

Syllabus

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directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of study or instruction, do forthwith cease and desist from:

1. Representing directly or by implication:

(a) That employment is being offered when in fact the purpose is to obtain purchasers of such courses of study or instruction.

(b) That persons who complete their airline training course are thereby qualified for employment by major commercial airlines or any airline; or that persons completing any of their other courses of study or instruction are thereby qualified for employment in any job to which the course relates when all the qualifications for such job as established by the prospective employer or others, cannot be acquired through respondents' course.

2. Using the word "Registrar" or "Field Registrar" as descriptive of or in referring to any of respondents' salesmen.

It is further ordered, That the second and the fourth to seventh charges, inclusive, of the complaint as amended (subparagraphs 1, 3, 4, 5 and 6 of Paragraph Seven and Paragraph Eight) be, and they hereby are, dismissed.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Alice L. Sawyer in her individual capacity but not in her capacity as an officer of respondent corporations.

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained herein.

IN THE MATTER OF

GEORGE MCKIBBIN & SON ET AL.

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

Docket 7245. Complaint, Aug. 28, 1958—Decision, Feb. 14, 1961

Order requiring Brooklyn, N.Y., printers of a one-volume reference work entitled "Webster's Encyclopedic Dictionary of the English Language", a loose-leaf edition of "Webster's Unified Dictionary and Encyclopedia"—itself based on two older works, whose publishers licensed respondents to print and sell it in supermarkets only in the U. S. and Canada, where it was sold a section at a time over a 10-week period—to cease representing falsely—in advertising circulars, window banners, store displays, and on

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the title pages of the books—that their said reference book sold regularly for \$25 and was a new publication, and that all the information contained therein was complete and up to date.

Mr. Charles W. O'Connell, supporting the complaint.

Booth, Lipton & Lipton of New York, N. Y., for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The complaint herein was issued on August 28, 1958 and charges that respondents have used false and misleading representations and have failed to disclose material facts in connection with the marketing of an encyclopedic dictionary. After the filing of respondents' answer, evidence was received in support of, and in opposition to, the allegations of the complaint. Proposed findings of fact and conclusion were submitted by counsel supporting the complaint but were not submitted by counsel for respondents.

After considering the entire record, it is concluded that the proposed findings of fact and conclusion are sustained by the evidence and they are hereby adopted and are included in the following findings as to the facts and conclusion, and the following order is issued.

FINDINGS AS TO THE FACTS

1. George McKibbin & Son is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and place of business located at 67 - 34th Street, Brooklyn, New York.

Individual respondents Samuel Schulman and Harold S. Cohen are president and secretary, respectively, and Leslie Schwartz and Martin Sperling are vice presidents of said corporation. Their address is the same as that of the corporate respondent.

2. Respondents are now, and for some time last past have been, engaged in printing and selling a one volume reference work entitled "Webster's Encyclopedic Dictionary of the English Language." Said book is a loose-leaf edition of "Webster's Unified Dictionary and Encyclopedia" published and sold by H. S. Stuttman Co., which firm has licensed respondents to print said loose-leaf edition and to sell it in supermarkets only in the United States and Canada. Pursuant to said agreement respondents sell their said encyclopedic dictionary in pre-punched sections, offering a new section each week for a period of ten weeks. A post binder and thumb index and a so-called guide to self-education are additional units which complete the book. The several units are assembled by the purchaser.

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Respondents cause said units of their book to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a substantial course of trade in their said encyclopedic dictionary in commerce, as "commerce" is defined in the Federal Trade Commission Act.

3. At all times mentioned herein, respondents have been in direct and substantial competition, in commerce, with corporations, firms and individuals engaged in the sale and distribution of dictionaries and encyclopedias.

4. In the course and conduct of their business, and for the purpose of inducing the purchase of their encyclopedic dictionary, respondents have made certain representations and statements with respect to such books in advertising circulars, window banners, store displays and on the title page of said book. Typical of such statements are the following:

Nationally Advertised

\$25.00

De Luxe Edition

And never before has this big \$25.00 volume been available at such a tiny price!

Here in this beautiful, mammoth reference work is the information and knowledge you need on any work or subject . . .

A concise and comprehensive reference work, completely new and up to date.

By means of such statements respondents have been and are representing, directly or by implication that their "Webster's Encyclopedic Dictionary of the English Language" regularly sells at retail for \$25.00; that it is a new publication and that all of the information contained therein is complete and up to date.

5. The foregoing representations were false, misleading and deceptive. In truth and in fact the usual and regular retail price of said reference book was not \$25.00 but substantially less than that amount. Said reference book is not a new publication since it is a loose-leaf edition of "Webster's Unified Dictionary and Encyclopedia" which in turn draws its basic material from two older works, namely, "Webster's New American Dictionary" and "The New American Encyclopedia", and all of the information contained therein was not complete and up to date.

6. Respondents fail to adequately disclose that their said "Webster's Encyclopedic Dictionary of the English Language" is also published as "Webster's Unified Dictionary and Encyclopedia" and that it contains material from "Webster's New American Dictionary"

and from "The New American Encyclopedia", thereby representing directly or by implication that the said "Webster's Encyclopedic Dictionary of the English Language" is an original publication containing original or new information or material when in truth and in fact said publication is a reprint of another publication of a different name and certain of the information or material contained therein has been taken or reprinted from other publications. A disclosure of this information on the copyright page of the book is not sufficient to afford adequate notice to prospective buyers.

7. The use by respondents of the foregoing false, deceptive and misleading statements and representations and their failure to disclose the aforesaid material facts has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasers and prospective purchasers of said reference book into the erroneous and mistaken belief that such statements and representations are true, and into the purchase of substantial numbers of respondents' reference book by reason of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce is and has been unfairly diverted to respondents from their competitors and substantial injury is and has thereby been done to competition in commerce.

CONCLUSION

The aforesaid acts and practices of respondents as herein found were and are all to the prejudice and injury of the public and respondents' competitors and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act.

ORDER

It is ordered. That respondent George McKibbin & Son, a corporation, and its officers, and respondents Samuel Schulman, Harold S. Cohen, Leslie Schwartz and Martin Sperling, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of Webster's Encyclopedic Dictionary of the English Language or any other book or publication, whether sold under the same or any other title, do forthwith cease and desist from:

1. Representing, directly or by implication, that Webster's Encyclopedic Dictionary of the English Language is a new publication, provided that this shall not be construed to forbid respondents from

representing that the manner of presentation of the information in such book is new;

2. Representing, directly or by implication, that any book or publication is new when it is based specifically upon a previously published work or when in form or content it is recognizably based upon a previously published work;

3. Representing, directly or by implication, that the information in Webster's Encyclopedic Dictionary of the English Language is complete or up to date;

4. Representing, directly or by implication, that the information in any encyclopedia or dictionary is up to date unless such information is reasonably current at the time the representation is made;

5. Representing, directly or by implication, that a certain amount is the customary or usual retail price of Webster's Encyclopedic Dictionary of the English Language or is the customary or usual price of any other book or publication, when said amount is in excess of the price at which such book or other books or publications is customarily or usually sold at retail;

6. Offering for sale, selling or distributing books or other publications consisting wholly, or substantially, of reprints of previously published books or other publications, unless the fact that they are reprints or contain reprinted material and the names of the previously published books or other publications are clearly disclosed in all advertising and on the title page in immediate conjunction with the title or in another position on the title page which would readily attract the attention of a prospective purchaser or on the front cover.

OPINION OF THE COMMISSION

By ANDERSON, *Commissioner*:

The respondents have appealed from the initial decision filed by the substitute hearing examiner, in which he found that they had engaged in misrepresentations and deceptively failed to reveal material facts in connection with their distribution in commerce of an encyclopedic dictionary.

The book, entitled "Webster's Encyclopedic Dictionary of the English Language" is sold by respondents to supermarkets for resale to patrons of such stores. It is a single volume, loose-leaf work consisting of ten sections or units. The sales program calls for a new section to be offered each week to patrons of the stores. The sections are assembled by the buyer in a binder which is supplied and total cost for the book varies from \$8.00 up to \$9.00. Promotional matter or mats are furnished by the respondents to the stores for assisting

sales of the book. Its distribution by respondents is under license from H. S. Stuttman Company which publishes and sells Webster's Unified Dictionary and Encyclopedia. The latter is marketed in case-bound form and has retailed in its most expensive binding for \$25.00. When preparing their encyclopedic dictionary, respondents used films or plates for the Stuttman publication and also incorporated additional material.

The advertising furnished by respondents for promotions of the book by the supermarkets has included the statements, among others, "Nationally advertised \$25.00 DeLuxe Edition" and "never before has this big \$25.00 volume been available at such a tiny price!" In excepting to the initial decision's conclusions that the advertising has represented and implied that respondents' book has been regularly sold for \$25.00, respondents concede that their own book, that is, Webster's Encyclopedic Dictionary of the English Language, has never retailed for that amount. They argue, however, that their advertising serves only to convey impressions and beliefs that the same or a substantially similar book has retailed at \$25.00 and that such representations are justified inasmuch as Webster's Unified Dictionary and Encyclopedia has been regularly sold in one type of binding at that price by respondents' licensor. This contention, however, ignores the fact that the challenged advertising statements relate to and are closely keyed to illustrations of respondents' book and omit mention of any other publication.

In addition, companion statements in the advertising variously describe the advertised lower price as "Only A Fraction Of Regular Cost!" and as "A Fraction of the Nationally Advertised Price." We think that the advertising for the book reasonably represents and implies a prior retail price of \$25.00 by respondents for their book in regular course of business, and the appeal's exceptions to this aspect of the initial decision are denied accordingly.

In the answer which they filed in this proceeding, respondents admit, among other things, that some of their advertising has included a statement as to their reference work being "completely new." The substitute hearing examiner found that respondents have represented thereby that their book is a new publication and that such representation is false. His conclusions respecting such falsity are based on undisputed evidence that the book is a loose-leaf edition of the Stuttman book which in turn drew its basic material from two older works, namely, Webster's New American Dictionary and The New American Encyclopedia.

Respondents' publication differs from conventional encyclopedias and dictionaries in that it consecutively lists or unifies dictionary

