

It is further ordered, That this proceeding be, and it hereby is, dismissed against David T. Beals and Russell W. Kerr, now deceased.

It is further ordered, That the proceeding be, and it hereby is, dismissed as to the following persons in their individual capacities:

Miller Bailey	Sister Michaela Marie
E. B. Berkowitz	Russell H. Miller
T. R. Butler	Dr. William C. Mixson
Dr. Ralph Coffey	Gilbert C. Murphy
Tom J. Daly	Adolph R. Pearson
Abraham Gelperin	Walter A. Reich
Meyer L. Goldman	James R. Rich
Mack Herron	Dr. William J. Sekola
Maurice Johnson	James T. Sparks
Thomas M. Johnson	Nathan J. Stark
Walter N. Johnson	Harry M. Walker
James D. Marshall	Robert F. Zimmer

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.

Commissioners Elman and Reilly dissented. Commissioner Elman has filed a dissenting opinion, and Commissioner Reilly has filed a dissenting statement. Commissioner Jones concurred and has filed a concurring statement.

IN THE MATTER OF

THE CROWELL-COLLIER PUBLISHING COMPANY ET AL.*

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

*Docket 7751. Complaint, Jan. 18, 1960—Decision, Sept. 30, 1966***

Order requiring a New York City publisher which sells its encyclopedias

*Now known as Crowell Collier and Macmillan, Inc.

**This order was made effective on Feb. 4, 1969, and applicable to the respondent parent corporation, its successor and the new subsidiary.

Complaint

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through door-to-door solicitation, to cease misrepresenting that its salesmen are conducting a survey, that it offers its books free or at a reduced price in return for the use of the customer's name; that its offer to sell is limited in time or to a select group, that its books are advertised nationally at any sum in excess of the usual sale price, that prices offered prospective customers constitute a savings, and failing to disclose at the time of first contact that the respondent's representatives are in fact salesmen of encyclopedias. The order also postpones its effective date until further order of the Commission.

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 Crowell-Collier Publishing Company, a corporation, and P. F. Collier & Son Corporation, a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Crowell-Collier Publishing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Respondent P. F. Collier & Son Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Respondent Crowell-Collier Publishing Company is a holding company and as such it dominates, controls and dictates the acts, practices and policies of respondent P. F. Collier & Son Corporation, a wholly owned subsidiary of respondent Crowell-Collier Publishing Company. Respondents have an office and principal place of business located at 640 Fifth Avenue, New York, New York.

PAR. 2. Respondents, among other things, are now, and for several years last past have been, engaged in the business of publishing, selling and distributing books, including an encyclopedia called Collier's Encyclopedia. Respondents cause their said books, including Collier's Encyclopedia, when sold, to be transported from the State of Indiana 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 said books, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents have been, and now are, in direct and substantial competition in commerce with other corporations, individuals and firms in the sale of books of the same general nature as those sold by respondents.

PAR. 4. Respondents sell said books, including the Collier's Encyclopedia, at retail to the general public. Sales are made by agents, representatives or employees who contact prospective purchasers in their homes or at their places of business. Respondents furnish said agents, representatives or employees with sales kits, various books, pamphlets, circulars, and other advertising, sales and promotional material, including order blanks, instructions and sales talks. In their solicitation and sales presentation, said agents, representatives or employees make many statements and representations concerning their status, employment, and concerning the offer, the quality, composition, characteristics and price of respondents' said books, including the Collier's Encyclopedia. Some of these statements and representations are orally made by said agents, representatives or employees to the prospective purchaser, and some are contained in advertising and promotional literature displayed by said representatives to said prospective purchasers.

Typical, but not all inclusive, of said statements and representations are the following:

(a) That respondents are conducting a market research survey, a brand identification program or survey or a survey of a special list of people.

(b) That respondents' agent or representative calling on the prospect is connected with respondents' advertising or publicity department, and is not selling anything.

(c) That respondents are offering to give a set of Collier's Encyclopedia free or at a reduced price to the person being called upon providing the yearly supplements included in a combination offer are purchased.

(d) That the cost of the set of Collier's Encyclopedia is included in an covered by respondents' advertising budget and is being given free, or at a reduced price, to the person called upon in return for:

1. A letter giving his or her opinion and comments about said set of encyclopedia after it is received, and

2. Permission in writing to use the person's name in advertising their said encyclopedias.

(e) That the offer made of respondents' encyclopedia is a "special introductory offer," is not being offered to the public generally at that particular time and is only being offered to a specially selected group of people in the particular community at that time.

(f) That respondents' general sales promotion and offer of said encyclopedia will be conducted at a later date.

(g) That the annual supplement volume or year book usually and regularly sells for \$10.00 and is being specially offered to the prospective customer for only \$3.95.

(h) That certain books included in respondents' "combination offer" are given free of cost with the purchase of respondents' said encyclopedia and supplements or year books.

(i) That the set of said encyclopedia being offered to the prospective customer is nationally advertised for \$389 or more.

(j) That the special offer as to conditions and price is limited to the time of the call on the prospective customer.

PAR. 5. Said representations were false, misleading and deceptive. In truth and in fact:

(a) Respondents were not conducting a market research survey, a brand identification program or survey, a survey of a special list of people, or a survey of any other nature.

(b) The agents or representatives were engaged in selling encyclopedias and other books to the prospect called on and were not connected with respondents' advertising or publicity department.

(c) Respondents did not give the set of said Collier's Encyclopedia free to the person called on, in case the yearly supplements were purchased, or for any other reason.

(d) The cost of the set to a purchaser of Collier's Encyclopedia was not included in or covered by respondents' advertising budget but was paid for in full by the customer. Respondents did not generally use the names of the customers in their advertising of said encyclopedia and books or letters of comment, and the practice of obtaining the signed consent of the customer agreeing thereto was only a device to lead the customer into the erroneous belief that the offer was a special one or constituted a reduced price and that the signed agreement consenting thereto is a prerequisite to quality for said offer. Many customers did not write respondents a letter listing his or her comments about said encyclopedia and respondents did not require or make any effort to require the customer to fulfill such agreement.

(e) Respondents' offer of said encyclopedia was not a special introductory offer or one made only to a specially selected group in a particular community at the time of the offer. In truth and in fact said offer was available to the public generally.

(f) The sales promotion of said encyclopedia was not to be held at a later date, but was being conducted at the time solicitations were being made.

(g) The annual supplement volume or year book did not usually and regularly sell for \$10.00 but usually and regularly sold for \$3.95.

(h) Books, other than the encyclopedia, included in respondents' combination offer, were not free of cost with the purchase of respondents' said encyclopedia and supplements or year book, as the cost of all such books, including said encyclopedia, was included in the contract price of the combination offer.

(i) The set of said encyclopedia offered the customer was one with a different and less expensive binding, and other features, from that nationally advertised \$389 or more.

(j) Respondents' offer was neither special nor was it limited to the time when the call was made on the prospective customer.

PAR. 6. The use by respondents of the foregoing false, misleading and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements were and are true, and to enter into contracts for respondents' products because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been, and is now being, unfairly diverted to respondents from their competitors, and substantial injury has been, and is being, done to competition in commerce.

PAR. 7. 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 and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Charles S. Cox for the Commission.

Whitlock, Markey & Tait, by *Mr. Thomas S. Markey* and *Mr. William W. Rayner*, Washington, D.C., for respondents.

Initial Decision

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INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER¹
SEPTEMBER 3, 1965

NATURE OF CASE—THE ISSUES

This is a proceeding brought under the Federal Trade Commission Act against the two respondent corporations charging them with unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of Section 5 thereof (15 U.S.C.A. § 45). In substance the complaint alleges that in the sale of respondents' books, including the Collier's Encyclopedia, at retail to the general public, by and through the solicitations of, and sales presentations made to members of the public by respondents' agents, representatives or employees, respondents now make and for several years past have made many false, misleading, and deceptive statements. These are alleged to relate to such employees' status and employment and also to the nature of the sales offer and the quality and price of respondents' books in commerce in competition with others. These representations were alleged to have been made both by oral statements and representations and also by some which were contained in advertisements and promotional literature displayed to prospective purchasers. (Complaint, Paragraphs Two, Three and Four.) It is also charged that as a holding company respondent The Crowell-Collier Publishing Company dominated, controlled and dictated the acts of the other respondent which was a wholly owned subsidiary thereof. (Complaint, Paragraph One.) The complaint then sets forth (Complaint, Paragraphs Four and Five) ten different types of such alleged misrepresentations by both respondents.

Each of the respondents in its separate answers denies all the allegations of the complaint made in Paragraphs Four, Five and Six thereof charging the making of such false representations by them or by their agents, and further denies the legal conclusions of Paragraph Seven of the complaint. Each of them admits in its separate answer the corporate capacity of each of the respondents as then existing and that the respondent P. F. Collier & Son Corporation at that time (March 30, 1960), was a wholly owned subsidiary of respondent The Crowell-Collier Publishing Company, whose correct corporate name is recited in both answers as The Crowell-Collier Publishing Company (Paragraph One of each answer).

¹ In the answer of each respondent reference is made to the correct title of this corporation as The Crowell-Collier Publishing Company.

Pleading further the respondent The Crowell-Collier Publishing Company in its answer denies that it dominates, controls, or dictates the acts, practices and policies of P. F. Collier & Son Corporation (Paragraph One), and also denies therein that it is in the business of publishing, selling or distributing books in commerce (Paragraph Two).

The respondent P. F. Collier & Son Corporation also pleading further admits in its answer (Paragraph Two) that as of the time its answer was filed (March 30, 1960), and for several years prior thereto, it was engaged in the business of publishing, selling and distributing books, including Collier's Encyclopedia, but further specifically denies (Paragraph Three) that it is in substantial competition with other corporations, individuals, and firms in the publishing and sale of books of the same general nature. It admits (Paragraph Four) that it sells through solicitors who contact prospective purchasers at their homes or places of business; and also admits that it furnishes sales kits and other materials to its solicitors and that they exhibit some of such material and also make oral presentations to prospective purchasers of this respondent's books.

Each of the respondents moved for dismissal of the complaint in its respective answer and subsequently renewed its motion to dismiss at appropriate times as hereinafter more fully stated.

The two basic factual issues under the pleadings were: (1) whether both or either of the respondents engaged in the unlawful practices charged; and (2) whether the respondent The Crowell-Collier Publishing Company, as the parent corporation of its wholly owned subsidiary P. F. Collier & Son Corporation, dominated, controlled or dictated the acts, practices and policies of such subsidiary so as to make it liable for the acts of the latter's representatives, agents and employees. A third basic issue of fact developed comparatively early in the trial when it was established that P. F. Collier & Son Corporation had been dissolved about January 1, 1961. No attempt was made then or later to cause the complaint to be amended properly to include its successor corporation P. F. Collier, Inc., as a respondent in the place and stead of the dissolved corporation.

There was also the necessary concomitant intangible issue of public interest which is an intangible one arising out of the facts and circumstances of the case.

In this initial decision the charges of the complaint are dismissed as to each of the respondent corporations for failure of

