

own trade name or labels and thereafter distributing such products under The Bendix Corporation's trade name or labels, or (b) by reason of such concern's discontinuing the manufacture, production, marketing, distribution and/or sale of such products and thereafter transferring to The Bendix Corporation customer lists or in any other way making available to The Bendix Corporation access to customers or customer accounts.

## X

The Bendix Corporation shall within sixty (60) days after the date of service of this order, and every ninety (90) days thereafter until The Bendix Corporation has fully complied with the provisions of this order, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which The Bendix Corporation intends to comply, is complying, or has complied with this order. All compliance reports shall include, among other things that may from time to time be required, a summary of all contacts and negotiations with potential purchasers of Fram Corporation, the identity of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

## XI

As used in this order the word "person" shall include all members of the immediate family of the individuals specified and shall include corporations, partnerships, associations and other legal entities, as well as natural persons.

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 IN THE MATTER OF

 RICHARD A. ROMAIN TRADING AS  
 EDUCATIONAL SERVICE COMPANY

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

*Docket 8781. Amended and Supplemental Complaint, July 31, 1969-  
 Decision, June 23, 1970*

Consent order requiring an individual trading as the Educational Service Company with headquarters in New York City and engaged in the selling of encyclopedias and children's books by door-to-door salesmen to cease mis-

Complaint

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representing that its solicitors are conducting surveys, that any of its material is "free," that it has an office in Chicago, that it provides life or property insurance for its customers, and that any sales contract is inoperative unless approved by the signatory's spouse. The order also prohibits deceptive pricing tactics, using the words "Junior Institute" and "Complete Ten Year Educational Plan," and delivering unordered volumes and attempting to collect for them.

#### AMENDED AND SUPPLEMENTAL 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 Richard A. Romain, an individual trading as Educational Service Company, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Richard A. Romain is an individual trading as Educational Service Company, with his principal office and place of business located at 119 Fifth Avenue, in the city of New York, State of New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of encyclopedias, children's books and other books and a consultation service in connection therewith to the public.

PAR. 3. In the course and conduct of his business, as aforesaid, respondent now causes, and for some time last past has caused, his said products, when sold, to be shipped from his aforesaid place of business and from the places of business of his suppliers to purchasers thereof located in various other States of the United States other than the State of origination and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his aforesaid business, and at all times mentioned herein, respondent has been in substantial competition in commerce with corporations, firms and individuals in the sale of encyclopedias, children's books and other books of the same general kind and nature as those sold by respondent.

PAR. 5. In the course and conduct of his business, as aforesaid, respondent sells said books at retail to the general public. Sales are made by respondent's agents, representatives, or employees who contact prospective purchasers in their homes.

Respondent has formulated, developed and carried out a plan for the purpose of selling said books. In furtherance of this plan, the respondent supplies his agents, representatives or employees with a "sales pitch" and material in connection therewith and instructs them to use and follow same. Said agents, representatives or employees employ said presentation and material in orally soliciting the purchase of respondent's books.

Respondent, in said sales presentation and in advertising and promotional literature and other printed materials, and respondent's agents, representatives or employees, in the course of their sales talks, make many statements and representations concerning their status and employment, the quality, characteristics, the offer and price of respondent's books. Some of these statements and representations are made orally by said agents, representatives or employees, and some are contained in advertising and promotional literature displayed by said agents, representatives or employees to prospective customers.

PAR. 6. Through the use of such statements and representations, respondent represents, and has represented, directly or by implication:

1. That respondent's sales personnel are visiting the homes of families for the purpose of conducting surveys or performing tests or some other function with respect thereto.
2. That the books offered during the sales presentation were "free" and the customer was only purchasing a year book service either for a year or a ten year period.
3. That respondent's books were being put into the customer's area for advertising purposes and that the price of said books was a "special introductory offer" or a "reduced price."
4. That respondent has an office or place of business in the city of Chicago, Illinois.
5. By the use of the words "Junior Institute" that respondent's organization is an institution of learning.
6. By the use of the words "A Complete Ten Year Educational Program" that respondent offers prospective customers a comprehensive continuing course of study for a period of ten years.
7. That respondent provides customers with "Credit Life Insurance at no additional charge" which would be underwritten by the Fidelity Life and Casualty Company, Battle Creek, Michigan, a certificate of said insurance to be mailed to the buyer.
8. That respondent provides customers with "Property Insurance Certificate at no additional charge," which would be underwritten

by the American Fidelity Fire Insurance Company, Westbury, New York.

9. That no obligation would exist under the sales transaction on the part of the purchaser until approval of the said sales transaction by the signatory's spouse.

10. That no obligation would exist under the sales transaction on the part of the purchaser until a subsequent receipt of a deposit by the respondent from the purchaser.

11. That certain monthly payments and total costs would be due and owing as the purchase price of the respondent's combination offer of books.

PAR. 7. In truth and in fact:

1. Respondent's sales personnel are not visiting the homes of families for the purpose of conducting surveys but solely for the purpose of selling respondent's books. Furthermore, the respondent is not engaged in conducting surveys or tests in any manner.

2. Respondent's books are not given "free" to purchasers of the year book service. On the contrary, the purchasers pay the full purchase price for respondent's books and an additional sum yearly for the year book service.

3. Respondent's books are not being put in a purchaser's area for advertising purposes and are not sold as a "special introductory offer" or at a "reduced price." Respondent's sales personnel will sell respondent's books in any area where said personnel happen to be and at the same price at which the respondent has offered these books for sale in the usual regular course of his business.

4. The respondent does not maintain an office or place of business in the city of Chicago, Illinois.

5. Respondent's organization is not a "Junior Institute" nor any other type of institution of learning. Respondent has neither a curriculum, teaching faculty or facilities for the purpose of teaching or providing educational courses to prospective purchasers. Respondent is merely a seller of books.

6. Respondent does not offer prospective customers a comprehensive continuing course of study for a period of ten years. He merely sells books that can be used by pupils from pre-school age to high school age. After execution of the sales contract, respondent's only interest and contact with purchasers is in the collection of the purchase price of the contract.

7. No credit life insurance was ever provided on the life of the buyer by the Fidelity Life and Casualty Company, Battle Creek, Michigan, or by any other life insurance carrier.

8. No group property insurance was ever provided to the purchaser by the American Fidelity Fire Insurance Company, Westbury, New York, or any other property insurance carrier.

9. Respondent, either after notice of disapproval of the sales transaction by the signatory's spouse, or without the signature of the signatory's spouse has sought to enforce, and in fact has enforced, said contract against both the signatory and the signatory's spouse.

10. Respondent has sought to enforce, and in fact has enforced, said contract even though no deposit was made by the prospective purchaser.

11. The executed documents purport to obligate the signatory thereof to amounts of monthly payments and total costs substantially higher than the amounts of monthly payments and total costs verbally represented to the purchaser by respondent's sales personnel.

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

PAR. 8. Respondent in a substantial number of instances sends sets of his encyclopedias, children's books or other books to persons who have not contracted to buy same and then endeavors to enforce payment for them by stating that they are legally or otherwise obligated to pay therefor.

Therefore, said representations, acts and practices set forth in Paragraph Eight were and are unfair, false, misleading and deceptive.

PAR. 9. The use by the respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and to enter into contracts for the purchase of and to purchase respondent's products because of such erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Commission having issued its amended and supplemental complaint on July 31, 1969, charging the respondent named in the

caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with a copy of that amended and supplemental complaint; and

The Commission having duly determined upon motion certified to the Commission that, in the circumstances presented, the public interest would be served by waiver here of the provision of Section 2.34(d) of its Rules that the consent order procedure shall not be available after issuance of complaint; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record and having duly considered the comments filed thereafter pursuant to § 2.34(b) of its Rules, now, in further conformity with the procedure prescribed in such Rule, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Richard A. Romain is an individual trading as Educational Service Company, with his principal office and place of business located at 119 Fifth Avenue, New York, New York.

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

ORDER

*It is ordered,* That respondent Richard A. Romain, an individual trading as Educational Service Company, or under any other trade name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of encyclopedias, children's books, or other books or supplementary services in connection therewith, or any other articles of merchandise or services in connection therewith in commerce, as "commerce" is de-

fined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) Respondent's agents, representatives or employees are visiting the homes of families for the purpose of conducting tests for surveys or for any other purpose other than the sale of books or supplementary service connected therewith; or misrepresenting, in any manner, the nature or purpose of any prospective customer or customer contact or solicitation.

(b) Any encyclopedias, books, supplements, publications or supplementary service in connection therewith are "free" or in any sense a gratuity when in fact payment therefor is included in the total price to be paid by the purchaser.

(c) Said encyclopedias, books, products or services are being offered for sale or sold on special or favorable terms or conditions as a part of an advertising or promotional plan or program.

(d) Any price at which respondent's encyclopedias, books, supplements, publications or supplementary service in connection therewith or other products are offered for sale, is a special or reduced price unless such price constitutes a substantial reduction from the price at which such publications were sold in substantial quantities for a reasonably substantial period of time by the respondent in the recent regular course of his business; or representing that any price is an introductory price unless such price is substantially less than the price to which the respondent in good faith intends to increase the price and that within a reasonable period thereafter such price was in fact so increased.

(e) Respondent has an office or place of business in the city of Chicago, Illinois or any other locality other than the place or places whereat he actually conducts his business.

(f) That respondent provides customers with credit life insurance at no additional charge; or misrepresenting in any manner that respondent provides life insurance in any form for purchasers of his products or services.

(g) That respondent provides customers with a property insurance certificate at no additional charge; or misrepresenting in any manner that respondent provides any type of property insurance for purchasers of his products or services.