

IN THE MATTER OF  
ALMACENES HERNANDEZ CORPORATION, ET AL.

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

*Docket C-2803. Complaint, Mar. 8, 1976—Decision, Mar. 8, 1976*

Consent order requiring a New York City seller and distributor of furniture and home appliances, among other things where sales presentations have been made in whole or in part in Spanish, to cease failing to furnish buyers with Spanish language translations of contracts, agreements or other documents used in connection with retail credit sales. Further, respondents are required to prominently display in-store notices of customers' right to receive all necessary documents in both Spanish and English.

*Appearances*

For the Commission: *Sandra L. Bird.*

For the respondents: *Samuel Weiner, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Almacenes Hernandez Corporation, a corporation, and Luis Cuevas, individually and as an officer of said corporation, have violated Section 5 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 Almacenes Hernandez Corporation 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 principal place of business located at 2136 Third Ave., New York, New York.

Respondent Luis Cuevas is an officer of said corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporate respondent, including those hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution to the public of furniture and home appliances.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have engaged in and are now engaged in commerce, or their practices affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended. Respondents purchase for

resale furniture and home appliances from suppliers located in various States of the United States. Respondents cause these products, when purchased by them, to be transported from the place of manufacture or purchase to their business establishment located in New York.

In addition, respondents have disseminated and have caused to be disseminated advertisements concerning said products in newspapers and radio broadcasts of interstate circulation. Said advertisements have been disseminated for the purpose of inducing the purchase of respondents' merchandise.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing consumers who only speak, read, write or understand Spanish, or consumers whose predominant language is Spanish to purchase their products, respondents have disseminated and have caused to be disseminated, in commerce, advertisements in the Spanish language and, in a substantial number of instances, have caused their sales personnel to conduct oral sales presentations to such consumers in the Spanish language.

PAR. 5. In the further course and conduct of their business as aforesaid, and for the purpose of facilitating the purchase of their merchandise, respondents regularly extend credit or arrange for credit to be extended to retail purchasers.

In connection with said credit transactions respondents utilize contracts, documents, notices, forms or other legal instruments which are printed only in the English language.

PAR. 6. In the further course and conduct of their business as aforesaid, respondents fail to provide customers who only speak, read, write or understand Spanish, or whose predominant language is Spanish, with a complete and accurate translation in Spanish of the documents normally executed and provided to customers in connection with credit sales, or which are required by law to be provided to customers in connection with such sales at the time of the transaction.

PAR. 7. Respondents' failure to provide customers who only speak, read, write or understand Spanish, or whose predominant language is Spanish, with a full and complete translation in Spanish of all the documents described in Paragraph Six hereof, deprives a substantial number of Spanish-speaking consumers, many of whom have been induced to deal with respondents as a result of respondents' advertisements or sales presentations in Spanish, of the opportunity to receive full and adequate disclosure of the terms and conditions of any agreements they have entered into, of their rights and obligations under such agreements, and of other written information or notices provided at the time of the transaction.

Therefore, the acts and practices of respondents, as set forth in

Paragraphs Five and Six hereof, were and are unfair, misleading and deceptive.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been and are now, in substantial competition, in commerce, with corporations, firms and individuals in the sale of furniture, home appliances and other products of the same general kind and nature as those sold by respondents.

PAR. 9. The aforesaid acts and practices of the respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Almacenes Hernandez Corporation 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 principal place of business located at 2136 Third Ave., New York, New York.

Respondent Luis Cuevas is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his business address is the same as that of said corporation.

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

#### ORDER

*It is ordered*, That respondents Almacenes Hernandez Corporation, a corporation, its successors and assigns and its officers, and Luis Cuevas, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, and distribution of furniture, home appliances or of any other products and services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist, in connection with credit sales in which the sales presentation has been conducted in whole or in part in Spanish, from:

1. Failing to furnish consumers executing any contracts, agreements or other documents in connection with such sales, a complete and accurate translation in Spanish of each such writing, prior to the execution of the same.

2. Failing to furnish consumers with complete and accurate translations in Spanish of any other documents, notices or disclosures normally provided to consumers in connection with respondents' credit sales at the time of the transaction.

*Provided, however*, That nothing in this order shall be understood to apply to sales receipts or other documents which serve merely as a memorandum of sale and do not, in themselves, contain covenants, disclaimers or other provisions defining the rights and responsibilities of the parties.

*Further provided*, That respondents must comply with subparagraphs 1 and 2 of this order by providing consumers either with:

a. bilingual documents containing all the provisions and disclosures in both English and Spanish, or

b. separate documents containing complete and accurate translations in Spanish of each English language document, and which shall contain in a clear and conspicuous manner in the Spanish language, the following heading in boldface 10 point type:

## READ THIS FIRST

THIS IS A TRANSLATION OF THE DOCUMENT OR DOCUMENTS  
YOU HAVE RECEIVED OR ARE ABOUT TO SIGN.

*It is further ordered,* That respondents prominently display, in at least two different locations on their premises, one of them being the location where customers usually execute consumer credit instruments or other legally binding documents, the following notice in Spanish:

## NOTICE TO SPANISH SPEAKING CUSTOMERS

IF YOU ARE A SPANISH-SPEAKING CUSTOMER AND THE SALES PRESENTATION WAS MADE, IN WHOLE OR IN PART IN SPANISH, YOU ARE ENTITLED TO RECEIVE A SPANISH TRANSLATION OF THE CREDIT CONTRACT AND OF THE OTHER DOCUMENTS RELATED TO THE FINANCING OF YOUR PURCHASE BEFORE YOU SIGN ANYTHING. DO NOT SIGN ANY DOCUMENTS UNTIL YOU HAVE RECEIVED AND READ THE SPANISH TRANSLATIONS.

*It is further ordered,* With respect to each account in which translations in Spanish are provided, as required herein, that respondents shall maintain in their files, for a period of two years, statements signed by respondents' customers acknowledging receipt of such translations.

*It is further ordered,* That respondents deliver a copy of this order to cease and desist to all operating divisions and to all present and future personnel of respondents engaged in making sales presentations and in the consummation of any consumer credit transactions.

*It is further ordered,* That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the operation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

*It is further ordered,* That the individual respondent named herein promptly notify the Commission upon the discontinuance of his present business and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

*It is further ordered,* That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency, or act as a defense to actions instituted by municipal or State regulatory agencies. No provision of this order shall be construed to imply that any past or

400

## Decision and Order

future conduct of respondents complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

*It is further ordered,* That the respondents herein 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 this order.

Complaint

87 F.T.C.

IN THE MATTER OF

WEIL &amp; CO., INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT*Docket C-2804. Complaint, Mar. 8, 1976—Decision, Mar. 8, 1976*

Consent order requiring a New York City seller and distributor of furniture and home appliances, among other things where sales presentations have been made in whole or in part in Spanish, to cease failing to furnish buyers with Spanish language translations of contracts, agreements or other documents used in connection with retail credit sales. Further, respondents are required to prominently display in-store notices of customers' right to receive all necessary documents in both Spanish and English.

*Appearances*For the Commission: *Sandra L. Bird.*For the respondent: *Pro se.*

## 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 Weil & Co., Inc. has violated Section 5 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 Weil & Co., Inc. 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 principal place of business located at 39 West 14th St., New York, 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 to the public of furniture and home appliances.

PAR. 3. In the course and conduct of its business, respondent has engaged in and is now engaged in commerce, or its practices affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended. Respondent purchases for resale furniture and home appliances from suppliers located in various States of the United States. Respondent causes these products, when purchased by it, to be transported from the place of manufacture or purchase to its business establishment located in New York.

In addition, respondent has disseminated and has caused to be

disseminated advertisements concerning said products in radio and television broadcasts of interstate circulation. Said advertisements have been disseminated for the purpose of inducing the purchase of respondent's merchandise.

PAR. 4. In the course and conduct of its business as aforesaid, and for the purpose of inducing consumers who only speak, read, write or understand Spanish or whose predominant language is Spanish to purchase its products, respondent has disseminated and has caused to be disseminated, in commerce, advertisements in the Spanish language and has caused, in a substantial number of instances, its sales personnel to conduct oral sales presentations to such consumers in the Spanish language.

PAR. 5. In the further course and conduct of its business as aforesaid, and for the purpose of facilitating the purchase of its merchandise, respondent regularly extends credit or arranges for credit to be extended to retail purchasers.

PAR. 6. In the further course and conduct of its business as aforesaid, respondent fails to provide customers who can only speak, read, write or understand Spanish or whose predominant language is Spanish, with a complete and accurate translation in Spanish of the documents normally executed and provided to customers in connection with credit sales, or which are required by law to be provided to customers in connection with such sales at the time of the transaction.

PAR. 7. Respondent's failure to provide customers who only speak, read, write or understand Spanish or whose predominant language is Spanish, with a full and complete translation in Spanish of all documents described in Paragraph Six hereof, deprives a substantial number of Spanish-speaking consumers, many of whom have been induced to deal with respondent as a result of respondent's advertisements or sales presentations in Spanish, of the opportunity to receive full and adequate disclosure of the terms and conditions of any agreements they have entered into, of their rights and obligations under such agreements, and of other information or notices provided at the time of the transaction.

PAR. 8. The aforesaid acts and practices of the 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 or affecting commerce and unfair and deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of

certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules; the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Weil & Co., Inc. 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 principal place of business located at 39 West 14th St., 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 Weil & Co., Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, and distribution of furniture, home appliances or of any other products and services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist, in connection with credit sales in which the sales presentation has been conducted in whole or in part in Spanish, from:

1. Failing to furnish consumers executing any contracts, agreements or other documents in connection with such sales, a complete and accurate translation in Spanish of each such writing, prior to the execution of the same.

2. Failing to furnish consumers with complete and accurate translations in Spanish of any other documents, notices or disclosures normally provided to consumers in connection with respondent's credit sales at the time of the transaction.

*Provided, however,* That nothing in this order shall be understood to apply to sales receipts or other documents which serve merely as a memorandum of sale and do not, in themselves, contain covenants, disclaimers or other provisions defining the rights and responsibilities of the parties.

*Further provided,* That respondent must comply with subparagraphs 1 and 2 of this order by providing consumers either with:

a. bilingual documents containing all the provisions and disclosures in both English and Spanish, or

b. separate documents containing complete and accurate translations in Spanish of each English language document, and which shall contain in a clear and conspicuous manner in the Spanish language, the following heading in boldface 10 point type:

READ THIS FIRST

THIS IS A TRANSLATION OF THE DOCUMENT OR DOCUMENTS  
YOU HAVE RECEIVED OR ARE ABOUT TO SIGN.

*It is further ordered,* That respondent prominently display, in at least two different locations on their premises, one of them being the locations on their premises, one of them being the location where customers usually execute consumer credit instruments or other legally binding documents, the following notice in Spanish:

NOTICE TO SPANISH SPEAKING CUSTOMERS

IF YOU ARE A SPANISH-SPEAKING CUSTOMER AND THE SALES PRESENTATION WAS MADE, IN WHOLE OR IN PART IN SPANISH, YOU ARE ENTITLED TO RECEIVE A SPANISH TRANSLATION OF THE CREDIT CONTRACT AND OF THE OTHER DOCUMENTS RELATED TO THE FINANCING OF YOUR PURCHASE BEFORE YOU SIGN ANYTHING. DO NOT SIGN ANY DOCUMENTS UNTIL YOU HAVE RECEIVED AND READ THE SPANISH TRANSLATIONS.

*It is further ordered,* With respect to each account in which translations in Spanish are provided, as required herein, that respondent shall maintain in its files, for a period of two years, statements

signed by respondent's customers acknowledging receipt of such translations.

*It is further ordered,* That respondent deliver a copy of this order to cease and desist to all operating divisions and to all present and future personnel of respondent engaged in making sales presentations and in the consummation of any consumer credit transactions.

*It is further ordered,* That respondent notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

*It is further ordered,* That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondent from complying with agreements, orders or directives of any kind obtained by any other agency, or act as a defense to actions instituted by municipal or State regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondent complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

*It is further ordered,* That the respondent herein 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 this order.

## IN THE MATTER OF

## BIRD &amp; SON, INC.

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

*Docket C-2805. Complaint, Mar. 8, 1976—Decision, Mar. 8, 1976*

Consent order requiring an East Walpole, Mass., manufacturer of building materials, among other things to divest itself of the Tuscaloosa, Ala., Logan-Long asphalt roofing manufacturing facility within 18 months, while permitting respondent to retain the two remaining Logan-Long plants in Chicago, Ill., and Franklin, Ohio. Further, respondent is prohibited for 10 years from acquiring any manufacturer of asphalt roofing products without prior approval of the Commission.

*Appearances*

For the Commission: *Peter W. Kitson.*

For the respondent: *Arnold Manthorne, Warner & Stackpole,* Boston, Mass. and *Miles Kirkpatrick and Coswell Hobbs, Morgan, Lewis & Bockius,* Washington, D.C.

## COMPLAINT

In the exercise of authority vested in it by the Federal Trade Commission Act, the Federal Trade Commission, having reason to believe that respondent, Bird & Son, Inc., a corporation, has violated Section 7 of the Clayton Act, as amended (15 U.S.C. §18) and/or Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45) and that a proceeding in respect thereof would be in the public interest, issues this complaint charging as follows:

## I. DEFINITIONS

For the purpose of construing this complaint the following definitions shall be controlling:

(a) "Asphalt and tar roofing" includes asphalt or tar saturated felts and roll roofing, and asphalt shingles made from an organic felt, asbestos felt or fiberglass base, saturated and/or coated with asphalt or coal tar pitch.

(b) "Saturated felts" include both organic and inorganic mats saturated or impregnated, but not coated, with asphalt or tar.

(c) "Roll roofing" is made from a saturated or impregnated felt by applying an additional coating of more viscous weather-resistant asphalt and fine surfacings or mineral granules.

(d) "Asphalt shingles" are mineral-surfaced saturated felts machine-cut into squares or strips.

(e) "Asphalt roofing products" refers to any or all of the products described in (b) through (d) above, but specifically excludes accessory items such as asphalt cements, adhesives, primers, and mineral granules.

## II. RESPONDENT

1. Bird & Son, Inc. (hereafter "Bird") is a publicly-held corporation chartered and operating under the laws of the Commonwealth of Massachusetts, with a principal place of business at Washington St., East Walpole, Massachusetts.

2. Bird is a manufacturer of building materials, primarily asphalt roofing products. It has roofing plants in Norwood, Massachusetts; Shreveport, Louisiana; Charleston, South Carolina; Perth Amboy, New Jersey; Portland, Oregon; Martinez, California; Wilmington, California; and felt mills in Phillipsdale, Rhode Island; Chicago, Illinois; Shreveport, Louisiana; and Portland, Oregon. It also operates a paper-board products division, and has a wholly-owned subsidiary, Bird Machine Company, Inc., which manufactures and sells machinery, being principally screening and stock cleaning equipment for the paper industry, and centrifugal and filtration equipment used in chemical and other process industries and in pollution control. For its fiscal year ending December 31, 1974, Bird & Son reported revenues in excess of \$170 million of which \$120 million consisted of asphalt roofing products, a net income in excess of \$14 million from all products lines, and total assets of approximately \$95 million.

3. On September 10, 1975, Bird announced its agreement in principle for Bird to purchase all of the stock of The Logan-Long Company, a manufacturer of asphalt roofing products. Upon consummation of definitive agreements subsequently entered into, The Logan-Long Company will become a fully-owned subsidiary of Bird & Son, Inc. on or before March 31, 1976.

4. At all times relevant to this complaint Bird has sold and shipped, and continues to sell and ship, its products in interstate commerce throughout the United States. Consequently, Bird was, at the date of the acquisition in question here, and is now, engaged in commerce as "commerce" is defined in the Clayton Act (15 U.S.C. §12), and in the Federal Trade Commission Act (15 U.S.C. §44).

## III. LOGAN-LONG COMPANY

5. The Logan-Long Company (hereafter "Logan-Long") is a

corporation chartered and operating under the laws of the State of Ohio with a principal place of business at 6600 So. Central Ave., Chicago, Illinois

6. At the time of the agreement, Logan-Long was a manufacturer of asphalt roofing products. Approximately 80 percent of the outstanding stock of the company is owned by the Logan and Long families. For its fiscal year ending March 31, 1975, Logan-Long produced and sold approximately \$20 million in asphalt roofing products, realized total net income of approximately \$1.3 million, and had total assets of approximately \$10 million. Logan-Long has plants for the manufacture and sale of asphalt roofing products in Chicago, Illinois; Franklin, Ohio; and Tuscaloosa, Alabama, a dry felt plant in Franklin, Ohio, a small lightweight dry felt plant facility in St. Matthews, Kentucky, and five wholesale building materials distribution warehouses.

7. At all times relevant to this complaint Logan-Long sold and shipped products in interstate commerce and was, therefore, engaged in commerce as that term is defined in the Clayton Act (15 U.S.C. §12), and in the Federal Trade Commission Act (15 U.S.C. §44).

#### IV. THE ACQUISITION

8. On September 10, 1975, Bird agreed in principle with Logan-Long for Bird to purchase all of the common shares of Logan-Long. Upon consummation of the agreements referred to in Paragraph 3 of the complaint, the purchase transactions will be closed on or before March 31, 1976 and Bird will thereupon become the owner of all of the common shares of Logan-Long or such smaller number of shares as Bird may elect to purchase if it has failed to gain the agreement of all shareholders of Logan-Long.

#### V. TRADE AND COMMERCE

9. Functionally, the production of asphalt roofing products breaks down into two distinct processes: (1) the preparation of a base (organic felt, asbestos felt, or fiberglass) mat; and (2) the conversion of this mat into saturated felts, roll roofing, or shingles.

10. Today over 80 percent of all roofing applied in the United States is produced by the asphalt roofing industry. There are approximately 33 domestic manufacturers of asphalt roofing products operating a total of 125 plants in the United States.

11. Asphalt roofing products are manufactured, transported, sold, and applied throughout the United States. For the year 1972, total sales of asphalt roofing products, as defined herein, amounted to \$765.4 million, of which \$530.4 million represented sales of shingles and \$235.0

million were sales of saturated felts and roll roofing. The eight largest manufacturers of these products reported sales of \$649.0 million or 84.8 percent of all sales; the four largest manufacturers realized \$453.2 million in sales, or 59.2 percent of all sales of asphalt roofing products.

12. For the year 1972, Bird ranked 5th in sales of all asphalt roofing products and 4th in the sale of shingles. Bird represented 9.9 percent and 10.5 percent of industry sales of asphalt roofing products, and shingles respectively, for that year. During the same year The Logan-Long Company ranked 9th in both the sales of all asphalt roofing products and shingles.

#### VI. EFFECTS OF THE ACQUISITION

13. The effect of the acquisition of the Tuscaloosa, Ala. asphalt roofing plant of The Logan-Long Company by Bird may be substantially to lessen competition or to tend to create a monopoly in the manufacture, sale and distribution of asphalt roofing products in the Southeastern United States, in the following ways:

(a) By eliminating actual competition between Bird & Son, Inc., and The Logan-Long Company in the manufacture, sale and distribution of asphalt roofing products.

(b) The entry of new asphalt roofing products manufacturers may have been, and may be, significantly discouraged or retarded.

(c) The ability of purchasers of asphalt roofing products, as defined herein, to select from alternative manufacturers in the Southeastern United States has been and may be substantially limited.

#### VII. VIOLATION

14. The acquisition of The Logan-Long Company by Bird constitutes a violation of Section 7 of the Clayton Act (15 U.S.C. §18), as amended, and/or Section 5 of the Federal Trade Commission Act (15 U.S.C. §45), as amended.

#### DECISION AND ORDER

The Commission having determined to issue its complaint charging the respondent named in the caption hereto with violation of Section 7 of the Clayton Act and/or Section 5 of the Federal Trade Commission Act and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to

issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Bird & Son, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, its office and principal place of business located at Washington St., East Walpole, Massachusetts.

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

For the purposes of this order, the following definitions shall apply:

(a) "Asphalt and tar roofing" includes asphalt or tar saturated felts and roll roofing, and asphalt shingles made from an organic felt, asbestos felt, or fiberglass base, saturated and/or coated with asphalt or coal tar pitch.

(b) "Saturated felts" include both organic and inorganic mats saturated or impregnated, but not coated, with asphalt or tar.

(c) "Roll roofing" is made from a saturated or impregnated felt by applying an additional coating of more viscous, weather-resistant asphalt and fine surfacings or mineral granules.

(d) "Asphalt shingles" are mineral-surfaced saturated felts machine-cut into squares or strips.

(e) "Asphalt roofing products" refers to any or all of the products described in (b) through (d) above, but specifically excludes accessory items such as asphalt cements, adhesives, primers, and mineral granules.

#### I

*It is ordered*, That Bird & Son, Inc. (hereafter "Bird"), within a period not exceeding 18 months from March 31, 1976, or from such other date upon which Bird shall become the owner of all or any substantial part

of the share capital or assets of The Logan-Long Company (hereafter "Logan-Long"), shall divest absolutely and in good faith by sale, or by spinoff into and sale of the stock of a new corporation formed for such purpose, subject to prior approval of the Federal Trade Commission, all properties (hereafter "properties") associated with the Tuscaloosa, Alabama, Plant (hereafter "Plant") of Logan-Long including, but not limited to, all land, buildings, improvements, equipment, machinery, inventory, and customer lists relating to such Plant and acquired by Bird as a result of its acquisition of Logan-Long together with all additions and improvements to such properties; *provided, however*, that approval of a proposed divestiture hereunder shall not be withheld solely on the ground that the proposed acquirer is a manufacturer of asphalt roofing products.

## II

*It is further ordered*, That, in the event that a new corporation is established as provided herein, Bird shall make reasonable efforts to assure that such new corporation will remain properly staffed with adequate administrative, sales and service personnel to carry on the business to be transferred to the new corporation, to assist such new corporation in retaining, rehiring, or replacing such personnel, and to insure the retention of customers associated with the divested plant.

## III

*It is further ordered*, That, if respondent is unable to sell or dispose of the Plant outright, nothing in this order shall be deemed to prohibit respondent from retaining, accepting and enforcing in good faith any security interest therein, not to exceed five (5) years in duration, for the sole purpose of securing to respondent full payment of the price, with interest, at which the Plant is sold or disposed of; *provided, however*, that if after a good faith divestiture pursuant to this order, respondent reacquires any of the divested assets by virtue of such security interest, respondent shall redivest such assets within six (6) months.

## IV

*It is further ordered*, That none of the properties to be divested, as described in Part I of this order, shall be sold or transferred, directly or indirectly, to any person who is at the time of the divestiture an officer, director, employee, or agent of or under the control or direction of, Bird or any of Bird's subsidiary or affiliate corporations, or anyone who owns or controls, directly or indirectly, more than one percent of the

outstanding shares of common stock of Bird, or to anyone who is not approved in advance by the Federal Trade Commission.

## V

*It is further ordered,* That if Bird divests the properties described in Part I of this order, to a new corporation or corporations, the stock of each of which is wholly-owned by Bird, and if Bird then distributes all the stock in said corporation or corporations to the stockholders of Bird, in proportion to their holdings of Bird stock, Part IV of this order shall be inapplicable, and the following Parts VI and VII shall take force and effect in its stead.

## VI

*It is further ordered,* That no person who is an officer, director, or executive employee of Bird, or who owns or controls, directly or indirectly, more than 1 percent of the stock of Bird, shall contemporaneously therewith be an officer, director, or executive employee of any new corporation or corporations described in Part V, or shall contemporaneously therewith own or control, directly or indirectly, more than one percent of the stock of any new corporation or corporations described in Part V.

## VII

*It is further ordered,* That any person who must sell or dispose of a stock interest in Bird or the new corporation or corporations, described in Part V, in order to comply with Part VI of this order may do so within six (6) months after the date on which distribution of the stock of the said corporation or corporations is made to stockholders of Bird.

## VIII

*It is further ordered,* That, pending divestiture, Bird shall not make any changes or permit any deterioration, other than in the ordinary course of business, in any of the plants, machinery, buildings, equipment or other property or assets of the plant to be divested which may impair its present capacity or market value; *provided, however,* that nothing in this order shall prevent respondent from exercising reasonable business judgment with respect to conducting the business and operations of the plant pending divestiture.

## IX

*It is further ordered,* That for a period of ten (10) years from the date

upon which Bird shall become the owner of all or any substantial part of the share capital or assets of Logan-Long, Bird shall not acquire, directly or indirectly, without the prior approval of the Commission, the share capital or assets (other than products acquired for use or resale in the ordinary course of business), of any manufacturer of asphalt roofing products having direct sales within the United States. Direct sales shall include all sales to purchasers for those purchasers' subsequent use in the United States or those purchasers' subsequent resale in the United States.

## X

*It is further ordered,* That Bird shall, within six (6) months of the date upon which it shall become the owner of all or any substantial part of the share capital of Logan-Long, and every six (6) months thereafter, until Bird has fully complied with Part I of this order, submit to the Federal Trade Commission a detailed written report of its actions, plans and progress in complying with the provisions of Part I of this order.

## XI

*It is further ordered,* That Bird notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in Bird which may affect compliance obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation or the creation or dissolution of subsidiaries.

IN THE MATTER OF  
KOSCOT INTERPLANETARY, INC., ET AL.

CLARIFYING ORDER, ETC., IN REGARD TO ALLEGED VIOLATION  
OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 2 OF THE  
CLAYTON ACT

*Docket 8888. Final Order, Nov. 18, 1975—Clarifying Order, Mar. 9, 1976*

Order clarifying previous Commission order issued Nov. 18, 1975, 86 F.T.C. 1106, 40 F.R. 60044, because of apparent misunderstanding as to the significance of order compliance Paragraph VI. Paragraph VI, which requires respondents to deliver copies of Section II of the order to several individuals, is construed by the Commission to impose an obligation on each named respondent only to notify persons who are now or may in the future be acting *on behalf of that particular respondent*. Further, order denies petition of individual respondent Ben Bunting for reconsideration and modification of said order with respect to himself.

ORDER DENYING PETITION FOR RECONSIDERATION

Individual respondent Ben Bunting has filed a petition for reconsideration of the Commission's order in this matter, asking that Paragraph VI of the order be deleted as to him. While the Commission does not believe that modification of the order is necessary or appropriate, we will take this opportunity to clarify the meaning of Paragraph VI, inasmuch as there is apparently some misunderstanding as to its significance.

Paragraph VI requires several named respondents, including respondent Bunting, to deliver a copy of Section II of the Commission's order to:

\* \* \* all present and future salespeople, franchisees, distributors, participants, or other persons engaged in the sale of franchises, distributorships, products, or services on behalf of respondents, and secure from each such person a signed statement acknowledging receipt thereof.

The Commission construes the foregoing paragraph to impose an obligation on each named respondent only to notify persons who are now or may in the future be acting *on behalf of that particular respondent*. Thus, respondent Bunting has no obligation under the order to make notification to salespeople of the corporation Koscot Interplanetary, Inc., since he is no longer affiliated with the company. However, if respondent Bunting should in the future establish a new business involving salespeople operating on his behalf, Paragraph VI of the order would then impose a notification obligation upon him.

If, in the future, the respondent Bunting chooses to constitute such a new business he may petition the Commission to reopen and modify

Order

87 F.T.C.

Paragraph VI of the order if he believes modification to be warranted by changed circumstances or the public interest, pursuant to Section 3.72 of the Commission's Rules of Practice. At present, however, no reason has been shown as to why any modification of Paragraph VI, as construed herein, is required.

Therefore,

*It is ordered*, That respondent's petition for reconsideration be, and it hereby is, denied.

IN THE MATTER OF  
ENCYCLOPAEDIA BRITANNICA, INC., ET AL.

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

*Docket 8908. Complaint, Dec. 11, 1972—Final Order, Mar. 9, 1976*

Order requiring a Chicago, Ill., publisher, seller and distributor of textbooks, encyclopaedia, reference and educational materials, training courses and other literary works and services, among other things to cease giving the false impression that managerial positions were offered when the true job offer was to recruit door-to-door sales personnel; making deceptive pricing and free claims; misrepresenting a salespersons' training or income opportunities; misrepresenting their research service furnished to subscribers, or the terms and conditions of plans involving the shipment of publications at intervals on an approval basis; and making false claims that suit will be instituted to recover delinquent debts.

*Appearances*

For the Commission: *Donald L. Bachman, Lemuel W. Dowdy and Paul L. Chassy.*

For the respondents: *Bryson P. Burnham, John Bleveans and Stephen M. Shapiro, Mayer, Brown & Platt, Chicago, Ill.*

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 Encyclopaedia Britannica, Inc., a corporation and Britannica Home Library Services, Inc., a corporation, hereinafter sometimes referred to as respondents, having 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 Encyclopaedia Britannica, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 425 North Michigan Ave., Chicago, Illinois.

Through its various organizational divisions and wholly-owned subsidiary, respondent Encyclopaedia Britannica, Inc. publishes, sells and distributes, throughout the world, textbooks, encyclopedias, reference and educational materials, training courses, and other literary works and services. Its volume of business has been, and is substantial. It has established and operates a wholly-owned corporation

subsidiary for the purpose of promoting, selling and distributing said products and services to the trade and to the purchasing public.

PAR. 2. Respondent Britannica Home Library Services, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 425 North Michigan Ave., Chicago, Illinois. It is a wholly-owned subsidiary of respondent Encyclopaedia Britannica, Inc., and sells and distributes books and other merchandise through advertising and mailings. Its volume of business has been, and is substantial.

PAR. 3. In the course and conduct of their businesses, as aforesaid, respondents now cause, and for some time last past have caused, said products to be shipped and distributed from their places of business or their sources of supply to purchasers and prospective purchasers thereof located in various States of the United States other than the State of origination, distribution or storage of said products. Respondents disseminate, transmit and receive, or have caused to be disseminated, transmitted and received, sales promotional materials, invoices, checks, collection notices and various other commercial papers or documents in the course of advertising, selling, distributing, and collecting payment for said products among and between the several States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in such books and other products or services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent Encyclopaedia Britannica, Inc., dominates, controls, furnishes the means, instrumentalities, services and facilities for, and condones and approves the acts and practices of respondent Britannica Home Library Services, Inc.

#### COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Three and Four hereof are incorporated by reference in Count I with respect to respondent Encyclopaedia Britannica, Inc., as if fully set forth verbatim:

PAR. 5. In the course and conduct of its business as conducted through its various sales divisions, and for the purpose of recruiting persons for door-to-door solicitations, respondent Encyclopaedia Britannica, Inc., disseminates or has caused to be disseminated advertisements in various publications of general circulation which contain statements concerning the nature of the advertised positions. Through the use of the aforesaid advertisements and oral statements of

representatives or agents, respondent has represented, directly or by implication that:

1. Respondent is offering positions in such fields as advertising research analysis, public relations or other nonselling fields.

2. Respondent is offering to train persons as management trainees or other positions of responsibility concerned principally with administrative office functions.

3. Respondent is offering persons monthly incomes in excess of \$500 per month, or similar incomes.

4. Persons engaged by respondent contact other persons in their homes primarily for the purposes of conducting surveys, advertising promotions or for other nonselling purposes.

PAR. 6. In truth and in fact:

1. Respondent is not offering positions in the fields represented. To the contrary, respondents are recruiting persons, principally, as salesmen in the door-to-door sale of respondent's publications, merchandise or services.

2. Respondent will not train persons for the positions represented. Persons hired by respondent are sent out to sell and are not hired specifically for training in how to assume administrative functions in an office.

3. Persons engaged by respondents do not receive the incomes as represented. Conditions and limitations imposed upon the receipt of the stated incomes results in few, if any being paid the represented incomes.

4. Persons engaged by respondent do not contact people in their homes primarily for the purposes represented by respondents. Such persons approach the homes of people for the purpose of soliciting purchases of respondent's publications, merchandise or services.

Therefore, the statements, representations, acts and practices, set forth in Paragraph Five hereof were and are deceptive acts or practices.

PAR. 7. In the further course and conduct of its business as aforesaid, and for the purpose of inducing members of the general public to purchase its publications, merchandise or services, respondent through its sales representatives utilizes various forms of promotional materials in conjunction with oral sales presentations containing statements concerning the purpose of the initial contact with the prospect, the identity of the solicitor, the nature of the offer and the terms of respondent's contracts or other agreements. In the foregoing manner, respondent and its sales representatives have represented, directly or by implication that:

1. Respondent's sales representatives are contacting persons in

their homes or places of business primarily for the purpose of conducting a survey, or a brand identification analysis relating to the marketing of respondent's publications, merchandise or services, or for purposes other than the sale of respondent's merchandise or services.

2. Respondent is offering certain of its publications, merchandise or services without cost to persons agreeing to do all of the following acts or similar acts:

- a. Permit their names to be listed as local owners;
- b. Provide respondent with the names of four prospects; and
- c. Write a letter evaluating the merits of the publications or services which may be used for promotional purposes.

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

4. The claimed retail prices of respondent's publications are the prices at which such publications have been sold by respondent in substantial quantities to the general public.

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

6. Persons subscribing to respondent's Library Research Service receive answers to questions regarding any subject.

7. The answers provided by respondent's Library Research Service are the product of detailed, exhaustive or original research generated by the specific questions asked by subscribers to said Service.

PAR. 8. In truth and in fact:

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

2. Respondent is not offering certain of its publications, merchandise or services without cost to any person who agrees to perform the conditions set forth in Paragraph Seven, subparagraph two herein. Respondent merely uses these conditions to confuse and mislead such persons into believing that the amount of their monetary obligations to respondent does not include the cost of all the publications, merchandise or services obtained from respondent.

3. Persons who purchase respondent's publications in combination with other publications will not realize a significant savings from the stated higher prices at which such publications have been sold by

respondent in substantial quantities to the general public. To the contrary, respondent has made only isolated or insignificant sales at the stated higher prices.

4. The claimed retail prices of respondent's publications are not the prices at which such publications have been sold by it in substantial quantities to the general public. Respondent has made only isolated or insignificant sales at the represented retail prices.

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

6. Persons subscribing to respondent's Library Research Service do not receive answers to questions regarding all subjects. To the contrary, respondent fails to disclose the many conditions and limitations imposed.

7. The answers provided by respondent's Library Research Service are not the product of detailed, exhaustive and original research generated by specific questions asked by the subscribers to said Service. In most instances, such answers are form responses containing general information not related to the specific questions posed.

Therefore, the statements, representations, acts and practices set forth in Paragraph Seven hereof were and are deceptive acts and practices.

PAR. 9. In the further course and conduct of its business, respondent has conducted various contests and utilized other promotional devices for the purpose of obtaining leads to persons who will allow respondent's sales representatives into said persons' homes for the purpose of inducing said persons to purchase respondent's products. Among the inducements used to achieve the above purposes are purportedly free merchandise, gift certificates and receipt of informational brochures obtained upon return of reply cards contained in promotional material.

Persons who enter any contest, or who receive informational brochures, or who are told that they have been awarded a valuable gift, are not informed of the material fact that as a result of entering the contest, receiving the informational brochures, or gift certificates, such persons will be subject to a lengthy sales presentation for respondent's publications, merchandise or services.

Therefore, respondent's statements, representations, acts and practices, and the failure to disclose material facts as aforesaid were and are deceptive acts and practices.

## COUNT II

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, Three and Four hereof are incorporated by reference in Count II with respect to respondents Encyclopaedia Britannica, Inc., and its wholly-owned subsidiary Britannica Home Library Services, Inc., as if fully set forth verbatim:

PAR. 10. In the course and conduct of their business, respondents have disseminated and are disseminating advertisements in various publications of general circulation or in promotional materials mailed to members of the general public. By and through such advertisements, respondents attempt to induce persons to become subscribers to continuity book promotion programs. A continuity book program is a procedure whereby persons receive a single book on an approval basis. The aforesaid advertisements place emphasis on shipment of books singly at intervals, without conspicuously containing the material disclosure that all but a few of the books are mailed to subscribers by means of a bulk shipment. Among the continuity programs set forth in said advertisements, but not all inclusive thereof, are the following:

POPULAR MECHANICS DO-IT-YOURSELF ENCYCLOPEDIA, THE INTERNATIONAL WILDLIFE ENCYCLOPEDIA, THE ANNALS OF AMERICA, THE WORLD OF MAN, THE ILLUSTRATED FAMILY ENCYCLOPEDIA OF THE LIVING BIBLE, and PEOPLE OF DESTINY.

PAR. 11. Through the use of said programs or others of similar import and meaning but not specifically set forth herein, respondents have represented, and are continuing to represent directly or by implication that:

a. Subscribers to respondents' continuity programs are accorded the option of receiving a single book at a time, and thereby are afforded the opportunity to receive and review on approval each book separately, and to reject or accept same, until expiration of the continuity programs.

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

PAR. 12. In truth and in fact:

a. Subscribers to respondents' continuity programs are not accorded the option of receiving a single book at a time, and thereby are not afforded the opportunity to receive and review on approval each book separately, and to accept same, until expiration of the continuity programs. Respondents do not clearly and conspicuously disclose to subscribers the material fact that when subscribers initially receive promotional materials concerning the continuity programs, that all but

the first several books are shipped in mass by means of single bulk shipments.

b. Subscribers to respondents' continuity programs are subject to risks or obligations. Once a person subscribes to the continuity programs, respondents impose the following duties or obligations on the subscribers: must notify respondents to prevent shipment of additional books; must return to respondents all books found unacceptable; must pay for all books not returned to respondents. Subscribers also incur the risk that due to delays in mail delivery or computer error they will receive unordered merchandise or incorrect billings in the manner set forth in Paragraph Thirteen hereinafter.

Therefore, the representations set forth in Paragraph Twelve hereof were and are deceptive acts or practices.

PAR. 13. In the further course and conduct of their business, respondents have attempted to promote the sale of substantial quantities of their publications through the manner and form set forth in Paragraph Ten hereof. Respondents' failure to adequately advise subscribers of the material fact that the subscribers will receive all but the first several books in mass, unfairly places an undue burden on subscribers to affirmatively notify respondents in order to prevent shipment of books not expressly and knowingly authorized by said subscribers.

In addition, such subscribers are subject to repeated and unrelenting mailings of bills, dunning letters and the like for unwanted, and unordered merchandise which, in many instances, has been previously returned to respondents.

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

PAR. 14. In the further course and conduct of their business and for the purpose of collecting debts allegedly due and owing respondents pursuant to contracts or other agreements relating to the purchase of respondents' publications, merchandise or services, respondents and their representatives or agents, in numerous instances, have attempted to induce payment of accounts, either due or delinquent as the case may be, by sending dunning letters, notices or similar instruments in the United States mails which contain statements and representations in the form of harassment or threats, including but not limited to the representations set forth below. Through such means, respondents have represented to the aforesaid members of the public, directly or by implication, that:

a. Letters or notices on the letterheads of attorneys are prepared or mailed by those individuals.

b. Respondents regularly transfer accounts to attorneys with

instructions to institute suit or to take other legal measures to collect an alleged outstanding debt.

PAR. 15. In truth and in fact:

a. The letters or notices on the letterheads of attorneys are not prepared or mailed by said individuals. Said letters or notices are prepared or mailed, in many instances by respondents. Replies or responses to said mailings are forwarded to respondents.

b. Respondents do not regularly transfer accounts to attorneys with instructions to institute suits or to take other legal action to collect allegedly outstanding debts.

Therefore, the statements and representations set forth in Paragraph Fourteen hereof were and are deceptive acts or practices.

### COUNT III

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Fifteen hereof are incorporated by reference in Count III with respect to respondents Encyclopaedia Britannica, Inc., and its wholly-owned subsidiary Britannica Home Library Services, Inc., as if fully set forth verbatim:

PAR. 16. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of publications, merchandise and services of the same general kind and nature as that sold by respondents.

PAR. 17. The use by respondents of the aforesaid unfair or deceptive statements, representations and practices, and their failure to disclose material facts, as alleged in Count I through II, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, or into the purchase or retention of, and payment for substantial quantities of said publications, merchandise and services by reason of said erroneous and mistaken belief.

PAR. 18. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

INITIAL DECISION BY ERNEST G. BARNES, ADMINISTRATIVE  
LAW JUDGE

DECEMBER 16, 1974

## PRELIMINARY STATEMENT

[1] Respondents Encyclopaedia Britannica, Inc. (hereinafter referred to as "EB"), a corporation, and Britannica Home Library Services, Inc. (hereinafter referred to as "BHLS"), a corporation, are charged with violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45).

The complaint, issued by the Commission on December 11, 1972, has three parts. Count I alleges that respondent EB, in connection with recruiting persons for door-to-door [2] solicitation of sales of its products, has falsely represented, directly or by implication, through statements and representations in advertisements in various publications of general circulation and through oral statements of its representatives or agents that it is (1) offering positions in non-selling fields, (2) offering to hire persons as management trainees or in other positions concerned principally with administrative office functions, (3) offering monthly incomes in excess of \$500 per month, and (4) offering positions that involve contacting persons in their homes primarily for non-selling purposes. In truth and in fact, the complaint alleges, EB is (1) recruiting persons principally as salesmen in the door-to-door sales of respondent's products; (2) persons are not hired by respondent specifically for training in how to assume administrative functions, but are hired to sell; (3) conditions and limitations imposed by respondent upon the receipt of stated incomes result in few, if any, persons being paid the represented incomes; and (4) persons hired by respondent do not contact persons in their homes primarily for the purposes represented by respondent, but for the purpose of solicitation of sales of respondent's products.

The complaint further alleges that EB, for the purpose of inducing persons to purchase its publications, merchandise and services, utilizes various forms of promotional materials in conjunction with oral representations which represent that (1) EB's salesmen are contacting persons in their homes for non-selling purposes; (2) EB is offering items without cost to persons agreeing to do certain acts; (3) persons who purchase respondent's publications will realize significant savings from the stated prices at which substantial sales of said products have been made by respondent to the general public; (4) EB's representatives will take only a few minutes to complete their presentations inside prospects' homes or places of business; (5) persons subscribing to

