

II

As used in this Final Judgment:

- (A) "Person" shall mean an individual, partnership, corporation or any other legal entity;
- (B) "Higbee" shall mean defendant The Higbee Company;
- (C) "Burrows" shall mean the assets of the Burrows stores listed in Appendix A to this Final Judgment and operated by Higbee at or near the locations indicated in Appendix A as those assets may be changed in the ordinary course of business.
- (D) "Trade Books" shall mean all hardbound books except books used as textbooks, encyclopedias and technical manuals.
- (E) "Affiliate" shall mean a person that controls or has power to control Higbee or is controlled by or is under common control with Higbee, or a person who owns or controls ten per cent (10%) or more of the securities of Higbee, or a person any of whose securities are owned or controlled by Higbee.
- (F) "Purchaser" shall mean a person who acquires one or more Burrows stores pursuant to Section IV of this Final Judgment.

III

The provisions of this Final Judgment applicable to Higbee shall apply to each of its directors, officers, agents, employees, affiliates, successors and assigns, and to all persons in active concert or participation with Higbee who receive actual notice of this Final Judgment by personal service or otherwise. Any person not a party hereto who acquires any assets or control of any assets by means of a divestiture pursuant to this Final Judgment shall not be considered to be a successor or an assign of Higbee.

IV

(A) Higbee is ordered and directed to divest, by thirty (30) months from the date of entry of this Final Judgment, all of its interest, direct and indirect, in Burrows.

(B) Until the time of such divestiture, Higbee shall continue to operate Burrows as a single, viable Division of Higbee.

(C) No divestiture of all or any portion of Burrows shall be made to any person or persons who are directors, officers, agents, employees, or affiliates of Higbee at the time of divestiture.

(D) Higbee is ordered and directed to put forth its best efforts to divest Burrows to a single purchaser, and if unable to do so, shall divest the Burrows stores as individual units or in combinations of such units to one or more purchasers.

(E) Higbee, in addition to any other steps it may make to secure purchasers, will take reasonable steps to make the availability of Burrows known publicly, and particularly to persons engaged, in whole or in part, in retail sales of trade books. Higbee shall furnish to bona fide prospective purchasers, or their agents, all appropriate information regarding the business of Burrows and shall permit them to make such inspection of the facilities and operations of Burrows as is reasonably necessary for a prospective purchaser to advise himself properly.

(F) Ninety (90) days after the date of entry of this Final Judgment and every ninety (90) days thereafter until a satisfactory purchaser(s) is (are) obtained, Higbee shall report to the plaintiff in writing the steps which have been taken to comply with this Section IV and shall make known to the plaintiff the names and addresses of all persons who have made an offer for divestiture together with the terms and conditions of such offer. At least sixty (60) days in advance of the effective date of any contract with any purchaser, Higbee shall supply the plaintiff with the name and address of such

proposed purchaser, and with the basic facts concerning the terms and conditions of the proposed divestiture, together with any other pertinent information requested by the plaintiff. At the same time, Higbee shall make known to the plaintiff the names and addresses of all other persons not previously reported who have made an offer for divestiture together with the terms and conditions of such offer. Not more than thirty (30) days after its receipt of the basic facts of the proposed transaction, the plaintiff shall advise Higbee of any objection it may have to the consummation of the proposed divestiture. If no such objection is made known to Higbee within such period, the plaintiff shall be deemed to have approved such divestiture. If such an objection is made by the plaintiff, the proposed divestiture shall not be consummated unless approved by the Court or unless the plaintiff's objection is withdrawn. In the case of any divestiture to which plaintiff objects, which if consummated would leave Higbee without any further interest in Burrows, the time period set forth in Subsection (A) of this Section IV within which total divestiture must be accomplished shall, unless this Court orders otherwise upon application of the plaintiff, be tolled during the pendency of any application by defendant for approval.

(G) If any divestiture pursuant to this Section IV involves the disposition of assets of Burrows not solely for cash, nothing in this Final Judgment shall be deemed to prohibit Higbee from retaining, accepting and enforcing a bona fide lien, mortgage, deed of trust or other form of security on said assets for the purpose of securing to Higbee full payment of the price at which said assets are disposed of. If Higbee acquires any stock of, or any promissory note or

other obligation from, any person acquiring Burrows assets, Higbee shall, subject to the provisions of this Final Judgment, sell such stock, note or obligation, within one year of its acquisition, together with any lien, mortgage, deed of trust, or other form of security to assure payment of any such note or obligation. If Higbee regains ownership or control of any such assets by enforcement or settlement of a bona fide lien, mortgage, deed of trust, or other form of security before selling the note or other obligation to which the security pertains, Higbee shall, subject to the provisions of this Final Judgment, dispose of any such assets thus regained within eighteen (18) months from the time of reacquisition.

(H) Higbee is ordered and directed for two years from the date of divestiture to provide credit, billing, accounts payable, and sales and inventory reporting services for Burrows to any person to whom the divestiture of all (but not merely a portion) of Burrows is made, if that person so desires. Such services (or any one or more thereof) shall be provided for a reasonable fee, the amount of which shall not depend in any way upon the volume of sales or profits of Burrows.

V

(A) None of the Burrows stores shall be closed by Higbee without the approval of the plaintiff, or failing such approval, of the Court. At least sixty (60) days in advance of the date of any such closing, Higbee shall supply the plaintiff with the complete details concerning the reasons for such closing together with any other pertinent information requested by the plaintiff. Not more than thirty (30) days after its receipt of the foregoing information, the plaintiff shall advise Higbee of any objection it may have to such closing. If no such objection is made known to Higbee within such

period, the plaintiff shall be deemed to have approved such closing. If such an objection is made by the plaintiff, the proposed closing shall not be consummated unless approved by the Court or unless the plaintiff's objection is withdrawn.

(B) In no event shall any Burrows store be closed unless the inventory and other moveable assets of such closed store are transferred to one or more of the other Burrows Stores.

VI

Higbee is enjoined and restrained for a period of five (5) years from the date of entry of this Final Judgment from acquiring without the consent of plaintiff, any part of the assets, or of the stock or other share capital, of a person engaged in the business of selling trade books through retail outlets located in Cuyahoga County, Ohio.

VII

(A) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, Higbee shall permit duly authorized representatives of the Department of Justice, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice, subject to any legally recognized privilege:

(1) Reasonable access during the business hours of Higbee, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Higbee which relate to any matters contained in this Final Judgment;

(2) Subject to the reasonable convenience of Higbee and without restraint or interference from it,

to interview officers or employees of Higbee, any of whom may have counsel present, regarding such matters.

(B) Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, Higbee shall submit such reports in writing, with respect to the matters contained in this Final Judgment, as may from time to time be requested.

(C) No information obtained by the means provided in this Section VII of this Final Judgment shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of determining or securing compliance with this Final Judgment, or as otherwise required by law.

VIII

Jurisdiction is retained by this Court for the purpose of enabling the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, modification, or termination of any of the applicable provisions thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.

IX

This Final Judgment shall remain in full force and effect for five (5) years from the date of entry hereof, and no longer.

/s/ ROBERT B. KRUPANSKY
United States District Judge

Dated: October 4, 1971

APPENDIX A

1. 419 Euclid Avenue
Cleveland, Ohio 44114
2. 24 Union Commerce Arcade
Cleveland, Ohio 44115
3. 2159 Lee Road
Cleveland Heights, Ohio 44118
4. 3538 Mayfield Road (Severance Center)
Cleveland Heights, Ohio 44118
5. 21400 Libby Road (Southgate Center)
Maple Heights, Ohio 44137
6. 14825 Detroit Avenue
Lakewood, Ohio 44107
7. 16712 Chagrin Boulevard
Shaker Heights, Ohio 44120
8. 684 East 185th Street
Cleveland, Ohio 44119
9. 13127 Shaker Square
Cleveland, Ohio 44120
10. 3301 Westgate (Westgate Center)
Fairview Park, Ohio 44126
11. 7765 West Ridgewood Drive (Parma town)
Parma, Ohio 44129
12. 26255 Great Northern Shopping Center
North Olmsted, Ohio 44138
13. Webster Company (Wholesale Subsidiary)
419 Euclid Avenue
Cleveland, Ohio 44114