

IN THE MATTER OF
GOLD MEDAL BOOKS, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2880. Complaint, July 24, 1936—Decision, Dec. 13, 1938

Where a corporation engaged in offer and sale of books of fiction, periodicals, and pamphlets, in commerce among the various States and in the District of Columbia; in soliciting, through periodicals circulated among purchasers and prospective purchasers in various States and in said District, sale, for 98 cents, of group of five books which, as originally bound, jacketed, and published in original edition, sold at prices ranging from \$2.00 to \$2.50 each—

Deicted, under heading "MOST SENSATIONAL OFFER IN PUBLISHING HISTORY," and, in large bold type statement "\$11.50 WORTH OF 'BEST SELLERS' Now Only 98¢," and statement in small, but plain, type "Here are the 5 books you've always wanted to buy * * * so sensational in theme the public made them 'best sellers' overnight at \$2 and \$2.50 each. Now you get all five for only 98¢ * * * the book opportunity of a lifetime! Don't delay!", aforesaid five books against a black background, as originally bound, jacketed, and published as aforesaid, and in the original edition and in the form in which each sold at said prices ranging from \$2.00 to \$2.50 each, together with, in corner of advertisement and in very small and relatively inconspicuous miniature type (and under enlarged words "COMPLETE * * * UNCENSORED"), notice to the effect that the books, as then being offered for 98 cents, were reprints, facts being specific edition of books then offered were not identical with or equal in value to original editions referred to in form or in quality, but were reprints in paper covers of such original editions, and were not identical in form, make-up, and quality with the original, which sold at one time for such higher prices, but were inferior thereto, and said reprints never sold at such higher prices or at price of \$11.50 for group, or at price greater than 98 cents, and boxed explanatory statements referred to were, under circumstances of such advertisements, either wholly unnoticeable or left unread by many readers, and were without force as an informative or material portion of such advertisements and did not place purchasers or prospective purchasers on notice that edition in question was reprint and not original one which at one time sold for price indicated;

With tendency and capacity to mislead and deceive members of purchasing public with respect to quality and value of books distributed and sold by it, and particularly to mislead them into false and erroneous belief that edition thereof being sold for 98 cents for entire group was same as original one which sold at prices ranging from \$2.00 to \$2.50 each, or \$11.50 for the group of five, and with result that purchasing public bought said edition of five books above referred to in reliance upon the truthfulness of said representations and trade was thereby unfairly diverted to it from its

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competitors who do not misrepresent the character, quality, or value of the books sold by them in commerce among the various States:

Held, That such acts and practices were to the prejudice and injury of the public and competitors and constituted unfair methods of competition.

Before *Mr. John J. Keenan*, trial examiner.

Mr. Alden S. Bradley and *Mr. Jay L. Jackson* for the Commission.

I. Manck & M. E. Kaplan, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Gold Medal Books, Inc., hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in 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 Gold Medal Books, Inc., is a corporation existing under and by virtue of the laws of the State of New York, with its principal office and place of business at 915 Broadway, in the city of New York, in said State. For more than 2 years last past respondent has been engaged in the business of offering for sale and selling books of fiction, periodicals, and pamphlets in constant course of trade and commerce between and among the various States of the United States and the District of Columbia. In the course and conduct of its said business it causes the literature aforesaid, when sold, to be transported from its place of business aforesaid into and through the various States of the United States to the purchasers thereof located in States of the United States, other than the State of New York, and the District of Columbia.

In the course and conduct of its business as aforesaid, respondent is now and for more than 2 years last past has been in substantial competition with other corporations, partnerships, firms, and individuals, engaged in the sale and transportation of books of fiction, periodicals, and pamphlets in trade and commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. During the course and conduct of its business, respondent, in soliciting the sale of and selling its products in interstate commerce, has represented, and does represent to purchasers and poten-

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tial purchasers thereof, that certain sets of books by it sold and offered for sale, for 98 cents per set, to wit, "The Desert of Love," "Georgie May," "Private Secretary," "Five Sisters," and "Show Girl," were books having the regular and usual sales price and value of \$11.50. In promoting and inducing the sale of its said books, respondent advertises and causes to be made in newspapers, magazines, and other periodicals having an interstate circulation, the following representations:

\$11.50 worth of "Best Sellers" now only \$.98.

The 5 books acclaimed by critics everywhere—so sensational in theme the public made them "best sellers" overnight at \$2 and \$2.50 each. Now you get all five for only 98¢ (plus postage).

Guarantee—

1. Each of these 5 books was originally published at \$2 or more.
2. Each of these 5 books was a "best seller."

You take no chances! When you buy novels that were so sensational in theme that they became "best sellers" overnight at \$2 and \$2.50 each—and now get all *five books* for only 98¢, you take no chances; for you're buying *proved successes!* And when you have the privilege of returning the books within 3 days and getting your money back, you're not risking one penny! Because this offer is so revolutionary, we expect the demand to quickly exhaust the supply. That's why we suggest—to avoid delay—act today! Send no money—just the coupon!

GEORGIE MAY

* * * * *

an overnight sensation in its original \$2 edition.

PRIVATE SECRETARY

* * * * *

whom does she choose—big business executive playboy or ??? Now you can read exciting answer in this frank book that was originally published at \$2.50.

DESERT OF LOVE

* * * * *

Originally published in Paris under the title "Le Desert de L'Amour," and sold in this country at \$2.50.

FIVE SISTERS

* * * * *

Every word just as originally published in its \$2.50 edition.

SHOW GIRL

* * * * *

at \$2. "Show Girl" sold like "hot-cakes"—no wonder we rave about our ability to include it in this greatest of book bargain offers.

and other representations of similar tenor and effect.

PAR. 3. The publications of the respondent, the regular selling price of which is represented by it to be from \$2.00 to \$2.50 each, or \$11.50 per set of five, were never sold at the prices so represented. Such prices are not and have never been the regular prices of such publications, and such publications do not have the values represented in such

advertisements. The ordinary and usual price at which the entire set of the aforesaid books so sold by respondent is and always has been 98 cents. The values so advertised and represented by the respondent are false and fictitious values and the prices at which it is indicated in such advertisements that such publications had previously been sold are grossly marked up and greatly exaggerated.

PAR. 4. There are among the competitors of the respondent engaged in the sale of books of fiction, periodicals and pamphlets, as set forth in paragraph 1 hereof, corporations, firms, partnerships, and individuals, who do not misrepresent the prices at which their said books are customarily and regularly sold and who do not falsely represent their said books to be of a value in excess of the actual value thereof and who do not, through the medium of fictitious and grossly marked-up prices endeavor to attract purchasers of such books.

PAR. 5. The representations by respondent, as set forth in paragraph 2 hereof, have the capacity and tendency to and do mislead and deceive the purchasing public into the false belief that the books of fiction, periodicals, and pamphlets sold and offered for sale by it, for 98 cents a set were and are customarily or regularly sold by it at the price of \$2.00 to \$2.50 each or for \$11.50 per set of five, and are calculated to and have the capacity and tendency to and do induce the purchasing public acting in such belief to purchase the publications above described, thereby diverting trade to respondent from its competitors who do not, by their advertising, false representations, or grossly exaggerated and marked-up prices, misrepresent the usual and customary selling price of such publications or the value thereof, and thereby respondent does substantial injury to competition in interstate commerce.

PAR. 6. The acts and things alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and competitors of respondent and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 24, 1936, issued and served its complaint in this proceeding upon respondent, Gold Medal Books, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent

filed no answer. Thereafter, testimony and other evidence in support of the allegations of said complaint were introduced by Jay L. Jackson, attorney for the Commission, and in opposition to the allegations of the complaint, by Max E. Kaplan, attorney for the respondent, before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint, testimony and other evidence, and brief in support of the complaint (respondent not having filed brief and not having requested oral argument); and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Gold Medal Books, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Its office and principal place of business was formerly located at 915 Broadway, and its office and principal place of business is now located in the RCA Building, both addresses being in the city of New York, State of New York.

Said respondent has been and is engaged in the business of offering for sale and selling books of fiction, periodicals, and pamphlets in commerce among and between the various States of the United States and in the District of Columbia. It has caused said products, when sold or ordered, to be shipped and transported from its place of business in the State of New York to purchasers located in various States of the United States other than the State of New York and in the District of Columbia. In the course and conduct of said business respondent has been, and is, in substantial competition with other corporations, partnerships, firms, and individuals engaged in the sale and distribution of books of fiction, periodicals, and pamphlets in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, it has been respondent's practice to solicit the sale of and sell a certain group of five books of fiction for the price of 98 cents, through and by means of advertisements which respondent caused to appear in certain magazines and periodicals having a circulation among purchasers and prospective purchasers of such products located in various States of the United States and in the District of Columbia.

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The advertisements referred to are comprised of a display of the said five books against a black background, in which each book is pictured as originally bound, jacketed, and published, in the original edition, and in the form in which each of said books originally sold at prices ranging from \$2.00 to \$2.50 each. The said books as pictured, reading from left to right, are entitled: "SHOW GIRL," "GEORGIA MAY," "THE DESERT OF LOVE," "PRIVATE SECRETARY," and "FIVE SISTERS." This background display constitutes approximately one-third of the space occupied by the entire advertisement. Across the top of said advertisement, in white capital letters against the black background, appears the following statement: "MOST SENSATIONAL OFFER IN PUBLISHING HISTORY." Immediately beneath the black background display appears the following large bold type statement:

\$11.50 WORTH OF "BEST SELLERS"

Now
Only 98¢

Just beneath the above statement, in small but plain type, appears the following statement:

Here are the 5 books you've always wanted to buy—packed with life, love, romance, heart-throbs, and passion. The 5 books acclaimed by critics everywhere * * * so sensational in theme the public made them "best sellers" overnight at \$2 and \$2.50 each. Now you get all five for only 98¢ (plus postage). Truly, the book opportunity of a lifetime! Don't delay!

In the lower right-hand corner of the black background display, as carried on certain of the said advertisements referred to, and printed in boxed form and in black letters against a white background, appear the enlarged words "COMPLETE * * * UNCENSORED," and immediately thereunder, in very small miniature type, the following explanatory statement:

Thousands gladly paid \$2 and \$2.50 for each of these best sellers in their original form. Now we have reprinted all five novels in special bindings. Printed on 6¾- by 9½-inch pages in clear, legible type—all five books for only 98¢. Act today. Supply is limited!

Subsequent to the appearance and circulation of the advertisements above described, and during the year 1936, respondent caused the same advertisements to appear and to be circulated, as aforesaid, but with this exception, that the statement last above quoted was changed and supplanted in slightly larger type by the following statement:

Each book—shown as photographed in its original \$2 and \$2.50 binding—has been reprinted in clear, easily read type on pages 6½ x 9¾ inches, with uniform, heavy paper covers.

PAR. 3. The statement, "\$11.50 worth of 'best sellers' now only 98c." together with the other statements and representations herein described serve as representations to members of the purchasing public as to the character, quality, and value of respondent's books and publications. The use of such statements mislead members of the purchasing public into the erroneous and mistaken belief that the particular editions of said books sold by respondent customarily and regularly sold at the price of from \$2.00 to \$2.50 each or for \$11.50 for the group of five books. The aforesaid statements and representations are false and misleading in that the specific edition of the books sold by respondent are not identical with, or equal in value to, the original editions of the five books referred to, in form or in quality. The five books sold by respondent are bound in paper covers and are reprints of the original editions of said books. In form, make-up, and quality the respondent's edition of said books is not identical with the original edition which at one time did sell for prices ranging from \$2.00 to \$2.50 each, but is inferior in quality to said original edition. The five books as printed, published, and sold by respondent were never sold at the price of \$2.00 to \$2.50 each or at the price of \$11.50 for the group, and have never sold, in such editions, for a price greater than 98 cents for the group. The aforesaid representations, standing out in emblazoned type, are further fortified by the black background display which pictures the various books sold by respondent, not in the form or edition used by respondent, but in the form and edition in which they were originally published and sold at prices ranging from \$2.00 to \$2.50 each.

The boxed explanatory statements which indicate that the respondent's edition of said books is a reprint are so inconspicuous, by reason of the small size of the type thereof, the much greater prominence of the bold type statement, "\$11.50 worth of 'best sellers' now only 98c" and the picture display of the books in their original edition, as to make the explanatory statements either wholly unnoticeable or left unread by many persons reading said advertisements. In such instances the said explanatory statements are without force as an informative or material portion of said advertisements and do not place purchasers or prospective purchasers on notice that the respondent's edition of said books is a reprint and is not the original edition which at one time sold for the price indicated.

PAR. 4. The use by respondent of the aforesaid statements and representations has had, and has, the tendency and capacity to mislead and deceive members of the purchasing public with respect to the quality and value of the books distributed and sold by respondent

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and particularly to mislead such purchasers into the false and erroneous belief that the edition of said books sold by respondent for 98 cents for the entire group is the same as the original edition which sold at prices ranging from \$2.00 to \$2.50 each or for \$11.50 for the group of five books. As a result the purchasing public has purchased respondent's said edition of five books above named in reliance upon the truthfulness of said representations, and trade has thereby been unfairly diverted to the respondent from its competitors who do not misrepresent the character, quality, or value of the books sold by them in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondent, Gold Medal Books, Inc., are to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief of counsel for the Commission (respondent not having filed brief), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered. That the respondent, Gold Medal Books, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of books, in interstate commerce and in the District of Columbia, do forthwith cease and desist from:

Using pictures of, or references to, books in their original bindings and formats, or in any bindings and formats other than those actually and currently used by respondent, to describe, designate, illustrate, or in any way refer to, books offered for sale and sold by respondents, when in fact the bindings, formats, or quality of respondent's books are not identical with, or equal to, the books pictured or referred to, unless such pictures and references are accompanied in close proximity by other conspicuous and unequivocal statements which will fully

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inform purchasers as to the differences between respondent's books and the books pictured or referred to, and which will prevent any mistaken belief on the part of purchasers that the bindings, formats, or quality of respondent's books are identical with, or equal to, that of the books pictured or referred to.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.