.

That reasoning is applicable here.¹⁰⁴ Complaint counsel's contention is, therefore, rejected.

2. *Order Provisions Requiring Disclosure of Objective of Respondents' Contact with Consumers When the Purpose Is To Sell*

Lead Gathering

Securing leads to prospective customers by offers of free information, gifts, or the opportunity to enter a contest, without disclosing that the recipient may be subjected to a sales presentation as a result of responding to such offers, is unfair and deceptive. It is now established that "Recipients of 'free' information solicitations are entitled to know what strings are attached; that a salesman may call; that they will be subjected to a sales pitch." *Mather Hearing Aid Distributors, Inc.*, 78 F.T.C. 709, 735 (1971); *Britannica, supra* at 10. Paragraphs II A and B of the Order will require the necessary disclosures. [150]

The Card-at-the-Door Requirement

The requirement that encyclopedia salesmen affirmatively disclose, at the time of initial contact with the consumer at his home, that they are sales representatives and that the purpose of the call is to make a sale is not a novel one. In fact, the Commission in *The Crowell-Collier Publishing Co., et al.*, 70 F.T.C. 977 (1966), imposed such a requirement some 10 years ago.¹⁰⁵ The reviewing court expressly approved the requirement although competitors were not so restricted. *P. F. Collier & Son Corp. v. FTC*, 427 F.2d, *supra* at 275-76.

A substantial portion of the public prefers not to deal with door-to-

¹⁰⁴ Complaint counsel urge that the provision should be adopted in this case because of the difficulty of meeting the conditions prerequisite to payment of the guarantee and the disparity of the income earned and that promised. The differences on this point in the two cases do not appear appreciable. (See *Britannica* Initial Decision, p. 82.)

¹⁰⁵ In that case, the respondent was required to cease and desist from:

"Failing to disclose at the time admission is sought into the home, office or other establishment of the prospective purchaser or purchaser that the person making the call is respondent's salesman and is

door encyclopedia salesmen. Respondents do not affirmatively disclose, at the time of the initial contact with the consumer, that the purpose of the call is to make a sale (Findings 127-29, 132). Respondents' officials feel it is necessary to have a transitional period in the home to set the stage prior to making such disclosure.¹⁰⁶ The purpose of the salesman's call is clearly a material factor in the consumer's decision as to whether to admit the individual at the door. [151]

The record here, as in *Britannica*, demonstrates that respondents' sales representatives were trained to disguise or misrepresent the main purpose of their visit, which was to sell (Findings 128-30, 132). Consider, for example, the following telephone talk in a sales manual furnished to respondents' sales representatives: [152]

Hello, Mrs. _____? My name is _____ and I am calling for the Grolier Society. Does that name mean anything to you? Well, Grolier is the world's leading manufacturer of educational products - however, let me put your mind at ease Mrs. _____. *I didn't call you to give you a sales talk.* You see Grolier has several new products which they are *testing* right now with several families in each community . . . These new products are used by the children and we want to get some help from these different families and we pay the families for that help in merchandise. Now, due to the unusual nature of this program Grolier insists that it be explained to both husband and wife . . . Grolier will have a member of their staff out in your area this evening . . . He would want to spend about 10 minutes with you and your husband to explain how you can help us . . . *please be sure to tell your husband that he will be there and that he is not coming out to give you a sales talk!*

¹⁰⁶ Respondents' officials object to disclosing at the door that the purpose of the call is to sell and contend that a card making such a disclosure would be a "very negative thing" (DeLucia 15071). The basic approach today as outlined by one of respondents' Regional Vice Presidents is:

"Hi, Mr. Jones, my name is . . . I am doing some work in the area for Grolier Interstate. Do you mind if I step in for a minute. I would like to talk to you" (Tr. 15072).

The problem with the card from respondents' point of view "is not being able to set the stage with regard to explaining to the individual, not at the doorstep, but rather in his home, that I would like to discuss with him some educational products, encyclopedias, after the stage is set" (Tr. 15073). On the other hand, in respondents' view, if the disclosure required by the card was made at the door, "*it would be too easy for that individual to say to me in a very nice way, that's great. We have some*" (emphasis supplied; Tr. 15073). Respondents' officials desire five minutes to set the stage and to do so in the home.

" . . . If I could have five minutes, of having that individual break down that barrier. . . . If we can get that individual to just sit down, and take a sigh of relief in his home, that I am really not too bad a guy and I would like to just talk to him about Monday night football for a minute before I start going into what I am doing. . . ." (Tr. 15074).

Another of respondents' witnesses testifying on the basis of his long experience in the encyclopedia sales industry stated that the card-at-the-door requirement would have a devastating effect on ability to gain entrance into the home. The objection appears to go as much to the requirement of affirmative disclosure at the door as to the mechanics of the card:

"I feel that, first of all, there is a great deal of distrust when someone comes to a door nowadays anyway. There has been for a number of years. I believe that if you are to do something quite out of the normal, from what anyone else might do when they go to that particular door, that that just raises some red flags of distrust, concern and wonder why someone would do this. I don't believe that's the place to identify yourself. *I believe you should identify yourself, but I believe it should be when you are able to develop a little bit of rapport with the customer and sell yourself somewhat and then sit down and be able to explain what you are there for. You don't try to do this sort of thing on a door step. You do it in their living room and if they are interested fine; if they are not, fine, too.*" (Emphasis supplied; Stearns 14625.)

Will you do that? Good. He will see you folks tonight. (Emphasis supplied; CX 563 "O".)

(See also Finding 118.)

The Commission in *Britannica*, on the basis of similar facts, imposed the requirement that, at the time admission is sought to the consumer's premises, the sales representative present a 3 X 5 card showing the names of the corporation and the sales representative, the term "Encyclopedia Sales Representative" or other applicable product, and the terminology "the purpose of this representative's call is to solicit the sale of encyclopedias [or other applicable product]."

The consumer's right to know the purpose of those seeking admission into his home has been firmly established. (See *Crowell-Collier, supra*, n. 105.) The Commission's determination in *Britannica*, that affirmative disclosure in the form of the card-at-the-door requirement is necessary under such circumstances to prevent deception, is binding here. Respondents complain that the imposition of the card-at-the-door requirement would be highly injurious to their business. However, the applicable provision in *Britannica* to be incorporated here is less onerous than the requirement set forth in the notice order.¹⁰⁷ [153] In any event, the assertion of economic hardship may not preclude the imposition of the remedial measures necessary to prevent deception. See *Arthur Murray Studio of Washington, Inc.*, 78 F.T.C. 401, 443 (1972), *aff'd.*, 458 F.2d 622 (5th Cir. 1971).¹⁰⁸

Respondents contend that the card-at-the-door remedy would be ineffective since the individual sales representative could not be relied upon to comply with the requirement. They urge that effective measures to counteract deception in in-home selling must not rely on action to be taken by the individual sales representative. The short answer is that, where a firm violates the law through the actions of its sales representatives and is responsible for those actions, the Commission may require that seller to control his sales representatives. This is not a novel principle and it requires no further citation. Moreover, the record in this proceeding shows that, through such techniques as verification calls and telephone surveys, respondents

¹⁰⁷ The size of the card has been reduced and the requirement that the customer sign the card before the sales representative gains entry has been eliminated.

¹⁰⁸ The cooling-off period within which a contract may be cancelled may ameliorate the effects of deceptive practices. It is not, however, an acceptable substitute for preventing them in the first instance. *Arthur Murray*

are able to effectively monitor their sales representatives' activities.¹⁰⁹

Complaint counsel's proposals for the provisions pertaining to the card-at-the-door remedy include some minor departures from the comparable provisions in the *Britannica* order. Specifically, in Paragraphs IID(3), they would add the phrase "when an encyclopedia is not part of the offer" after the requirement that the card use the term "Encyclopedia Sales Representative [or other applicable product]." They propose a similar change for Paragraph IID(4). Complaint counsel state these changes are designed to cover situations where encyclopedias may not be part of the package sold by respondents. They advise in those situations that respondents' salesmen would not be required to disclose that they are encyclopedia [154] sales representatives. There is no need for such changes. Under the *Britannica* order, whose provisions will be incorporated here, if encyclopedias are not sold, the "other products" description would come into play.

The changes proposed in Paragraph IIE for clarification purposes will not be adopted.¹¹⁰ They neither clarify nor add to the substance of the order.

3. Order Provisions Pertaining to Pricing Claims and Offers of Free Goods

Savings claims through the use of terms such as "retail price" and related representations are deceptive when substantial sales of the products in question have not been made at the represented "retail" price. *Guides Against Deceptive Pricing*, 16 C.F.R. 233. Misleading offers of "free" goods may also be prohibited. *Guide Concerning Use Of The Word "Free" And Similar Representations*, 16 C.F.R. 251. Advancing fictitious reasons to make price reduction or "free" representations more plausible has the potential of effectuating purchases which might otherwise not be made. Such practices violate Section 5 of the Federal Trade Commission Act. *Southern States Distributing Co.*, 83 F.T.C. 1126, 1176 (1973).

Respondents' sales representatives were trained and required to sell a combination of products and services at the price established by respondents. The combination or package price established by the

¹⁰⁹ Verification has been found to be an efficient way of checking up on what respondents' sales representatives do (DeLucia 15087).

¹¹⁰ Complaint counsel propose to add the language italicized:

II-E. Failing to give the card required by and in accordance with the procedures set forth in Paragraph II D above, to each such person, and at the time such card is given to such person direct each such person to read the information contained on such card and provide each such person with adequate opportunity to read such card before engaging each such person in any sales solicitation.

respondents was the regular [155] price at which such products were sold (Findings 89, 157-58). The combination price was not a reduction from prices at which substantial sales of such products had been made, and respondents gave no free goods to the consumer. The record demonstrates that respondents have utilized deceptive comparative pricing claims, represented, contrary to fact, that certain goods were free, and advanced fictitious reasons to make more convincing their price-reduction and free-goods representations.¹¹¹ These practices will be prohibited.

The provisions in the *Britannica* order relating to misrepresentation of price reductions and offers of free goods adequately remedy the law violations documented here. They will be adopted in this proceeding. They will be augmented, however, by provisions specifically designed to deal with certain of the fictitious reasons advanced to justify purported offers of price reductions or free goods in return for various forms of help and cooperation on the consumer's part. (See Paragraph IIG6, subparagraphs (d) through (h) of the Order.) [156]

Complaint counsel propose two significant departures from the *Britannica* order which require discussion. They recommend that respondents be prohibited from representing that a price is a regular retail price unless at least 30 percent of their sales for that product have been made at that price or a higher price for the previous six months. Commission counsel acknowledge that the Commission, in *Britannica*, rejected a similar provision which would have required that 40 percent of the sales be made individually before such a representation could be made. They urge, however, that differences in the *Britannica* record and in the record of this proceeding justify the imposition of such a provision. In this case, they argue, it is necessary to define substantial sales with a percentage figure to ensure that the Order is enforceable. They state that this case is distinguishable from *Britannica* since these respondents maintain no records enabling them to calculate the percentage of individual sales at the higher price. Complaint counsel further urge that, when such information was requested in this proceeding, the data was not preserved. These facts, complaint counsel assert, indicate that an

¹¹¹ Respondents have represented, contrary to fact, that prices will be reduced or certain merchandise furnished at no cost in return for help provided by the customer in promoting the merchandise or keeping the reference materials up to date (Findings 145, 147-48). In fact, customers were not required to furnish such cooperation as a condition to making such purchases at the combination price (Finding 149).

Another fictitious reason employed by respondents to make the offer of free or bonus goods more plausible was the so-called 10-year conversion plan. In that approach, the price was first stated in terms of payments over a 10-year period. The customer was then offered free goods or merchandise at no extra cost for paying off the contract in approximately three years on the ground that the shorter payment period would benefit respondents by reducing

order not defining substantial sales would be difficult, if not impossible, to enforce.

The argument will be rejected. As in *Britannica*, respondents will be required to maintain adequate records to substantiate the validity of their pricing claims. There is no reason, accordingly, to depart from the Commission's determination in *Britannica* that orders in this area should not vary from the Commission's *Guides Against Deceptive Pricing*, 16 C.F.R. 233. In the *Britannica* order, the pricing provisions were expressly conformed to that provision in the Guides stating that the retail price may be described as a selling price if "substantial" sales are made at the retail level (*Britannica*, *supra* at 9). That precedent will be followed here.

The failure to maintain records to substantiate respondents' pricing claims, however, warrants relief.¹¹² The consumer [157] is entitled as a matter of marketplace fairness to rely upon the seller to have a reasonable basis for such representations. Cf. *Pfizer Inc.*, 81 F.T.C. 23, 62 (1972); *The Firestone Tire and Rubber Co.*, 81 F.T.C. 398 (1972, *aff'd.*, 481 F.2d 246 (6th Cir. 1973), *cert. denied*, 414 U.S. 1112 (1973). Sales made on the basis of unsupported claims, moreover, are unfair to competitors as well as consumers. The Guides Against Deceptive Pricing impose a requirement that a seller be "reasonably certain" that his pricing claims are correct. 16 C.F.R. 233. It is unfair to make pricing claims without supporting data to document their accuracy. Respondents will be prohibited from making pricing claims unless they have records from the preceding six months to document the validity of such representations.

The other significant departure from the *Britannica* order proposed by complaint counsel pertains to the use made by respondents of cost figures relating to the Information Service.¹¹³ In this connection, respondents have utilized certain figures as the cost to the company of furnishing an answer to a request for information, for example, \$3.32. Respondents have represented to consumers that the total cost or liability to them for furnishing 100 answers over a 10-year period would be in excess of \$300 (Findings 154, 165). Complaint counsel apparently do not challenge the accuracy of the cost figures¹¹⁴ as such, but maintain that the use of such figures in connection with the retail prices or values for other items in the

¹¹² "... The books and records of Grolier and its subsidiaries are not maintained in such manner as to set forth the numbers of each product or service sold separately or the total dollar sales of such products or services sold separately. . . ." (Respondents' Special Report In Response To Order Of March 13, 1970, CX 5N.) In short, respondents were unable to document that the retail, list or individual price of the product was the usual or regular price of such product at which it was sold in substantial quantities.

¹¹³ The Service is also sometimes referred to in the record as the Fact Research Service.

¹¹⁴ See Tr. 10789.

combination is inherently deceptive. They contend it builds up the claimed retail value of the combination in a misleading way.

The use of cost figures for the Research Service in conjunction with retail prices or values for other items in the combination has the capacity to mislead. The use of noncomparable figures (the Research Service is never sold at retail) to build up the claimed retail value and inflate asserted price reductions should be prohibited. However, complaint counsel's proposal would prohibit any use of cost figures in connection with the Information Service. There is insufficient evidence [158] to make a finding that such figures are inaccurate. The Order should not be framed so as to preclude a legitimate use of such figures. Complaint counsel's proposal will be revised. Respondents will be required to cease and desist from representing, directly or indirectly, that:

- (d) any research service is being offered at any price or that the research service has a retail value unless such is the fact;
- (e) the cost to any respondent of any research service represents a retail value.

(Paragraph II I (d)-(e).)

4. Order Provisions Pertaining to Representations of Terms, Conditions, Method, Rate or Time of Payment

Paragraph II-H of the Order proposed by the Commission staff would prohibit respondents from:

H. Making any reference or statement concerning "10 cent per day," "10 years," or any other statement as to a sum of money or duration or period of time in connection with a sales contract or any other agreement which does not in fact provide, at the option of the purchaser, renter, or lessee, 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 any person.

The record shows that respondents' sales representatives have, at least impliedly, represented that 10-year payment plans were available and, in order to minimize the price, have prorated the payment in cents per day over such 10-year period. In fact, a 10-year payment plan was generally not available and most sales representatives were not authorized to offer such a plan (Findings 170, 174). Clearly, the misrepresentation of the time period within which payment could be made was deceptive. Equally deceptive was the allied misrepresentation prorating the price in terms of cents a day over a time period having no relationship to the payment plan actually available. Such [159] practices deceptively minimize the price which the consumer must pay and should be prohibited. On the

other hand, there is insufficient evidence in this record to support a finding that cents-a-day representations pertaining to a time period in a payment plan actually available are either inherently deceptive or unfair. No precedent has been cited to support such a position. The record would not sustain a finding that a cents-a-day representation, standing alone, has the capacity to mislead consumers into the belief that they could actually make payment on a cents-a-day basis. In short, a blanket prohibition on such representations does not appear justified. The provision will be modified to prohibit:

Misrepresenting, in any manner, the terms, conditions, method, rate or time of payment actually made available to any person.

(Paragraph II-H.)

5. *Proposed Order Provisions Relating to Notice of Violations and Restitution*

Complaint counsel propose that respondents be required to furnish their customers with a notice summarizing the selling provisions of the Order. They urge that this proposal would create a mechanism enabling the Commission to monitor compliance with the Order and to take such actions as are necessary to redress consumer complaints. Such a provision was not included in the *Britannica* order. Complaint counsel urge, however, that the facts presented in this case justify inclusion of the provision. Complaint counsel propose a further provision that respondents be required to refund to purchasers all monies paid if purchasers can demonstrate that the sales transaction involved was a violation of the Order. A provision of this type was neither sought nor included in the *Britannica* order.

Turning first to the provision which would require respondents to notify consumers of the violations within the scope of the Order, it is apparent that, as a general rule, the Commission has refused to impose such consumer-warning requirements even where fraud is the essence of the practice as in the case of bait and switch representations. See *Maryland Carpet Outlet, Inc.*, 3 CCH Trade Reg. Rep. ¶20,906 (1975 [85 F.T.C. 754]). There are no facts apparent on the face of this record supporting a departure from that precedent in this case. [160]

The efficacy of the restitution provision suggested by complaint counsel depends to a considerable degree upon the related proposal of a consumer warning provision which will not be adopted for the reasons stated. Complaint counsel argue for inclusion of this proposal on the ground that previous Commission enforcement proceedings with respect to the respondents in this case have been

ineffective in the past. There is no persuasive showing that there are significant differences between the respondents in *Britannica* and this proceeding in this respect. No convincing arguments have been advanced to sustain a departure from so recent a precedent placing the respondents herein at a disadvantage with respect to a major competitor.

6. Order Provisions Relating To Respondents' Solicitation of Leads Through Schools

Respondents have sent materials through the schools to homes of students designed to secure entry to such homes for the purpose of making sales presentations. The record shows that respondents have persuaded school officials to permit the dissemination of such materials without disclosing to such officials that they intended to follow up with sales presentations. The record shows that respondents have disguised to school officials the purpose of disseminating their promotional materials through the schools which was to secure leads for in-home sales presentations (Findings 92-96). This method of transmitting promotional materials has the capacity to mislead parents into the belief that the school is endorsing such products and respondents' selling efforts (Finding 98). Respondents have, on occasion, reinforced this impression in the case of parochial schools by sending the materials home in a large envelope imprinted with a cross (Finding 97).

The record justifies the imposition of affirmative disclosure requirements to prevent the repetition of such practices. Complaint counsel's proposed order on this point, however, is unduly lengthy and cumbersome. The proposal will be revised so as to require disclosure to school officials that the purpose of disseminating such materials is to secure leads in order to facilitate in-home sales presentations. The Order will also require a disclosure on the face of such materials that their dissemination through the school does not constitute an endorsement or a recommendation by the school or its officials that such materials be purchased unless, in [161] fact, such an endorsement has been given or such a recommendation made¹¹⁵ (Paragraph III).

The issuance of the Order provisions directed to these practices, complies with the requirements of due process even though they were not included in the provisions of the notice order. The practices to which these provisions relate were clearly in issue during the trial of the case. The Commission, moreover, is not bound to rigidly

¹¹⁵ The provisions of Paragraph IIA and B of the Order will require the disclosure to parents, on the face of

adhere to the provisions of the notice order if the record indicates that it should be modified. As the notice order states, its provisions are subject to change if the facts developed during the adjudicative proceeding indicate that such provisions might not be fully adequate to protect the consuming public.

7. *Order Provisions Designed To Prevent False Emotional Appeals*

Complaint counsel contend that respondents created such programs as "The Child Development Program," "The National Institute of Programmed Learning," and "The Mothers Club" to appeal to the emotional concerns of parents for the proper education of their children or their own intellectual development. They urge that the essence of such a program is to make the prospects believe that respondents are offering something substantially different from just encyclopedias, and that parents are made to believe that such assistance, over and above that provided in the school, is required to properly educate their child. They further contend that the record shows that parents are purposely made to feel guilty if they do not accept this offer. In support of this contention, they also rely on evidence that, in a presentation designed for the Spanish-speaking population, respondents utilize a "Technique of a Threatening Eventuality" implying that their reference materials are a prerequisite to success (CX 2278). [162]

To prevent appeals of this nature, complaint counsel propose to prohibit the following practices:

- Y. Using the words "Child Development Program," "Mothers' Club," "National Institute of Programmed Learning" or words of similar import and meaning to represent, directly or by implication, the existence of a *bona fide* educational program, club or business entity which provides educational services or benefits to consumers.
- Z. Using any promotional device, program or representation which falsely or unfairly appeals to the concerns of individuals for their own educational or intellectual development or of parents or prospective parents for the proper educational development of their children; or using any promotional device, program or representation to confuse, confound or obfuscate the actual purpose of the promotional device or program which is to attempt to promote the sale, rental or lease of publications, merchandise or services.

The record shows that respondents have used devices, such as the "Mothers Club," to imply the existence of a *bona fide* educational club program or business entity which provide educational services or benefits to customers.¹¹⁶ In fact, they were simply devices to sell respondents' products (Finding 122).

¹¹⁶ For example, representations were made in connection with the "Mothers Club" that the sales representatives were "field counselors" and that the consumer was being "enrolled" in the Club (Findings 123-25, 129, 151).

The use of trade names implying that a business is something other than a commercial enterprise is unfair. *Mather Hearing Aid Distributors, Inc.*, 78 F.T.C. 709, 735 (1971). The courts have uniformly sustained orders prohibiting the use of designations misrepresenting the nature of a respondents' business. *Goodman v. FTC*, 244 F.2d 584, 595 (9th Cir. 1957). [163]

Such practices can be enjoined and respondents will be prohibited from using names, such as the "Mothers Club," implying the existence of a genuine educational club or program in connection with their sales presentation or offers of sale.

The provision designed to enjoin false emotional appeals is another matter. The Commission simply cannot enjoin every promotional ploy as, for example, the "Threatening Technique" which may be in poor taste or unfair. Complaint counsel's proposal on this point is too vague to be enforceable. If a practice is to be prohibited, it must be capable of clear definition, otherwise the provision designed to curb such practices becomes excessively vague. It is not practical to frame an order prohibiting practices such as appeals to parents' feelings of guilt or to unfair appeals to concern for the educational development of an individual or that individual's child. As the Commission noted in *Arthur Murray Studio of Washington, Inc., et al.*, 78 F.T.C., *supra* at 441, an order prohibiting "generally the use of excessive or unfair pressure would be virtually impossible to enforce." The practices under consideration will be effectively curbed by enjoining the use of names which disguise the purpose of respondents, which is to sell.

8. Order Provisions Relating to Endorsements

The use of fictitious or unauthorized endorsements or testimonials is an unfair and deceptive act or practice within the meaning of the Federal Trade Commission Act. *FTC v. Standard Education Society*, 302 U.S. 112 (1937). Where such violations have occurred, the Commission, in addition to prohibiting such practices, may require that, before endorsements are used, respondents obtain express authorization in writing for such use. *National Dynamics Corporation*, 82 F.T.C. 488, 565-66 (1973), *modified on other grounds*, 492 F.2d 1333 (D.C. Cir. 1974). Additionally, respondents may be required to have good reason to believe, at the time such endorsements are used, that the person or organization named as endorsing the product currently subscribes to the facts and opinions contained in such endorsement (*id.*). Respondents will also be required to specify the year of the edition of their publications to which an endorsement or testimonial letter pertains. This provision is directed to the practice

conjunction with editions published years after such letter had been written. In a related provision, respondents will be prohibited from representing in any manner that an endorsement has been recently executed or is current unless this is the fact.

9. *Order Provisions Relating to Debt Collection Procedures*

The resort to misrepresentation to collect delinquent accounts has long been considered actionable under the Federal Trade Commission Act. Practices to be prohibited include the false representation that a debt has been turned over to a third party for collection and misrepresenting that legal action will be taken if the debt is not paid. There is a clear public interest in prohibiting such practices. See *S. Dean Slough v. FTC*, 396 F.2d 870 (5th Cir. 1968), *cert. denied*, 393 U.S. 980 (1968). Much of the evidentiary record in this case going to the debt collection issue relates essentially to these and related representations.

Respondents have misrepresented that letters emanate from the Legal Departments of their local offices when no such departments exist¹¹⁷ (Findings 240-43). Respondents will be prohibited from representing that any company, corporation or entity engaged in debt collection has a separate bona fide department or division for legal matters unless those are the facts, or "misrepresenting in any manner, the existence, or functions of any division or department of any company, corporation or entity."

Respondents have used forms implying threats of dismissal from the Civil Service and criminal prosecution for mail fraud as a collection technique in the case of certain of their delinquent accounts. The use of such forms is misleading and unfair; as a general rule, respondents' debtors would not be subject to such sanctions (Findings 262-65). The routine use of forms making such threats should be prohibited. The provision recommended by complaint counsel enjoining the use [165] of such threats unless respondents have sufficient facts to establish the propriety of such a claim in a particular case will be adopted.

Respondents have also sent out forms threatening that a credit reporting agency would disseminate adverse credit reports with respect to a delinquent account when, in fact, no such reports were disseminated (Findings 260-61). That practice will also be enjoined.

Respondents have utilized a number of techniques to directly or

¹¹⁷ The allegation that respondents have misrepresented the existence of separate credit and collection departments has not been established. The mere fact that accounts are transferred from one unit to another, in respondents' local offices, on a predetermined schedule is insufficient to establish that they are not separate departments as complaint counsel contend (Finding 244).

indirectly threaten the institution of suit or legal process when no decision had been made to initiate such measures at the time that such representations were made. Respondents have made widespread use of form letters going out under attorneys' letterheads when such attorneys had not prepared or originated the letters, reviewed the account, or been authorized to take any action in connection therewith (Findings 245-52). Under these circumstances, there is no bona fide referral of the account to a lawyer for collection. The existence of this practice also supports a ban on representing that an account has been transferred to any person or entity for purposes of collection unless that is the fact. In addition, respondents have used forms simulating or depicting legal process which had no relationship to actual proceedings to recover any debt (Finding 254).

The basic policy of respondents, which is of long standing, has been not to sue delinquent accounts, and the filing of suit is an exception to the general policy (Finding 255). The record further shows that, to the extent that delinquent accounts were ultimately turned over by a headquarters office to third parties such as credit and collection companies or attorneys, that decision had no relationship to the form letters used by local offices making such representations. Similarly, to the extent that a decision was ultimately made in a headquarters office to file suit, that decision had no relationship to the routine use of forms by respondents' local offices making such a threat (Finding 258, n. 80). If suit was, in fact, filed, with few exceptions, such process was not instituted by the lawyers who had lent their letterheads to be used in respondents' "attorney letters."

Respondents will be enjoined from representing that suit will be instituted to recover any delinquent debt, that any delinquent debt will be transferred to any attorney with instructions to institute suit, or that any other legal step to [166] collect any outstanding debt will be taken, unless a definite date is set for such act and such are the facts. The record further justifies a prohibition on misrepresenting in any way respondents' relationship with, or instructions to, any attorney, or the course of action that will be taken by any lawyer. These provisions in the *Britannica* order will be applied here. Respondents' use of forms to depict or simulate legal process will similarly be prohibited.

10. *Order Provisions Relating to Continuity Programs*

Respondents' advertisements and promotional materials soliciting participation in their continuity program, prior to March 1971, created the impression that all the books in the series would be shipped singly at intervals of approximately a month. Such

promotional materials failed to disclose that all but the first few volumes in the series would be sent in a bulk shipment (Finding 230). Many customers have a preference for receiving such books singly and the failure to disclose, in the initial customer contact, that they would receive a bulk shipment constituted the failure to disclose a material fact (Finding 231).

Respondents have also represented that persons joining or participating in such programs do so at no risk or obligation. However, participating in such continuity programs did entail certain risks and obligations. Consumers were subject to the risk of receiving a bulk shipment if the negative option provided by respondents was not successfully exercised. If books were not wanted, the consumer had to reject them and do so within the allotted time. If a timely notice of cancellation was not received due to delays in the mail, they risked being billed for publications even after such publications had been returned (Findings 234-36).

The foregoing practices are essentially identical to those found illegal in *Britannica*. The provisions in the Order issued in that proceeding will be entered here. The provisions in the *Britannica* order to be adopted in this proceeding will prohibit misrepresentations that (1) a person has the option to receive each publication separately and individually and reject the same; (2) that a person will not receive further merchandise after respondent has received a timely notice of cancellation unless that is the fact; and (3) that no risks or obligations [167] are incurred in joining or participating in the program or misrepresenting in any manner the rights, duties or obligations imposed thereunder (Par. IIIA). In their advertising, respondents will be required to describe the conditions and terms of their continuity programs, the method of sales or distribution and the subscriber risks and obligations. Respondents will also be required to describe in their advertising the merchandise or products offered, the billing charges, the anticipated total number of publications, the number of publications to be included in such shipments and the intervals between shipments (Par. IIIB). The Order further requires that on each return coupon, order form or similar document, respondents will be required to disclose the following: the anticipated total number of publications, merchandise or services included in the program; the number of publications to be included in each shipment; and the number of and intervals between each shipment (Par. IIIC). In addition, respondents will be required to affirmatively disclose in connection with any shipment or notice thereof, the anticipated date on which respondents will initiate the processing of the next shipment (Par. IIID). Finally, the Order

requires that respondents disclose in each notice of shipment, the means by which a person may exercise his option or right to cancel such shipment if that is his right (Par. IIIE).

The foregoing provisions appear ample to correct the law violations documented in this proceeding. Complaint counsel, however, urge that additional provisions to clarify the consumer's risks and obligations and to spell out more clearly the procedures with respect to cancellation and returns also be adopted. (See Proposed Order IIIB(3) and (4), IIIE, IIIG and IIIH.) These provisions will not be included in the Order. They do little more than amplify the provisions in the *Britannica* order addressing themselves to the question of representations concerning the consumers' risks and obligations and the disclosure requirements pertaining to the operation of the program. The additional provisions are of marginal value and whatever benefit they may have is outweighed by the fact that they would complicate both enforcement and compliance with the Order. It is not practical for Commission orders to provide for every conceivable contingency. Cf. *Bantam Books, Inc. v. FTC*, 275 F.2d 680 (2d Cir. 1960), *cert. denied*, 364 U.S. 819. Moreover, there do not appear to be significant differences between this proceeding and *Britannica* justifying [168] the inclusion of these proposals.¹¹⁸

11. *Order Provisions Relating to Cooling-Off Period*

The Order herein will incorporate the provisions of the Commission's Trade Regulation Rule, *Cooling-Off Period For Door-To-Door Sales*, 16 C.F.R. 429.1. The reasoning in *Britannica*, that this provision is required to provide relief from sales practices of the nature under consideration here, applies to this proceeding.

12. *Proposed Order Provisions Relating to Quality of Product*

Complaint counsel also propose a prohibition to prevent respondents from using prospectuses or sample volumes in their sales presentations "not representative in kind and quality of each volume included in such set of publications" (Proposed Order IIG).

The quality issue as such was not expressly alleged in the complaint. This issue came into the proceeding as an afterthought and the evidence on this point is sketchy. In complaint counsel's

¹¹⁸ See the findings in *Britannica* that some customers were subjected to unrelenting mailings of bills and dunning letters demanding payment for books that had been previously returned or never received and that continuity customers had even received shipments of books after they had cancelled the program (Initial Decision).

memorandum outlining their position as to the relevance of this evidence,¹¹⁹ complaint counsel made it clear that such evidence should go to the limited question of remedy and specifically to the length of the cooling-off period. They asserted such evidence was relevant to the question of whether the cooling-off period should be extended subsequent to the time the products had been received. Complaint counsel urged that merely prohibiting quality misrepresentations would be insufficient. Under these circumstances, it does not appear that a prohibition unrelated to the cooling-off period should be entered. [169]

13. *Proposed Order Provisions Requiring Respondents To Conduct Surveillance of Sales Activities*

The Order proposed by the Commission staff, like the order entered in *Britannica*, requires respondents to provide copies of the order to any person engaged in the sale, promotion, or distribution of their products. Those provisions will be adopted here. In addition, complaint counsel propose that respondents be required to institute a program of surveillance to determine whether those they have engaged to sell their products have complied with the order. Respondents under this proposal would be required to terminate those violating the order if such violations involve two or more customers or prospects during a six-month period. The proposed surveillance provisions would cover respondents' own sales representatives as well as their outside distributors.

The proposal that respondents be required to institute a surveillance program over their sales representatives was rejected in *Britannica*. It was rejected as unnecessary because of the increase in civil penalties for violations of Commission orders. Complaint counsel urge a different result should be reached in this proceeding. They contend that these respondents have historically used a wide variety of sales presentations and recruiting practices in contrast to the uniformity and centralized control characteristic of the *Britannica* operation. As a result, they assert a surveillance program is required to detect and eliminate violations of the order. The provision will not be entered; respondents herein have moved to centralize control. The prospective penalties for violations should be a sufficient inducement to spur respondents to take the steps necessary to ensure compliance.

The proposal that respondents be required to monitor the activities of their outside distributors raises a number of issues not

¹¹⁹ Memorandum Outlining Complaint Counsel's Position On The Quality Of Respondents' Products And Services As An Issue In This Case, dated June 10, 1975.

considered in *Britannica*. Complaint counsel urge that respondents be required to institute a program of surveillance in the case of distributors when respondents direct, control or approve their promotional practices, provide promotional materials or aids, or finance at least 40 percent of the contracts procured by such persons or entities. [170]

Citing cases such as *FTC v. National Lead Co.*,¹²⁰ complaint counsel urge that such a provision is well within the Commission's power to require affirmative action to cure the effects of illegal conduct and to prevent its recurrence. The Commission's general powers to require affirmative action to achieve effective relief are not in issue. The question is whether requiring such surveillance can be justified on the basis of the facts presented in this proceeding.

Complaint counsel state that the proposed order does not seek to hold respondents directly liable for the acts and practices of their distributors. Rather, the provision under consideration is designed to ensure that respondents will not be permitted to do indirectly through distributors what the Order forbids them to do directly. Citing cases such as *International Art Co. v. FTC*,¹²¹ *Permanent Stainless Steel, Inc.*,¹²² and *Star Office Supply*.¹²³ Complaint counsel urge that the Commission has frequently imposed liability on manufacturers for misleading sales representations by persons who were independent contractors rather than its agents or employees.

Complaint counsel contend it is unnecessary to find respondents vicariously or directly liable for the acts of their distributors to sustain the proposed surveillance provision. (Complaint Counsel's Brief, p. 55, Complaint Counsel's Answering Brief, p. 58.) Moreover, they expressly disavow reliance upon the acts and practices of such distributors to establish liability on the part of respondents.¹²⁴

The argument is not entirely clear. Complaint counsel appear to concede that there must be at least some showing of liability on respondents' part before such an order can be sustained. They state: [171]

... However, the basic principle underlying both the imposition of direct liability and a surveillance provision is the same - that is that a respondents' relationship to persons who sell its products is such that is appropriate that the respondent be held responsible for the actions of said parties. Thus, we submit that the same factors,

¹²⁰ 352 U.S. 419 (1957).

¹²¹ 109 F.2d 393, 396 (7th Cir. 1940).

¹²² 51 F.T.C. 734, 745-46 (1955).

¹²³ 77 F.T.C. 383 (1970), *aff'd*, 1972, Trade Cases ¶73,867 (2d Cir. 1971), *cert. denied*, 92 S. Ct. 1767 (1972).

¹²⁴ "... we do not rely upon the acts and practices of Jayhill or the Richards distributors to establish respondents' liability. We submit that it is not necessary to find that either Grolier, Incorporated or Richards are vicariously liable for the acts of the distributors in order to sustain the proposed order. . . ." (Complaint Counsel's

which are considered in determining the direct liability of respondents for the acts of other parties are relevant in considering whether a surveillance and termination provision is appropriate. . . .

Complaint counsel evidently rely on that line of cases finding liability where sales persons-independent contractors act within the scope of apparent authority conferred by the manufacturer,¹²⁵ the manufacturer has placed in the hands of others the instrumentality of deceit¹²⁶ or the interrelationship between the manufacturer and its independent sales representatives was so pervasive that respondents materially contributed to and participated in such activities for their own benefit.¹²⁷ The Commission is not bound by the common law rules governing vicarious liability or agency.¹²⁸ Nevertheless, it is also clear that a seller does not become amenable to Commission process for all sales further down the chain of distribution absent a showing of responsibility for, or involvement in, the activities of those reselling his product. [172]

If the order sought is to be entered, there must be a showing that (1) respondents directed or controlled their distributors' sales or recruiting practices; or (2) the materials furnished by respondents placed in the hands of their distributors the means of deception; or (3) the distributors' sales or recruiting activities are within at least the scope of apparent authority conferred by respondents. Absent a showing that at least one of these criteria has been met, the surveillance requirement cannot be justified. The record demonstrates no control by respondents in the case of distributors not financed by them which would justify the imposition of an order requiring surveillance over the sales or recruiting practices of such retailers. The record, moreover, contains no information as to the nature of the sales and recruiting practices of distributors in this category.

The question is closer in the case of the Richards' spin-off distributors and the former Jayhill-Hemphill operation. The Jayhill-Hemphill operation, however, no longer exists.¹²⁹ The question will be resolved on the basis of the evidence pertaining to the Richards'

¹²⁵ *Goodman v. FTC*, *supra*.

¹²⁶ *FTC v. Winsted Hosiery Co.*, 258 U.S. 483 (1922).

¹²⁷ In *Star Office Supply Co.*, 71 F.T.C., *supra* at 445, the Commission held:

" . . . Respondents sought to benefit from the wrongful acts of the jobbers, fully knowing the nature, purpose and result of those acts. By supplying the financial backing, the inventory, the physical facilities, the clerical services, shipping—in fact all elements of the scheme except actually taking the customers' orders—the respondents materially and substantially contributed to, and participated in, the salesmen's activities for their own benefit."

¹²⁸ See *Goodman v. FTC*, *supra*; *Permanent Stainless Steel*, 51 F.T.C. 734, 745 (1955).

¹²⁹ In the case of the Jayhill-Hemphill operations, the standard of control and apparent authority may have been satisfied (Findings 269-72).

spin-off distributors whose contracts have been financed by Bunker Hill, a subsidiary of respondent Richards.

Considering the record as a whole, the evidence bearing on the question of whether respondents are responsible and liable for the actions of the spin-off distributors is subject to conflicting inferences (Findings 273-88). By and large, however, the contacts between respondents' officials and these distributors are not inconsistent with a finding that they were normal business communications such as may be expected of any manufacturer and his outside retailers. On balance, the evidence does not sustain a finding that respondents controlled or are responsible for the actions of such distributors. [173]

It is, however, unnecessary to reach the question of whether respondents are liable for the actions of these distributors. The proposed surveillance remedy is inherently inappropriate for a number of reasons. The surveillance procedure to prevent indirect violations of the Order is unnecessary. The criteria for holding a respondent liable for the actions of his independent contractor-sales representatives (or distributors) have been clearly spelled out by precedents such as *Permanent Stainless Steel, Inc.*, 51 F.T.C. 734 (1955), *Goodman v. FTC*, *supra*, or *Star Office Supply Co.*, *supra*. If respondents' relationship with their distributors is such as to bring them within that line of decisions, then this Order will cover the unfair practices, if any, committed by such distributors.¹³⁰ On the other hand, if the criteria in those cases are not met, then an order requiring the surveillance procedure would not be justified in any event.

The surveillance provisions by virtue of the burdens imposed would tend to discourage respondents from seeking new avenues of distribution. In that respect, the effect would be punitive. Enforcement efforts might be eased if respondents were to refrain from expanding their sales effort through distributors. It is not, however, the purpose of cease and desist orders to freeze a respondent's method of distribution with the resultant risk of inefficiency.

Finally, the parties appear to agree that the distributors under consideration are independent and separate entities. The record indicates that such distributors, as retailers of respondents' encyclopedias in combination with other products, of necessity, compete

¹³⁰ The standard provision in Commission cease and desist orders prohibiting violations by respondents' employees, agents, and representatives, directly or through any corporate or other device, also contained in this Order, would cover indirect violations by respondents through their distributor network. It would only be necessary to demonstrate within the meaning of the precedents that respondents' relationship with their distributors was such that they should be held liable for their acts.

with Grolier Interstate's [174] nationwide in-home selling operation.¹³¹ The fact that such distributors are also respondents' actual or potential competitors is a crucial factor in the consideration of remedy. In addition, these distributors, as a practical matter, are respondents' customers.¹³² The possibility of vertical and horizontal restraints resulting from the proposed surveillance procedure should not be ignored.

The advisability of requiring respondents to institute such surveillance procedures over firms who buy from and are actual or potential competitors of the Grolier companies is questionable. Consideration must be given to the antitrust implications of such a provision. When weighing such remedies, the possibility of trade restraints impairing price competition or impairing a competitor's ability to gain access to certain markets cannot be ignored. *E.g.*, see *Hummel Antitrust Problems Of Industry Codes Of Advertising, Standardization, And Seals Of Approval*, XIII Antitrust Bulletin 607 (1968).

There is also the danger that such surveillance and concomitant communications between respondents and their distributors would result in the blacklisting of various employees. It is one thing for an employer to terminate a misbehaving sales representative; it is another to subject such decisions to possible agreement or discussion between competitors.¹³³ [175]

There is, moreover, a danger of abuse when businessmen police the activities of their competitors, particularly where there is inequality of economic power. Cf. *Silver v. New York Stock Exchange*, 373 U.S. 341, 359 (1963). And, even where self-regulation is mandated by statute, such activities have no blanket immunity from the antitrust laws (*id.* at 359-60). Law enforcement is a governmental function which should be left with the agency to which it has been entrusted by statute. The regulatory powers of government should not be turned over to even well-intentioned private parties. (Cf. Dissent of

¹³¹ The record shows in the case of one distributor that he and Grolier Interstate competed both in the hiring of sales representatives and in selling to consumers (Pardee 11098).

¹³² The jobbers, from whom the financed distributors ostensibly buy at cost, make their profits on such transactions only on the basis of the amounts retained from collections. The goods, moreover, are dropshipped by respondents' subsidiary to the customer. Under the circumstances, the jobber appears to be essentially a conduit between respondents' subsidiaries and these distributors.

¹³³ Compare the holding of the Commission in *Federal Trade Commission Advisory Opinion On Selling Code For Paid-During Service Periodical Subscription Sales Agencies*, 307 ATTR X-1 (1967):

"... the Commission is unable to give its approval to those sections of the Code which apply to the salesmen as those sections are now written. While the Code now provides that the action to be taken with respect to the salesmen found to be in violation would be on the basis of a recommendation by the Administrator rather than by agreement among the signatory agencies, the Commission believes the probable result of that recommendation would be to substantially interfere with those individuals' right of employment and their right to have their fate decided by their individual employers uninfluenced by virtually mandatory recommendations from the Administrator."

Commissioner Elman, *FTC Advisory Opinion On Selling Code For Paid-During Service Periodical Subscription Sales Agencies*, *supra*, n. 133). Efforts to improve advertising and selling practices should proceed in ways that contribute to competition rather than to impede it. (See *Hummell*, *supra*.) In short, the probable antitrust dangers of this remedy, in the case of outside distributors, outweigh the possible consumer protection benefits of requiring respondents to conduct such surveillance. This is a critical consideration militating against the imposition of the surveillance provision.

There appears to be a more appropriate alternative to protect the public in this area. Under Section 205 of the Federal Trade Commission Improvement Act, orders may be enforced against nonparties provided they have notice thereof. Under the terms of the Order, respondents' distributors will be furnished with a copy thereof. Respondents will, on a quarterly basis, be required to submit to the Commission, a list of those distributors whose retail installment contracts have been financed by them or any of their subsidiaries or affiliates. With that information, the Commission will be in a position to conduct such investigation as may be appropriate. [176]

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents Grolier, Incorporated, American Peoples Press, Inc., Americana Interstate Corporation, Career Institute, Inc., Grolier Enterprises, Inc., Grolier Reading Programs, Inc., Americana Corporation, Spencer International Press, Inc., The Grolier Society, Inc., R. H. Hinkley Company, Grolier New Era Corporation, The Richards Company, Inc., Madison Enterprises, Inc., Grolier Interstate, Inc., and Federated Credit Corporation.

2. The proceeding is in the public interest.

3. The aforesaid acts and practices of respondents, as herein found, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act. [177]

ORDER

I

It is ordered that respondents Grolier, Incorporated, Americana Interstate Corporation, Career Institute, Inc., Grolier Enterprises, Inc., Grolier Reading Programs, Inc., Americana Corporation, Spencer International Press, Inc., The Grolier Society, Inc., R. H. Hinkley Company, Grolier New Era Corporation, The Richards Company, Inc., Madison Enterprises, Inc., Grolier Interstate, Inc., and Federated Credit Corporation, be and they are, jointly and severally, fined the sum of \$10,000.

Corporation, Grolier Interstate, Inc., Grolier New Era Corp., Madison Enterprises, Inc., R. H. Hinkley Company, The Grolier Society, Inc., Spencer International Press, Inc., and The Richards Company, Inc., corporations, and their successors, assigns, officers, agents, representatives and employees, directly or indirectly, through any corporation, subsidiary, division or other device, in connection with the recruitment, training, or orientation of any person to sell, rent, lease, or distribute any textbook, encyclopedia, reference or educational material, training course or teaching machine, or any other publication, merchandise or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

(1) any respondent is offering positions in such fields as advertising, education, public relations, marketing, interviewing, or in any field other than door-to-door [178] sales, if door-to-door sales is included, to any extent, in the position for which persons are being recruited; or misrepresenting, in any manner, the job for which any person is being solicited;

(2) persons will be trained as management trainees, or for other positions of responsibility concerned with administrative office functions, unless, in fact, a formal management training program is available to persons accepting employment on the basis of such representations; or misrepresenting, in any manner, the amount and type of training that will be given;

(3) any person who may be employed will contact prospects in their homes or places of business for the purposes of conducting surveys, advertising promotions, educational instruction or other nonselling functions; or misrepresenting, in any manner, the purposes for which any person is engaged. [179]

B. Misrepresenting, in any manner, the amount of income to be earned by any person or that may be earned by any person, the method of payment, or any condition or limitation imposed upon the compensation of any person, or the degree of ease or difficulty in performing any said condition imposed.

C. Failing to disclose, clearly and conspicuously, in all advertising offering employment in any way involving door-to-door sales:

(1) that the respondent concerned is recruiting persons for the sole purpose of soliciting or selling;

(2) that such soliciting or selling will be on an "in home" basis;

(3) that the products or services being sold are encyclopedias or services to be used in connection therewith, or in the event that

encyclopedias or such related services are not being sold, the products and services being sold; and

(4) the basis for compensating persons so engaged. [180]

D. Failing to clearly and conspicuously advise, both orally and in writing, any prospective salesperson at the initial face-to-face interview, and prior to executing any employment agreement with any such person, the following information:

(1) all those disclosures set forth in Paragraph I C above;

(2) a complete and detailed description of each condition and limitation imposed upon the receipt of any compensation;

(3) where applicable, notification that such person will not be paid for time spent during orientation and training;

(4) a complete and detailed description of any expense or expenses any such person may incur in performing the required duties; and

(5) the percentage of persons holding similar positions engaged by the office offering the position during the twelve (12) months immediately preceding the offer, who have actually received an equivalent, or greater, income than that promised under the terms of any such agreement. [181]

E. Failing to furnish to each applicant at the initial face-to-face interview and prior to executing any employment agreement with any such person, a copy of Paragraphs I, II and V of this order together with a cover letter as set forth in *Appendix A* attached hereto.

F. Making, distributing or using any training tapes, sales manuals, or any other document, method or device which contains any representation or instruction inconsistent with any provision of Paragraph I or Paragraph II of this order.

II

It is ordered, That respondents Grolier, Incorporated, Americana Corporation, Grolier Interstate, Inc., Grolier New Era Corp., Madison Enterprises, Inc., R. H. Hinkley Company, The Grolier Society, Inc., Spencer International Press, Inc., and The Richards Company, Inc., corporations and their successors, assigns, officers, agents, representatives, and employees, directly or indirectly, through any corporation, subsidiary, division or other device, in connection with the publishing, advertising, offering for sale, sale, rental, lease or distribution of any textbook, encyclopedia, reference or educational material, training course or teaching machine, [182] or any other publication, merchandise or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Disseminating or causing to be disseminated, any advertisement or promotional material which solicits participation in any contest, drawing or sweepstakes, or solicits any response to any offer of merchandise, service or information unless any such solicitation clearly and conspicuously discloses the following statement in 10-point boldface type:

NOTICE TO CONSUMER - PERSONS WHO REPLY AS REQUESTED MAY BE CONTACTED BY A SALESPERSON FOR THE PURPOSE OF SELLING [insert name of applicable product].

B. Providing any return card, coupon or other device which is used to respond to any advertisement or promotional material covered by Paragraph II A above, unless the following statement clearly and conspicuously appears in 10-point boldface type in immediate proximity to the space provided for a signature or other identification of the responding party: [183]

NOTICE TO CONSUMER - PERSONS WHO RETURN THIS [insert name of applicable device] MAY BE CONTACTED BY A SALESPERSON FOR THE PURPOSE OF SELLING [insert name of applicable product].

C. Failing to disclose clearly and conspicuously, at the beginning of any telephone call to any prospective customer, the fact that the individual making the call is either soliciting the sale, rental or lease of publications, merchandise or services for respondents, or is arranging for a sales solicitation to be made, and that if the prospective customer so agrees, the respondent concerned will send a salesperson to visit said prospect for the purpose of soliciting the sale, rental or lease of said publications, merchandise or services.

D. Visiting the home or place of business of any person for the purpose of soliciting the sale, rental or lease of any publications, merchandise or service, unless at the time admission is sought into the home or place of business of such person, a card 3 inches by 5 inches in dimension, with all words in 10-point boldface type, with the [184] following information, and none other, in the indicated order, is presented to such person:

- (1) the name of the corporation;
- (2) the name of the salesperson;
- (3) the term "Encyclopedia Sales Representative" [or other applicable product];
- (4) the terminology: "The purpose of this representative's call is to solicit the sale of encyclopedias" [or other applicable product].

E. Failing to present the card, required by Paragraph II D, above, to each such person, to direct each such person to read the

information contained on such card, and to provide each such person with an adequate opportunity to read the card before engaging any such person in any sales solicitation.

F. Using the words "Mothers Club" or words of similar import and meaning to represent, directly or by implication, the existence of a *bona fide* educational program, club, or business entity which provides educational services or benefits to consumers or using any trade name misrepresenting in any manner the nature or purpose of their business. [185]

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

(1) Any person calling on any prospective purchaser is:

(a) engaged in or connected with "advertising," "marketing," "promotion," "education," or anything other than the sale of encyclopedias or other educational or reference materials;

(b) conducting, taking or participating in a survey, opinion poll, interview or any other information gathering activity; or

(c) calling on said prospect for the primary purpose of delivering or disseminating any vacation gift certificate, prize, gift, gift certificate, chance in any contest, or any other merchandise or item or chance;

(2) only a few minutes will be required to complete the visit inside the prospective purchaser's home or place of business; or misrepresenting, [186] in any manner, the period of time required to complete the sales or other presentation;

(3) any person contacted has been specially selected to receive any offer; or misrepresenting, in any manner, the persons or class of persons to whom said offer is available;

(4) any encyclopedia or other reference material is a new publication, or a publication which has not been previously available to the public unless such is the fact, or misrepresenting, in any manner, the extent of editorial revisions, in any encyclopedia or other reference material;

(5) any offer is limited, must be accepted immediately or within a specified time period, or is a special offer, unless such is a fact; or misrepresenting, in any manner, the nature, scope or duration of any sales offer;

(6) any publication, merchandise or service is being offered free, without cost, as a bonus, reduced in price or otherwise to any prospective purchaser of any of respondents' publications, merchandise or services [187] agreeing to perform any advertising, promotional or selling function, including but not limited to, any of the following acts or similar acts:

- (a) permitting their names to be listed as local owners of the product or services;
 - (b) providing the name of any person who may be interested in purchasing any publication, merchandise or service;
 - (c) writing a letter evaluating the merits of any publication or other item which may be used in advertising;
 - (d) displaying any publication or other item in a conspicuous location in his home;
 - (e) keeping any publication or other item current by purchasing an annual yearbook or by purchasing any research service;
 - (f) completing installment payments for any item in a period of time less than the period of time initially represented; or
 - (g) paying a membership fee in order to participate in the Consumer Buying Educational Service, or any other program, club, [188] service or entity which provides an opportunity for participants to purchase merchandise at a savings from the retail prices for such merchandise, or paying a fee to participate in any similar program, club, service or entity; or
 - (h) misrepresenting, in any manner, that any publication, merchandise or service is being offered free, without cost, as a bonus, or reduced in price to any person;
- (7) any publication, merchandise or service is being offered free, without cost, or is given as a bonus or otherwise to any purchaser of any of respondents' publications, merchandise or services, pursuant to any agreement to purchase, rent or lease any other publication, merchandise, or service, or combination thereof, from such respondent, unless:
- (a) the contract price for the purchase, rental or lease of any such other publication, merchandise, service, or combination thereof, has remained at the said price or above for at least six (6) months within the last [189] twelve (12) months immediately preceding the time at which the representation is made;
 - (b) no publication, merchandise or service has been offered free, without cost or given as a bonus or otherwise with the sale, rental or lease of any such other publication, merchandise, service or combination thereof, to any person for a period of at least six (6) months within the last twelve (12) months immediately preceding the time at which the representation is made;
 - (c) no publication, merchandise, service, or combination thereof, of equivalent or greater value, has been eliminated by such respondent from any such other publication, merchandise, service, or combination thereof, with which the free, without cost or bonus publication, merchandise or service is being offered; [190]

Provided, however, any such prices as are restricted by Paragraph II G (7)(a) of this order may be altered at any time by the respondent concerned to reflect *bona fide* changes in market conditions.

H. Misrepresenting, in any manner, the terms, conditions, method, rate or time of payment actually made available to any person.

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

(a) any person using any research service will receive answers to questions on any subject; or misrepresenting, in any manner, the scope of, or restrictions imposed upon the use of, any such research service;

(b) any answer provided by a research service is the product of detailed, exhaustive or original research generated by the specific question asked by any person utilizing said service unless such is the fact; or misrepresenting, in any manner, the extent of individual attention, research, preparation or quality of any answer furnished by any such research service; [191]

(c) any answer provided by any research service is a suitable or acceptable substitute for any term paper, theme or other report; or misrepresenting, in any manner, the benefit or use of any answer provided by any research service;

(d) any research service is being offered at any price or that the research service has a retail value unless such is the fact;

(e) the cost to any respondent of any research service represents a retail value.

J. (1) Failing to disclose, clearly and conspicuously, in writing on all promotional materials describing any research service, and orally during the course of any sales or other presentation relating to said service, each condition or limitation placed upon the use of such research service.

(2) Failing to disclose applicable limitations on the time within which answers will be supplied by any research service in writing on all promotional materials and orally [192] during the course of any sales presentation relating thereto.

K. (1) Representing, directly or by implication, through the use of any oral statement, written quotation, picture or any other means that any publication, merchandise or service has received an endorsement, recommendation, or sponsorship from any educational, religious, or other institution or other entity or from any person, unless the stated endorsement is genuine and authentic in all respects, and discloses the year or edition of the publication to which such endorsements pertain, if a publication is involved.

(2) Using, publishing, or referring to any testimonial or endorsement unless (1) such use, publication, or reference is expressly authorized in writing and unless (2) respondents have good reason to believe that at the time of such use, publication, or reference, the person or organization named subscribes to the facts and opinions therein contained. [193]

(3) Representing, in any manner, that an endorsement or testimonial has been recently executed or is current unless this is the fact.

(4) Misrepresenting, in any manner, that any person is calling on a prospective customer with the endorsement, recommendation, or sponsorship of another person or organization.

L. Failing to disclose:

(1) clearly to the officials of any educational institution being visited, where a purpose of such visit is to obtain the institution's permission to disseminate through the institution promotional material which solicits the sale of any product to the parents of the children enrolled in the educational institution, and which is designed to secure leads for in-home sales presentations, prior to any such dissemination, that the purpose of disseminating such promotional materials is to secure leads for in-home sales presentations; [194]

(2) conspicuously on the face of such promotional materials within the scope of L(1) that dissemination of such promotional materials through the educational institution does not constitute an endorsement or a recommendation by the institution or its officials that such materials being promoted should be purchased unless such is the fact.

M. Representing to any person, directly or by implication, either orally or in writing that:

(1) any price is the retail, regular, usual or words of similar import or effect, price for any publication in any binding, merchandise or service, unless the respondent concerned is making a substantial number of its unit sales for each such publication in each such binding, merchandise or service, individually, at or above the represented price;

(2) any price is the retail, regular, usual, or words or similar import or effect, price for any set of publications in any binding and in combination with any other publication, [195] merchandise or service, unless the respondent concerned is making a substantial number of its unit sales for each such set of publications in each such binding individually or in combination at or above the represented price;

(3) savings may be realized by the purchase, rental or lease of any publication, merchandise or service, or any combination thereof from any of respondents' former prices for its products unless:

(a) such savings claims are based upon retail, regular, or usual prices, or combination prices, arrived at in accordance with Paragraph II M(1) and (2) above;

(b) respondents clearly and conspicuously specify the publication, merchandise or service, or combination thereof, and the price from which the savings are to be realized; and

(c) the publication, merchandise or service is of comparable quality in all material respects with the publication, merchandise or service sold at the higher price; [196]

(4) savings may be realized by the purchase, rental or lease of any publication, merchandise or service, or any combination thereof, from comparable products of competitors unless:

(a) the respondent concerned clearly and conspicuously specifies the publication, merchandise or service, or combination thereof, from which the savings are to be realized;

(b) the price utilized for comparison purposes is the price at which a substantial number of persons have purchased the item referred to in (a) immediately above;

(c) the item referred to in (a) above is of comparable quality in all material respects to the product being sold; [197]

(d) respondents have in good faith conducted a market survey or obtained a similar representative sample of prices in the trade area where the comparison is made which establishes the validity of said compared price.

N. Misrepresenting in any manner, either orally or in writing:

(1) the amount of savings to be realized by any person who enters into an agreement with any respondent for any publication, merchandise or service; or

(2) that any publication, merchandise or service is being offered free or without charge, or is given to any such person.

O. Failing to comply with any and all provisions of the Commission's Trade Regulation Rule, *Cooling-Off Period For Door-To-Door Sales* (16 C.F.R. 429.1), which are in effect on the date this order becomes effective, and with any modifications or changes in the aforesaid Rule which may be made. A copy of the said Rule shall be made a part of this order for purposes of complying with other provisions hereof. [198]

P. Initiating contact with any purchaser through any means for

containing a NOTICE OF CANCELLATION, as required by Paragraph II O of this order, until said buyer's cancellation period has expired.

Q. Failing to maintain a copy of each NOTICE OF CANCELLATION received pursuant to Paragraph II P of this order, and making said documents available for inspection and copying by the Commission's staff upon reasonable notice. Any respondent receiving such NOTICE shall maintain it for a period of three (3) years from date of receipt.

R. Failing to create adequate records, which shall be maintained for a period of three (3) years and made available to the Commission's staff for inspection and copying upon reasonable notice, from which the validity of any savings claims, retail price claims, comparative value claims, or other representations of the type described in Paragraphs II G(7), II M and II N of this order can be determined, and making any pricing claims within the scope of this provision unless there [199] are in existence for at least the six (6) months preceding such claims records from which the validity of such claims can be determined.

S. Failing to attach to any contract for the sale, rental or lease of any publication, merchandise, service or combination thereof a written statement that clearly and conspicuously discloses, and only discloses, the following information in the indicated order and manner:

- (1) in 12-point boldface type size the terminology:

PRICE LIST

THE FOLLOWING PRICES ARE THE ONLY AUTHORIZED PRICES AT WHICH THE LISTED ITEMS MAY BE OFFERED. ANY PRICE NOT LISTED BELOW IS UNAUTHORIZED AND FALSE.

- (2) a list of all publications, merchandise, services or combination thereof currently offered for sale, rental or lease, and in immediate conjunction thereto each price at which any respondent is authorized to offer said product or service pursuant to Paragraph II M of this order. [200]

- (3) in 12-point boldface type the terminology, when applicable:

FREE ITEMS

ONLY THE FOLLOWING PRODUCTS AND SERVICES MAY BE OFFERED FREE. YOU ARE PAYING FOR ANY ITEMS RECEIVED AND NOT LISTED BELOW.

- (4) a list of all publications, merchandise or services currently offered as free, without cost, or as a bonus pursuant to Paragraph II G(7) of this order.

T. Failing to orally instruct any person at the time said person signs any contract for sale, rental or lease, of any publication, merchandise, service or combination thereof, pursuant to an oral sales presentation, that a "Price List" is attached to said person's contract.

III

It is further ordered, That respondents Grolier, Incorporated, American Peoples Press, Inc., Americana Interstate Corp., Career Institute, Inc., Grolier Enterprises, Inc., and Grolier Reading Programs, Inc., corporations, and their successors or assigns, their officers, agents, representatives and employees, directly or indirectly, through any corporation, subsidiary or [201] division, or other device, in connection with the advertising, offering for sale, sale or distribution of any textbook, encyclopedia, reference or educational material, training course or teaching machine, or any other publication, merchandise or service through the use of any program, plan, method or device, that provides or purports to provide for the sale or distribution of any of said items to any person on an approval basis, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

(1) any person has the option to receive each publication, merchandise or service, separately and individually, and to accept or reject same, unless such person is allowed in all instances to receive and to purchase or reject each such publication, merchandise or service separately and individually;

(2) any person will not receive any further publication, merchandise or service after the respondent concerned has received a timely notification of the person's cancellation of any such program, plan or method of sale [202] or distribution, unless such is the fact; or misrepresenting, in any manner, any consequence resulting from any person's cancellation of his participation in any such program, plan, or method of sale or distribution; and

(3) any person incurs no risk or obligation by joining or participating in any such program, plan, or method of sale or distribution; or misrepresenting, in any manner, any condition, right, duty or obligation imposed on any person.

B. Disseminating, or causing the dissemination of, any advertisement which fails to disclose in a clear and conspicuous manner:

plan, or method of sale or distribution, and the duties, risks and obligations of any subscriber thereto; and

(2) a description of each publication, merchandise or service to be offered for sale, the billing charge to be made therefor, the anticipated total number of publications, merchandise or [203] services included in any such program, plan or method of sale or distribution, the number of publications, merchandise or services that will be included in each shipment of such items, and the number of and the intervals between each such shipment.

C. Failing to disclose, clearly and conspicuously, on any return coupon, order form or any other document used for responding to any such program, plan, or method of sale or distribution, the following information:

(1) the anticipated total number of publications, merchandise or services included in any such program, plan, or method of sale or distribution;

(2) the number of publications, merchandise or services that will be included in each shipment of such items; and

(3) the number of and the intervals between each such shipment.

D. Failing to disclose, clearly and conspicuously, in immediate conjunction with any publication, merchandise, service or notice thereof sent to any subscriber [204] the anticipated date on which the respondent from whom the subscriber obtained any of such items will initiate processing of the next shipment of any such item.

E. Failing to provide to any person in conjunction with each notice of any shipment of any publication, merchandise or service, a clear and conspicuous means by which said person may exercise his option or right to cancel said shipment, if such is his right.

IV

It is further ordered. That respondents Grolier, Incorporated, American Peoples Press, Inc., Americana Corporation, Americana Interstate Corp., Federated Credit Corp., Career Institute, Inc., Grolier Interstate, Inc., Grolier New Era Corp., Madison Enterprises, Inc., R. H. Hinkley Company, Spencer International Press, Inc., The Grolier Society, Inc., and The Richards Company, corporations, and their successors, assigns, officers, agents, representatives and employees, directly or indirectly, through any corporation, subsidiary, division or other device, in connection with the collection or attempted collection of any debt allegedly due and owing pursuant to any contract or other agreement relating to the purchase or other receipt of any textbook, encyclopedia, reference or educational material, [205] training course or teaching machine, or any other

publication, merchandise or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

(1) any company, corporation, or entity engaged in collection of monies allegedly due or owing to such concerns or any other company, corporation or entity has separate *bona fide* departments or divisions for legal matters, unless such are the facts; or misrepresenting, in any manner, the existence, or functions of any division or department of any company, corporation or entity;

(2) the Code of Federal Regulations, or any other federal regulation or statute, provides that any employee of the Federal Government who has any outstanding debt due or owing may be subject to dismissal from the federal service for failure to pay said debt unless the respondent concerned can demonstrate that sufficient facts exist with regard to the [206] employee to whom the representation was made which establish the propriety of such claim;

(3) any person who utilizes the United States mail to obtain any publication, merchandise or service and who fails to pay or becomes delinquent in paying for any such item will be subject to prosecution for mail fraud under federal law unless the respondent concerned can demonstrate that sufficient facts exist, with regard to person to whom the representation was made, which establish the propriety of such claim; or misrepresenting, in any manner, the rights, duties or obligations of any person arising from any federal, state, or local statute, ordinance, or regulation;

(4) any respondent utilizes the services of credit reporting companies or other entities or persons who disseminate credit information in a manner which will adversely affect the public or general credit rating of any person who has become delinquent in paying any debt unless the respondent concerned can demonstrate [207] that sufficient facts exist, with regard to the person to whom the representation was made, which establish the propriety of such claim; or misrepresenting, in any manner, that any person's public or general credit rating will be adversely affected;

(5) any letter, notice or other communication which has been prepared, originated or composed by any respondent has been prepared, originated or composed by any other person, firm or corporation;

(6) using any correspondence, forms or any written materials

(7) suit will be instituted to recover any delinquent debt, or that any delinquent debt will be transferred to any attorney with instructions to institute suit, or that any other legal step to collect any outstanding debt will be taken, unless a definite date is set forth for such action and such are the facts; or misrepresenting, in any manner, respondents' relationship with, or instructions to, any attorney, or the course of action that will be taken by any attorney, [208] or misrepresenting in any manner that an account has been transferred to any person or entity for collection unless those are the facts.

V

For the purpose of the following provisions of this order, the term "respondents" shall apply to each of the respondents named in Paragraphs I and II of this order.

It is further ordered. That respondents:

A. Deliver, by registered mail, a copy of this order to each of their salesmen, agents, solicitors, independent contractors, or to any person engaged in the promotion, sale or distribution of any of the publications, merchandise or services included in this order, and to any person engaged by respondents to perform such duties in the future at the time such person is so engaged;

B. Obtain from each person described in Paragraph V A, a signed statement setting forth his intention to conform his business practices to the requirements of this order; retain said statement during the period of three (3) years thereafter; and make said statement available to the Commission's staff for inspection and copying upon reasonable notice; [209]

C. Advise each such present and future salesman, agent, solicitor, independent contractor or any person engaged in the promotion, sale or distribution of any of the publications, merchandise or services included in this order that respondents will terminate the engagement or services of any such person, unless such person agrees to and does furnish to respondents a statement required by Paragraph V B, above; and

D. If any such person will not agree to file a statement with respondents as required by Paragraph V B above, and be bound by the provisions of this order, the respondents shall immediately terminate the services of such person.

E. Furnish the Commission on a quarterly basis with a list of those independent or outside distributors whose retail installment contracts have been financed by respondents, their subsidiaries or affiliates.

Opinion

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VI

It is further ordered, That the respondents shall forthwith distribute a copy of this order to each of their operating divisions. [210]

VII

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

VIII

It is further ordered, That respondents shall, within sixty (60) days after the effective date 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.

APPENDIX A

NOTICE

Attached hereto are the *pertinent provisions* of a cease and desist order entered against Grolier, Incorporated and certain of its subsidiaries, including Grolier Interstate, Inc. by the Federal Trade Commission, an agency of the Federal Government. Violation of any provision of this order can result in severe monetary penalties to Grolier, Incorporated and Grolier Interstate, Inc. If you are employed by Grolier, Incorporated or any of its subsidiaries, you will be *required* to observe the provisions of this order. Violation of any provision of this order by an employee constitutes a violation of a federal law.

You should carefully read this order before agreeing to any employment arranged with Grolier, Incorporated or any of its subsidiary companies.

(President)

Grolier, Incorporated

OPINION OF THE COMMISSION

BY DOLE, Commissioner:

Grolier, Inc. and its wholly-owned subsidiaries,¹ [hereinafter referred to as "respondent"] appeal from the initial decision of

¹ American Peoples Press, Inc., Americana Interstate Corp., Career Institute, Inc., Grolier Enterprises, Inc., Grolier Reading Programs, Inc., Americana Corporation, Spencer International Press, Inc., The Grolier Society, Inc., R. H. Hinkley Co., Grolier New Era Corp., The Richards Co., Inc., Madison Enterprises, Inc., Grolier Interstate, Inc., and Federated Credit Corp. were named as respondents and found by the Administrative Law

Administrative Law Judge Theodor P. von Brand that certain of respondent's practices violated Section 5 of the Federal Trade Commission Act. Complaint counsel have filed a cross-appeal.² [2]

Respondent is engaged in the publication and distribution of encyclopedias, other reference works and services, training courses, and teaching machines. Respondent sells its products door-to-door as well as through mail solicitations. Its products have included Encyclopedia Americana, Encyclopedia International, New Book of Knowledge, World's Greatest Classics, Book of Popular Science, and Children's Hour.³ Both door-to-door selling and mail order solicitations account for substantial sales volume.⁴

On the basis of an extensive hearing record, the law judge sustained the complaint allegations that respondent has engaged in a host of deceptive and unfair practices. We agree with his determination that respondent has violated Section 5. Like the appeals before us, this opinion is directed mainly to the rather technical issues raised by the judge's proposed order to cease and desist.

The law judge's findings deal with respondent's personnel recruitment activities, sales and promotion practices, and debt collection procedures. With respect to personnel recruitment he found, *inter alia*, that respondent misrepresented that the jobs offered were non-selling positions and that the conditions placed upon salary or income guarantees were not disclosed to job applicants.⁵ He also determined that respondent employed a variety of deceptive sales and promotional practices. For example, he concluded that respondent misrepresented the regular retail price of its products. [3] Furthermore the judge found that respondent had misrepresented to consumers the purpose of in-home sales presentations.⁶

² For convenience, the following abbreviations are used in this opinion:

I.D. - Initial decision of the administrative law judge;

Tr. - Transcript of testimony;

Cx - Commission exhibit.

³ Respondent has also sold products not published by Grolier, Inc. These include the Harvard Classics, The Bible, and the Hammond Atlas. See I.D. Finding 90.

⁴ In 1969 respondent's door-to-door sales were \$70,000,000 while mail order sales of certain subsidiaries accounted for \$41.5 million. In 1970, sales door-to-door accounted for \$63.4 million while mail order volume was \$49 million. In 1972, mail order volume exceeded door-to-door sales by \$63 million to \$35.3 million, respectively. See I.D. Findings 16 and 17.

⁵ See I.D. Findings 60-88.

⁶ See I.D. Findings 114-132. In addition, the judge found that the salesmen of respondent Spencer International Press, Inc., in approaching parochial school principals, had misrepresented that they were from the "National Catholic Educator's Association" and that respondent Spencer's promotional packets, printed with a "bold cross in the upper left hand corner," as well as its follow-up phone talks and sales presentation had the capacity to lead parents to believe that the product had been endorsed by the parochial school or the archdiocese. See I.D. Finding 91-101. Respondent, The Richards Company, Inc., according to the law judge, distributed to its salesmen a picture of Pope Paul with the American People's Encyclopedia, although the Holy See had not endorsed the encyclopedia

(Continued)

The administrative law judge's order places respondent under a number of prohibitions and requires respondent to take certain affirmative actions. The order is directed to respondent's personnel recruiting practices, debt collection procedures, promotions aimed at schools to obtain entry to students' homes, misrepresentations as to the purpose of salesmen's calls and payment plans, misleading pricing claims and offers of free goods, and other unfair or deceptive advertising practices.

LIABILITY

While respondent addresses its appeal, in the main, to selected provisions of the judge's order, it also contends that the evidence adduced by complaint counsel at the hearing in this matter compels a dismissal of all counts of the complaint. See Respondents' Appeal Brief at 3. We find no merit in this argument or in respondent's alternative argument that complaint [4] counsel's evidence of Section 5 violations was *de minimis*. We have carefully reviewed the record in light of the initial decision and have found ample evidence to support the judge's findings. Respondent also contends that the evidence is insufficient to hold it accountable for any deceptive recruitment, sales or debt collection practices of its employees. We reject this contention. It is well settled that firms cannot avoid the requirements of Section 5 by passing off responsibility for deception to their employees. As the court stated in *Parke, Austin & Lipscomb, Inc. v. FTC*, 142 F.2d 437, 440 (2d Cir. 1944), "[H]owever unauthorized the offending conduct of the salesmen may have been and however condemned and discouraged by their superiors, it still was conduct which subjects the employers to the jurisdiction of the Commission and its cease and desist order." See *Goodman v. FTC*, 244 F.2d 584 (9th Cir. 1967). In any case, the record indicates that respondent initiated several of the illegal practices. We, therefore, adopt the judge's findings and conclusions, except to the extent they are inconsistent with the findings and conclusions set forth in this opinion.

ORDER PROVISIONS

I. Deceptive Recruitment Practices

The judge's order requires respondent in recruitment advertise-

for commercial purposes. See I.D. Finding 184. Judge von Brand also determined that a letter written in 1953 by the President of the University of Notre Dame concerning a 1953 encyclopedia edition was used by respondent

ments to disclose that prospects will be hired to sell encyclopedias on an "in-home" basis.⁷ The provision is based on the judge's finding that respondent recruited its door-to-door encyclopedia salesmen by affirmatively misrepresenting that the positions offered were in public relations work, marketing and promotions, sales administration and management.⁸ Although phone numbers were listed in respondent's [5] recruitment advertisements, it was respondent's policy not to disclose over the phone the nature of the employment offered.⁹ While some applicants were informed during their initial interview that the position involved encyclopedia sales,¹⁰ other recruits did not realize that until training was actually in progress or had been completed.¹¹ In some instances recruits were explicitly told that the jobs did not involve selling.¹² Under these circumstances, the order provision requiring respondent to disclose in advertising that it is recruiting "encyclopedia salesmen" is necessary to prevent a continuation of the type of deception which has misled job applicants in the past.¹³

Respondent asserts that a simple "help wanted" ad would be in violation of the order,¹⁴ and that an ad that includes no more than a telephone number does not mislead.¹⁵ Respondent contends that an affirmative disclosure that the sole job responsibility is to solicit and sell encyclopedias in the home will effectively preclude recruitment advertisements.¹⁶ However, in view of the affirmative misrepresentations as to the nature of the job which have been made both in advertising and at the initial interview, we conclude that the affirmative disclosure required by the order is justified. [6]

The law judge required¹⁷ that certain paragraphs of the order¹⁸ be furnished to applicants at the initial face-to-face interview. Respon-

⁷ Respondent argues that the evidence establishes only unauthorized and infrequent recruiting violations and that therefore no order provisions relating to recruitment should be included in the order. The administrative law judge, however, correctly found that respondent's recruitment advertisements frequently and affirmatively misrepresented that the positions offered were non-selling in nature, see I.D. Finding 60; that "management trainee" recruits were in fact hired to work as door-to-door salesmen, see I.D. Finding 67; and that respondent frequently advertised compensation guarantees for the positions offered without disclosing the conditions which applicants would be required to meet in order to receive the guaranteed compensation, see I.D. Findings 68 and 70.

⁸ See I.D. Finding 60.

⁹ See I.D. Finding 63.

¹⁰ See I.D. Finding 73.

¹¹ See I.D. Finding 75.

¹² See I.D. Finding 76.

¹³ See Order Paragraph I (C).

¹⁴ See Respondents' Appeal Brief at 52.

¹⁵ See Transcript of Oral Argument at 14 (remarks of Mr. Furth).

¹⁶ See Transcript of Oral Argument at 14 (remarks of Mr. Furth). We note, however, that respondent's President and Chairman of the Board, Mr. Murphy, testified at the hearing that he would be amenable to a statement in recruitment advertising that the job involved direct selling in the home, see Tr. at 16458, and that on occasion he would be willing to disclose in advertising that the products to be sold were encyclopedias. See Tr. at 16459.

¹⁷ Order Paragraph I (E).

¹⁸ Paragraphs I, II and V.

dent argues that it should be permitted, instead, to furnish the applicant with a summary of the order. The order does not preclude respondent from furnishing a prospective employee with an accurate explanation of the order, orally or in writing. The Commission has determined, however, not to modify the requirement that respondent furnish copies of the pertinent provisions specified. See *Encyclopedia Britannica, Inc.*¹⁹

II. Deceptive Sales and Promotion Practices

Respondent objects to the judge's order requirement that its sales representatives present a three inch by five inch card at the time admission is sought into the home for the purpose of soliciting sales. Respondent's representatives must direct the consumer to read the information contained on the card. The card discloses the name of the corporation, the name of the sales person, and the term "ENCYCLOPEDIA SALES REPRESENTATIVE" (or reference to other applicable product).

The record shows that respondent's sales representatives failed to disclose and have misrepresented the purpose of the in-home visit in both telephone calls to consumers and in door-to-door canvassing.²⁰ As Judge von Brand concluded:

The purpose of respondents' sales representatives' contact, which is to sell, is a material fact in a prospect's decision to let such representative into [his] home. The failure to disclose at the [7] outset, and in many instances, to affirmatively misrepresent, the purpose of contacting prospective customers was false, misleading and deceptive.²¹

Respondent's assertion that instances of deception-at-the-door "are clearly isolated and untypical examples of individual sales representatives acting in contravention of respondents' corporate policies"²² is contradicted by the record.²³ Both the sales manual issued under the letterhead of The Grolier Society, Inc. Publishers²⁴ and distributed to the company sales representatives,²⁵ as well as respondent Spencer's manual, instruct salesmen to affirmatively misrepresent the purpose of the in-home visit.²⁶

¹⁹ 87 F.T.C. 421, 528 (1976), *appeal pending*, No. 76-1477 (7th Cir.).

²⁰ See I.D. Finding 108-130.

²¹ I.D. Finding 132 (citation omitted). A similar requirement was included in the Commission's order in *Encyclopaedia Britannica*, *supra* 87 F.T.C. at 524, 527.

²² Respondents' Appeal Brief at 56.

²³ See CX 419, Tr. at 664, 698-95 (testimony of Mr. Romano); CX 651A-C, Tr. at 5662-63; I.D. Finding 136.

²⁴ CX 563(a).

²⁵ See Tr. at 2886-38 and CX 563(a).

²⁶ "Hello, Mr./Mrs. blank, blank, blank? My name is blank, blank, blank, and I'm with the Grolier Society. I don't know whether that name means anything to you but Grolier is the world's largest publisher of educational reference books. We actually publish 20 different sets of Encyclopedias-but please do not be alarmed Mr./Mrs.

[8] It is clear from the in-home presentation talks set forth in the manuals that the purpose of the in-home visit is to sell [9] the company's products.²⁷ Indeed, the instruction accompanying one of the telephone talks points out that "when you have an appointment you take your samples with you."²⁸

Respondent has argued that the Commission should not mandate the exact disclosures to be made. Each of the disclosures required to be included on the card however is necessary to prevent future violations. While respondent might be allowed to make undefined, "appropriate" disclosures, such an order provision would inject unnecessary uncertainty into respondent's compliance obligations.

Respondent also suggests as an alternative to the 3x5 card the use of a normal size business card. However, if all of the necessary information were included on a business card, the print would be so small that the disclosure would be unintelligible. Moreover, business cards are normally accepted for purposes of future reference, whereas the purpose of this requirement is to encourage the consumer immediately to refer to the card so that he will be placed

"Grolier has approximately 7,000 sales people across the country and we have to provide these sales people with prospects to call on. Right now we are getting some help from several families in each community and in return for that help we are paying these families in Grolier merchandise. . . .

"Notes: If prospect says they won't be home then set it up for tomorrow night—or for Sat. and Sun.

"If prospect says they are not interested—say 'That's fine—all I want to do is explain what we are doing and like I said I am not coming out there to give you a sales talk.' "

CX 563(i) (emphasis in original)

Telephone talk number II makes the same affirmative misrepresentation. See CX 563(o).

Respondent Spencer International Press, Inc. likewise utilized a training manual which contained both a "door approach" and "telephone talk" that misrepresented the purpose of the in-home visit. See CX 871-F; CX 871-V; I.D. Finding 100. The training manual instructed the sales representative to:

FOLLOW PRESENTATION - *Do not deviate* - it must be done our way, which is the successful way.

CX 871-B (emphasis in original). The door approach set forth in the training manual is as follows:

Hi, I wonder if you could give me some information? (wait for reaction)

I'm conducting a series of special interviews in the _____ area this evening and I was supposed to ask you and the Mrs. a couple of questions. (show questionnaire) By the way my name is _____. (Hold out hand) Do you mind if I step in? (If ques. use follow up. Also when known, use family name)

CX 871-F.

The Telephone Talk represents the home visitor as an "instructor" in programmed learning:

Hello. Is this Mrs. _____? Good! This is Mr. _____ calling from the Catholic School Division of Programmed Learning. I'm calling in reference to the announcements the children took home from (Name) School. (Pause.) You probably remember it. As you know, we agreed to give each family a free demonstration on programmed learning as a public service. And the reason I'm calling now is that our instructors will be in the (Name) area tonight. I thought I'd call first to make sure both you and Mr. _____ will be in this evening. It takes around 10 minutes, since each instructor sees about 6 or 7 families an evening. . . .

CX 871-V.

Judge von Brand found that certain of respondent's documents contain directives that full disclosure be made of the identity of the callers and the purpose of the call. He found further that these documents reflected the company's "official policy." See Finding 126. We disagree. This label is inconsistent with the evidence in the record and with other findings of the administrative law judge. See, e.g., Finding 129. Accordingly we have modified Finding 126 by deleting the statement that "respondents' official policy prohibited misrepresenting to a prospective customer the purpose of a telephone call or home visit."

²⁷ See CX 563 J-K; CX 871 P-T.

²⁸ CX 563-1 and O.

"You have now prepared your prospects for the next step which is the presentation of products. *Do not ask them if you can go get your samples. Do it!!*" CX 563-k.

on notice that the caller is there for the purpose of selling him a set of encyclopedias.

We are not persuaded by respondent's argument that the "notice to consumer" provisions of the order are unjustified. This portion of the order requires that lead-gathering advertising which, for example, invites participation in a contest, contain a disclosure that consumers who respond may be contacted by a salesperson for the purpose of selling the applicable products. As the judge concluded, respondent's lead-generating advertising failed to disclose this material fact.²⁹ Furthermore, certain of the advertising in question creates the [10] impression that the consumer who responds to an offer of free information will receive delivery by mail and will not be subjected to a salesman's call.³⁰

With respect to the proposed disclosure in the lead-getting material respondent objects to the requirement that it be placed in ten point boldface type and also renews its argument that the Commission should not prescribe specific language.³¹ We find that it is necessary to place this important language in ten point boldface to assure that the consumer will be apprised of the message. The proposed language includes a disclosure that the consumer may be contacted by a sales representative for the purpose of selling the applicable product. There is no question that the main purpose of respondent's sales representatives in contacting persons at their homes is to sell its products. Any other assertion or inference would be deceptive. [11]

We turn now to respondent's objections concerning the pricing provisions of the order.³² Respondent's contract, adjoining the retail price list, states that "a combination purchase of two or more of the products shown in bold face automatically entitles the customer to an approximate 30% price advantage from the individual prices. If,

²⁹ See I.D. Finding 105, I.D. p. 149.

³⁰ The copy at the end of respondent's "Uncle George" ad, CX 1614-H, states:

Now we've run out of space, but we would like to tell you more. So please send for our free brochure. The coupon below will bring it

The coupon which the consumer is requested to send in states in part:

Gentlemen:

I am interested and would like to know more. I understand there's no charge and no obligation. . . .

Ibid. See CX 1614-G.

³¹ Order Paragraph II (A) requires the following disclosure in lead-gathering advertising.

NOTICE TO CONSUMER - PERSONS WHO REPLY AS REQUESTED MAY BE CONTACTED BY A SALESPERSON FOR THE PURPOSE OF SELLING [insert name of applicable product].

Order Paragraph II (B) requires a similar disclosure on the coupon used to respond to the advertisement.

NOTICE TO CONSUMER - PERSONS WHO RETURN THIS [insert name of applicable device] MAY BE CONTACTED BY A SALESPERSON FOR THE PURPOSE OF SELLING [insert name of applicable product].

however, you purchase just one product you pay the full price shown.”³³ The prices listed for the designated publications, however, are not the prices at which significant numbers of sales are made.³⁴ They represent the prices charged when the products are sold on an individual basis and sales of individual publications constitute only a small percentage of respondent’s sales.³⁵ The law judge found that the sales representatives are frequently not even authorized to make individual sales of the publication or are discouraged from doing so. Respondent’s sales representatives are trained instead to sell the products in combination, and respondent distributes standard combination schedules to its respective sales representatives which set forth the various publications included in each combination as well as the price of each combination.³⁶ We take the title “retail price list” to be tantamount to a representation that these are regular prices at which the designated publications have been sold. In view of the fact that the publications were only rarely sold at these prices, the list deceptively represented to consumers that cost savings could be realized through combination purchases.³⁷

[12] The order recommended by the judge, therefore, prohibits respondent from representing a price for a product as its regular retail price unless substantial sales are made at the level represented as the regular price. In addition, the order requires that respondent attach to each contract a list of all products and services and, in immediate conjunction thereto, the actual selling price

³³ I.D. Finding 158.

³⁴ I.D. Findings 158 and 160.

³⁵ I.D. Finding 157. See I.D. Finding 89.

³⁶ See I.D. Findings 89, 157-58. Indeed, beginning in late 1973 respondent added a statement to the retail price list which disclosed that “only a small fraction of Grolier’s sales of any of these products is on an individual basis.” I.D. Finding 158.

³⁷ We uphold the order provisions which address respondent’s “continuity programs” and other methods of selling its products by mail on an approval basis. Under the “continuity programs” respondent would ship the first three volumes of a set singly, at intervals, but transmitted the balance of the set in one shipment unless the customer had tendered a timely notice of cancellation. The judge found that respondent failed to disclose that a bulk shipment of the remaining volumes would be made after shipment of the first three volumes. See I.D. Finding 230 and I.D. p. 166. Respondent argues that these order provisions are unwarranted since, prior to the issuance of the Part III complaint in this matter, it followed a policy of “full disclosure” of shipment sequences. However, the Commission has been “parsimonious, if not totally unyielding, in its adjudicative recognition of the defense of abandonment, and courts have been reluctant to vacate Commission orders on those grounds except in the most extreme circumstances not present here, such as where a corporate respondent had exited from the relevant lines of business under circumstances in which reentry seemed improbable.” See *Fedders Corp.*, 85 F.T.C. 38, 72 (1975), *aff’d*, 529 F.2d 1398 (2d Cir.), *cert. denied*, 429 U.S. 818 (1976).

In addition, respondent contends that the testimony of customers called by complaint counsel was not sufficient to support this portion of the order. Respondent’s arguments are untenable. Moreover, as the administrative law judge observed:

Respondents have also represented that persons joining or participating in such programs do so at no risk or obligation. However, participating in such continuity programs did entail certain risks and obligations. Consumers were subject to the risk of receiving a bulk shipment if the negative option provided by respondents was not successfully exercised. If books were not wanted, the consumer had to reject them and do so within the allotted time. If a timely notice of cancellation was not received due to delays in the mail, they risked being billed for publications even after such publications had been returned. I.D. p. 166.

pursuant to the "substantial" sales standard. The price list will enable the contracting consumer to judge whether the offer is a bargain—to compare [13] the contract with the authorized list prices and determine whether or not any savings claims are true. *Encyclopaedia Britannica, supra*.³⁸

Complaint counsel advocate the adoption of an order provision which would prohibit respondent from representing that a price is a regular retail price unless, for the previous 6 month period, at least 30 percent of its sales for that product have been made at the price, or a higher price. As in *Encyclopaedia Britannica*³⁹ we are not persuaded that the order should depart from the Commission's guides on deceptive pricing, 16 C.F.R. 233, which provide, *inter alia*, that the retail price may be described as a selling price if "substantial" sales are made at the retail level.

Both respondent and complaint counsel object to Paragraph V of the proposed order. In essence Paragraph V requires respondent to furnish each person engaged in the promotion, distribution and sale of respondent's products and services, including independent contractors (distributors), with a copy of the order; to obtain a signed statement from each person declaring his intention to conform his business practices with the requirements of the order; and to cease doing business with each person who will not so sign. Respondent points to certain findings in the initial decision that respondent neither controlled nor was responsible for the actions of distributors.⁴⁰ For example, when respondent, The Richards Company, withdrew from direct sales, most of the company's key sales personnel became distributors.⁴¹ While [14] respondent furnished assistance to the former Richards employees in helping them become distributors,⁴² the law judge concluded that

[b]y and large, . . . the contacts between respondent's officials and these distributors are not inconsistent with a finding that they were normal business communications such as may be expected of any manufacturer and his outside retailers. On balance, the evidence does not sustain a finding that respondents controlled or are responsible for the actions of such distributors.⁴³

Complaint counsel, while conceding that Paragraph V should not apply to wholly independent distributors whose only connection with respondent is the purchase of books for resale to consumers, contend,

³⁸ 87 F.T.C. at 529.

³⁹ *Id.*

⁴⁰ See I.D. Findings 276-288 and I.D. p. 172.

⁴¹ I.D. Finding 282.

⁴² See I.D. Findings 283-86.

⁴³ I.D. at 172.

nevertheless, that independent distributors who maintain a significant connection⁴⁴ with respondent should be subject to this order provision. Complaint counsel argue that there is a "very real possibility that the respondents will attempt to do, through distributors, what the Order prohibits them from doing directly."⁴⁵ We are not persuaded that it is necessary to include independent contractors within the purview of Paragraph V, and we have modified the order accordingly.⁴⁶ Should the violations addressed in these [15] proceedings be practiced by persons other than respondent's salesmen or agents, the Federal Trade Commission Act⁴⁷ affords sufficient means of proceeding against the alleged offenders.⁴⁸

Procedural Issues

As the final matter, we now consider respondent's procedural arguments. Respondent reasserts in its appeal a claim which the Commission has dealt with previously in this proceeding, that Judge von Brand should have been disqualified from conducting the hearing. The Commission concluded in its prior order addressing this issue⁴⁹ that Judge von Brand would not be subject to disqualification even if it could be shown that, while serving as attorney advisor to Commissioner MacIntyre, he advised the former Commissioner on matters pertaining to respondent. Respondent has marshalled no additional arguments in its briefs which dissuade us from this view.⁵⁰ Respondent asserts that "an attorney advisor bears an ethical responsibility as stringent as that of the [16] Commissioners themselves"⁵¹ and therefore that Judge von Brand should be disqualified. The fallacy in respondent's argument is that the

⁴⁴ Complaint counsel would apply Paragraph V to persons or entities: (1) receiving direction, control or approval from respondent for sales practices; (2) receiving promotional materials or sales aids from respondent; or (3) receiving financing from respondent for any contracts procured.

⁴⁵ Answering Brief of Counsel Supporting the Complaint at 54.

⁴⁶ Compare *National Housewares, Inc.*, Dkt. 8733, Opinion and Final Order (November 19, 1977). There, respondent Emdeko developed and refined an illegal "package selling scheme" and actively promoted its adoption by distributors. Unlike *National Housewares*, respondent cannot be said to be "active participants in the illegal practices," *id.* at 18-19 (slip opinion), of the distributors. Now would its conduct subject it to liability "closely akin to the liability of a contributing 'tort feaser,'" *id.* at 13 (slip opinion).

⁴⁷ 15 U.S.C. 45(m)(1)(B).

We also note that other portions of the order place restrictions upon possible attempts by the respondent to accomplish, through distributors, what the order prohibits it from doing directly. See Order Paragraph 1(F).

⁴⁸ The judge's order requires that respondent furnish the Commission with the names of the independent distributors with whom it does business and we adopt this provision. In addition, we will require respondent to furnish the addresses of its independent distributors and have modified Paragraph V accordingly.

⁴⁹ 87 F.T.C. 179 (1976).

⁵⁰ In conjunction with respondent's arguments as to disqualification of the law judge, respondent contends that the Commission was in error in denying discovery of certain documents reasonably calculated to lead to evidence concerning contacts between the Commissioners and the respondent during the period in which Judge von Brand was an attorney advisor. We reaffirm our ruling. 87 F.T.C. at 180-81.

⁵¹ Transcript of Oral Argument at 6 (remarks of Mr. Furth.)

Federal Trade Commission Act provides for participation by Commissioners in both the investigative and the adjudicative stages of a proceeding.⁵² Section 554(d) of the Administrative Procedure Act explicitly recognizes the dual role of "members of the body comprising the agency;" that legislation specifically authorizes a member's participation in both the investigative-prosecutorial function and the adjudicative decision-making process.

Respondent also appeals the denial of its motion to dismiss or stay the adjudicative proceedings and contends that the Commission should proceed by way of an industrywide trade regulation rule. It argues that while a principal competitor⁵³ is subject to similar affirmative relief provisions, other competitors are not.

While rulemaking would not necessarily be inappropriate in this circumstance, it is well established that the Commission may proceed by adjudication against an alleged offender without simultaneously pursuing all others. *Moog Industries v. FTC*, 355 U.S. 411, 413 (1958). The Commission, of course, does not have "unbridled power to institute proceedings which will arbitrarily destroy one of many law violators in an industry." *FTC v. Universal-Rundle Corp.*, 387 U.S. 244, 251 (1967). However, respondent has not substantiated its claim that the order provisions would cause substantial economic injury to its business. The record in this case demonstrates egregious violations of the Federal Trade Commission Act and the order imposed by the Commission is reasonably related to the violation and necessary to correct these abuses.⁵⁴

[17] Having considered the arguments of respondent and com-

⁵² See 15 U.S.C. 45(b) and 49.

⁵³ *Encyclopaedia Britannica, supra*.

⁵⁴ Respondent's claim of "fundamental unfairness" as to the card-at-the-door and the advertising and promotional disclosure provisions is without merit.

We also reject respondent's contention that it was error for the administrative law judge to deny respondent's request to call as a witness a former director of the Commission's Office of Policy Planning and Evaluation. Respondent sought his testimony with respect to whether or not alternative relief provisions might be incorporated in the order which were "less drastic" than those proposed by the law judge. We cannot find that the judge abused his discretion in denying this request.

We uphold the administrative law judge's determination to deny discovery of an internal staff memorandum, entitled "Analytical Program Guide for the Direct Selling Industry," and related documents. Respondent sought the memorandum to support its assertion that the Commission has prejudged this proceeding, upon the basis of "secret evidence and secret law." Respondent's Appeal Brief at 38. The Commission's determination and its order in this matter rest solely upon the record compiled in Dkt. 8879. See *Encyclopaedia Britannica, Inc.*, 87 F.T.C. 378 (1976).

Also without merit is respondent's argument that it was error to deny it access to the total number of complaints and the subject matter of each complaint received from its customers by the Federal Trade Commission. The complaint information is relevant, according to respondent, to the formulation of appropriate relief. Specifically, respondent would seek to show "if negligible consumer injury or dissatisfaction has resulted from the practice which the particular form of relief is designed to rectify." Respondents' Appeal Brief at 39. The administrative law judge noted that the presence or absence of consumer complaints is of marginal utility in the formulation of the order provisions. Moreover, as stated by the law judge in denying discovery of the complaint information, the request was made "at a late stage of the proceeding. . . in the midst of trial." His denial of

plaint counsel in this matter, we have determined that the public interest is best served by the issuance of the appended order.

FINAL ORDER

This matter having been heard by the Commission upon the cross-appeals of complaint counsel and respondents' counsel from the initial decision and upon briefs and oral argument in support thereof and opposition thereto, and the Commission, for the reasons stated in the accompanying Opinion, having determined to sustain the initial decision with certain modifications:

It is ordered, That pages 1-176 of the initial decision of the administrative law judge be, and they hereby are, adopted as the Findings of Fact and Conclusions of Law of the Commission, except to the extent modified or otherwise indicated in the accompanying Opinion and except for the following: delete in Finding 126 the first sentence and the words "In fact" in the second sentence.

Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying Opinion.

It is further ordered, That the following order to cease and desist be, and it hereby is, entered: [2]

ORDER

I

It is ordered, That respondents Grolier, Incorporated, Americana Corporation, Grolier Interstate, Inc., Grolier New Era Corp., Madison Enterprises, Inc., R. H. Hinkley Company, The Grolier Society, Inc., Spencer International Press, Inc. and The Richards Company, Inc., corporations, and their successors, assigns, officers, agents, representatives and employees, directly or indirectly, through any corporation, subsidiary, division or other device, in connection with the recruitment, training, or orientation of any person to sell, rent, lease, or distribute any textbook, encyclopedia, reference or educational material, training course or teaching machine, or any other publication, merchandise or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

(1) any respondent is offering positions in such fields as advertising, education, public relations, marketing, interviewing, or in any field other than door-to-door [3] sales, if door-to-door sales is included, to any extent, in the position for which persons are being

recruited; or misrepresenting, in any manner, the job for which any person is being solicited;

(2) persons will be trained as management trainees, or for other positions of responsibility concerned with administrative office functions, unless, in fact, a formal management training program is available to persons accepting employment on the basis of such representations; or misrepresenting, in any manner, the amount and type of training that will be given;

(3) any person who may be employed will contact prospects in their homes or places of business for the purposes of conducting surveys, advertising promotions, educational instruction or other nonselling functions; or misrepresenting, in any manner, the purposes for which any person is engaged. [4]

B. Misrepresenting, in any manner, the amount of income to be earned by any person or that may be earned by any person, the method of payment, or any condition or limitation imposed upon the compensation of any person, or the degree of ease or difficulty in performing any said condition imposed.

C. Failing to disclose, clearly and conspicuously, in all advertising offering employment in any way involving door-to-door sales:

(1) that the respondent concerned is recruiting persons for the sole purpose of soliciting or selling;

(2) that such soliciting or selling will be on an "in home" basis;

(3) that the products or services being sold are encyclopedias or services to be used in connection therewith, or in the event that encyclopedias or such related services are not being sold, the products and services being sold; and

(4) the basis for compensating persons so engaged. [5]

D. Failing to clearly and conspicuously advise, both orally and in writing, any prospective salesperson at the initial face-to-face interview, and prior to executing any employment agreement with any such person, the following information:

(1) all those disclosures set forth in Paragraph I C above;

(2) a complete and detailed description of each condition and limitation imposed upon the receipt of any compensation;

(3) where applicable, notification that such person will not be paid for time spent during orientation and training;

(4) a complete and detailed description of any expense or expenses any such person may incur in performing the required duties; and

(5) the percentage of persons holding similar positions engaged by the office offering the position during the twelve (12) months

equivalent, or greater, income than that promised under the terms of any such agreement. [6]

E. Failing to furnish to each applicant at the initial face-to-face interview and prior to executing any employment agreement with any such person, a copy of Paragraphs I, II and V of this order together with a cover letter as set forth in *Appendix A* attached hereto.

F. Making, distributing or using any training tapes, sales manuals, or any other document, method or device which contains any representation or instruction inconsistent with any provision of Paragraph I or Paragraph II of the order.

II

It is ordered, That respondents Grolier, Incorporated, Americana Corporation, Grolier Interstate, Inc., Grolier New Era Corp., Madison Enterprises, Inc., R. H. Hinkley Company, The Grolier Society, Inc., Spencer International Press, Inc., and The Richards Company, Inc., corporations and their successors, assigns, officers, agents, representatives, and employees, directly or indirectly, through any corporation, subsidiary, division or other device, in connection with the publishing, advertising, offering for sale, sale, rental, lease or distribution of any textbook, encyclopedia, reference or educational material, training course or teaching machine, [7] or any other publication, merchandise or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Disseminating or causing to be disseminated, any advertisement or promotional material which solicits participation in any contest, drawing or sweepstakes, or solicits any response to any offer of merchandise, service or information unless any such solicitation clearly and conspicuously discloses the following statement in 10-point boldface type: NOTICE TO CONSUMER - PERSONS WHO REPLY AS REQUESTED MAY BE CONTACTED BY A SALESPERSON FOR THE PURPOSE OF SELLING [insert name of applicable product].

B. Providing any return card, coupon or other device which is used to respond to any advertisement or promotional material covered by Paragraph II A above, unless the following statement clearly and conspicuously appears in 10-point boldface type in immediate proximity to the space provided for a signature or other identification of the responding party: [8] NOTICE TO CONSUMER - PERSONS WHO RETURN THIS [insert name of applicable device] MAY BE CONTACTED BY A SALESPERSON FOR THE PURPOSE OF SELLING [insert name of applicable product].

C. Failing to disclose clearly and conspicuously, at the beginning of any telephone call to any prospective customer, the fact that the individual making the call is either soliciting the sale, rental or lease of publications, merchandise or services for respondents, or is arranging for a sales solicitation to be made, and that if the prospective customer so agrees, the respondent concerned will send a salesperson to visit said prospect for the purpose of soliciting the sale, rental or lease of said publications, merchandise or services.

D. Visiting the home or place of business of any person for the purpose of soliciting the sale, rental or lease of any publications, merchandise or service, unless at the time admission is sought into the home or place of business of such person, a card 3 inches by 5 inches in dimension, with all words in 10-point boldface type, with the [9] following information, and none other, in the indicated order, is presented to such person:

- (1) the name of the corporation;
- (2) the name of the salesperson;
- (3) the term "Encyclopedia Sales Representatives" [or other applicable product];
- (4) the terminology: "The purpose of this representative's call is to solicit the sale of encyclopedias" [or other applicable product].

E. Failing to present the card, required by Paragraph II D, above, to each such person, to direct each such person to read the information contained on such card, and to provide each such person with an adequate opportunity to read the card before engaging any such person in any sales solicitation.

F. Using the words "Mothers Club" or words of similar import and meaning to represent, directly or by implication, the existence of a *bona fide* educational program, club, or business entity which provides educational services or benefits to consumers or using any trade name misrepresenting in any manner the nature or purpose of their business. [10]

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

- (1) Any person calling on any prospective purchaser is:
 - (a) engaged in or connected with "advertising," "marketing," "promotion," "education," or anything other than the sale of encyclopedias or other educational or reference materials;
 - (b) conducting, taking or participating in a survey, opinion poll, interview or any other information gathering activity; or
 - (c) calling on said prospect for the primary purpose of delivering or disseminating any vacation gift certificate, prize, gift, gift certificate,

(2) Only a few minutes will be required to complete the visit inside the prospective purchaser's home or place of business; or misrepresenting, [11] in any manner, the period of time required to complete the sales or other presentation;

(3) any person contacted has been specially selected to receive any offer; or misrepresenting, in any manner, the persons or class of persons to whom said offer is available;

(4) any encyclopedia or other reference material is a new publication, or a publication which has not been previously available to the public unless such is the fact, or misrepresenting, in any manner, the extent of editorial revisions, in any encyclopedia or other reference material;

(5) any offer is limited, must be accepted immediately or within a specified time period, or is a special offer, unless such is a fact; or misrepresenting, in any manner, the nature, scope or duration of any sales offer;

(6) any publication, merchandise or service is being offered free, without cost, as a bonus, reduced in price or otherwise to any prospective purchaser of any of respondents' publications, merchandise or services [12] agreeing to perform any advertising promotional or selling function, including but not limited to, any of the following acts or similar acts:

(a) permitting their names to be listed as local owners of the product or services;

(b) providing the name of any person who may be interested in purchasing any publication, merchandise or service;

(c) writing a letter evaluating the merits of any publication or other item which may be used in advertising;

(d) displaying any publication or other item in a conspicuous location in his home;

(e) keeping any publication or other item current by purchasing an annual yearbook or by purchasing any research service;

(f) completing installment payments for any item in a period of time less than the period of time initially represented; or

(g) paying a membership fee in order to participate in the Consumer Buying Educational Service, or any other program, club, [13] service or entity which provides an opportunity for participants to purchase merchandise at a savings from the retail prices for such merchandise, or paying a fee to participate in any similar program, club, service or entity; or

(h) misrepresenting, in any manner, that any publication, merchandise or service is being offered free, without cost, as a bonus, or reduced in price to any person;

(7) any publication, merchandise or service is being offered free, without cost, or is given as a bonus or otherwise to any purchaser of any of respondents' publications, merchandise or services, pursuant to any agreement to purchase, rent or lease any other publication, merchandise, or service, or combination thereof, from such respondent, unless:

(a) the contract price for the purchase, rental or lease of any such other publication, merchandise, service, or combination thereof, has remained at the said price or above for at least six (6) months within the last [14] twelve (12) months immediately preceding the time at which the representation is made;

(b) no publication, merchandise or service has been offered free, without cost or given as a bonus or otherwise with the sale, rental or lease of any such other publication, merchandise, service or combination thereof, to any person for a period of at least six (6) months within the last twelve (12) months immediately preceding the time at which the representation is made;

(c) no publication, merchandise, service, or combination thereof, of equivalent or greater value, has been eliminated by such respondent from any such other publication, merchandise, service, or combination thereof, with which the free, without cost of bonus publication, merchandise or service is being offered; [15]

Provided, however, any such prices as are restricted by Paragraph II G (7) (a) of this Order may be altered at any time by the respondent concerned to reflect *bona fide* changes in market conditions.

H. Misrepresenting, in any manner, the terms, conditions, method, rate or time of payment actually made available to any person.

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

(a) any person using any research service will receive answers to questions on any subject; or misrepresenting, in any manner, the scope of, or restrictions imposed upon the use of, any such research service;

(b) any answer provided by a research service is the product of detailed, exhaustive or original research generated by the specific question asked by any person utilizing said service unless such is the fact; or misrepresenting, in any manner, the extent of individual attention, research, preparation or quality of any answer furnished by any such research service; [16]

(c) any answer provided by any research service is a suitable or

misrepresenting, in any manner, the benefit or use of any answer provided by any research service;

(d) any research service is being offered at any price or that the research service has a retail value unless such is the fact;

(e) the cost to any respondent of any research service represents a retail value.

J. (1) Failing to disclose, clearly and conspicuously, in writing on all promotional materials describing any research service, and orally during the course of any sales or other presentation relating to said service, each condition or limitation placed upon the use of such research service.

(2) Failing to disclose applicable limitations on the time within which answers will be supplied by any research service in writing on all promotional materials and orally [17] during the course of any sales presentations relating thereto.

K. (1) Representing, directly or by implication, through the use of any oral statement, written quotation, picture or any other means that any publication, merchandise or service has received an endorsement, recommendation, or sponsorship from any educational, religious, or other institution or other entity or from any person, unless the stated endorsement is genuine and authentic in all respects, and discloses the year or edition of the publication to which such endorsements pertain, if a publication is involved.

(2) Using, publishing, or referring to any testimonial or endorsement unless (1) such use, publication, or reference is expressly authorized in writing and unless (2) respondents have good reason to believe that at the time of such use, publication, or reference, the person or organization named subscribes to the facts and opinions therein contained. [18]

(3) Representing, in any manner, that an endorsement or testimonial has been recently executed or is current unless this is the fact.

(4) Misrepresenting, in any manner, that any person is calling on a prospective customer with the endorsement, recommendation, or sponsorship of another person or organization.

L. Failing to disclose:

(1) clearly to the officials of any educational institution being visited, where a purpose of such visit is to obtain the institution's permission to disseminate through the institution promotional material which solicits the sale of any product to the parents of the children enrolled in the educational institution, and which is designed to secure leads for in-home sales presentations, prior to any such dissemination, that the purpose of disseminating such promo-

tional materials is to secure leads for in-home sales presentations [19]

(2) conspicuously on the face of such promotional materials within the scope of L(1) that dissemination of such promotional materials through the educational institution does not constitute an endorsement or a recommendation by the institution or its officials that such materials being promoted should be purchased unless such is the fact.

M. Representing to any person, directly or by implication, either orally or in writing that:

(1) any price is the retail, regular, usual or words of similar import or effect, price for any publication in any binding, merchandise or service, unless the respondent concerned is making a substantial number of its unit sales for each such publication in each such binding, merchandise or service, individually, at or above the represented price;

(2) any price is the retail, regular, usual, or words of similar import or effect, price for any set of publications in any binding and in combination with any other publication, [20] merchandise or service, unless the respondent concerned is making a substantial number of its unit sales for each such set of publications in each such binding individually or in combination at or above the represented price;

(3) savings may be realized by the purchase, rental or lease of any publication, merchandise or service, or any combination thereof, from any of respondents' former prices for its products unless:

(a) such savings claims are based upon retail, regular, or usual prices, or combination prices, arrived at in accordance with Paragraph II M(1) and (2) above;

(b) respondents clearly and conspicuously specify the publication, merchandise or service, or combination thereof, and the price from which the savings are to be realized; and

(c) the publication, merchandise or service is of comparable quality in all material respects with the publication, merchandise or service sold at the higher price; [21]

(4) savings may be realized by the purchase, rental or lease of any publication, merchandise or service, or any combination thereof, from comparable products of competitors unless:

(a) the respondent concerned clearly and conspicuously specifies the publication, merchandise or service, or combination thereof, from which the savings are to be realized;

a substantial number of persons have purchased the item referred to in (a) immediately above;

(c) the item referred to in (a) above is of comparable quality in all material respects to the product being sold; [22]

(d) respondents have in good faith conducted a market survey or obtained a similar representative sample of prices in the trade area where the comparison is made which establishes the validity of said compared price.

N. Misrepresenting in any manner, either orally or in writing:

(1) the amount of savings to be realized by any person who enters into an agreement with any respondent for any publication, merchandise or service; or

(2) that any publication, merchandise or service is being offered free or without charge, or is given to any such person.

O. Failing to comply with any and all provisions of the Commission's Trade Regulation Rule, *Cooling-Off Period For Door-To-Door Sales* (16 C.F.R. 429.1), which are in effect on the date this order becomes effective, and with any modifications or changes in the aforesaid Rule which may be made. A copy of the said Rule shall be made a part of this order for purposes of complying with other provisions hereof. [23]

P. Initiating contact with any purchaser through any means for any reason from the time said purchaser enters into any agreement containing a NOTICE OF CANCELLATION, as required by Paragraph II O of this order, until said buyer's cancellation period has expired.

Q. Failing to maintain a copy of each NOTICE OF CANCELLATION received pursuant to Paragraph II O of this order, and making said documents available for inspection and copying by the Commission's staff upon reasonable notice. Any respondent receiving such NOTICE shall maintain it for a period of three (3) years from date of receipt.

R. Failing to create adequate records, which shall be maintained for a period of three (3) years and made available to the Commission's staff for inspection and copying upon reasonable notice, from which the validity of any savings claims, retail price claims, comparative value claims, or other representations of the type described in Paragraphs II G(7), II M and II N of this order can be determined, and making any pricing claims within the scope of this provision unless there [24] are in existence for at least the six (6) months preceding such claims records from which the validity of such claims can be determined.

S. Failing to attach to any contract for the sale, rental or lease of any publication, merchandise, service or combination thereof a written statement that clearly and conspicuously discloses, and only

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discloses, the following information in the indicated order and manner:

- (1) in 12-point boldface type size the terminology:

PRICE LIST

THE FOLLOWING PRICES ARE THE *ONLY* AUTHORIZED PRICES AT WHICH THE LISTED ITEMS MAY BE OFFERED. ANY PRICE NOT LISTED BELOW IS UNAUTHORIZED AND FALSE.

- (2) a list of all publications, merchandise, services or combination thereof currently offered for sale, rental or lease, and in immediate conjunction thereto each price at which any respondent is authorized to offer said product or service pursuant to Paragraph II M of this order. [25]

- (3) in 12-point boldface type the terminology, when applicable:

FREE ITEMS

ONLY THE FOLLOWING PRODUCTS AND SERVICES MAY BE OFFERED FREE. YOU ARE PAYING FOR ANY ITEMS RECEIVED AND NOT LISTED BELOW.

- (4) a list of all publications, merchandise or services currently offered as free, without cost, or as a bonus pursuant to Paragraph II G(7) of this order.

T. Failing to orally instruct any person at the time said person signs any contract for sale, rental or lease, of any publication, merchandise, service or combination thereof, pursuant to an oral sales presentation, that a "Price List" is attached to said person's contract.

III

It is further ordered. That respondents Grolier, Incorporated, American Peoples Press, Inc., Americana Interstate Corp., Career Institute, Inc., Grolier Enterprises, Inc., and Grolier Reading Programs, Inc., corporations, and their successors or assigns, their officers, agents, representatives and employees, directly or indirectly, through any corporation, [26] subsidiary or division, or other device, in connection with the advertising, offering for sale, sale or distribution of any textbook, encyclopedia, reference or educational material, training course or teaching machine, or any other publication, merchandise or service through the use of any program, plan, method or device, that provides or purports to provide for the

basis, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

(1) any person has the option to receive each publication, merchandise or service, separately and individually, and to accept or reject same, unless such person is allowed in all instances to receive and to purchase or reject each such publication, merchandise or service separately and individually;

(2) any person will not receive any further publication, merchandise or service after the respondent concerned has received a timely notification of the person's cancellation of any such program, plan or method of sale [27] or distribution, unless such is the fact; or misrepresenting, in any manner, any consequence resulting from any person's cancellation of his participation in any such program, plan, or method of sale or distribution; and

(3) any person incurs no risk or obligation by joining or participating in any such program, plan, or method of sale or distribution; or misrepresenting, in any manner, any condition, right, duty or obligation imposed on any person.

B. Disseminating, or causing the dissemination of, any advertisement which fails to disclose in a clear and conspicuous manner:

(1) a description of the conditions and terms of any such program, plan, or method of sale or distribution, and the duties, risks and obligations of any subscriber thereto; and

(2) a description of each publication, merchandise or service to be offered for sale, the billing charge to be made therefor, the anticipated total number of publications, merchandise or [28] services included in any such program, plan or method of sale or distribution, the number of publications, merchandise or services that will be included in each shipment of such items, and the number of and the intervals between each such shipment.

C. Failing to disclose, clearly and conspicuously, on any return coupon, order form or any other document used for responding to any such program, plan, or method of sale or distribution, the following information:

(1) the anticipated total number of publications, merchandise or services included in any such program, plan, or method of sale or distribution;

(2) the number of publications, merchandise or services that will be included in each shipment of such items; and

(3) the number of and the intervals between each such shipment.

D. Failing to disclose, clearly and conspicuously, in immediate

conjunction with any publication, merchandise, service or notice thereof sent to any subscriber [29] the anticipated date on which the respondent from whom the subscriber obtained any of such items will initiate processing of the next shipment of any such item.

E. Failing to provide to any person in conjunction with each notice of any shipment of any publication, merchandise or service, a clear and conspicuous means by which said person may exercise his option or right to cancel said shipment, if such is his right.

IV

It is further ordered. That respondents Grolier, Incorporated, American Peoples Press, Inc., Americana Corporation, Americana Interstate Corp., Federated Credit Corp., Career Institute, Inc., Grolier Interstate, Inc., Grolier New Era Corp., Madison Enterprises, Inc., R. H. Hinkley Company, Spencer International Press, Inc., The Grolier Society, Inc., and The Richards Company, corporations, and their successors, assigns, officers, agents, representatives and employees, directly or indirectly, through any corporation, subsidiary, division or other device, in connection with the collection or attempted collection of any debt allegedly due and owing pursuant to any contract or other agreement relating to the purchase or other receipt of any textbook, encyclopedia, [30] reference or educational material, training course or teaching machine, or any other publication, merchandise or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

(1) any company, corporation, or entity engaged in collection of monies allegedly due or owing to such concerns or any other company, corporation or entity has separate *bona fide* departments or divisions for legal matters, unless such are the facts; or misrepresenting, in any manner, the existence, or functions of any division or department of any company, corporation or entity;

(2) the Code of Federal Regulations, or any other federal regulation or statute, provides that any employee of the Federal Government who has any outstanding debt due or owing may be subject to dismissal from the federal service for failure to pay said debt unless the respondent concerned can demonstrate that sufficient facts exist with regard to the [31] employee to whom the representation was made which establish the propriety of such claim;

publication, merchandise or service and who fails to pay or becomes delinquent in paying for any such item will be subject to prosecution for mail fraud under federal law unless the respondent concerned can demonstrate that sufficient facts exist, with regard to person to whom the representation was made, which establish the propriety of such claim; or misrepresenting, in any manner, the rights, duties or obligations of any person arising from any federal, state, or local statute, ordinance, or regulation;

(4) any respondent utilizes the services of credit reporting companies or other entities for persons who disseminate credit information in a manner which will adversely affect the public or general credit rating of any person who has become delinquent in paying any debt unless the respondent concerned can demonstrate [32] that sufficient facts exist, with regard to the person to whom the representation was made, which establish the propriety of such claim, or misrepresenting, in any manner, that any person's public or general credit rating will be adversely affected;

(5) any letter, notice or other communication which has been prepared, originated or composed by any respondent has been prepared, originated or composed by any other person, firm or corporation;

(6) suit will be instituted to recover any delinquent debt, or that any delinquent debt will be transferred to any attorney with instructions to institute suit, or that any other legal step to collect any outstanding debt will be taken, unless a definite date is set forth for such action and such are the facts; or misrepresenting, in any manner, respondents' relationship with, or instructions to, any attorney, or the course of action that will be taken by any attorney or misrepresenting in any manner that any account has been transferred to any [33] person or entity for collection unless those are the facts.

B. Using any correspondence forms or any written materials which appear to depict official legal process.

V

For the purpose of the following provisions of this order, the term "respondents" shall apply to each of the respondents named in Paragraph I and II of the order.

It is further ordered, That respondents:

A. Deliver by registered mail, a copy of this decision and order to each of their salesmen, agents, solicitors, or other persons engaged by respondents for the promotion, sale or distribution of any of the publications, merchandise or services included in this order, and to

any person engaged by respondents to perform such duties in the future at the time such person is so engaged;

B. Obtain from each person described in Paragraph V A, a signed statement setting forth their intention to conform their business practices to the requirements of this order; retain said statement during the period of three (3) years thereafter; and make said statement available to the Commission's staff for inspection and copying upon reasonable notice; [34]

C. Advise each such present and future salesman, agent, solicitor, or other person engaged by respondents for the promotion, sale or distribution of any of the publications, merchandise or services included in this order that respondents will terminate the engagement or services of any such person, unless such person agrees to and does furnish to respondents a statement required by Paragraph V B, above; and

D. If any such person will not agree to file a statement with respondents as required by Paragraph V B above, and be bound by the provisions of this order, the respondents shall immediately terminate the services of such person.

E. Furnish the Commission on a quarterly basis with a list, including business addresses, of those independent or outside distributors who have purchased or otherwise obtained for resale any of the publications, merchandise or services included in this order.

VI

It is further ordered, That the respondent shall forthwith distribute a copy of this order to each of their operating divisions. [35]

VII

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

VIII

It is further ordered, That respondents shall, within sixty (60) days

report in writing setting forth in detail, the manner and form in which they have complied with this order.

APPENDIX A

NOTICE

Attached hereto are the *pertinent provisions* of a cease and desist order entered against Grolier, Incorporated and certain of its subsidiaries, including Grolier Interstate, Inc. by the Federal Trade Commission, an agency of the Federal Government. Violation of any provision of this order can result in severe monetary penalties to Grolier, Incorporated and Grolier Interstate, Inc. If you are employed by Grolier, Incorporated or any of its subsidiaries, you will be *required* to observe the provisions of this order. Violation of any provision of this order by an employee constitutes a violation of a federal law.

You should carefully read this order before agreeing to any employment arranged with Grolier, Incorporated or any of its subsidiary companies.

(*President*)

Grolier, Incorporated

Interlocutory Order

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IN THE MATTER OF

FORD MOTOR COMPANY, ET AL.

Docket 9073. Interlocutory Order, Mar. 16, 1978

Denial of a respondent's application for interlocutory review of ALJ's denial to stay the proceedings and to consider other motions.

ORDER DENYING APPLICATION FOR REVIEW

On March 15, 1978, respondent Francis Ford, Inc., filed a document styled "Emergency Petition for Review to the Federal Trade Commission" which we will treat as an application for interlocutory review of the ALJ's ruling on March 13, 1978, denying respondent's motion to stay the proceedings and to consider other motions.¹ The ALJ also denied a request to certify his order to the Commission under Section 3.23(b) of the Commission's Rules of Practice, 16 C.F.R. 3.23(b).

Section 3.23(a) of the Commission's Rules of Practice specifies the limited situations in which an interlocutory appeal from a ruling of the ALJ will be entertained in the absence of certification by the ALJ under Section 3.23(b).² Respondent has advanced no basis on which an appeal will lie under one of the enumerated subsections.

Even if the order were subject to interlocutory review under Section 3.23, it would be reversible only if there had been a clear abuse of discretion by the ALJ. *Kellogg Co., et al.*, 83 F.T.C. 1956 (1974) and 86 F.T.C. 650 (1975). Insofar as the respondent seeks a delay of the proceedings, the Commission has repeatedly ruled that matters of scheduling are within the sound discretion of the law judge. See, e.g., *Maremont Corp.*, 77 F.T.C. 1654 (1970); *American Home Products*, Dkt. 8918, Order of August 18, 1977 Denying Application

¹ Respondent submitted the following motions to the ALJ:

Motion for Emergency Determination on Motion to Withdraw Matter from Adjudication for the Purpose of Considering Such Respondent's Proposed Consent Agreement and on its Motion in Opposition to Withdrawal of Ford Motor Company and Ford Motor Credit Company from this proceeding or in the Alternative to Join Such Respondents as Third Party Respondents;

Motion to Withdraw the Matter from Adjudication for the Purpose of Considering Respondent's Proposed Consent Agreement, for Certification of Settlement Proposal, and for a Stay of the Proceedings;

Motion in Opposition to Withdrawal of Ford Motor Company and Ford Motor Credit Company from Proceeding or in the Alternative to Join Such Respondents as Third Party Respondents.

² Section 3.23(a) of the Commission's Rules of Practice provides that

"The Commission may, in its discretion, entertain interlocutory appeals where a ruling of the Administrative Law Judge: (1) requires the disclosure of the Commission records or the appearance of an official or employee of the Commission pursuant to §3.26; (2) requires the appearance of other government officials pursuant to §3.37; (3) suspends an attorney from participation in a particular proceeding pursuant to §3.42(d); or (4) grants or denies an application for intervention pursuant to the provisions of §3.14."