

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders

IN THE MATTER OF

ENCYCLOPAEDIA BRITANNICA, INC., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 8908. Final Order, March 9, 1976—Modifying Order, July 5, 1988

This order reopens the proceeding and modifies the Preambles to Paragraphs I through IV, Paragraph II.C (Telephone Talk), and Paragraph II.L (No-Contact Period) of the Commission's final order issued on March 9, 1976 [87 FTC 421]. The Commission concludes that the modifying order is in the public interest. The modification of the Preambles clarifies that the Commission's final order applies only to subsidiaries and employees of Encyclopaedia Britannica, Inc. engaged in selling or being recruited to sell via in-home, over-the-counter, direct mail, or telephone solicitations. The modification of Paragraph II.C requires respondents to disclose the sales purpose of a call or an appointment within 30 seconds of beginning a sales call or a call to make a sales appointment. The modification of Paragraph II.L allows respondents to contact purchasers to correct inadvertent errors on sales forms, or to obtain necessary information that respondent inadvertently failed to obtain during a sales presentation.

ORDER REOPENING THE PROCEEDING AND MODIFYING CEASE AND DESIST ORDER

On September 22, 1987, Encyclopaedia Britannica, Inc. ("EB") filed with the Commission a request that the above-referenced proceeding be reopened and that the order issued therein on March 9, 1976, either

- (1) be set aside in its entirety; or
- (2) be modified by setting a date certain when the order would expire and in the interim modifying specific provisions; or
- (3) be modified by altering specific order provisions. The specific modifications requested were alterations to Parts I.B., II.C, II.H., IV., and the Preambles I- IV, and deletion of Parts I.D., I.E., II.L., and V. [2]

This petition replaced an earlier petition filed on April 2, 1987, that was subsequently withdrawn.

The petition contends that changed conditions of fact and law and the public interest require that the proceeding be reopened and the order be set aside or modified as respondent requests. One comment was received from placement of the petition on the public record.

On December 11, 1987, EB asserted that its petition had requested sunseting of the order in its entirety, or, in the alternative, sunseting of all the affirmative fencing-in provisions of the order. We disagree with EB. The petition sets forth the relief requested in its first page, and does not request sunseting all of the affirmative fencing-in provisions. If EB had wished to request such action, it could have clearly done so in its subsequent refiling of January 22, 1988 so that the request would have clearly been presented to the public for comment. EB failed to do so. Even if the petition did request such relief, we would deny it for the reasons we here deny a sunseting of the entire order.

On December 29, 1987, EB submitted alternative language for the requested specific modifications and stated that it would accept whatever modifications the Commission would agree to.

On January 19, 1988, another comment regarding EB was received.

On January 22, 1988, EB withdrew its petition, and simultaneously refiled its petition with the addition of two [3] affidavits, one from the president and one from the general counsel of EB. These affidavits provided clarification and additional evidence of some of the assertions EB made in its petition.

HISTORY OF THE ORDER AGAINST EB

The complaint against EB and Britannica Home Library Services, Inc., ("BHLS") was issued by the Commission on December 11, 1972. It alleged that EB and BHLS had made certain false and misleading representations to induce consumers to purchase encyclopedias and accessories, to induce job recruits to accept sales positions, and to collect debts.

After several years of litigation, the Commission issued an order on March 9, 1976, which became effective on March 17, 1980, after the company exhausted its appeals. Since its effective date, the order has twice been modified at EB's request, first on October 28, 1980, and again on October 5, 1982.

DESCRIPTION OF EB

EB publishes encyclopedias and continuity book plans. and markets

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them through in-home sales talks, telephone solicitations, and over-the-counter sales. EB publishes and markets both the Encyclopaedia Britannica and the Compton's Encyclopedia brands of encyclopedias. BHLS publishes and markets the annual supplements to encyclopedias published by EB. [4]

DESCRIPTION OF THE ORDER

The order comprises nine parts. Part I prohibits certain misrepresentations during employee recruitment and requires that certain information be supplied to prospective recruits. Part II prohibits certain misrepresentations during marketing of merchandise or services and requires that certain information be supplied to prospective buyers. Part III prohibits creation of any training devices or sales aids which are inconsistent with Parts I or II of the order. Part IV prohibits certain misrepresentations in the marketing of continuity book programs and requires that certain information be supplied to prospective buyers. Part V prohibits certain misrepresentations during attempts to collect debts. Part VI requires measures to ensure compliance to the order by all respondents and their agents. Parts VII through IX are standard provisions requiring distribution of the order, notification to the Commission of any change in the corporate respondents, and filing of a compliance report with the Commission.

SUMMARY OF EB'S ARGUMENTS FOR REOPENING AND
VACATING OR SUNSETTING THE ORDER

In a request to reopen based on changed conditions or on public interest considerations, the burden is on the respondent to make the requisite satisfactory showing. Both the language of Section 5(b) and its legislative history make it clear that the petitioner has the burden of showing, other than by conclusory [5] statements, why an order should be modified. The Commission may properly decline to reopen an order if a request is "merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order." S. Rep. No. 96-500, 96th Cong., 1st Sess. 9-10 (1979). The Commission is not required to reopen the order if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. In the present case, the petitioner has not met its burden to show that the order should be vacated or set to expire, and the Commission now declines to reopen the order to consider granting such relief.

Respondent alleges that three changed conditions of fact require the reopening and setting aside or modification: (1) the ownership and control of EB had been transferred to a private, noncommercial foundation, with profits from its operation going to the University of Chicago; (2) EB has instituted policies and procedures rendering the order unnecessary; and (3) EB has ceased the practices which caused the Commission to issue the complaint.

None of these allegations set forth changed conditions of fact that support reopening this matter. The Commission has previously considered and rejected in the context of EB's 1982 petition the argument that its transfer of ownership to the University of Chicago constitutes a change in fact. The implementation of internal policies to ensure adherence to an [6] order, and the alleged cessation of the practices giving rise to an order, are not the type of conduct to be rewarded by termination of an order, but are the minimum we require of a respondent for it to avoid civil penalties for violating the order.

Respondent further alleges that two changed conditions of law require the reopening and setting aside or modification: (1) consumer protection statutes and regulations now render the order unnecessary; and (2) EB's situation is similar to that of various respondents whose orders (in decisions cited) were sunsetted or modified.

EB misconstrues the requirements for reopening an order based upon changed conditions of law. The Commission has consistently declined to reopen proceedings based upon changed conditions of law absent a specific showing that the order prohibits activity that subsequently has been found or made lawful. The petition makes no such showing, and therefore fails to state sufficient cause on this ground.

EB has cited several cases as precedent for reopening and sunseting or vacating orders on public interest grounds. These cases establish that the petitioner must demonstrate either that an order places it at a competitive disadvantage in the marketplace or that an order is no longer necessary because of changes in the marketplace. EB has shown neither.

EB has similarly not made a sufficient showing to support [7] reopening the order to sunset the affirmative disclosure requirements on public interest grounds.

EB'S REQUESTS FOR MODIFICATIONS TO SPECIFIC PROVISIONS

Respondent's petition alternatively alleges that several specific

modifications to the order should be made. On December 29, 1987, EB stated that it would accept certain alternative modifications to those proposed in the petition. On January 22, 1988, EB provided additional evidence and clarification of its arguments for specific modifications. On June 9, 1988, EB stated that it would accept a proviso limiting Para. II.L. of the order in lieu of the deletion of that paragraph as EB had originally requested.

The Commission concludes that it is in the public interest to reopen the order and grant some of the modifications sought by the petitioners, but to deny other modifications requested.

Para. II.C.—Telephone Talks

Para. II.C. requires EB to disclose the sales purpose of a telephone call before beginning any "sales presentation." The respondent complains that it has expended considerable legal resources in defining what constitutes a "sales presentation." As respondent devises new telephone talks in the future, it is likely that this issue will continue to arise.

To prevent this, EB proposed in its petition that Para. II.C. be modified to require that in any telephone sales call, EB [8] disclose the sales purpose within thirty seconds of the beginning of the call, and that in any call to set a sales appointment, EB disclose the sales purpose of the appointment before setting the date and time of the appointment. However, EB fails to show that it is in the public interest to reopen the order and grant a proposed modification that would, in effect, lessen consumer protection.

In its letter of December 29, 1987, EB indicated that it would accept a more limited modification of Para. II.C., which would require that EB disclose the sales purpose of a call or an appointment within thirty seconds of beginning a sales call or a call to make a sales appointment. This modification would not lessen consumer protection, and would effectively eliminate any conceivable ambiguity by establishing a bright line standard to measure future compliance.

Because of these advantages, we conclude that it is in the public interest to modify Para. II.C. of the order in accordance with the proposal in the letter of December 29, 1987.

Para. II.L. No-Contact Period

Para. II.L. forbids EB from contacting purchasers during the "cooling off" period when purchasers may cancel their contracts. One

effect of this paragraph is to prevent EB from correcting certain inadvertent errors during this period.

In its petition, EB alleges that Para. II.L. should be deleted in the public interest to allow EB to contact consumers [9] before the cooling-off period has expired so that EB may expedite corrections in the interests of consumers. EB has stated that this paragraph sometimes prevents it from contacting consumers to correct errors, such as when salespersons calculate incorrectly the date until which a consumer may cancel his or her order under the Commission's *Trade Regulation Rule, Cooling-Off Period for Door-to-Door Sales* (16 CFR 429.1). Such a calculation, if uncorrected, could mistakenly deprive a consumer of his or her rights. Therefore, there would be some benefit to the public if EB were allowed to contact persons to correct inadvertent mistakes or oversights. However, EB has not shown that it would be in the public interest to delete Para. II.L. and allow EB to have unrestricted access to contact purchasers. EB has not shown that allowing such unrestricted access would benefit the public, or that allowing such access would relieve a burden from EB without potentially harming consumers' interests. On the other hand, we find that it would be in the public interest to modify the order to include the proviso to Para. II.L. agreed to by EB in its June 9, 1988 letter. That proviso allows EB to contact purchasers to correct inadvertent errors on sales forms, or to obtain necessary information that EB inadvertently failed to obtain during a sales presentation. [10]

Preambles

The Preambles to paragraphs I through IV define the scope of coverage of the order. In its petition, EB alleges that changes in fact require that the Preambles to paragraphs I through IV be modified so that the order covers EB subsidiaries only when they are engaged in certain selling practices and only when they are marketing merchandise or services related to encyclopedias, textbooks, reference materials, or educational materials. EB alleges that, because it has diversified its business, this modification is necessary to prevent the order from requiring EB to demand "false statements" from employees, *i.e.*, statements from employees that they will comply with the order when in fact the order does not apply to them. However, the present order merely requires an agreement that the employee will comply with the order, and assumes that they are engaged in practices covered by the order. Obviously if the employee is not engaged in

practices covered by the order, no obligation arises. EB has not made a showing sufficient to reopen the order for this proposed modification, because no requirement exists that employees file "false statements."

In its letter of December 29, 1987, EB indicated that it would accept a more limited modification of the Preambles. This modification would clarify that the order applies only to subsidiaries and employees of EB engaged in selling or being recruited to sell via in-home, over-the-counter, direct mail, or telephone solicitations. Such has been the interpretation FTC [11] staff has worked under, and the more limited modification is therefore a clarification of the coverage of this order.

This proposed modification, which merely states the Commission's interpretation of the order more clearly than does the present language, should be made for purposes of clarification, and we so modify the order. Consistent with this modification and with our interpretation of the scope of the order, we interpret the phrase "successors and assigns, officers, agents, representatives and employees" in the preambles to Paras. I.-IV. as "excluding independent retailers who derive the majority of their income from products or services not covered by the order, and who sell in-store." We also interpret the phrase "any of the publications, merchandise or services included in this order" in Para. VI.A. of the order as referring only to "any textbook, encyclopedia, reference or educational product or any publication, merchandise or service related thereto." And finally, we interpret the phrase "any person" in Para. VI.A. to exclude independent retailers who derive the majority of their income from products or services not covered by the order, and who sell in-store. We note that the exclusion of retailers is meant only to allow bona fide independent retailers to sell publications or merchandise covered by the order without being required to have their employees or assigns agree to the terms of the order, and without risking liability for infractions of the order. We note, however, that EB and BHLS are still liable under this order for violations of the order incurred "through any [12] . . . device," including those incurred by independent retailers and their successors and assigns, officers, agents, representatives and employees, directly and indirectly.

Paras. I.B., I.D., I.E.

Para. I.B. prohibits EB from making misrepresentations regarding certain factors that would affect a recruit's income. Paras. I.D. and

I.E. require certain disclosures be made to prospective sales representatives.

In its petition, EB alleges that Para. I.B. should be modified, and Paras. I.D. and I.E. deleted, to allow EB more flexibility in presenting prospective sales recruits with disclosures regarding employment. EB alleges that this modification would serve the public interest by eliminating needless burdens upon EB.

EB has not demonstrated that any burdens presented by the language it seeks to modify in Para. I are so great as to outweigh benefits conferred by the language. If the order were modified as proposed, EB would not be required to make the disclosures which are presently required. These disclosures are necessary to inform prospective sales representatives of EB's unusual compensation methods, which in many ways treat the sales representatives as independent contractors rather than employees, and which require sales representatives to bear many costs and risks normally borne by an employer rather than by a salesperson. [13]

Para. II.H. Instant Research Service

Para. II.H. requires EB to disclose conditions and limitations on the use of its research services in writing in promotional materials and orally during sales presentations.

In its petition, EB alleged that Para. II.H. should be modified in the public interest to require respondents to disclose orally only that conditions and limitations upon its Instant Research Service exist. The petition also proposes to confine written disclosures to a single document that would be given to consumers during oral sales presentations, but would not necessarily be left with consumers. EB argues that this change would eliminate the present burden upon EB sales representatives to recite certain disclosures regarding EB's Instant Research Service to prospective purchasers when those same disclosures are given in writing to prospective purchasers. However, EB fails to show that it is in the public interest to reopen and modify the order as proposed.

In its letter of December 29, 1987, EB indicated that it would accept a modification of Para. II.H. that would require all advertising describing the features of a research service to disclose that conditions and limitations exist, and would require that these conditions and limitations be fully described in a written document to be left with purchasers during oral sales presentations. This modification would

still lessen consumer protection, though less so than the modification proposed in the [14] petition, because EB would no longer have to orally disclose the features of a research service to consumers. Such oral disclosure is more likely to ensure effective understanding by consumers than is a written disclosure, which may or may not be read by consumers. Therefore, it is not in the public interest to modify Para. II.H.

Para. IV. Continuity Book Sales

Para. IV.C. requires respondents EB and BHLS to make detailed disclosures about EB's continuity book plans on the return coupons, order forms, or any other documents used for responding to those plans.

EB alleges that Para. IV.C. should be modified to require on order forms only directions on where to find accompanying detailed disclosures of the terms and conditions for continuity book programs, not the detailed disclosures themselves. EB alleges that it is presently at a competitive disadvantage in the marketplace, and that the proposed modification to Para. IV.C. would eliminate this disadvantage. EB further alleges that the proposed modification is consistent with the decisions in *G.R.I. Corp.*, 103 FTC 442 (1984) and *Golden Tabs Pharmaceutical Co.*, 101 FTC 410 (1983). Those decisions involved orders that originally required the companies to disclose all the terms and conditions to a "free" offer every time the offer was repeated within an advertisement and its attached coupon. [15]

The Commission finds that EB has not established that the present order places EB at a substantial competitive disadvantage requiring modification of the order. Furthermore, the proposed modification would lessen consumer protection by lowering the likelihood that consumers will be fully informed about the terms of sale for EB's continuity book programs. In *G.R.I. Corp.* and *Golden Tabs*, the orders contemplated that full disclosure should always be made on or near a coupon. Both orders required that disclosure be made "in close proximity to the coupon," effectively requiring that a coupon either include complete disclosure itself or be a part of a document which includes the complete disclosure. EB's proposed modification, in contrast, would require only that complete disclosure be made in an "accompanying letter or advertisement." This language would allow EB to make its disclosures on a separate document from the coupon, which consumers may lose or not locate easily. Because EB's proposed

modification to Para. IV.C. would lessen the likelihood that consumers will make fully informed decisions, it would not be in the public interest to modify the order as requested.

EB alleges that Para. IV.B.2. should be modified: (1) to clarify that EB may offer open-ended continuity book programs where the eventual number of volumes in a program is undetermined and (2) to clarify that the order requires only a disclosure that the eventual number of volumes is undetermined, and that the Para. IV preamble should be modified in accordance with EB's [16] contention that Para. IV was never intended to cover annual supplements.

EB has not made a sufficient showing to reopen the order for either modification. Para. IV has never been interpreted to make it impracticable for EB to offer open-ended continuity programs, and we decline to so interpret it today. If EB does not know the total number of volumes that will comprise a program, it may so state in its promotional material for that program, and in so doing it will be within the present order. Since the present order does not prevent EB from offering open-ended continuity programs, it is unnecessary to modify the order for the purpose of allowing EB to offer open-ended continuity programs.

We also decline to accept EB's contention that Para. IV was never intended to include annual supplements. EB has not offered any proof of its contention, but has merely pointed out that annual supplements are not mentioned in the documents recording the decisionmaking process leading to the order. However, the language of the preamble unmistakably applies Para. IV to annual supplements. Absent evidence that the Commission intended something other than the plain meaning of this provision, we decline to reopen the order to modify Para. IV.

Para. V. Debt Collection

EB alleges that deletion of Para. V is required by a change of law. It alleges that Para. V is rendered unnecessary by the Fair Debt Collection Practices Act. The order, however, covers [17] EB's collection activities related to its own debts. These activities are not covered by the Fair Debt Collection Practices Act, which primarily covers activities by third party debt collectors.

EB has not demonstrated that the requirements of Para. V are a significant burden upon it, nor has it demonstrated that these practices should not be covered by the order. Therefore, EB has not

made a showing sufficient to warrant reopening the order for consideration of this proposed modification.

It is therefore ordered, That the Preambles to Paras. I through IV and Paras. II.C. and II.L. of the order be reopened and modified so that the order will read as follows:

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 granted the appeals in part:

It is ordered, That pages 1-117 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, with the following exceptions: those portions of pages 103-110 ("The Remedy") which are inconsistent with the opinion of the Commission herein.

Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying Opinion. [18]

I. *It is ordered*, That respondent Encyclopaedia Britannica, Inc., and its successors and assigns, officers, agents, representatives and employees, directly or indirectly, through any corporation, subsidiary, division, or other device, engaged in direct selling to consumers, by means of in-home, over-the-counter, direct mail or telephone sales solicitations, in connection with the recruitment of persons to sell, rent, lease or distribute any textbook, encyclopedia, reference or educational product, or any other publication, merchandise or service, in commerce, 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) Respondent is offering positions in such fields as advertising analysis, public relations, marketing, interviewing, or in any field other than door-to-door 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, or other nonselling functions; or misrepresenting, in any manner, the purposes for which any person is engaged.

B. Misrepresenting, in any manner, the amount of income to be earned by any person or that may be earned by any person, the expenses [19] that may be incurred by any person, the method of payment, or any condition or limitation imposed upon the compensation of any person.

C. Failing clearly and conspicuously to disclose in all advertising offering

employment in any way involving door-to-door sales that respondent is recruiting persons for the sole purpose of soliciting or selling.

D. Failing clearly and conspicuously to provide, both orally and in writing, to any prospective sales employee at the initial face-to-face interview, and prior to executing any employment agreement with any such persons, the following information:

(1) (a) that respondent is recruiting persons for the sole purpose of soliciting or selling;

(b) 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

(c) the basis for compensating persons so engaged;

(2) that conditions or limitations upon the receipt of compensation, if any, do in fact exist, together with an example of such a material condition or limitation, and that all such conditions and limitations will be stated in detail in an interview in the event an offer of employment is made to such person;

(3) where applicable, notification that such person will not be paid for time spent during orientation and training;

(4) that expenses will be incurred by such person in performing required duties, together with an example of such material expense, and that all such expense items will be stated in detail in an interview in the [20] event an offer of employment is made to such person;

(5) (DELETED)

(6) that such soliciting or selling will be on an "in-home" basis, if such is the fact, or will include soliciting or selling on an "in-home" basis, if such is the fact.

E. Failing clearly and conspicuously to provide, both orally and in writing, to any prospective sales employee at an interview at which an offer of employment is made and prior to executing any employment agreement with any such person, the following information:

(1) A complete and detailed description of each condition and limitation imposed upon the receipt of any compensation;

(2) a complete and detailed description of any expense or expenses any such person may incur in performing the required duties;

(3) (a) the total number of sales employees employed by the office offering the position during the most recent calendar quarter, and

(b) the number of sales employees employed by the office who, during the prior calendar quarter, received net earnings equivalent to or greater than the amount represented in the advertisement to which the prospective employee is responding; provided, however, that if the office has been in existence for less than three months or has fewer than five sales employees, respondents shall provide the information described above pertaining to the division in which the office is located; provided further that such information need not be furnished if the prospective sales employee contacts respondents more than ten days following the dissemination of the most recent advertisement that contains representations of earnings.

Respondent shall afford any prospective sales employee an adequate opportunity to review and consider the above information prior to [21] requesting execution of any employment agreement.

F. Failing to furnish to persons at an interview when an offer of employment is

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made, and prior to executing any employment agreement with any such person, a copy of Paragraphs I, II, III, and VI of this order, together with a cover letter as set for in *Appendix A* attached hereto. Respondent shall afford any prospective sales employee an adequate opportunity to review and consider these provisions of the order prior to requesting execution of any employment agreement.

II. *It is further ordered*, That respondent Encyclopaedia Britannica, Inc., and its successors and assigns, officers, agents, representatives and employees, directly or indirectly, through any corporation, subsidiary, division or other device, engaged in direct selling to consumers, by means of in-home, over-the-counter, direct mail or telephone sales solicitations, in connection with the publishing, advertising, offering for sale, sale, rental, lease or distribution of any textbook, encyclopedia, reference or educational product, or any other publication, merchandise or service, in commerce, 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, in any advertisement or promotional material that solicits participation in any contest, drawing, or sweepstakes, or solicits any response to any offer of merchandise, service, or information, and that employs any return card, coupon, or other device to respond to such solicitation, that a person who replies as requested will not be contacted directly by a salesperson for the purpose of selling respondents' products, unless such is the fact. Such advertisements or promotional material shall comply with this Paragraph only if they meet the criteria set forth in *Appendix B*. [22]

B. Failing, upon the written request of the Associate Director for Enforcement or his designee, to (1) submit any advertisement or promotional material or (2) test any such advertisement or promotional material, using the procedure set forth in *Appendix B*, to determine whether it complies with Paragraph II.A.

C. Failing to disclose, clearly and conspicuously, during the first 30 seconds of any telephone contact with prospective customers, 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, respondents 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 or business of such person, a business card of at least 2 inches by 3-1/2 inches containing only the following information is presented to such person:

- (1) the name of the corporation;
- (2) the name of the salesperson;
- (3) the term "sales representative";
- (4) an address and telephone number at which the corporation or sales person may be contacted;
- (5) the product or the corporation logo or identifying mark.

E. Failing to give the card, required by Paragraph II(D) above, to each person and to provide each such person with an adequate opportunity to read the card before engaging any such person in any sales solicitation. [23]

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

(1) Any person telephoning or visiting the home of any prospective purchaser is:

(a) engaged in or connected with "advertising," "marketing," "promotion," "education" or anything other than the door-to-door sale of encyclopedias or other reference materials,

(b) conducting, taking or participating in a survey, advertising research analysis or any other information gathering activity, or

(c) telephoning or visiting the home of said prospect for the primary purpose of delivering or disseminating prizes, gifts, gift certificates, chances in any contest, drawing, sweepstakes, educational fund, or any other merchandise or item of 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, in any manner, the period of time required to complete the sales or other presentation;

(3) an offer is limited, must be accepted immediately or within any specified time period, or is a special offer, unless such is a fact; or misrepresenting, in any manner, the duration of any sales offer;

(4) any publication, merchandise or service is being offered free, without cost, or is given as a bonus or otherwise to any prospective purchaser of respondent's publications, merchandise or services agreeing to perform any advertising, promotional or selling function, including but not limited to, any of the following acts or similar acts:

(a) permit their names to be listed as local owners of the product or service;

(b) provide the name of any person who may be interested in purchasing any publication, merchandise or service; [24]

(c) write a letter evaluating the merits of any publication or other item which may be used in advertising; or

(5) any publication, merchandise, or service is being offered free, without cost, or is given as a bonus or otherwise to any purchaser of respondents' publications, merchandise, or services, pursuant to any agreement to purchase, rent, or lease any other publication, merchandise, service, or combination thereof from respondent, unless respondent complies with all of the terms of the Federal Trade Commission's "Guide Concerning Use of the Word 'Free' and Similar Representations," 16 CFR Part 251, which is hereby incorporated into this order, and with any modifications or changes that are made to this Guide. All of the provisions of the aforesaid Guide shall be construed as mandatory and binding upon the respondents.

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

(1) Any person using any research service will receive answers to questions regarding all subjects other than legal or medical advice; or misrepresenting, in any manner, the research service that will be furnished to subscribers;

(2) any answer provided by any 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 research, preparation or quality of any answer furnished by any such research service.

H. 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

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other presentation relating to said service, each condition or limitation placed upon the use of such research service. [25]

I. 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 such price is an actual, bona fide price for which each such publication has been openly and actively offered for sale in the recent and regular course of business for a reasonably substantial period of time.

(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, merchandise or service, unless such price is an actual, bona fide price for which each such publication has been openly and actively offered for sale in the recent and regular course of business for a reasonably substantial period of time.

(3) savings may be realized by the purchase, rental or lease of any publication, merchandise or service, or any combination thereof, from respondent's 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(1) and (2) above;

(b) respondent clearly and conspicuously specifies 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;

(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: [26]

(a) respondent 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.

J. 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 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.

K. Failing to comply with any and all provisions of the Commission's *Trade Regulation Rule, Cooling-Off Period for Door-to-Door Sales*, (16 CFR 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 from time to time. A copy of the said Rule shall be made a part of this order for purposes of complying with other provisions hereof.

L. Initiating contact with any purchaser through any means for any reason from the time said purchaser enters into any agreement containing a NOTICE OF CANCEL-

LATION, as required by Paragraph II K of this order, until said buyer's cancellation period has expired. *Provided, however*, that nothing in this paragraph shall be construed to prevent respondent from contacting any purchaser to correct inadvertent errors on necessary sales forms, or to obtain necessary information that [27] respondent inadvertently failed to obtain during the sales presentation.

M. Failing to maintain a copy of each NOTICE OF CANCELLATION received pursuant to Paragraph II.K. of this order, and making said documents available for inspection and copying by the Commission's staff upon reasonable notice. Any such notice shall be maintained for a period of three (3) years from the date of receipt by respondent.

N. Failing to keep 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.F.(5), II.I and II.J of this order can be determined.

O. (DELETED)

P. (DELETED)

III. *It is further ordered*, That respondent Encyclopaedia Britannica, Inc., and its successors and assigns, officers, agents, representatives and employees, directly or indirectly, through any corporation, subsidiary, division, or other device, engaged in direct selling to consumers, by means of in-home, over-the-counter, direct mail or telephone sales solicitations, in connection with the recruitment, training, or orientation of any person to sell, rent, lease or distribute any textbook, encyclopedia, reference or educational product, or any other publication, merchandise or service, in commerce, or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from 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. [28]

IV. *It is further ordered*, That respondents Encyclopaedia Britannica, Inc. and Britannica Home Library Services, Inc. and their successors and assigns, officers, agents, representatives and employees, directly or indirectly, through any corporation, subsidiary, division or other device, engaged in direct selling to consumers, by means of in-home, over-the-counter, direct mail or telephone sales solicitations, in connection with the advertising, offering for sale, sale or distribution of any textbook, encyclopedia, reference or educational product, 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 at intervals on an approval basis, in commerce, 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 he notifies respondents of his cancellation of any such program, plan or method of sale

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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. [29]

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 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, the anticipated date on which respondents 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 [30] 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.

V. *It is further ordered*, That respondents Encyclopaedia Britannica, Inc. and Britannica Home Library Services, Inc. and their successors and 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 owing to respondents for the purchase or other receipt of any textbook, encyclopedia, reference or education product, or any other publication, merchandise or service, in commerce, or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, either orally or in writing that:

A. Any letter, notice or other communication which has been prepared, originated or composed by respondents has been prepared, originated or composed by any other person, firm or corporation; and

B. 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.

VI. *It is further ordered*, That respondents, Encyclopaedia Britannica, Inc. and Britannica Home Library Services, Inc., do the following:

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 [31] 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 VI(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;

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 VI(B), above; and

D. If any such person will not agree to file a statement with respondents as required by Paragraph VI(B) above and be bound by the provisions of this order, the respondents shall immediately terminate the services of such person.

VII. *It is further ordered*, That the respondents shall forthwith distribute a copy of this order to each of their operating divisions.

VIII. *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.

IX. *It is further ordered*, That respondents shall, within sixty (60) days after the effective date of this order, file with the [32] 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 Encyclopaedia Britannica 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 Encyclopaedia Britannica. If you are employed by Encyclopaedia Britannica, 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 Federal law.

You should carefully read this order before agreeing to any employment arranged with Encyclopaedia Britannica.

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[President]
Encyclopaedia Britannica

APPENDIX B

This appendix sets forth the methodology respondents shall employ to determine whether advertisements or promotional materials represent that a person who replies as requested may be contacted directly by a salesperson for the purpose of selling respondents' products, and the criteria for determining whether such advertisements or promotional materials comply with Paragraph II.A.

1. Format—Respondents shall test the comprehension level of advertisements or promotional material by conducting a mallintercept test, using the questionnaire attached hereto as exhibit 1.

2. Sample size—The sample shall consist of at least 150 subjects.

3. Demographics—Test subjects must: [33]

a) be between 25 and 49 years of age;

b) have at least one child fifteen years of age or younger living at home;

c) have household incomes of at least \$15,000 per year; provided that, upon respondents' request, the Division of Enforcement shall increase this figure by increments of \$5,000 whenever the percentage of households earning at least the requested amount equals or exceeds the percentage of households that, according to the 1980 United States Census, have household incomes of at least \$15,000 per year. The data for future changes shall be based on the most recently published edition of the *Statistical Abstract of the United States*.

4. Location of Markets—The interviewing will be conducted in four geographically dispersed markets. The same central location facilities will be used wherever possible. If it is necessary to change any interviewing facility, the new facility shall have demographic characteristics similar to those of the facility it is replacing.

5. Criteria for acceptability of new coupon copy—New coupon copy shall comply with Paragraph II.A if at least seventy-five percent of the test subjects answer "yes" to question 6(b) of the questionnaire (exhibit 1).

Modifications to this appendix, including the questionnaire, may be made upon a request by respondents and the approval of the Associate Director for Enforcement.

EXHIBIT 1

STUDY: COUPON COMPREHENSION STUDY

MARKETS: Cleveland ()-1 Boston ()-3
(9)

New York ()-2 Kansas City ()-4 [34]

CARD:

INTERVIEWER'S NAME: _____

DATE: _____ TIME INTERVIEW BEGINS: _____

Hello, I'm _____ from _____. Today we are conducting a

survey among men and women between the ages of 25 and 49 years of age.

1. Please tell me your approximate age(READ LIST) (11)

Under 25 <u>TERMINATE</u>	40 to 44 years.....()
25 to 29 years ...()-1	45 to 49 years.....()
30 to 34 years ...()-2	50 years and older.. <u>TERMINATE</u>
35 to 39 years ...()-3	Refused..... <u>TERMINATE</u>

2. Do you have any children living at home 15 years of age or younger?

Yes() No() TERMINATE

3. What are the ages of your children who live at home? (CHECK AS MANY AS APPLY) (12)

16 years or above()-1
 12 years to 15 years()-2
 8 years to 11 years()-3
 4 years to 7 years()-4
 3 years or younger()-5

4a. Is your total family income:

\$15,000 and above()
 Below \$15,000TERMINATE
 RefusedTERMINATE

4b. Sex:

Male.....()-1 Female()-2

TAKE RESPONDENT TO A PRIVATE INTERVIEWING AREA
 IN YOUR CENTRAL LOCATION FACILITY FOR THE BAL-
 ANCE OF THE INTERVIEW.

(HOLD UP AD IN A MANNER THAT PERMITS RESPONDENT TO SEE IT—COLOR CODED WITH QUESTIONNAIRE—AND SAY:)

“Suppose you saw this ad, and the coupon that was attached to it”.

[35]

(HAND COUPON CARD—COLOR CODED WITH QUESTIONNAIRE—TO RESPONDENT AND SAY:)

“Now, using your imagination for a moment, assume you want to fill in and return this coupon which would be part of this ad for ENCYCLOPAEDIA BRITANNICA”.

“Read this coupon as though you were interested enough to fill it in”.

(DO NOT RUSH RESPONDENT. TAKE COUPON CARD FROM RESPONDENT WHEN HE/SHE HAS FINISHED READING.)

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BE SURE TEST COUPON CARD AND AD ARE OUT OF SIGHT
BEFORE ASKING:

5a. Based on your reading of the coupon, what would you expect to happen if you send in the coupon? (PROBE FULLY AND CLARIFY)

_____(14)_____
_____(15)_____
_____(16)_____
_____(17)_____

5b. What else would you expect to happen? (PROBE FULLY AND CLARIFY)

_____(18)_____
_____(19)_____
_____(20)_____
_____(21)_____

5c. Is there anything else you would expect to happen?

_____(22)_____
_____(23)_____
_____(24)_____
_____(25)_____

"Now, I'd like to ask you a few more questions".

(INTERVIEWER: START AT THE "X" MARKED QUESTION AND PROCEED TO NEXT ONE, AND THEN BACK TO THE FIRST ONE, ETC.)

() 6a. Based on your reading of the coupon, would you expect to receive a free booklet, if you send in the coupon?

(26)

Yes()-1

No()-2

Don't Know...(VOLUNTEERED)()-3 [36]

() 6b. Based on your reading of the coupon, would you expect a sales representative for ENCYCLOPAEDIA BRITANNICA to contact you, if you send in the coupon?

(27)

Yes()-1

No()-2

Don't Know...(VOLUNTEERED)()-3

- () 6c. Based on your reading of the coupon, would to expect to get a free book rack, if you send in the coupon?

(28)

Yes()-1
 No()-2
 Don't Know...(VOLUNTEERED)()-3

- () 6d. Based on your reading of the coupon, would you expect to get a free globe of the world, if you send in the coupon?

(29)

Yes()-1
 No()-2
 Don't Know...(VOLUNTEERED)()-3

If yes to Q. 6b

7. If someone sent in the coupon, how likely do you think it would be that a sales representative from ENCYCLOPAEDIA BRITANNICA would contact that person? (READ FIRST FOUR RESPONSES ONLY)

(30)

Very Likely()-1
 Fairly Likely()-2
 Not Too Likely()-3
 Not Likely At All()-4
 Don't Know...(VOLUNTEERED)()-5

[37]

THANK RESPONDENT FOR HIS/HER COOPERATION.

RESPONDENT'S NAME: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____ TIME INTERVIEW ENDED: _____

(Area Code)

VALIDATED BY: _____ (31)_____

(32)_____

(33)_____

(34)_____

(35)_____

Commissioner Calvani dissenting.

STATEMENT OF CHAIRMAN DANIEL OLIVER
CONCURRING IN PART AND DISSENTING IN PART

This is the third time in eight years the Commission has found it necessary to modify the order issued against Encyclopaedia Britannica, Inc. ("EB"). That experience should teach us something about the wisdom of entering orders of such length and excruciating detail. I doubt that it is necessary for the Commission to micro-manage a respondent's business so closely in order to achieve effective relief. Nevertheless, that issue is water under the bridge. Accepting the EB order as a given, I turn to the merits of EB's latest modification petition.

I agree with the conclusion that EB has failed to demonstrate that changed conditions of fact or law require vacating, sunseting, or modifying the order. I also agree that EB has not shown that public interest considerations support vacating or sunseting the entire order, but that such considerations do support modifying specific provisions of the order. I therefore concur in the modifications and interpretations set forth in the Commission's order reopening this proceeding. I would go further, however, and grant two of EB's other requests.

First, I would grant EB's request to modify Paragraph II.H of the order.¹ Paragraph II.H requires detailed disclosure of all conditions and limitations on the use of EB's research services, both orally during sales presentations and in any written promotional materials. EB proposes to streamline this requirement. The requested modification would require all advertising describing the features of a research service to disclose that conditions and limitations exist, and would require that the conditions and limitations themselves be spelled out in a document left with consumers during oral sales presentations. Sales representatives would also be required to disclose orally that conditions and limitations exist and to refer consumers to the disclosure document for complete details.

In my view, this modification would not lessen the protection consumers derive from Paragraph II.H. The Commission order asserts that "oral disclosure is more likely to ensure effective understanding by consumers than is a written disclosure," but no support is offered for that assertion. Even assuming its truth, however, I would not

¹ I refer here to the revised request presented in EB's December 29, 1987 letter, not to the request as presented in its original petition.

automatically conclude that consumers would be less informed under the modification. It seems to me that a system in which consumers are alerted not once, but twice (in advertising and orally during the sales presentation), to the existence of conditions and limitations, are twice directed to a document explaining those conditions and limitations in full, and are then left with the document to study at their leisure, is reasonably calculated to ensure effective understanding. I fail to see how requiring EB to duplicate the disclosures orally produces additional benefits.

At the same time, the costs of complying with Paragraph II.H would decrease dramatically under the proposed revision. EB would no longer be required to train sales representatives to memorize and recite detailed disclosures. Neither EB's counsel nor FTC enforcement staff would have to devote as many resources to reviewing ads and sales scripts. And oral sales presentations would be shortened, reducing opportunity costs for consumers—who, according to EB, often prefer not to listen to long-winded disclosures—and allowing EB's representatives to increase productivity by conducting a greater number of presentations in a given amount of time.

Because the costs imposed on a firm by a Commission order presumably are passed on to consumers in the form of higher prices, consumers benefit from modifications that increase an order's economic efficiency (i.e., achieve the same level of protection at lower cost or achieve a greater level of protection with no increase in costs). EB's proposed change to Paragraph II.H, which would maintain the current level of protection at less cost, is just such an efficiency-enhancing modification. Thus, I believe the public interest would be served by making this modification.

For similar reasons, I would also grant EB's request to modify Paragraph IV.C of the order. That provision requires EB to place detailed disclosures about its continuity book plans on return coupons and order forms. The respondent urges that Paragraph IV.C be modified so that order forms are requested only to refer to full disclosures in accompanying materials or advertisements. Like the proposed change to Paragraph II.H, this approach would eliminate needless duplication while still providing ample safeguards to ensure that consumers understand the terms of EB's offer. Granting the request would therefore be in the public interest.²

² Granting this request would also be consistent with the Commission's actions in *G.R.I. Corporation*, 103 F.T.C. 410 (1983). Those cases both involved

Finally, although I concur in the decision not to modify Paragraphs I.B, I.D. and I.E of the order in the specific manner requested by EB, I have no doubt that those provisions also could be modified in a way that reduces costs without lessening the protection afforded consumers. The Commission's order states that EB has not demonstrated that the burdens imposed by the language it seeks to modify outweigh the benefits conferred by that language. That may be so, but that observation skips over the question whether the burdens could be reduced while maintaining the same level of benefits.

For the reasons stated above, I dissent from the portions of the Commission's order denying the requests to modify Paragraphs II.H and IV.C. I also urge the Commission to consider carefully before issuing another order as detailed as this one. While we must ensure that law violations are effectively remedied, we should be conscious of the enormous amount of staff resources consumed in judging compliance with such detailed requirements— and in reviewing the repeated order modification petitions they spawn. This case is already a prime example of that type of resource commitment, and I doubt that we have seen the last of EB.

DISSENTING STATEMENT OF COMMISSIONER TERRY CALVANI

The majority modifies the order against Encyclopedia Britannica (EB) in several respects. I agree that most of these changes are justified. However, I do not agree that the modification to paragraph II.L. of the EB order is justified. Therefore, I have voted against the majority's order.

STATEMENT OF COMMISSIONER MARY L. AZCUENAGA
CONCURRING IN PART AND DISSENTING IN PART

I concur in the Commission's decision to deny Encyclopaedia Britannica's petition to set aside the order in Docket No. 8908 or "sunset" that order. I also concur in the Commission's decision that the requested modifications of Paragraphs II.C. and II.L. and the Preambles to Paragraphs I through IV are in the public interest.

I dissent only from the Commission's denial of the requested

orders requiring disclosure of the terms of a "free" offer every time the offer was repeated within a single ad and attached coupon. The Commission modified each order to eliminate the need to repeat the conditions on the coupon, as long as the coupon referred the reader to the text of the accompanying ad for a full disclosure of the conditions.

modification of Paragraph II.H., which requires both oral and written disclosures of all conditions and limitations on the use of Encyclopaedia Britannica's research service. I believe that the requested modification (which would require EB salespeople to disclose orally that conditions and limitations exist and are described fully in a written document that will be given to each prospective customer, and also would require that such a document actually be provided to the prospective customer) is in the public interest. The modified provision would give consumers sufficient information about the conditions and limitations on the research service, and would spare Encyclopaedia Britannica's salespeople and their prospective customers from a lengthy and perhaps unwanted oral recitation of those conditions and limitations.

IN THE MATTER OF

OCCIDENTAL PETROLEUM CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket 9205. Complaint, April 11, 1986—Decision, July 19, 1988

This consent order requires, among other things, Tenneco, Inc., a Houston, Tx. corporation that manufactures and sells polyvinyl chloride (PVC), to abide by any divestiture order issued by the Commission against Occidental and to abide by the stipulations regarding the reacquisition of the Burlington, N.J. plant from Occidental. The order prohibits Tenneco from interfering with the relief ordered by the Commission and requires that they cooperate in the transfer of assets to a third party or business divested by Occidental pursuant to the order of the Commission.

Appearances

For the Commission: *Rhett R. Krulla.*

For the respondents: *Steven R. Hunsicker, Baker & Botts,*
Washington, D.C.

COMPLAINT

The Federal Trade Commission having reason to believe that respondents, Occidental Petroleum Corporation, Occidental Chemical Corporation, Tenneco, Inc., and Tenneco Polymers, Inc., corporations subject to the jurisdiction of the Federal Trade Commission, have entered into an agreement, described in paragraph 12 herein, that, if consummated, would violate the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; that said agreement and the actions of respondents to implement that agreement constitute violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, the Commission hereby issues its complaint, pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows: [2]