

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JULY 1, 1960, TO DECEMBER 31, 1960

IN THE MATTER OF SELECT MAGAZINES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(d) OF THE CLAYTON ACT

Docket 7384. Complaint, Feb. 5, 1959—Decision, July 6, 1960

Consent order requiring a corporate national distributor—with annual sales of the magazines "Life", "Time", "McCall's", "Popular Science Monthly", "Charm", "Reader's Digest", "Mademoiselle", "Better Homes and Gardens", "Redbook", and others, and paper backs and comic books of its six publisher-owners and others amounting to some \$43,000,000—and its six publisher-owners, to cease violating Sec. 2(d) of the Clayton Act by making payments or allowances for services or facilities furnished to certain customers operating retail outlets in railroad, airport, and bus terminals, and in hotels and office buildings—such as a payment of \$107,000 to The Union News Company of New York—which were not made available on proportionally equal terms to all competing customers.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson Patman Act, hereby issues this complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Select Magazines, Inc., (hereinafter sometimes referred to as SM) is a corporation organized and doing business under the laws of the State of New York, with its principal place of business located at 229 Fourth Avenue, New York 3, N.Y.

Respondent SM is a mutually owned corporation in which each of the six respondent publishers owns one-sixth of the controlling stock.

PAR. 2. Respondent McCall Corporation is a corporation organized and doing business under the laws of the State of Delaware, with its principal office and place of business located at 230 Park Avenue, New York 17, N.Y.

Respondent The Popular Science Publishing Company, Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 353 Fourth Avenue, New York 10, N.Y.

Respondent The Reader's Digest Association, Inc., is a corporation organized and doing business under the laws of the State of New York with its principal office and place of business located at Chappaqua, N.Y.

Respondent Meredith Publishing Company, Inc., is a corporation organized and doing business under the laws of the State of Iowa, with its principal office and place of business located at 1716 Locust Street, Des Moines 3, Iowa.

Respondent Street & Smith Publications, Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 575 Madison Avenue, New York 22, N.Y.

Respondent Time, Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 9 Rockefeller Plaza, New York 20, N.Y.

PAR. 3. Respondent Select Magazines, Inc., has acted and is now acting as a national distributor for all the various publications (e.g. magazines, pocket books, comic books) published by the other named respondents (sometimes referred to as publisher-owners) as well as for publications of other publishers not owning any shares of stock in SM.

SM's sales amount to approximately \$43,000,000 per year, approximately \$30,000,000 of which is from the sale of magazines published by the publisher-owners of SM. Some of the magazines published by these publisher-owners and distributed by SM include "Life", "Time", "McCall's", "Popular Science Monthly", "Charm", "Reader's Digest", "Mademoiselle", "Better Homes & Gardens" and "Redbook". These magazines are among the most popular and widely circulated magazines in the United States.

SM, as national distributor of publications published by respondents McCall Corporation, The Popular Science Publishing Company, Inc., The Reader's Digest Association, Inc., Meredith Pub-

lishing Company, Inc., Street & Smith Publications, Inc., and Time, Inc., has performed and is now performing various services for these publisher-owners. Among the services performed and still being performed by SM for the benefit of its publisher-owners in connection with the sale and distribution of their publications are taking orders; distributing, billing and collecting from customers; and participating in the negotiation of various promotional arrangements with the retail customers of its publisher-owners.

In its capacity as national distributor for the publisher-owners, and in dealing with customers of said publisher-owners, SM served and is now serving as a conduit or intermediary for the sale, distribution and promotion of the publications of its publisher-owners. These publications are distributed throughout various States by SM through local distributors to retail customers.

PAR. 4. The respondent publishers have been and are presently engaged in the business of publishing and distributing various publications under copyrighted titles, through their conduit or intermediary SM, in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of their business in commerce, respondents paid or contracted for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of publications sold to them by respondents. Such payments or allowances were not made available on proportionally equal terms to all other customers of respondents competing in the distribution of such publications.

PAR. 6. As an example of the practices alleged herein, respondents have made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available by respondents on proportionally equal terms to all other customers (including drug chains, grocery chains and other newsstands) competing with the favored customers in the sale and distribution of respondents' publications.

In 1957 respondent publishers, through their conduit or intermediary SM, paid their favored retail customers as consideration

for promoting respondents' magazines a total of approximately \$231,000, of which approximately \$107,000 was paid to The Union News Company of New York.

Respondents made said payments to their favored customers on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

PAR. 7. The acts and practices of respondents as alleged above are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

Mr. J. Wallace Adair and *Mr. Jerome Garfinkel* for the Commission.

Whitman, Ransom & Coulson, by *Mr. J. Bay Robinson*, of New York, N.Y.; *Mr. Charles E. Oberle*, of New York, N.Y.; *Parker, Duryee, Benjamin, Zumino & Malone*, by *Mr. James G. Bernheim*, of New York, N.Y.; *Lord, Day & Lord*, by *Mr. Thomas F. Daly*, of New York, N.Y.; *Clark, Carr & Ellis*, by *Mr. Frank E. Barnett*, *Mr. Covington Hardee* and *Mr. William J. McDonald, Jr.*, of New York, N.Y.; and *Cravath, Swaine & Moore*, by *Mr. Harold R. Medina, Jr.*, of New York, N.Y., for the several respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on February 5, 1959, charging Respondents with violation of § 2(d) of the Clayton Act (U.S.C. Title 15, § 13), as amended by the Robinson-Patman Act, by paying or contracting for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of publications sold to them by Respondents, such payments or allowances not having been made available by Respondents on proportionally equal terms to all their other customers competing in the distribution of such publications, and Respondents not having made such payments among their favored customers on proportionally equal terms.

Thereafter, on May 2, 1960, Respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director and Associate Director of the Commission's Bureau of Litigation, and thereafter, on May 9, 1960, submitted to the hearing examiner for consideration.

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Decision

The agreement identified Respondents as follows:

Respondent	State of Incorporation	Principal office and place of business
Select Magazines, Inc.....	New York.....	229 Park Ave., South, New York 3, N.Y.
McCall Corporation.....	Delaware.....	230 Park Avenue, New York 17, N.Y.
The Popular Science Publishing Company, Inc.....	New York.....	355 Lexington Avenue, New York 17, N.Y.
The Reader's Digest Association, Inc.....	New York.....	Chappaqua, N.Y.
Meredith Publishing Company (erroneously named in the complaint as Meredith Publishing Company, Inc.).....	Iowa.....	1716 Locust Street, Des Moines 3, Iowa.
Street & Smith Publications, Inc.....	New York.....	575 Madison Avenue, New York 22, N.Y.
Time, Inc.....	New York.....	9 Rockefeller Plaza, New York 20, N.Y.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

The agreement is entered into subject to the condition that the initial decision based thereon shall become the decision of the Commission on the same date that the initial decisions in Dockets 7385, 7386, 7387, 7388, 7389, 7390, 7391, 7392, 7393, 7394, 7611, 7612, 7613, 7614, and 7615 become the decision of the Commission.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified, or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; that the word "customer" wherever used in said order means anyone who purchases from a respondent, acting either as principal or agent, or from a distributor or wholesaler where such transaction with such purchaser is essentially a sale by such respondent, acting either as principal or agent; and that the agreement is for settlement purposes only and does not constitute an admission by the Respondents that they have violated the law as alleged in the complaint.

Order

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After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That each of the named respondents, Select Magazines, Inc., McCall Corporation, The Popular Science Publishing Company, Inc., The Reader's Digest Association, Inc., Meredith Publishing Company, Street & Smith Publications, Inc., Time, Inc., its officers, agents, representatives or employes, directly or through any corporate or other device, in connection with the distribution, sale, or offering for sale of magazines, paper back or comic books in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of any magazine, paper back or comic book published, sold or offered for sale by such respondent, unless such payment or consideration is affirmatively offered or otherwise made available on proportionally equal terms to all of its other customers competing such such favored customer in the distribution of such magazine, paper back or comic book.

It is further ordered, That respondent, Select Magazines, Inc., its officers, agents, representatives or employes, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of magazines, paper back or comic books in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from paying, contracting for, or passing on an allowance or anything of value to, or for the benefit of any customer of any publisher for which it distributes any magazine, paper back or comic book as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of any of such publisher's magazines, paper back or comic books which are sold, offered for sale or distributed by Select Magazines, Inc., unless such allowance or consideration is affirmatively offered or otherwise made available on proportionally equal terms

to all other customers of such publisher to whom Select Magazines, Inc., distributes such publisher's magazines, paper back or comic books, and who are competing with such favored customer in the distribution of such magazines, paper back or comic books.

DECISION OF THE COMMISSION AND ORDER EXTENDING TIME FOR FILING
REPORT OF COMPLIANCE

Pursuant to § 3.21 of the Commission's Rules of Practice, the hearing examiner's initial decision in this proceeding shall, on the 6th day of July 1960, become the decision of the Commission.

It is ordered, That the time within which the respondents may file their report, setting forth the manner and form in which they have complied with the order to cease and desist as required by § 3.26 of the Rules of Practice, be, and it hereby is, extended until further order of the Commission.

The Commission on January 10, 1961 issued an order to file report of compliance, as follows:

The Commission, by order entered June 30, 1960, having noted that the hearing examiner's initial decision in this proceeding should, on July 6, 1960, become the decision of the Commission, and having directed that the time within which the respondents may file a report of compliance with the order to cease and desist contained in said decision be extended until further order of the Commission:

It is now ordered, That the respondents 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 the order to cease and desist contained in the aforesaid initial decision.

Commissioner Mills not participating.

IN THE MATTER OF

CURTIS PUBLISHING CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(d) OF THE CLAYTON ACT

Docket 7385. Complaint, Feb. 5, 1959—Decision, July 6, 1960

Consent order requiring a corporate national publisher and its two publishing and distributing subsidiaries—with sales of "Saturday Evening Post", "Ladies' Home Journal", "The American Home", and other publications for 1957 in excess of \$30,000,000—to cease violating Sec. 2(d) of the Clayton Act by making payments or allowances for services or facilities furnished certain customers operating retail outlets in railroad, airport, and

Complaint

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bus terminals and in hotels and office buildings—and on the basis of individual negotiation—which were not made available on proportionally equal terms to all competing customers.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues this complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Curtis Publishing Co., Inc., (hereinafter sometimes referred to as Curtis) is a corporation organized and doing business under the laws of the State of Pennsylvania, with its principal office and place of business located at Independence Square, Philadelphia, Pa. Curtis has been engaged and is presently engaged in the business of publishing and distributing various publications (e.g. magazines, pocket books, comic books) under copyrighted titles, distribution being made through its wholly-owned subsidiary, respondent Curtis Circulation Company, Inc.

PAR. 2. Respondent The American Home Magazine Corp., (hereinafter sometimes referred to as American), a wholly-owned subsidiary of respondent Curtis Publishing Co., Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal place of business located at 300 Park Avenue, New York 22, N.Y. American has been and is presently engaged in the business of publishing and distributing various publications under copyrighted titles, distribution being made through respondent Curtis Circulation Company, Inc.

PAR. 3. Respondent Curtis Circulation Company, Inc. (hereinafter referred to as Curtis Circulation) is a corporation organized and doing business under the laws of the State of Delaware, with its principal place of business located at Independence Square, Philadelphia, Pa.

Curtis Circulation has acted and is now acting as a national distributor for all the various publications of the respondent publishers, as well as for publications of independent publishers. Sales of publications through Curtis Circulation in 1957 were in excess of \$30,000,000. Approximately \$20,000,000 of such sales were accounted for by sales of magazines published by its parent company, Curtis, and approximately \$1,500,000 of such sales were accounted for by magazines published by American. Some of the magazines pub-

lished by these respondent publishers and distributed by Curtis Circulation include "Saturday Evening Post", "Ladies' Home Journal", and "The American Home". These magazines are among the most popular and widely circulated magazines in the United States.

Curtis Circulation, as national distributor of publications published by respondents Curtis and American, has performed and is now performing various services for said respondent publishers. Among the services performed and still being performed by Curtis Circulation for the benefit of the respondent publishers in connection with the sale and distribution of their publications are taking orders; distributing, billing and collecting from customers; and participating in the negotiation of various promotional arrangements with the retail customers of respondent publishers.

In its capacity as national distributor for the respondent publishers in dealing with customers of said respondent publishers, Curtis Circulation served and is now serving as a conduit or intermediary for the sale, distribution and promotion of the publications of the respondent publishers. These publications are distributed throughout various States by Curtis Circulation through local distributors to retail customers.

PAR. 4. Respondent publishers, through their conduit or intermediary Curtis Circulation, have sold and distributed and now sell and distribute their publications in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of their business in commerce, respondents paid or contracted for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of publications sold to them by respondents. Such payments or allowances were not made available on proportionally equal terms to all other customers of respondents competing in the distribution of such publications.

PAR. 6. As an example of the practices alleged herein, respondents have made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including drug chains, grocery chains and other newsstands) competing

with the favored customers in the sale and distribution of respondents' publications. Among the favored customers receiving payments in 1957 which were not offered to other competing customers in connection with the purchase of respondents' publications were:

<i>Customer</i>	<i>Approximate payment received</i>
The Union News Company, New York, N.Y.-----	\$34,906
Fred Harvey, Chicago 4, Ill.-----	7,774
Garfield News Co., New York, N.Y.-----	5,883
ABC Vending Corp., New York, N.Y.-----	5,345
Barkalow Bros., Omaha, Nebraska-----	4,273
The Armstrong Co., Boston 14, Mass.-----	2,451

Respondents made said payments to their favored customers on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

PAR. 7. The acts and practices of respondents as alleged above are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

Mr. J. Wallace Adair and *Mr. Jerome Garfinkel* for the Commission.

Pepper, Hamilton & Scheetz, by *Mr. Wilbur H. Haines, Jr.*, of Philadelphia, Pa., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on February 5, 1959, charging Respondents with violation of § 2(d) of the Clayton Act (U.S.C. Title 15, § 13), as amended by the Robinson-Patman Act, by paying or contracting for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale or offering for sale of publications sold to them by Respondents, such payments or allowances not having been made available by Respondents on proportionally equal terms to all their other customers competing in the distribution of such publications, and Respondents not having made such payments among their favored customers on proportionally equal terms.

Thereafter, on April 27, 1960, Respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director and Associate Director of the Commission's Bureau of Litigation, and thereafter, on May 9, 1960, submitted to the hearing examiner for consideration.

The agreement identifies Respondent The Curtis Publishing Company (erroneously named in the complaint as Curtis Publishing Co., Inc.) as a Pennsylvania corporation, with its office and principal place of business located at Independence Square, Philadelphia, Pa.; Respondent The American Home Magazine Corporation (erroneously named in the complaint as The American Home Magazine Corp.) as a New York corporation, with its office and principal place of business located at 300 Park Avenue, New York 22, N.Y.; and Respondent Curtis Circulation Company (erroneously named in the complaint as Curtis Circulation Company, Inc.) as a Delaware corporation, with its office and principal place of business located at Independence Square, Philadelphia, Pa.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

The agreement is entered into subject to the condition that the initial decision based thereon shall become the decision of the Commission on the same date that the initial decisions in Dockets 7384, 7386, 7387, 7388, 7389, 7390, 7391, 7392, 7393, 7394, 7611, 7612, 7613, 7614, and 7615 become the decisions of the Commission.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; that the word "customer" wherever used in said order means anyone who purchases from a respondent, acting either as principal or agent, or from a distributor or wholesaler where such transaction with such purchaser is essentially a sale by such respondent, acting either as principal or agent; and that the agreement is for settlement purposes only and does not constitute an admission by Respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing

examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That each of the named respondents, The Curtis Publishing Company, The American Home Magazine Corporation, Curtis Circulation Company, its officers, agents, representatives or employees, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of magazines, paperback or comic books in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of any magazine, paperback or comic book published, sold or offered for sale by such respondent, unless such payment or consideration is affirmatively offered or otherwise made available on proportionally equal terms to all of its other customers competing with such favored customer in the distribution of such magazine, paperback or comic book.

It is further ordered, That respondent Curtis Circulation Company, its officers, agents, representatives or employees, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of magazines, paperback or comic books in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from paying, contracting for, or passing on an allowance or anything of value to, or for the benefit of any customer of any publisher for which it distributes any magazine, paperback or comic books as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of any of such publisher's magazines, paperback or comic books which are sold, offered for sale or distributed by Curtis Circulation Company, unless such allowance or consideration is affirmatively offered or otherwise made available on proportionally equal terms to all other customers of such publisher to whom Curtis Circulation Company, distributes such publisher's magazines, paperback or comic books, and who are competing with such favored

customer in the distribution of such magazines, paperback or comic books.

DECISION OF THE COMMISSION AND ORDER EXTENDING TIME FOR FILING
REPORT OF COMPLIANCE

Pursuant to § 3.21 of the Commission's Rules of Practice, the hearing examiner's initial decision in this proceeding shall, on the 6th day of July 1960, become the decision of the Commission.

It is ordered, That the time within which the respondents may file their report, setting forth the manner and form in which they have complied with the order to cease and desist, as required by § 3.26 of the Rules of Practice, be, and it hereby is, extended until further order of the Commission.

The Commission on January 10, 1961 issued an order to file report of compliance, as follows:

The Commission, by order entered June 30, 1960, having noted that the hearing examiner's initial decision in this proceeding should, on July 6, 1960, become the decision of the Commission, and having directed that the time within which the respondents may file a report of compliance with the order to cease and desist contained in said decision be extended until further order of the Commission:

It is now ordered, That the respondents 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 the order to cease and desist contained in the aforesaid initial decision.

Commissioner Mills not participating.

IN THE MATTER OF

COWLES MAGAZINES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(d) OF THE CLAYTON ACT

Docket 7386. Complaint, Feb. 5, 1959—Decision, July 6, 1960

Consent order requiring a corporate national publisher—with sales of "Look" and other magazines, pocket books, and comic books in 1957 exceeding \$13,000,000—and its national distributor, to cease violating Sec. 2(d) of the Clayton Act by making payments or allowances for services or facilities furnished certain customers operating retail outlets in railroad, airport, and bus terminals and in hotels and office buildings—and on the basis of individual negotiation—which were not made available on proportionally equal terms to all competing customers.

Complaint

57 F.T.C.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Cowles Magazines, Inc., is a corporation organized and doing business under the laws of the State of Iowa, with its principal office and place of business located at 488 Madison Avenue, New York 22, N.Y. Said respondent has been engaged and is presently engaged in the business of publishing and distributing various publications (e.g. magazines, pocket books, comic books) under copyrighted titles, distribution being made through respondent Curtis Circulation Company, Inc. Respondent publisher's sales of its publications in 1957 exceeded \$13,000,000, more than \$4,400,000 of which were sales to retail outlets.

PAR. 2. Respondent Curtis Circulation Company, Inc. (hereinafter referred to as Curtis Circulation) is a corporation organized and doing business under the laws of the State of Delaware, with its principal office and place of business located at Independence Square, Philadelphia, Pa.

PAR. 3. Curtis Circulation has acted and is now acting as National distributor for the publications of several independent publishers, including respondent publisher. One of the magazines published by this respondent publisher and distributed by Curtis Circulation is "Look". This magazine is among the most popular and widely circulated magazines in the United States.

Curtis Circulation, as national distributor of publications published by respondent Cowles Magazines, Inc., and other independent publishers, has performed and is now performing various services for these publishers. Among the services performed and still being performed by Curtis Circulation for the benefit of these publishers, and more particularly for respondent Cowles Magazines, Inc., in connection with the sale and distribution of the publications of said publishers are the taking of orders; distributing, billing and collecting from customers; and participating in the negotiation of various promotional arrangements with the retail customers of said publishers.

In its capacity as national distributor for the respondent publisher in dealing with the customers of said respondent publisher,

Curtis Circulation served and is now serving as a conduit or intermediary for the sale, distribution and promotion of the publications of the respondent publisher. These publications are distributed throughout various States by Curtis Circulation through local distributors to retail customers.

PAR. 4. Respondent publisher, through its conduit or intermediary Curtis Circulation, has sold and distributed and now sells and distributes its publications in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of their business in commerce, respondents paid or contracted for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of publications sold to them by respondents.

Such payments or allowances were not made available on proportionally equal terms to all other customers of respondents competing in the distribution of such publications.

PAR. 6. As an example of the practices alleged herein, respondents have made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including drug chains, grocery chains and other newsstands) competing with the favored customers in the sale and distribution of the publications of respondent publisher. Among the favored customers receiving payments in 1957 which were not offered to other competing customers in connection with the purchase of respondent's publications were:

<i>Customer</i>	<i>Approximate payment received</i>
The Union News Company, New York, N.Y.-----	\$9,568
Fred Harvey, Chicago 4, Illinois-----	1,961
ABC Vending Corp., New York, N.Y.-----	1,727
Garfield News Co., New York, N.Y.-----	1,113
Barkalow Bros., Omaha, Nebr.-----	783

Respondents made said payments to their favored customers on the basis of individual negotiations. Among said favored customers, such payments were not made on proportionally equal terms.

Respondent Curtis Circulation has also acted as a conduit or intermediary for other independent publishers in making payments similar to those alleged herein in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

PAR. 7. The acts and practices of respondents as alleged above are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

Mr. J. Wallace Adair and *Mr. Jerome Garfinkel* for the Commission.

Mr. John F. Harding, of New York, N.Y., and *Pepper, Bodine, Frick, Sheetz & Hamilton*, by *Mr. Philip H. Strubing*, of Philadelphia, Pa., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on February 5, 1959, charging Respondents with violation of § 2(d) of the Clayton Act (U.S.C. Title 15, § 13), as amended by the Robinson-Patman Act, by paying or contracting for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale or offering for sale of publications sold to them by Respondents, such payments or allowances not having been made available by Respondents on proportionally equal terms to all their other customers competing in the distribution of such publications, and Respondents not having made such payments among their favored customers on proportionally equal terms.

Thereafter, on May 14, 1959, Respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director of the Commission's Bureau of Litigation, and thereafter, on December 15, 1959, submitted to the hearing examiner for consideration.

The agreement identifies Respondent Cowles Magazines, Inc., as an Iowa corporation, with its office and principal place of business located at 488 Madison Avenue, New York 22, N.Y., and Respondent Curtis Circulation Company (erroneously named in the complaint as Curtis Circulation Company, Inc.) as a Delaware corporation, with its office and principal place of business located at Independence Square, Philadelphia, Pa.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of

jurisdictional facts had been duly made in accordance with such allegations.

The agreement is entered into subject to the condition that the initial decision based thereon shall become the decision of the Commission on the same date that the initial decisions in Dockets 7384, 7385, 7387, 7388, 7389, 7390, 7391, 7392, 7393, and 7934 become the decisions of the Commission.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by Respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered. That each of the named Respondents, Cowles Magazines, Inc. and Curtis Circulation Company, its officers, agents, representatives or employees, directly or through any corporate or other device, do forthwith cease and desist from paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any of its customers as compensation or in consideration for any services or facilities furnished by or through such customer of such Respondent in or in connection with the handling, offering for sale, sale or distribution of any magazine, paper back or comic book by such Respondent to such customer in commerce, as "com-

merce" is defined in the amended Clayton Act, unless such payment or consideration is affirmatively made available on proportionally equal terms to all of its other customers competing with such customer in the distribution of such magazine, paper back or comic book.

DECISION OF THE COMMISSION AND ORDER EXTENDING TIME FOR FILING
REPORT OF COMPLIANCE

Pursuant to § 3.21 of the Commission's Rules of Practice, the hearing examiner's initial decision in this proceeding shall, on the 6th day of July 1960, become the decision of the Commission.

It is ordered, That the time within which the respondents may file their report, setting forth the manner and form in which they have complied with the order to cease and desist, as required by § 3.26 of the Rules of Practice, be, and it hereby is, extended until further order of the Commission.

The Commission on January 10, 1961 issued an order to file report of compliance, as follows:

The Commission, by order entered June 30, 1960, having noted that the hearing examiner's initial decision in this proceeding should, on July 6, 1960, become the decision of the Commission, and having directed that the time within which the respondents may file a report of compliance with the order to cease and desist contained in said decision be extended until further order of the Commission:

It is now ordered, That the respondents 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 the order to cease and desist contained in the aforesaid initial decision.

Commissioner Mills not participating.

IN THE MATTER OF
ESQUIRE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(d) OF THE CLAYTON ACT

Docket 7387. Complaint, Feb. 5, 1959—Decision, July 6, 1960

Consent order requiring the publisher of "Coronet" and "Esquire" magazines, pocket books, and comic books—with sales in 1957 exceeding \$16,000,000—and its national distributor, to cease violating Sec. 2(d) of the Clayton Act by making payments or allowances for services or facilities furnished certain customers operating retail outlets in railroad, airport, and bus ter-

minals and in hotels and office buildings—and on the basis of individual negotiation—which were not made available on proportionally equal terms to all competing customers.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues this complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Esquire, Inc., is a corporation organized and doing business under the laws of the State of Delaware, with its principal office and place of business located at 488 Madison Avenue, New York 22, New York. Said respondent has been engaged and is presently engaged in the business of publishing and distributing various publications (e.g. magazines, pocket books, comic books) under copyrighted titles, distribution being made through respondent Curtis Circulation Company, Inc. Respondent Esquire, Inc.'s sales of its publications in 1957 exceeded \$16,000,000, more than \$6,700,000 of which were sales to retail outlets.

PAR. 2. Respondent Curtis Circulation Company, Inc., (hereinafter referred to as Curtis Circulation) is a corporation organized and doing business under the laws of the State of Delaware, with its principal office and place of business located at Independence Square, Philadelphia, Pa.

Curtis Circulation has acted and is now acting as national distributor for the publications of several independent publishers, including respondent publisher. Two magazines published by said respondent publisher and distributed by Curtis Circulation are "Coronet" and "Esquire". These two magazines are among the most popular and widely circulated magazines in the United States.

Curtis Circulation, as national distributor of publications published by respondent Esquire, Inc., and other independent publishers, has performed and is now performing various services for these publishers. Among the services performed and still being performed by Curtis Circulation for the benefit of these publishers, and more particularly for respondent Esquire, Inc., in connection with the sale and distribution of the publications of said publishers, are the taking of orders; distributing, billing and collecting from customers; and participating in the negotiation of various promotional arrangements with the retail customers of said publishers.

In its capacity as national distributor for the respondent publisher in dealing with the customers of said respondent publisher, Curtis Circulation served and is now serving as a conduit or intermediary for the sale, distribution and promotion of the publications of the respondent publisher. These publications are distributed throughout various States by Curtis Circulation through local distributors to retail customers.

PAR. 3. Respondent publisher, through its conduit or intermediary Curtis Circulation, has sold and distributed and now sells and distributes its publications in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business in commerce, respondents paid or contracted for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of publications sold to them by respondents. Such payments or allowances were not made available on proportionally equal terms to all other customers of respondents competing in the distribution of such publications.

PAR. 5. As an example of the practices alleged herein, respondents have made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including drug chains, grocery chains and other newsstands) competing with the favored customers in the sale and distribution of respondents' publications. Among the favored customers receiving payments in 1957 which were not offered to other competing customers in connection with the purchase of respondent publisher's publications were:

<i>Customer</i>	<i>Approximate payment received</i>
Union News Company, New York, N.Y.-----	\$13,351
Fred Harvey, Chicago, Ill.-----	4,465
Garfield News Co., New York, N.Y.-----	2,006
ABC Vending Corp., New York, N.Y.-----	1,488
Barkalow Bros., Omaha, Neb.-----	1,940
The Armstrong Co., Boston, Mass.-----	812

Respondents made said payments to their favored customers on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

Respondent Curtis Circulation has also acted as a conduit or intermediary for other independent publishers in making payments similar to those alleged herein in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

PAR. 6. The acts and practices of respondents as alleged above are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

Mr. J. Wallace Adair and *Mr. Jerome Garfinkel* for the Commission.

Pepper, Bodine, Frick, Sheetz & Hamilton, by *Mr. Philip H. Strubing*, of Philadelphia, Pa., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on February 5, 1959, charging Respondents with violation of § 2(d) of the Clayton Act (U.S.C. Title 15, § 13), as amended by the Robinson-Patman Act, by paying or contracting for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale or offering for sale of publications sold to them by Respondents, such payments or allowances not having been made available by Respondents on proportionally equal terms to all their other customers competing in the distribution of such publications, and Respondents not having made such payments among their favored customers on proportionally equal terms.

Thereafter, on April 30, 1959, Respondents, their counsel and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director of the Commission's Bureau of Litigation, and thereafter, on December 15, 1959, submitted to the hearing examiner for consideration.

The agreement identifies Respondent Esquire, Inc., as a Delaware corporation, with its office and principal place of business located at 488 Madison Avenue, New York 22, N.Y., and Respondent Curtis Circulation Company (erroneously named in the complaint as Curtis Circulation Company, Inc.) as a Delaware corporation, with its office and principal place of business located at Independence Square, Philadelphia, Pa.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

The agreement is entered into subject to the condition that the initial decision based thereon shall become the decision of the Commission on the same date that the initial decisions in Dockets 7384, 7385, 7386, 7388, 7389, 7390, 7391, 7392, 7393 and 7394 become the decisions of the Commission.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by Respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered. That each of the named Respondents, Esquire, Inc. and Curtis Circulation Company, its officers, agents, representatives or employees, directly or through any corporate or other device, do forthwith cease and desist from paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any of its customers as compensation or in consideration for any services or facilities furnished by or through such customer of such Respondent in or in connection with the handling, offering for sale,

sale or distribution of any magazine, paper back or comic book by such Respondent to such customer in commerce, as "commerce" is defined in the amended Clayton Act, unless such payment or consideration is affirmatively made available on proportionally equal terms to all of its other customers competing with such customer in the distribution of such magazine, paper back or comic book.

DECISION OF THE COMMISSION AND ORDER EXTENDING TIME FOR FILING
REPORT OF COMPLIANCE

Pursuant to § 3.21 of the Commission's Rules of Practice, the hearing examiner's initial decision in this proceeding shall, on the 6th day of July 1960, become the decision of the Commission.

It is ordered. That the time, within which the respondents may file their report, setting forth the manner and form in which they have complied with the order to cease and desist, as required by § 3.26 of the Rules of Practice, be, and it hereby is, extended until further order of the Commission.

The Commission on January 10, 1961 issued an order to file report of compliance, as follows:

The Commission, by order entered June 30, 1960, having noted that the hearing examiner's initial decision in this proceeding should, on July 6, 1960, become the decision of the Commission, and having directed that the time within which the respondents may file a report of compliance with the order to cease and desist contained in said decision be extended until further order of the Commission:

It is now ordered, That the respondents 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 the order to cease and desist contained in the aforesaid initial decision.

Commissioner Mills not participating.

IN THE MATTER OF

NEW YORKER MAGAZINE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(d) OF THE CLAYTON ACT

Docket 7388. Complaint, Feb. 5, 1959—Decision, July 6, 1960

Consent order requiring the publisher of the "The New Yorker" magazine—with sales in 1957 exceeding \$15,000,000—and its national distributor, to cease violating Sec. 2(d) of the Clayton Act by making payments or allowances for services or facilities furnished to customers operating retail outlets in

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railroad, airport, and bus terminals and in hotels and office buildings—and on the basis of individual negotiation—which were not made available on proportionally equal terms to all competing customers.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues this complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent New Yorker Magazine, Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 25 West 43d Street, New York, N.Y. Said respondent has been engaged and is presently engaged in the business of publishing and distributing a magazine under the copyrighted title of "The New Yorker", distribution being made through respondent Curtis Circulation Company, Inc. Respondent publisher's sales of "The New Yorker" in 1957 exceeded \$15,000,000, more than \$1,500,000 of which were sales to retail outlets.

PAR. 2. Respondent Curtis Circulation Company, Inc., (hereinafter referred to as Curtis Circulation) is a corporation organized and doing business under the laws of the State of Delaware, with its principal office and place of business located at Independence Square, Philadelphia, Pa.

Curtis Circulation has acted and is now acting as national distributor for the publications of several independent publishers, including respondent publisher. In this capacity it has performed and is now performing various services for these publishers. Among the services performed and still being performed by Curtis Circulation for the benefit of these publishers, and more particularly for respondent New Yorker Magazine, Inc., in connection with the sale and distribution of publications of said publishers, are the taking of orders; distributing, billing and collecting from customers; and participating in the negotiation of various promotional arrangements with the retail customers of said publishers.

In its capacity as national distributor for respondent publisher in dealing with the customers of said respondent publisher, Curtis Circulation served and is now serving as a conduit or intermediary for the sale, distribution and promotion of "The New Yorker", which is among the most popular and widely circulated magazines in the United States. This magazine is distributed throughout the

various States by Curtis Circulation through local distributors to retail customers.

PAR. 3. Respondent publisher, through its conduit or intermediary Curtis Circulation, has sold and distributed and now sells and distributes its magazine "The New Yorker" in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business in commerce, respondents paid or contracted for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of magazines sold to them by respondents. Such payments or allowances were not made available on proportionally equal terms to all other customers of respondents competing in the distribution of this magazine.

PAR. 5. As an example of the practices alleged herein, respondents have made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including drug chains, grocery chains and other newsstands) competing with the favored customers in the sale and distribution of "The New Yorker". Among the favored customers receiving payments in 1957 in connection with the purchase of respondent publisher's magazine was The Union News Company of New York. In 1957 respondents paid this customer more than \$13,000 for promoting "The New Yorker".

Respondents made said payments to their favored customers on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

Respondent Curtis Circulation has also acted as a conduit or intermediary for other independent publishers in making payments similar to those alleged herein in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

PAR. 6. The acts and practices of respondents as alleged above are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

Mr. J. Wallace Adair and Mr. Jerome Garfinkel for the Commission.

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Hetkin, Jervis & Hetkin, by *Mr. Herman Jervis*, of New York, N.Y., and *Pepper, Hamilton & Scheetz*, by *Mr. Wilbur H. Haines, Jr.*, of Philadelphia, Pa., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on February 5, 1959, charging Respondents with violation of § 2(d) of the Clayton Act (U.S.C. Title 15, § 13), as amended by the Robinson-Patman Act, by paying or contracting for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale or offering for sale of magazines sold to them by Respondents, such payments or allowances not having been made available by Respondents on proportionally equal terms to all their other customers competing in the distribution of such magazines, and Respondents not having made such payments among their favored customers on proportionally equal terms.

Thereafter, on April 25, 1960, Respondents, their counsel and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director and Associate Director of the Commission's Bureau of Litigation, and thereafter, on May 9, 1959, submitted to the hearing examiner for consideration.

The agreement identifies Respondent The New Yorker Magazine, Inc. (erroneously named in the complaint as New Yorker Magazine, Inc.), as a New York corporation, with its office and principal place of business located at 25 West 43rd Street, New York, New York, and Respondent Curtis Circulation Company (erroneously named in the complaint as Curtis Circulation Company, Inc.) as a Delaware corporation, with its office and principal place of business located at Independence Square, Philadelphia, Pa.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

The agreement is entered into subject to the condition that the initial decision based thereon shall become the decision of the Commission on the same date that the initial decisions in Dockets 7384, 7385, 7386, 7387, 7389, 7390, 7391, 7392, 7393, 7394, 7611, 7612, 7613, 7614, and 7615 become the decisions of the Commission.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact and

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conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; the word "customer" wherever used in said order means anyone who purchases from a respondent, acting either as principal or agent, or from a distributor or wholesaler where such transaction with such purchaser is essentially a sale by such respondent, acting either as principal or agent; and that the agreement is for settlement purposes only and does not constitute an admission by Respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That each of the named respondents, The New Yorker Magazine, Inc. and Curtis Circulation Company, its officers, agents, representatives or employees, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale, of magazines, paper back or comic books in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of any magazine, paper back or comic book published, sold or offered for sale by such respondent, unless such payment or consideration is affirmatively offered or otherwise made available on proportionally equal terms to all of its other customers competing with such

avored customer in the distribution of such magazine, paper back or comic book.

DECISION OF THE COMMISSION AND ORDER EXTENDING TIME FOR FILING
REPORT OF COMPLIANCE

Pursuant to § 3.21 of the Commission's Rules of Practice, the hearing examiner's initial decision in this proceeding shall, on the 6th day of July 1960, become the decision of the Commission.

It is ordered, That the time within which the respondents may file their report, setting forth the manner and form in which they have complied with the order to cease and desist, as required by § 3.26 of the Rules of Practice, be, and it hereby is, extended until further order of the Commission.

The Commission on January 10, 1961 issued an order to file report of compliance, as follows:

The Commission, by order entered June 30, 1960, having noted that the hearing examiner's initial decision in this proceeding should, on July 6, 1960, become the decision of the Commission, and having directed that the time within which the respondents may file a report of compliance with the order to cease and desist contained in said decision be extended until further order of the Commission:

It is now ordered, That the respondents 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 the order to cease and desist contained in the aforesaid initial decision.

Commissioner Mills not participating.

IN THE MATTER OF
NEWSWEEK, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(d) OF THE CLAYTON ACT

Docket 7389. Complaint, Feb. 5, 1959—Decision, July 6, 1960

Consent order requiring the publisher of "Newsweek" magazine—with sales in 1957 exceeding \$14,000,000—and its national distributor, to cease violating Sec. 2(d) of the Clayton Act by making payments or allowances for services or facilities furnished to certain customers operating retail outlets in railroad, airport, and bus terminals and in hotels and office buildings—and on the basis of individual negotiation—which were not made available on proportionally equal terms to all competing customers.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues this complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Newsweek, Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 152 West 42d Street, New York 18, N.Y. Said respondent has been engaged and is presently engaged in the business of publishing and distributing a magazine under the copyrighted title of "Newsweek", distribution being made through respondent Curtis Circulation Company, Inc. Respondent publisher's sales of "Newsweek" in 1957 exceeded \$14,000,000, more than \$1,500,000 of which were sales to retail outlets.

PAR. 2. Respondent Curtis Circulation Company, Inc. (hereinafter referred to as Curtis Circulation) is a corporation organized and doing business under the laws of the State of Delaware, with its principal place of business located at Independence Square, Philadelphia, Pa.

Curtis Circulation has acted and is now acting as national distributor for the publications of several independent publishers, including respondent publisher. "Newsweek" is among the most popular and widely circulated magazines in the United States.

Curtis Circulation, as national distributor of publications published by respondent Newsweek, Inc., and other independent publishers, has performed and is now performing various services for these publishers. Among the services performed and still being performed by Curtis Circulation for the benefit of these publishers, and more particularly for respondent Newsweek, Inc., in connection with the sale and distribution of "Newsweek", are the taking of orders; distributing, billing and collecting from customers; and participating in the negotiation of various promotional arrangements with the retail customers of said publishers.

In its capacity as national distributor for respondent publisher in dealing with the customers of said respondent publisher, Curtis Circulation served and is now serving as a conduit or intermediary for the sale, distribution and promotion of "Newsweek". This

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magazine is distributed throughout various States by Curtis Circulation through local distributors to retail customers.

PAR. 3. Respondent publisher, through its conduit or intermediary Curtis Circulation, has sold and distributed and now sells and distributes its magazine "Newsweek" in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business in commerce, respondents paid or contracted for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of magazines sold to them by respondents. Such payments or allowances were not made available on proportionally equal terms to all other customers of respondents competing in the distribution of such magazines.

PAR. 5. As an example of the practices alleged herein, respondents have made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including drug chains, grocery chains and other newsstands) competing with the favored customers in the sale and distribution of "Newsweek". Among the favored customers receiving payments in 1957 which were not offered to other competing customers in connection with the purchase of respondent publisher's publications were:

<i>Customer</i>	<i>Approximate payment received</i>
The Union News Company, New York, N.Y.-----	\$7,615
Fred Harvey, Chicago 4, Ill.-----	579
Greyhound Post House, Inc., Forest Park, Ill.-----	486
Garfield News Co., New York, N.Y.-----	349
Barkalow Bros., Omaha, Nebraska-----	329
ABC Vending Corp., New York, N.Y.-----	247

Respondents made said payments to their favored customers on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

Respondent Curtis Circulation has also acted as a conduit or intermediary for other independent publishers in making payments similar to those alleged herein in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

PAR. 6. The acts and practices of respondents as alleged above are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

Mr. J. Wallace Adair and *Mr. Jerome Garfinkel* for the Commission.

Whitman, Ransom & Coulson, of New York, N.Y., and *Pepper, Bodine, Frick, Sheetz & Hamilton*, by *Mr. Philip H. Strubing*, of Philadelphia, Pa., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on February 5, 1959, charging Respondents with violation of § 2(d) of the Clayton Act (U.S.C. Title 15, § 13), as amended by the Robinson-Patman Act, by paying or contracting for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale or offering for sale of magazines sold to them by Respondents, such payments or allowances not having been made available by Respondents on proportionally equal terms to all their other customers competing in the distribution of such magazines, and Respondents not having made such payments among their favored customers on proportionally equal terms.

Thereafter, on May 11, 1959, Respondents, their counsel and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director of the Commission's Bureau of Litigation, and thereafter, on December 15, 1959, submitted to the hearing examiner for consideration.

The agreement identifies Respondent Newsweek, Inc., as a New York corporation, with its office and principal place of business located at 152 West 42d Street, New York 36, N.Y., and Respondent Curtis Circulation Company (erroneously named in the complaint as Curtis Circulation Company, Inc.) as a Delaware corporation, with its office and principal place of business located at Independence Square, Philadelphia, Pa.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

The agreement is entered into subject to the condition that the initial decision based thereon shall become the decision of the Commission on the same date that the initial decisions in Dockets 7384,

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7385, 7386, 7387, 7388, 7390, 7391, 7392, 7393, and 7394 become the decisions of the Commission.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by Respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered. That each of the named Respondents, Newsweek, Inc. and Curtis Circulation Company, its officers, agents, representatives or employees, directly or through any corporate or other device, do forthwith cease and desist from paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any of its customers as compensation or in consideration for any services or facilities furnished by or through such customer of such Respondent in or in connection with the handling, offering for sale, sale or distribution of any magazine, paper back or comic book by such Respondent to such customer in commerce, as "commerce" is defined in the amended Clayton Act, unless such payment or consideration is affirmatively made available on proportionally equal terms to all of its other customers competing with such customer in the distribution of such magazine, paper back or comic book.

DECISION OF THE COMMISSION AND ORDER EXTENDING TIME FOR FILING
REPORT OF COMPLIANCE

Pursuant to § 3.21 of the Commission's Rules of Practice, the hearing examiner's initial decision in this proceeding shall, on the 6th day of July 1960, become the decision of the Commission.

It is ordered, That the time within which the respondents may file their report, setting forth the manner and form in which they have complied with the order to cease and desist, as required by § 3.26 of the Rules of Practice, be, and it hereby is, extended until further order of the Commission.

The Commission on January 10, 1961 issued an order to file report of compliance, as follows:

The Commission, by order entered June 30, 1960, having noted that the hearing examiner's initial decision in this proceeding should, on July 6, 1960, become the decision of the Commission, and having directed that the time within which the respondents may file a report of compliance with the order to cease and desist contained in said decision be extended until further order of the Commission:

It is now ordered, That the respondents 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 the order to cease and desist contained in the aforesaid initial decision.

Commissioner Mills not participating.

IN THE MATTER OF
UNITED STATES NEWS PUBLISHING CORPORATION
ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(d) OF THE CLAYTON ACT

Docket 7390. Complaint, Feb. 5, 1959—Decision, July 6, 1960

Consent order requiring the publisher of "U.S. News & World Report"—with sales exceeding \$2,500,000 in 1957—and its national distributor, to cease violating Sec. 2(d) of the Clayton Act by making payments or allowances for services or facilities furnished to certain customers operating retail outlets in railroad, airport, and bus terminals and in hotels and office buildings—and on the basis of individual negotiation—which were not made available on proportionally equal terms to all competing customers.

Complaint

57 F.T.C.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues this complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent United States News Publishing Corporation is a corporation organized and doing business under the laws of the State of Delaware, with its principal office and place of business located at 1241 24th Street, NW., Washington 7, D.C. Said respondent has been engaged and is presently engaged in the business of publishing and distributing a magazine under the copyrighted title of "U.S. News & World Report", distribution being made through respondent Select Magazines, Inc. Respondent publisher's sales of "U.S. News & World Report" in 1957 exceeded \$2,500,000, more than \$1,500,000 of which were sales to retail outlets.

PAR. 2. Respondent Select Magazines, Inc., (hereinafter referred to as SM) is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 299 Fourth Avenue, New York 3, N.Y.

SM has acted and is now acting as national distributor for the publications of several independent publishers, including respondent publisher. SM, as national distributor of publications published by respondent United States News Publishing Corporation and other independent publishers, has performed and is now performing various services for these publishers. Among the services performed and still being performed by SM for the benefit of these publishers, and more particularly for respondent publisher in connection with the sale and distribution of "U.S. News & World Report", are the taking of orders; distributing, billing and collecting from customers; and participating in the negotiation of various promotional arrangements with the retail customers of said publishers.

In its capacity as national distributor for respondent publisher in dealing with the customers of said respondent publisher, SM served and is now serving as a conduit or intermediary for the sale, distribution and promotion of "U.S. News & World Report". This magazine, which is one of the most popular and widely circulated

magazines in the United States, is distributed throughout various States by SM through local distributors to retail customers.

PAR. 3. Respondent publisher, through its conduit or intermediary SM, has sold and distributed and now sells and distributes its magazine "U.S. News & World Report" in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business in commerce, respondents paid or contracted for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of magazines sold to them by respondents. Such payments or allowances were not made available on proportionally equal terms to all other customers of respondents competing in the distribution of such magazines.

PAR. 5. As an example of the practices alleged herein, respondents have made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including drug chains, grocery chains and other newsstands) competing with the favored customers in the sale and distribution of "U.S. News & World Report". Among the favored customers receiving payments in 1957 in connection with the purchase of respondent publisher's magazine was The Union News Company of New York. In 1957 respondents paid this customer more than \$3,500 for promoting "U.S. News & World Report".

Respondents made said payments to their favored customers on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

Respondent SM has also acted as a conduit or intermediary for other independent publishers in making payments similar to those alleged herein, in violation of subsection (d) of Section 2 of the Clayton Act, as amended.

PAR. 6. The acts and practices of respondents as alleged above are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

Mr. J. Wallace Adair and Mr. Jerome Garfinkel for the Commission.

Covington & Burling, by Mr. Harry L. Shniderman, of Washington, D.C., and *Whitman, Ransom & Coulson*, by Mr. J. Bay Robinson, of New York, N.Y., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on February 5, 1959, charging Respondents with violation of § 2(d) of the Clayton Act (U.S.C. Title 15, § 13), as amended by the Robinson-Patman Act by paying or contracting for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale or offering for sale of magazines sold to them by Respondents, such payments or allowances not having been made available by Respondents on proportionally equal terms to all their other customers competing in the distribution of such magazines, and Respondents not having made such payments among their favored customers on proportionally equal terms.

Thereafter, on June 23, 1959, Respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director of the Commission's Bureau of Litigation, and thereafter, on December 15, 1959, submitted to the hearing examiner for consideration.

The agreement identifies Respondent United States News Publishing Corporation as a Delaware corporation with its office and principal place of business located at 1241 24th Street, NW., Washington 7, D.C., and Respondent Select Magazines, Inc., as a New York corporation, with its office and principal place of business located at 299 Fourth Avenue, New York 3, N.Y.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

The agreement is entered into subject to the condition that the initial decision based thereon shall become the decision of the Commission on the same date that the initial decisions in Dockets 7384, 7385, 7386, 7387, 7388, 7389, 7391, 7392, 7393, and 7394 become the decisions of the Commission.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in

accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by Respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That each of the named Respondents, United States News Publishing Corporation and Select Magazines, Inc., its officers, agents, representatives or employees, directly or through any corporate or other device, do forthwith cease and desist from paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any of its customers as compensation or in consideration for any services or facilities furnished by or through such customer of such Respondent in or in connection with the handling, offering for sale, sale or distribution of any magazine, paper back or comic book by such Respondent to such customer in commerce, as "commerce" is defined in the amended Clayton Act, unless such payment or consideration is affirmatively made available on proportionally equal terms to all of its other customers competing with such customer in the distribution of such magazine, paper back or comic book.

DECISION OF THE COMMISSION AND ORDER EXTENDING TIME FOR FILING
REPORT OF COMPLIANCE

Pursuant to § 3.21 of the Commission's Rules of Practice, the hearing examiner's initial decision in this proceeding shall, on the 6th day of July 1960, become the decision of the Commission.

Complaint

57 F.T.C.

It is ordered, That the time within which the respondents may file their report, setting forth the manner and form in which they have complied with the order to cease and desist, as required by § 3.26 of the Rules of Practice, be, and it hereby is, extended until further order of the Commission.

The Commission on January 10, 1961, issued an order to file report of compliance, as follows:

The Commission, by order entered June 30, 1960, having noted that the hearing examiner's initial decision in this proceeding should, on July 6, 1960, become the decision of the Commission, and having directed that the time within which the respondents may file a report of compliance with the order to cease and desist contained in said decision be extended until further order of the Commission:

It is now ordered, That the respondents 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 the order to cease and desist contained in the aforesaid initial decision.

Commissioner Mills not participating.

IN THE MATTER OF
THE HEARST CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(d) OF THE CLAYTON ACT

Docket 7391. Complaint, Feb. 5, 1959—Decision, July 6, 1960

Consent order requiring the publisher and distributor of "Good Housekeeping", "Cosmopolitan", "House Beautiful" and other magazines, pocket books, and comic books—with sales exceeding \$32,500,000 in 1957—to cease violating Sec. 2(d) of the Clayton Act by making payments or allowances for services or facilities furnished on the basis of individual negotiation to certain customers who operated retail outlets in railroad, airport, and bus terminals and in hotels and office buildings—such as a payment of more than \$31,000 to The Union News Company of New York—which were not made available on proportionally equal terms to all competing customers.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (d) of Section 2 of the Clay-

ton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues this complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent The Hearst Corporation is a corporation organized and doing business under the laws of the State of Delaware, with its principal office and place of business located at 959 Eighth Avenue, New York 18, New York.

PAR. 2. Respondent, through its magazine division, has been and is presently engaged in the business of publishing and distributing various publications (e.g. magazines, pocket books, comic books) under copyrighted titles, distribution being made through International Circulation Distributors, an operating division of said respondent. Some of the magazines published and distributed by said respondent include "Good Housekeeping", "Cosmopolitan" and "House Beautiful". These magazines are among the most popular and widely circulated magazines in the United States. Respondent's sales of its publications in 1957 exceeded \$32,500,000, more than \$12,000,000 of which were sales to retail outlets.

PAR. 3. Respondent has sold and distributed and now sells and distributes its publications in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent, through its operating division International Circulation Distributors, paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of publications sold to them by respondent. Such payments or allowances were not made available on proportionally equal terms to all other customers of respondent competing in the distribution of such publications.

PAR. 5. As an example of the practices alleged herein, respondent has made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including drug chains, grocery chains and other newsstands) competing with the favored customers in the sale and distribution of respondent's publications. Among the favored customers receiving payments in 1957 in connection with the purchase of respondent's publications

was The Union News Company of New York. In 1957 respondent paid this customer more than \$31,000 for promoting its publications.

Respondent made said payments to its favored customers on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

PAR. 6. The acts and practices of respondent as alleged above are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

Mr. J. Wallace Adair and *Mr. Jerome Garfinkel* for the Commission.

McCauley, Henry and Brenman, of New York, N.Y., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on February 5, 1959, charging Respondent with violation of § 2(d) of the Clayton Act (U.S.C. Title 15, § 13), as amended by the Robinson-Patman Act, by paying or contracting for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale or offering for sale of publications sold to them by Respondent, such payments or allowances not having been made available by Respondent on proportionally equal terms to all its other customers competing in the distribution of such publications, and Respondent not having made such payments among its favored customers on proportionally equal terms.

Thereafter, on May 14, 1959, Respondent, its counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director of the Commission's Bureau of Litigation, and thereafter, on December 15, 1959, submitted to the hearing examiner for consideration.

The agreement identifies Respondent The Hearst Corporation as a Delaware corporation, with its office and principal place of business located at 959 Eighth Avenue, New York 18, N.Y.

Respondent admits all the jurisdictional facts alleged in the complaint, and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

The agreement is entered into subject to the condition that the initial decision based thereon shall become the decision of the

Commission on the same date that the initial decisions in Dockets 7384, 7385, 7386, 7387, 7388, 7389, 7390, 7392, 7393, and 7394 become the decisions of the Commission.

Respondent waives any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by the Respondent that it has violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order To Cease And Desist; finds that the Commission has jurisdiction over the Respondent and over its acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondent The Hearst Corporation, its officers, agents, representatives or employees, directly or through any corporate or other device, do forthwith cease and desist from paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any of its customers as compensation or in consideration for any services or facilities furnished by or through such customer of such Respondent in or in connection with the handling, offering for sale, sale or distribution of any magazine, paper back or comic book by such Respondent to such customer in commerce, as "commerce" is defined in the amended Clayton Act, unless such payment or consideration is affirmatively made available on proportionally equal terms to all of its other customers competing with such customer in the distribution of such magazine, paper back or comic book.

It is further ordered, That Respondent The Hearst Corporation, its officers, agents, representatives or employees, directly or through any corporate or other device, do forthwith cease and desist from paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer of any publisher for which it distributes any magazine, paper back or comic book as compensation or in consideration for any services or facilities furnished by or through such customer in or in connection with the handling, offering for sale, sale or distribution of such magazine, paper back or comic book in commerce, as "commerce" is defined in the amended Clayton Act, unless such payment or consideration is affirmatively made available on proportionally equal terms to all other customers of such publisher competing with such customer in the distribution of such magazine, paper back or comic book.

DECISION OF THE COMMISSION AND ORDER EXTENDING TIME FOR FILING
REPORT OF COMPLIANCE

Pursuant to § 3.21 of the Commission's Rules of Practice, the hearing examiner's initial decision in this proceeding shall, on the 6th day of July 1960, become the decision of the Commission.

It is ordered, That the time within which the respondent may file its report, setting forth the manner and form in which it has complied with the order to cease and desist, as required by § 3.26 of the Rules of Practice, be, and it hereby is, extended until further order of the Commission.

The Commission on January 10, 1961 issued an order to file report of compliance, as follows:

The Commission, by order entered June 30, 1960, having noted that the hearing examiner's initial decision in this proceeding should, on July 6, 1960, become the decision of the Commission, and having directed that the time within which the respondent may file a report of compliance with the order to cease and desist contained in said decision be extended until further order of the Commission.

It is now ordered, That the respondent shall, within sixty (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 the order to cease and desist contained in the aforesaid initial decision.

Commissioner Mills not participating.

Complaint

IN THE MATTER OF

MACFADDEN PUBLICATIONS, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(d) OF THE CLAYTON ACT*Docket 7392. Complaint, Feb. 5, 1959—Decision, July 6, 1960*

Consent order requiring the publisher and distributor of "True Story", "Photoplay", "True Romance", "TV-Radio Mirror", "Saga" and other magazines, pocket books, and comic books— with sales exceeding \$17,000,000 in 1957— to cease violating Sec. 2(d) of the Clayton Act by making payments or allowances for services or facilities furnished on the basis of individual negotiation to certain customers who operated retail outlets in railroad, airport, and bus terminals and in hotels and office buildings—such as a payment of more than \$19,000 to The Union News Company of New York—which were not made available on proportionally equal terms to all competing customers.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues this complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent MacFadden Publications, Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 205 East 42d Street, New York, N.Y.

PAR. 2. Respondent has been engaged and is presently engaged in the business of publishing and distributing various publications (e.g. magazines, pocket books, comic books) under copyrighted titles. Respondent's sales of its publications in 1957 exceeded \$17,000,000, more than \$11,000,000 of which were sales to retail outlets. Some of the magazines published and distributed by respondent include "True Story", "Photoplay", "True Romance", "TV-Radio Mirror", and "Saga". These magazines are among the most popular and widely circulated magazines in the United States.

PAR. 3. Respondent has sold and distributed and now sells and distributes its publications in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of publications sold to them by respondent. Such payments or allowances were not made available on proportionally equal terms to all other customers of respondent competing in the distribution of such publications.

PAR. 5. As an example of the practices alleged herein, respondent has made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including drug chains, grocery chains, and other newsstands) competing with the favored customers in the sale and distribution of respondent's publications. Among the favored customers receiving payments in 1957 in connection with the purchase of respondent's publications was The Union News Company of New York. In 1957 respondent paid this customer more than \$19,000 for promoting its publications.

Respondent made said payments to its favored customers on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

PAR. 6. The acts and practices of respondent as alleged above are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

Mr. J. Wallace Adair and *Mr. Jerome Garfinkel* for the Commission.

Mr. Benjamin E. Winston, of New York, N.Y., for Respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on February 5, 1959, charging Respondent with violation of § 2(d) of the Clayton Act (U.S.C. Title 15, § 13), as amended by the Robinson-Patman Act, by paying or contracting for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale or offering for sale of publications sold to them by Respondent, such payments or allowances not having been made available by Respondent on proportionally equal terms to all its other customers competing in the distribution of such publications, and Respondent

not having made such payments among its favored customers on proportionally equal terms.

Thereafter, on May 8, 1959, Respondent, its counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director of the Commission's Bureau of Litigation, and thereafter, on December 15, 1959, submitted to the hearing examiner for consideration.

The agreement identifies Respondent MacFadden Publications, Inc., as a New York corporation, with its office and principal place of business located at 205 East 42d Street, New York, N.Y.

Respondent admits all the jurisdictional facts alleged in the complaint, and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

The agreement is entered into subject to the condition that the initial decision based thereon shall become the decision of the Commission on the same date that the initial decisions in Dockets 7384, 7385, 7386, 7387, 7388, 7389, 7390, 7391, 7393 and 7394 become the decisions of the Commission.

Respondent waives any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by Respondent that it has violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the Respondent

and over its acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondent MacFadden Publications, Inc., its officers, agents, representatives or employees, directly or through any corporate or other device, do forthwith cease and desist from paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any of its customers as compensation or in consideration for any services or facilities furnished by or through such customer of such Respondent in or in connection with the handling, offering for sale, sale or distribution of any magazine, paper back or comic book by such Respondent to such customer in commerce, as "commerce" is defined in the amended Clayton Act, unless such payment or consideration is affirmatively made available on proportionally equal terms to all of its other customers competing with such customer in the distribution of such magazine, paper back or comic book.

It is further ordered, That Respondent MacFadden Publications, Inc., its officers, agents, representatives or employees, directly or through any corporate or other device, do forthwith cease and desist from paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer of any publisher for which it distributes any magazine, paper back or comic book as compensation or in consideration for any services or facilities furnished by or through such customer in or in connection with the handling, offering for sale, sale or distribution of such magazine, paper back or comic book in commerce, as "commerce" is defined in the amended Clayton Act, unless such payment or consideration is affirmatively made available on proportionally equal terms to all other customers of such publisher competing with such customer in the distribution of such magazine, paper back or comic book.

DECISION OF THE COMMISSION AND ORDER EXTENDING TIME FOR FILING
REPORT OF COMPLIANCE

Pursuant to § 3.21 of the Commission's Rules of Practice, the hearing examiner's initial decision in this proceeding shall, on the 6th day of July 1960, become the decision of the Commission.

It is ordered, That the time within which the respondent may file its report, setting forth the manner and form in which it has complied with the order to cease and desist, as required by § 3.26 of the Rules of Practice, be, and it hereby is, extended until further order of the Commission.

The Commission on January 10, 1961, issued an order to file report of compliance, as follows:

The Commission, by order entered June 30, 1960, having noted that the hearing examiner's initial decision in this proceeding should, on July 6, 1960, become the decision of the Commission, and having directed that the time within which the respondent may file a report of compliance with the order to cease and desist contained in said decision be extended until further order of the Commission:

It is now ordered, That the respondent shall, within sixty (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 the order to cease and desist contained in the aforesaid initial decision.

Commissioner Mills not participating.

IN THE MATTER OF
FAWCETT PUBLICATIONS, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(d) OF THE CLAYTON ACT

Docket 7393. Complaint, Feb. 5, 1959—Decision, July 6, 1960

Consent order requiring the publisher and distributor of "True Confessions", "True", "Motion Picture", "Mechanix Illustrated", "Cavalier" and other magazines, pocket books, and comic books—with sales in 1957 exceeding \$50,000,000—to cease violating Sec. 2(d) of the Clayton Act by making payments or allowances for services or facilities furnished on the basis of individual negotiation to certain customers who operated retail outlets in railroad, airport, and bus terminals and in hotels and office buildings—such as a payment of more than \$21,000 to The Union News Company of New York—which were not made available on proportionally equal terms to all competing customers.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues this complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Fawcett Publications, Inc., is a corporation organized and doing business under the laws of the State of

Delaware, with its principal place of business located at Fawcett Place, Greenwich, Conn.

PAR. 2. Respondent has been engaged and is presently engaged in the business of publishing and distributing publications (e.g. magazines, pocket books, comic books) under copyrighted titles. Respondent's sales to retail outlets in 1957 exceeded \$50,000,000, more than \$22,000,000 of which were sales of its pocket books, and in excess of \$10,000,000 were sales of its magazines. Some of the magazines published and distributed by respondent include "True Confessions", "True", "Motion Picture", "Mechanix Illustrated", and "Cavalier". These magazines are among the most popular and widely circulated in the United States.

PAR. 3. Respondent has sold and distributed and now sells and distributes its publications in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of publications sold to them by respondent. Such payments or allowances were not made available on proportionally equal terms to all other customers of respondent competing in the distribution of such publications.

PAR. 5. As an example of the practices alleged herein, respondents have made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including drug chains, grocery chains and other newsstands) competing with the favored customers in the sale and distribution of respondent's publications. Among the favored customers receiving payments in 1957 in connection with the purchase of respondent's publications was The Union News Company of New York. In 1957 respondent paid this customer more than \$21,000 for promoting its publications.

Respondent made said payments to its favored customers on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

PAR. 6. The acts and practices of respondent as alleged above are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

Mr. J. Wallace Adair and Mr. Jerome Garfinkel for the Commission.

DeWitt, Nast & Diskin, by *Mr. Thomas A. Diskin*, of New York, N.Y., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on February 5, 1959, charging Respondent with violation of § 2(d) of the Clayton Act (U.S.C. Title 15, § 13), as amended by the Robinson-Patman Act, by paying or contracting for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale or offering for sale of magazines sold to them by Respondent, such payment or allowances not having been made available by Respondent on proportionally equal terms to all its other customers competing in the distribution of such magazines, and Respondent not having made such payments among its favored customers on proportionally equal terms.

Thereafter, on April 26, 1960, Respondent, its counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director and Associate Director of the Commission's Bureau of Litigation, and thereafter, on May 9, 1960, submitted to the hearing examiner for consideration.

The agreement identifies Respondent Fawcett Publications, Inc., as a Delaware corporation, with its office and principal place of business located at Fawcett Place, Greenwich, Conn.

Respondent admits all the jurisdictional facts alleged in the complaint, and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

The agreement is entered into subject to the condition that the initial decision based thereon shall become the decision of the Commission on the same date that the initial decisions in Dockets 7384, 7385, 7386, 7387, 7388, 7389, 7390, 7391, 7392, 7394, 7611, 7612, 7613, 7614, and 7615 become the decisions of the Commission.

Respondent waives any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission

shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; that the word "customer" wherever used in said order means anyone who purchases from a Respondent, acting either as principal or agent, or from a distributor or wholesaler where such transaction with such purchaser is essentially a sale by such Respondent, acting either as principal or agent; and that the agreement is for settlement purposes only and does not constitute an admission by Respondent that it has violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the Respondent and over its acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondent Fawcett Publications, Inc., its officers, agents, representatives or employees, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale, of magazines, paper back or comic books in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of any magazine, paper back or comic book published, sold or offered for sale by such Respondent, unless such payment or consideration is affirmatively offered or otherwise made available on proportionally equal terms to all of its other customers competing with such favored customer in the distribution of such magazine, paper back or comic book.

It is further ordered, That Respondent Fawcett Publications, Inc., its officers, agents, representatives or employees, directly or through any corporate or other device, in connection with the dis-

tribution, sale or offering for sale, of magazines, paper back or comic books in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from paying, contracting for, or passing on an allowance or anything of value to, or for the benefit of any customer of any publisher for which it distributes any magazine, paper back or comic book as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of any of such publisher's magazines, paper back or comic books which are sold, offered for sale or distributed by Fawcett Publications, Inc., unless such allowance or consideration is affirmatively offered or otherwise made available on proportionally equal terms to all other customers of such publisher to whom Fawcett Publications, Inc. distributes such publisher's magazines, paper back or comic books, and who are competing with such favored customer in the distribution of such magazines, paper back or comic books.

DECISION OF THE COMMISSION AND ORDER EXTENDING TIME FOR FILING
REPORT OF COMPLIANCE

Pursuant to § 3.21 of the Commission's Rules of Practice, the hearing examiner's initial decision in this proceeding shall, on the 6th day of July 1960, become the decision of the Commission.

It is ordered, That the time within which the respondent may file its report, setting forth the manner and form in which it has complied with the order to cease and desist, as required by § 3.26 of the Rules of Practice, be, and it hereby is, extended until further order of the Commission.

The Commission on January 10, 1961, issued an order to file report of compliance, as follows:

The Commission, by order entered June 30, 1960, having noted that the hearing examiner's initial decision in this proceeding should, on July 6, 1960, become the decision of the Commission, and having directed that the time within which the respondent may file a report of compliance with the order to cease and desist contained in said decision be extended until further order of the Commission:

It is now ordered, That the respondent shall, within sixty (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 the order to cease and desist contained in the aforesaid initial decision.

Commissioner Mills not participating.

Complaint

57 F.T.C.

IN THE MATTER OF
TRIANGLE PUBLICATIONS, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(d) OF THE CLAYTON ACT

Docket 7394. Complaint, Feb. 5, 1959—Decision, July 6, 1960

Consent order requiring the publisher and distributor of "TV Guide" and "Seventeen" magazines—with sales in 1957 exceeding \$33,000,000—to cease violating Sec. 2(d) of the Clayton Act by making payments or allowances for services or facilities furnished to certain customers who operated retail outlets in railroad, airport, and bus terminals and in hotels and office buildings—and on the basis of individual negotiation—which were not made available on proportionally equal terms to all competing customers.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. title 15, Sec. 13) as amended by the Robinson-Patman Act, hereby issues this complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Triangle Publications, Inc., is a corporation organized and doing business under the laws of the State of Delaware, with its principal office and place of business located at 400 North Broad Street, Philadelphia, Pennsylvania.

PAR. 2. Respondent has been and is presently engaged in the business of publishing and distributing various magazines under copyrighted titles. Its magazines entitled "TV Guide" and "Seventeen" are among the most popular and widely circulated magazines in the United States. Respondent's sales of these two magazines to retail outlets in 1957 exceeded \$33,000,000.

PAR. 3. Respondent has sold and distributed and now sells and distributes its magazines in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or consideration for services or facilities furnished, or contracted to be furnished, by or through such customers, in connection with the handling, sale, or offering for sale of magazines sold to them by respondent. Such payments or allowances were not made available

on proportionally equal terms to all other customers of respondent competing in the distribution of such magazines.

PAR. 5. As an example of the practices alleged herein, respondent has made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including drug chains, grocery chains and other newsstands) competing with the favored customers in the sale and distribution of respondent's publications. Among the favored customers receiving payments in 1957 which were not offered to other competing customers in connection with the purchase of respondent's publications were:

<i>Customer</i>	<i>Approximate payment received</i>
ABC Vending Corp., New York, N.Y.....	\$4,734
Garfield News Co., New York, N.Y.....	3,011
The Union News Co., New York, N.Y.....	2,679
Fred Harvey, Chicago 4, Ill.....	1,308
Greyhound Post, Forest Park, Ill.....	1,110
Interstate Co., Chicago, Ill.....	905

Respondent made said payments to its favored customers on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

PAR. 6. The acts and practices of respondent as alleged above are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

Mr. J. Wallace Adair and *Mr. Jerome Garfinkel* for the Commission.

Dilworth, Paxson, Kalish, Kohn & Dilks, by *Mr. Harold E. Kohn*, of Philadelphia, Pa., for Respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on February 5, 1959, charging Respondent with violation of § 2(d) of the Clayton Act (U.S.C. Title 15, § 13), as amended by the Robinson-Patman Act, by paying or contracting for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale or offering for sale of magazines sold to them by Respondent, such payments or allowances not having been made available by Respondent on proportionally equal terms to all its other customers competing in the distribution of such magazines, and Respondent not

having made such payments among its favored customers on proportionally equal terms.

Thereafter, on June 23, 1959, Respondent, its counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director of the Commission's Bureau of Litigation, and thereafter, on December 15, 1959, submitted to the hearing examiner for consideration.

The agreement identifies Respondent Triangle Publications, Inc., as a Delaware corporation, with its office and principal place of business located at 400 North Broad Street, Philadelphia, Pa.

Respondent admits all the jurisdictional facts alleged in the complaint, and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

The agreement is entered into subject to the condition that the initial decision based thereon shall become the decision of the Commission on the same date that the initial decisions in Dockets 7384, 7385, 7386, 7387, 7388, 7389, 7390, 7391, 7392, and 7393 become the decisions of the Commission.

Respondent waives any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by the Respondent that it has violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order To Cease And Desist; finds that the Commission has jurisdiction over the Respondent and

over its acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondent Triangle Publications, Inc., its officers, agents, representatives or employees, directly or through any corporate or other device, do forthwith cease and desist from paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any of its customers as compensation or in consideration for any services or facilities furnished by or through such customer of such Respondent in or in connection with the handling, offering for sale, sale or distribution of any magazine, paper back or comic book by such Respondent to such customer in commerce, as "commerce" is defined in the amended Clayton Act, unless such payment or consideration is affirmatively made available on proportionally equal terms to all of its other customers competing with such customer in the distribution of such magazine, paper back or comic book.

DECISION OF THE COMMISSION AND ORDER EXTENDING TIME FOR FILING
REPORT OF COMPLIANCE

Pursuant to § 3.21 of the Commission's Rules of Practice, the hearing examiner's initial decision in this proceeding shall, on the 6th day of July 1960, become the decision of the Commission.

It is ordered, That the time within which the respondent may file its report, setting forth the manner and form in which it has complied with the order to cease and desist, as required by § 3.26 of the Rules of Practice, be, and it hereby is, extended until further order of the Commission.

The Commission on January 20, 1961, issued an order to file report of compliance, as follows:

The Commission, by order entered June 30, 1960, having noted that the hearing examiner's initial decision in this proceeding should, on July 6, 1960, become the decision of the Commission, and having directed that the time within which the respondent may file a report of compliance with the order to cease and desist contained in said decision be extended until further order of the Commission:

It is now ordered, That the respondent shall, within sixty (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 the order to cease and desist contained in the aforesaid initial decision.

Commissioner Mills not participating.

Complaint

57 F.T.C.

IN THE MATTER OF
THE NEW AMERICAN LIBRARY OF WORLD
LITERATURE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(d) OF THE CLAYTON ACT

Docket 7611. Complaint, Oct. 19, 1959—Decision, July 6, 1960

Consent order requiring the publisher of "Signet", "Mentor", and "Signet Key" paper back books—with sales in 1958 exceeding \$6,000,000—and its national distributor, to cease violating Sec. 2(d) of the Clayton Act by making payments or allowances for services or facilities furnished to certain customers who operated retail outlets in railroad, airport, and bus terminals and in hotels and office buildings, which were not made available on proportionally equal terms to all competing customers.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues this complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent The New American Library of World Literature, Inc. (hereinafter referred to as New American Library) is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 501 Madison Avenue, New York 22, N.Y. New American Library has been engaged and is presently engaged in the business of publishing and distributing various paperback books under copyrighted titles, distribution being made through respondent Independent News Company, Inc. Respondent publisher's sales of its publications in 1958 exceeded \$6,000,000.

PAR. 2. Respondent Independent News Company, Inc. (hereinafter referred to as Independent News Company) is a corporation organized and doing business under the laws of the State of New York with its principal office and place of business located at 480 Lexington Avenue, New York 17, N.Y.

Independent News Company has acted and is now acting as national distributor for the publications of several independent publishers, including respondent publisher. Popular paperback books published by said respondent publisher and distributed by Independent News Company include "Signet", "Mentor" and "Signet Key".

Independent News Company, as national distributor of paperback books published by respondent New American Library and other independent publishers, has performed and is now performing various services for these publishers. Among the services performed and still being performed by Independent News Company for the benefit of these publishers, and more particularly for respondent New American Library, in connection with the sale and distribution of the publications of said publishers are the taking of orders; distributing, billing and collecting from customers; and participating in the negotiation of various promotional arrangements with the retail customers of said publishers.

In its capacity as national distributor for the respondent publisher in dealing with the customers of said respondent publisher, Independent News Company served and is now serving as a conduit or intermediary for the sale, distribution and promotion of the paperback books of respondent publisher. These publications are distributed throughout various states by Independent News Company.

PAR. 3. Respondent publisher, through its conduit or intermediary Independent News Company, has sold and distributed and now sells and distributes its paperback books in substantial quantities in commerce as "commerce" is defined in the amended Clayton Act, to competing customers located throughout various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business in commerce, respondents paid or contracted for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of paperback books sold to them by respondents. Such payments or allowances were not made available on proportionally equal terms to all other customers of respondents competing in the distribution of such publications.

PAR. 5. As an example of the practices alleged herein, respondents have made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers competing with the favored customers in the sale and distribution of respondents' publications. Among the favored customers receiving

payments in 1957 which were not offered to other competing customers in connection with the purchase of respondents' publications were: Garfield News, New York, N.Y.; Barkalow Bros., Omaha, Nebr.; Interstate Co., Elkhart, Ind.; Sky Chefs, Inc., New York, N.Y.

Respondent Independent News Company has also acted as a conduit or intermediary for other independent publishers in making payments similar to those alleged herein in violation of the provisions of subsection (d) of Section 2 of the amended Clayton Act.

PAR. 6. The acts and practices of respondents as alleged above are in violation of the provisions of subsection (d) of Section 2 of the amended Clayton Act.

Mr. J. Wallace Adair and *Mr. Jerome Garfinkel* for the Commission.

Littauer & Ullman and *Weil, Gotshal & Manges*, both of New York, N.Y., for Respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on October 19, 1959, charging Respondents with violation of § 2(d) of the Clayton Act (U.S.C. Title 15, § 13), as amended by the Robinson-Patman Act, by paying or contracting for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale or offering for sale of paperback books sold to them by Respondents, such payments or allowances not having been made available by Respondents on proportionally equal terms to all their other customers competing in the distribution of such publications, and Respondents not having made such payments among their favored customers on proportionally equal terms.

Thereafter, on April 27, 1960, Respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director and Associate Director of the Commission's Bureau of Litigation, and thereafter, on May 9, 1960, submitted to the hearing examiner for consideration.

The agreement identifies Respondent The New American Library of World Literature, Inc., as a New York corporation, with its office and principal place of business located at 501 Madison Avenue,

New York 22, N.Y., and Respondent Independent News Company, Inc., as a New York corporation, with its office and principal place of business located at 575 Lexington Avenue, New York 22, N.Y.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

The agreement is entered into subject to the condition that the initial decision based thereon shall become the decision of the Commission on the same date that the initial decisions in Dockets 7384, 7385, 7386, 7387, 7388, 7389, 7390, 7391, 7392, 7393, 7394, 7612, 7613, 7614, and 7615 become the decisions of the Commission.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; that the word "customer" wherever used in said order means anyone who purchases from a Respondent, acting either as principal or agent, or from a distributor or wholesaler where such transaction with such purchaser is essentially a sale by such Respondent, acting either as principal or agent; and that the agreement is for settlement purposes only and does not constitute an admission by Respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint, and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order To Cease And Desist; finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

Decision

57 F.T.C.

It is ordered, That each of the named Respondents, The New American Library of World Literature, Inc., Independent News Company, Inc., its officers, agents, representatives or employees, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of magazines, paper back or comic books in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of any magazine, paper back or comic book published, sold or offered for sale by such Respondent, unless such payment or consideration is affirmatively offered or otherwise made available on proportionally equal terms to all of its other customers competing with such favored customer in the distribution of such magazine, paper back or comic book.

DECISION OF THE COMMISSION AND ORDER EXTENDING TIME FOR FILING
REPORT OF COMPLIANCE

Pursuant to § 3.21 of the Commission's Rules of Practice, the hearing examiner's initial decision in this proceeding shall, on the 6th day of July 1960, become the decision of the Commission.

It is ordered, That the time within which the respondents may file their report, setting forth the manner and form in which they have complied with the order to cease and desist, as required by § 3.26 of the Rules of Practice, be, and it hereby is, extended until further order of the Commission.

The Commission on January 10, 1961 issued an order to file report of compliance, as follows:

The Commission, by order entered June 30, 1960, having noted that the hearing examiner's initial decision in this proceeding should, on July 6, 1960, become the decision of the Commission, and having directed that the time within which the respondents may file a report of compliance with the order to cease and desist contained in said decision be extended until further order of the Commission:

It is now ordered, That the respondents 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 the order to cease and desist contained in the aforesaid initial decision.

Commissioner Mills not participating.

Complaint

IN THE MATTER OF
DELL PUBLISHING COMPANY, INC.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(d) OF THE CLAYTON ACT

Docket 7612. Complaint, Oct. 19, 1959—Decision, July 6, 1960

Consent order requiring the corporate national publisher and distributor of "Modern Screen", "Modern Romance", "Screen Stories", "Inside Detective", "Front Page Detective" and other magazines, "Dell" paper back books, and comic books—with sales in 1958 exceeding \$35,000,000—to cease violating Sec. 2(d) of the Clayton Act by making payments or allowances for services or facilities furnished to certain customers who operated retail outlets in railroad, airport, and bus terminals and in hotels and office buildings—and on the basis of individual negotiation—which were not made available on proportionally equal terms to all competing customers.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Section 13), as amended by the Robinson-Patman Act, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Dell Publishing Company, Inc. (hereinafter referred to as Dell Publishing Company) is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 750 Third Avenue, New York 17, N.Y. Respondent has been engaged and is presently engaged in the business of publishing and distributing various publications (magazines, paperback books, comic books) under copyrighted titles, distribution being made through its wholly owned subsidiary, Dell Distributing, Inc. Some of the popular magazines published by Dell Publishing Company and distributed by it through its wholly owned subsidiary include "Modern Screen", "Modern Romance", "Screen Stories", "Inside Detective" and "Front Page Detective". Respondent publisher publishes and distributes paperback books under the copyrighted title of "Dell". Said respondent publisher's gross sales of its publications in 1958 exceeded \$35,000,000.

PAR. 2. Respondent has sold and distributed and now sells and distributes its publications in substantial quantities in commerce, as "commerce" is defined in the amended Clayton Act, to competing

customers located throughout various states of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers, in connection with the handling, sale, or offering for sale of publications sold to them by respondent. Such payments or allowances were not made available on proportionally equal terms to all other customers of respondent competing in the distribution of such publications.

PAR. 4. As an example of the practices alleged herein, respondent has made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers competing with the favored customers in the sale and distribution of respondent's publications.

Among the favored customers receiving payments in connection with the purchase of respondent's publications was The Union News Company of New York. For example, from August through December, 1957, respondent paid this customer more than \$7,000 for promoting its magazines.

Respondent made said payments to its favored customers on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

PAR. 5. The acts and practices of respondent as alleged above are in violation of the provisions of subsection (d) of Section 2 of the amended Clayton Act.

Mr. J. Wallace Adair and *Mr. Jerome Garfinkel* for the Commission.

Kaye, Scholer, Fierman, Hays & Handler, of New York, N.Y., for Respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on October 19, 1959, charging Respondent with violation of § 2(d) of the Clayton Act (U.S.C. Title 15, § 13), as amended by the Robinson-Patman Act, by paying or contracting for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the han-

dling, sale or offering for sale of magazines, paperback books and comic books sold to them by Respondent, such payments or allowances not having been made available by Respondent on proportionally equal terms to all its other customers competing in the distribution of such publications, and Respondent not having made such payments among its favored customers on proportionally equal terms.

Thereafter, on April 29, 1960, Respondent, its counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director and Associate Director of the Commission's Bureau of Litigation; and thereafter, on May 9, 1960, submitted to the hearing examiner for consideration.

The agreement identifies Respondent Dell Publishing Co., Inc. as a New York corporation, with its office and principal place of business located at 750 3d Avenue, New York 17, N.Y.

Respondent admits all the jurisdictional facts alleged in the complaint, and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

The agreement is entered into subject to the condition that the initial decision based thereon shall become the decision of the Commission on the same date that the initial decisions in Dockets 7384, 7385, 7386, 7387, 7388, 7389, 7390, 7391, 7392, 7393, 7394, 7611, 7613, 7614, and 7615 become the decisions of the Commission.

Respondent waives any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; that the word "customer" wherever used in said order means anyone who purchases from the Respondent, acting either as principal or agent, or from a distributor or wholesaler where such transaction with such purchaser is essentially a sale by the Respondent, acting either as principal or agent; and that the agreement is for settlement pur-

poses only and does not constitute an admission by Respondent that it has violated the law as alleged in the complaint.

After consideration of the allegations of the complaint, and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the Respondent and over its acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondent Dell Publishing Co., Inc., its officers, agents, representatives or employees, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of magazines, paper back or comic books in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of any magazine, paper back or comic book published, sold or offered for sale by such Respondent unless such payment or consideration is affirmatively offered or otherwise made available on proportionally equal terms to all of its other customers competing with such favored customer in the distribution of such magazine, paper back or comic book.

DECISION OF THE COMMISSION AND ORDER EXTENDING TIME FOR FILING
REPORT OF COMPLIANCE

Pursuant to § 3.21 of the Commission's Rules of Practice, the hearing examiner's initial decision in this proceeding shall, on the 6th day of July 1960, become the decision of the Commission.

It is ordered, That the time within which the respondent may file its report, setting forth the manner and form in which it has complied with the order to cease and desist, as required by § 3.26 of the Rules of Practice, be, and it hereby is, extended until further order of the Commission.

The Commission on January 10, 1961, issued an order to file report of compliance, as follows:

The Commission, by order entered June 30, 1960, having noted that the hearing examiner's initial decision in this proceeding should, on July 6, 1960, become the decision of the Commission,

and having directed that the time within which the respondent may file a report of compliance with the order to cease and desist contained in said decision be extended until further order of the Commission:

It is now ordered, That the respondent shall, within sixty (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 the order to cease and desist contained in the aforesaid initial decision.

Commissioner Mills not participating.

IN THE MATTER OF
BANTAM BOOKS, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(d) OF THE CLAYTON ACT

Docket 7613. Complaint, Oct. 19, 1959—Decision, July 6, 1960

Consent order requiring the publisher and distributor of "Bantam" paper back books—with sales in 1958 exceeding \$7,000,000—to cease violating Sec. 2(d) of the Clayton Act by making payments or allowances for services or facilities furnished to certain customers who operated retail outlets in railroad, airport, and bus terminals and in hotels and office buildings—and on the basis of individual negotiation—which were not made available on proportionally equal terms to all competing customers.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues this complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Bantam Books, Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 25 West 45th Street, New York 18, N.Y.

PAR. 2. Respondent has been engaged and is presently engaged in the business of publishing and distributing paperback books under copyrighted titles, distribution being made through Curtis Circulation Company, Inc. Respondent's sales of its publications in 1958 exceeded \$7,000,000.

PAR. 3. Respondent, through Curtis Circulation Company, Inc., has sold and distributed and now sells and distributes its paperback books in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various states of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of publications sold to them by respondent. Such payments or allowances were not made available on proportionally equal terms to all other customers of respondent competing in the distribution of such publications.

PAR. 5. As an example of the practices alleged herein, respondent has made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers competing with the favored customers in the sale and distribution of respondent's publications. Among the favored customers receiving payments in 1957 which were not offered to other competing customers were:

<i>Customer</i>	<i>Approximate payment received</i>
Fred Harvey, Chicago, Ill.-----	\$3,691
Greyhound Post House, Inc., Forest Park, Ill.-----	6,064
The Union News Company, New York, N.Y.-----	10,762
Peoples Service News, Philadelphia, Pa.-----	897

Respondent made said payments to its favored customers on the basis of individual negotiations. Among said favored customers, such payments were not made on proportionally equal terms.

PAR. 6. The acts and practices of respondent as alleged above are in violation of the provisions of subsection (d) of Section 2 of the amended Clayton Act.

Mr. J. Wallace Adair and *Mr. Jerome Garfinkel* for the Commission.

Weil, Gotshal & Manges, of New York, N.Y., for Respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on October 19, 1959, charging Respondent with violation of § 2(d) of the Clayton Act (U.S.C.

Title 15, § 13), as amended by the Robinson-Patman Act, by paying or contracting for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale or offering for sale of paperback books sold to them by Respondent, such payments or allowances not having been made available by Respondent on proportionally equal terms to all its other customers competing in the distribution of such publications, and Respondent not having made such payments among its favored customers on proportionally equal terms.

Thereafter, on April 28, 1960, Respondent, its counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director and Associate Director of the Commission's Bureau of Litigation, and thereafter, on May 9, 1960, submitted to the hearing examiner for consideration.

The agreement identifies Respondent Bantam Books, Inc., as a New York corporation, with its office and principal place of business located at 25 W. 45th Street, New York 18, N.Y.

Respondent admits all the jurisdictional facts alleged in the complaint, and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

The agreement is entered into subject to the condition that the initial decision based thereon shall become the decision of the Commission on the same date that the initial decisions in Dockets 7384, 7385, 7386, 7387, 7388, 7389, 7390, 7391, 7392, 7393, 7394, 7611, 7612, 7614, and 7615 became the decisions of the Commission.

Respondent waives any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; that the word "customer" wherever used in said order means anyone who purchases

from the Respondent, acting either as principal or agent, or from a distributor or wholesaler where such transaction with such purchaser is essentially a sale by the Respondent, acting either as principal or agent; and that the agreement is for settlement purposes only and does not constitute an admission by Respondent that it has violated the law as alleged in the complaint.

After consideration of the allegations of the complaint, and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist, finds that the Commission has jurisdiction over the Respondent and over its acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondent Bantam Books, Inc., its officers, agents, representatives or employees, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of magazines, paper back or comic books in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of any magazine, paper back or comic book published, sold or offered for sale by such Respondent, unless such payment or consideration is affirmatively offered or otherwise made available on proportionally equal terms to all of its other customers competing with such favored customer in the distribution of such magazine, paper back or comic book.

DECISION OF THE COMMISSION AND ORDER EXTENDING TIME FOR FILING
REPORT OF COMPLIANCE

Pursuant to § 3.21 of the Commission's Rules of Practice, the hearing examiner's initial decision in this proceeding shall, on the 6th day of July 1960, become the decision of the Commission.

It is ordered, That the time within which the respondent may file its report, setting forth the manner and form in which it has complied with the order to cease and desist, as required by § 3.26 of the Rules of Practice, be, and it hereby is, extended until further order of the Commission.

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Complaint

The Commission on January 10, 1961, issued an order to file report of compliance, as follows:

The Commission, by order entered June 30, 1960, having noted that the hearing examiner's initial decision in this proceeding should, on July 6, 1960, become the decision of the Commission, and having directed that the time within which the respondent may file a report of compliance with the order to cease and desist contained in said decision be extended until further order of the Commission:

It is now ordered, That the respondent shall, within sixty (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 the order to cease and desist contained in the aforesaid initial decision.

Commissioner Mills not participating.

IN THE MATTER OF

NATIONAL COMICS PUBLICATIONS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(d) OF THE CLAYTON ACT

Docket 7614. Complaint, Oct. 19, 1959—Decision, July 6, 1960

Consent order requiring the publisher of various comic magazines including "Action Comics", "Adventure Comics", "Gangbusters", "Bob Hope", "House of Mystery", "Peter Panda", "Sgt. Bilko", and "Mr. District Attorney"—with sales in 1957 in excess of \$30,000,000—and its national distributor, to cease violating Sec. 2(d) of the Clayton Act by making payments or allowances for services or facilities furnished to certain customers who operated retail outlets in railroad, airport, and bus terminals and in hotels and office buildings—and on the basis of individual negotiation—which were not made available on proportionally equal terms to all competing customers.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Section 13), as amended by the Robinson-Patman Act, hereby issues this complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent National Comics Publications, Inc., (hereinafter referred to as National Comics) is a corporation organized and doing business under the laws of the State of New

York, with its principal office and place of business located at 480 Lexington Avenue, New York 17, N.Y. National Comics has been engaged and is presently engaged in the business of publishing and distributing various comic magazines, known as the National Group, under copyrighted titles, distribution being made through its wholly-owned subsidiary, respondent Independent News Company, Inc.

PAR. 2. Respondent Independent News Company, Inc., (hereinafter referred to as Independent News Company) is a corporation organized and doing business under the laws of the State of New York, with its principal place of business located at 480 Lexington Avenue, New York 17, N.Y.

Independent News Company has acted and is now acting as a national distributor for all the various publications (magazines, paperback books and comic books) of respondent publisher, as well as for publications of independent publishers. Sales of publications through Independent News Company in 1957 were in excess of \$30,000,000. Approximately \$15,000,000 of such sales were accounted for by sales of comic magazines published by its parent company, National Comics. Some of the comic magazines published by respondent publisher and distributed by Independent News Company include "Action Comics", "Adventure Comics", "Gangbusters", "Bob Hope", "House of Mystery", "Peter Panda", "Sgt. Bilko" and "Mr. District Attorney".

Independent News Company as national distributor of publications published by National Comics and independent publishers, has performed and is now performing various services for said respondent publisher and independent publishers. Among the services performed and still being performed by Independent News Company for the benefit of respondent publisher and others in connection with the sale and distribution of their publications, are taking orders; distributing, billing and collecting from customers; and participating in the negotiation of various promotional arrangements with retail customers of said publishers.

In its capacity as national distributor for the respondent publisher in dealing with customers of said respondent publisher, Independent News Company served and is now serving as a conduit or intermediary for the sale, distribution and promotion of the publications of respondent publisher. These publications are distributed throughout various States by Independent News Company through local distributors to retail customers.

PAR. 3. Respondent publisher, through its conduit or intermediary Independent News Company, has sold and distributed and now

sells and distributes its publications in substantial quantities in commerce, as "commerce" is defined in the amended Clayton Act, to competing customers located throughout various States of the United States and in the District of Columbia. Independent News Company also distributes the publications of independent publishers in interstate commerce.

PAR. 4. In the course and conduct of their business in commerce, respondents paid or contracted for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of publications sold to them by respondents. Such payments or allowances were not made available on proportionally equal terms to all other customers of respondents competing in the distribution of such publications.

PAR. 5. As an example of the practices alleged herein, respondents have made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including drug chains, grocery chains and other newsstands) competing with the favored customers in the sale and distribution of respondents' publications. Among the favored customers receiving payments in 1957 in connection with the purchase of respondents' publications were The Union News Company, New York, New York; Fred Harvey, Chicago, Illinois; Barkalow Bros., Omaha, Nebraska; Interstate Co., Elkhart, Indiana; and Peoples Service News, Philadelphia, Pennsylvania.

Respondents made said payments to their favored customers on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

Respondent Independent News Company has also acted as a conduit or intermediary for independent publishers in making payments similar to those alleged herein, in violation of subsection (d) of Section 2 of the amended Clayton Act.

PAR. 6. The acts and practices of respondents as alleged above are in violation of the provisions of subsection (d) of Section 2 of the amended Clayton Act.

Mr. J. Wallace Adair and *Mr. Jerome Garfinkel* for the Commission.

Weil, Gotshal & Manges, of New York, N.Y., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on October 19, 1959, charging Respondents with violation of § 2(d) of the Clayton Act (U.S.C. Title 15, § 13), as amended by the Robinson-Patman Act, by paying or contracting for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale or offering for sale of magazines, paperback books and comic books sold to them by Respondents, such payments or allowances not having been made available by Respondents on proportionally equal terms to all their other customers competing in the distribution of such publications, and Respondents not having made such payments among their favored customers on proportionally equal terms.

Thereafter, on April 27, 1960, Respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director and Associate Director of the Commission's Bureau of Litigation, and thereafter, on May 9, 1960, submitted to the hearing examiner for consideration.

The agreement identifies Respondent National Comics Publications, Inc. and Respondent Independent News Company, Inc., as New York corporations, with their office and principal place of business located at 575 Lexington Avenue, New York 22, N.Y.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

The agreement is entered into subject to the condition that the initial decision based thereon shall become the decision of the Commission on the same date that the initial decisions in Dockets 7384, 7385, 7386, 7387, 7388, 7389, 7390, 7391, 7392, 7393, 7394, 7611, 7612, 7613, and 7615 become the decisions of the Commission.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agree-

ment, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; that the word "customer" wherever used in said order means anyone who purchases from a Respondent, acting either as principal or agent, or from a distributor or wholesaler where such transaction with such purchaser is essentially a sale by such Respondent, acting either as principal or agent; and that the agreement is for settlement purposes only and does not constitute an admission by Respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That each of the named Respondents, National Comics Publications, Inc., Independent News Company, Inc., its officers, agents, representatives or employees, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of magazines, paper back or comic books in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of any magazine, paper back or comic book published, sold or offered for sale by such respondent, unless such payment or consideration is affirmatively offered or otherwise made available on proportionally equal terms to all of its other customers competing with such favored customer in the distribution of such magazine, paper back or comic book.

It is further ordered, That Respondent Independent News Company, Inc., its officers, agents, representatives or employees, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of magazines, paper back or

comic books in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from paying, contracting for, or passing on an allowance or anything of value to, or for the benefit of any customer of any publisher for which it distributes any magazine, paper back or comic book as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of any of such publisher's magazines, paper back or comic books which are sold, offered for sale or distributed by Independent News Company, Inc., unless such allowance or consideration is affirmatively offered or otherwise made available on proportionally equal terms to all other customers of such publisher to whom Independent News Company, Inc., distributes such publisher's magazines, paper back or comic books, and who are competing with such favored customer in the distribution of such magazines, paper back or comic books.

DECISION OF THE COMMISSION AND ORDER EXTENDING TIME FOR FILING
REPORT OF COMPLIANCE

Pursuant to § 3.21 of the Commission's Rules of Practice, the hearing examiner's initial decision in this proceeding shall, on the 6th day of July 1960, become the decision of the Commission.

It is ordered. That the time within which the respondents may file their report, setting forth the manner and form in which they have complied with the order to cease and desist, as required by § 3.26 of the Rules of Practice, be, and it hereby is, extended until further order of the Commission.

The Commission on January 10, 1961, issued an order to file report of compliance, as follows:

The Commission, by order entered June 30, 1960, having noted that the hearing examiner's initial decision in this proceeding should, on July 6, 1960, become the decision of the Commission, and having directed that the time within which the respondents may file a report of compliance with the order to cease and desist contained in said decision be extended until further order of the Commission:

It is now ordered. That the respondents 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 the order to cease and desist contained in the aforesaid initial decision.

Commissioner Mills not participating.

Complaint

IN THE MATTER OF

POCKET BOOKS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(d) OF THE CLAYTON ACT

Docket 7615. Complaint, Oct. 19, 1959—Decision, July 6, 1960

Consent order requiring a corporate national publisher of paper back books— with sales in 1958 exceeding \$8,000,000—and its national distributor, to cease violating Sec. 2(d) of the Clayton Act by making payments or allowances for services or facilities furnished to certain customers who operated retail outlets in railroad, airport, and bus terminals as well as in hotels and office buildings—and on the basis of individual negotiation—which were not made available on proportionally equal terms to other competing customers.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues this complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Pocket Books, Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 630 Fifth Avenue, New York 20, N.Y. Pocket Books, Inc., has been engaged and is presently engaged principally in the business of publishing and distributing paperback books under copyrighted titles, distribution being made through its wholly owned subsidiary, respondent Affiliated Publishers, Inc., and through Select Magazines, Inc., an independent distributor. Respondent publisher's sales of its publications in 1958 exceeded \$8,000,000.

PAR. 2. Respondent Affiliated Publishers, Inc. (hereinafter referred to as Affiliated Publishers), a wholly owned subsidiary of respondent Pocket Books, Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 630 Fifth Avenue, New York 20, N.Y.

Affiliated Publishers has acted and is now acting as a national distributor for all the various publications of respondent publisher, as well as for publications of independent publishers. As national distributor of publications published by respondent Pocket Books,

Inc., and independent publishers, Affiliated Publishers had performed and is now performing various services for said publishers. Among the services performed and still being performed by Affiliated Publishers for respondent publisher and independent publishers are the distributing and promoting of said publishers' publications, and the billing, remitting and collecting from their customers.

In its capacity as national distributor for the various publishers, including respondent Pocket Books, Inc., Affiliated Publishers served and is now serving as a conduit or intermediary for the sale, distribution and promotion of the publications of said publishers. These publications are distributed throughout various states by Affiliated Publishers to retail customers either directly or through local distributors.

PAR. 3. Respondent publisher, through its conduit or intermediary Affiliated Publishers, and through others, has sold and distributed and now sells and distributes its publications in substantial quantities in commerce, as "commerce" is defined in the amended Clayton Act, to competing customers located throughout various States of the United States and in the District of Columbia. Affiliated Publishers has also acted and is presently acting as a conduit or intermediary for the distribution of the various publications of independent publishers in interstate commerce to said publishers' competing customers.

PAR. 4. In the course and conduct of their business in commerce, respondents paid or contracted for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of publications sold to them by respondents. Such payments or allowances were not made available on proportionally equal terms to all other customers of respondents competing in the distribution of such publications.

PAR. 5. As an example of the practices alleged herein, respondents have made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers competing with the favored customers in the sale and distribution of respondents' publications.

In addition, respondents made payments or allowances to certain chain retail drugstore customers. These payments or allowances were not offered or otherwise made available on proportionally equal

terms to all other customers competing with said favored chain retail drugstore customers in the distribution of respondents' publications.

Among the favored customers receiving payments in 1958 which were not offered to other competing customers on proportionally equal terms were:

<i>Customer</i>	<i>Approximate payment received</i>
Rexall Drug Co., Los Angeles, Calif.....	\$19,500
United Cigar-Whelan Stores Corp., New York, N.Y.....	24,700
Fred Harvey, Chicago, Ill.....	3,463
Sky Chefs, Inc., New York, N.Y.....	1,664

Respondents made said payments to their favored customers on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

PAR. 6. Respondent Affiliated Publishers has acted as a conduit or intermediary for independent publishers in making payments similar to those alleged herein, in violation of the provisions of subsection (d) of Section 2 of the amended Clayton Act.

PAR. 7. The acts and practices of respondents as alleged above are in violation of the provisions of subsection (d) of Section 2 of the amended Clayton Act.

Mr. J. Wallace Adair and *Mr. Jerome Garfinkel* for the Commission.

Mr. Selig J. Levitan, of New York, N.Y., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on October 19, 1959, charging Respondents with violation of § 2(d) of the Clayton Act (U.S.C. Title 15, § 13), as amended by the Robinson-Patman Act, by paying or contracting for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale or offering for sale of the various publications sold to them by Respondents, such payments or allowances not having been made available by Respondents on proportionally equal terms to all their other customers competing in the distribution of such publications, and Respondents not having made such payments among their favored customers on proportionally equal terms.

Thereafter, on May 2, 1960, Respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved

Decision

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by the Director and Associate Director of the Commission's Bureau of Litigation, and thereafter, on May 9, 1960, submitted to the hearing examiner for consideration.

The agreement identifies Respondents Pocket Books, Inc., and Affiliated Publishers, Inc. as New York corporations, with their office and principal place of business located at 630 Fifth Avenue, New York 20, N.Y.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

The agreement is entered into subject to the condition that the initial decision based thereon shall become the decision of the Commission on the same date that the initial decisions in Dockets 7384, 7385, 7386, 7387, 7388, 7389, 7390, 7391, 7392, 7393, 7394, 7611, 7612, 7613, and 7614 become the decisions of the Commission.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; that the word "customer" wherever used in said order means anyone who purchases from a Respondent acting either as principal or agent, or from a distributor or wholesaler where such transaction with such purchaser is essentially a sale by such Respondent, acting either as principal or agent; and that the agreement is for settlement purposes only and does not constitute an admission by Respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint, and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist, finds that the Commission has jurisdiction over the Respondents and

over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That each of the named Respondents, Pocket Books, Inc., Affiliated Publishers, Inc., its officers, agents, representatives or employees, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of magazines, paper back or comic books in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of any magazine, paper back or comic book published, sold or offered for sale by such Respondent, unless such payment or consideration is affirmatively offered or otherwise made available on proportionally equal terms to all of its other customers competing with such favored customer in the distribution of such magazine, paper back or comic book.

It is further ordered, That Respondent Affiliated Publishers, Inc., its officers, agents, representatives or employees, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of magazines, paper back or comic books in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from paying, contracting for, or passing on an allowance or anything of value to, or for the benefit of any customer of any publisher for which it distributes any magazine, paper back or comic book as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of any of such publisher's magazines, paper back or comic books which are sold, offered for sale or distributed by Affiliated Publishers, Inc., unless such allowance or consideration is affirmatively offered or otherwise made available on proportionally equal terms to all other customers of such publisher to whom Affiliated Publishers, Inc., distributes such publisher's magazines, paper back or comic books, and who are competing with such favored customer in the distribution of such magazines, paper back or comic books.

DECISION OF THE COMMISSION AND ORDER EXTENDING TIME FOR FILING
REPORT OF COMPLIANCE

Pursuant to § 3.21 of the Commission's Rules of Practice, the hearing examiner's initial decision in this proceeding shall, on the 6th day of July 1960, become the decision of the Commission.

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It is ordered, That the time within which the respondents may file their report, setting forth the manner and form in which they have complied with the order to cease and desist, as required by § 3.26 of the Rules of Practice, be, and it hereby is, extended until further order of the Commission.

The Commission on January 10, 1961, issued an order to file report of compliance, as follows:

The Commission, by order entered June 30, 1960, having noted that the hearing examiner's initial decision in this proceeding should, on July 6, 1960, become the decision of the Commission, and having directed that the time within which the respondents may file a report of compliance with the order to cease and desist contained in said decision be extended until further order of the Commission:

It is now ordered, That the respondents 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 the order to cease and desist contained in the aforesaid initial decision.

Commissioner Mills not participating.

IN THE MATTER OF

GARMISA DISTRIBUTING COMPANY, INC., ET AL.

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

Docket 7781. Complaint, Feb. 12, 1960—Decision, July 6, 1960

Consent order requiring distributors of phonograph records, with main offices in Chicago and Milwaukee, to cease giving concealed "payola"—money or other material consideration—to disc jockeys of television and radio programs or others to induce broadcasting of their records.

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 Garmisa Distributing Company, Inc., a corporation, Garmisa Inc. of Wisc., a corporation, and Leonard Garmisa, and Edward Yalowitz, individually, and as officers of said corporations, and Myron J. Schulz, individually, and as officer of Garmisa Distributing Company, Inc., 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 Garmisa Distributing Company, 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 2011 South Michigan Avenue, Chicago, Ill.

Respondent Garmisa Inc. of Wisc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 1907 West Vleit Street, Milwaukee, Wis.

Respondents Leonard Garmisa and Edward Yalowitz are president and vice president, respectively, of said corporate respondents. Respondent Myron J. Schulz is treasurer of corporate respondent Garmisa Distributing Company, Inc. Said individual respondents formulate, direct and control the acts and practices of the corporate respondents of which they are officers, including the acts and practices herein set out. The address of the individual respondents is 2011 South Michigan Avenue, Chicago, Ill.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of phonograph records in various States of the United States.

In the course and conduct of their business, respondents now cause, and for some time last past have caused, the records they distribute, when sold, to be shipped from their respective places of business in the States of Illinois and Wisconsin, to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals in the sale and distribution of phonograph records.

PAR. 4. After World War II, when television and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry, with a sales volume of approximately \$400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as six to ten times a day, substantially increase the sales of those records so "exposed". Some

record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and television programs.

"Payola", among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations to induce, stimulate or motivate the disk jockey to select, broadcast, "expose" and promote certain records in which the payer has a direct financial interest.

Disk jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication represent to their listening public that the records "exposed" on their broadcasts have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 5. In the course and conduct of their business in commerce during the last several years, the respondents have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondents alone, or with certain unnamed record manufacturers, have negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across state lines, or to other personnel who influence the selection of the records "exposed" by the disk jockeys on such programs.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondents, by participating individually or in a joint effort with certain collaborating record manufacturers, have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them, or to other personnel which select or participate in the selection of the records used on such broadcasts.

Thus, "payola" is used by the respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selections of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they otherwise might not have purchased and, also,

to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 6. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public and to hinder, restrain and suppress competition in the offering for sale, sale and distribution of phonograph records, and to divert trade unfairly to the respondents from their competitors and substantial injury has thereby been done and may continue to be done to competition in commerce.

PAR. 7. The aforesaid acts and practices of respondents, as alleged herein, were and are all to the prejudice and injury of the public and of respondents' competitors and 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. John T. Walker and Mr. James H. Kelley for the Commission. Altheimer, Kabaker, Lipson & Naiburg, of Chicago, Ill., for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondents with violations of the provisions of the Federal Trade Commission Act by the payment of money or other valuable consideration to induce the playing of certain phonograph records over radio and television stations in order to enhance the popularity of such records.

On June 1, 1960, there was submitted to the undersigned hearing examiner an agreement between the above-named respondents, their counsel and counsel supporting the complaint providing for the entry of a consent order. Attached to said agreement is a letter from counsel for the respondents stating that Leonard R. Garmisa, one of the individuals who executed the agreement and waiver, is one and the same as Leonard Garmisa (no middle initial), one of the individuals named in the complaint.

Under the foregoing agreement, the respondents admit all the jurisdictional facts alleged in the complaint. The agreement provides that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact, and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have

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the same force and effect as if entered after a full hearing, the respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Garmisa Distributing Company, 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 2011 South Michigan Avenue, Chicago, Ill.

Respondent Garmisa Inc. of Wisc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 1907 West Vleit Street, Milwaukee, Wis.

Respondents Leonard Garmisa and Edward Yalowitz are president and vice president, respectively, of said corporate respondents. Respondent Myron J. Schulz is treasurer of corporate respondent Garmisa Distributing Company, Inc. Said individual respondents formulate, direct and control the acts and practices of the corporate respondents of which they are officers, including the acts and practices herein set out. The address of the individual respondents is 2011 South Michigan Avenue, Chicago, Ill.

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, Garmisa Distributing Company, Inc., a corporation, and Garmisa Inc. of Wisc., a corporation, and their officers, and Leonard Garmisa, and Edward Yalowitz, individually and as officers of said corporations, and Myron J. Schulz, individually and as officer of Garmisa Distributing Company, Inc., and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed, in commerce, or which are used by radio or television stations in broadcasting programs

in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature.

(2) Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly, received by him or his employer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 6th day of July, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That 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 the order to cease and desist.

IN THE MATTER OF
GENERAL NATURAL GAS CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(a) OF THE CLAYTON ACT

Docket 7782. Complaint, Feb. 15, 1960—Decision, July 6, 1960

Consent order requiring a holding company and its subsidiary—through which it controlled some 12 wholesale and retail sellers of "Sungas" bottled liquefied petroleum gas in Pennsylvania, New Jersey, and New York—to

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cease discriminating in price between different purchasers in violation of sec. 2(a) of the Clayton Act, through such practices as selling bottled gas at substantially lower prices to their Hazleton, Pa., subsidiary to eliminate competition in the Hazleton area, than to their other retail outlets, and selling at \$4.95 per 100-pound cylinder or bottle to some customers while charging prices ranging from \$10.00 to \$12.00 to their competitors.

COMPLAINT

The Federal Trade Commission having reason to believe that the respondents named in the caption hereof, and more particularly designated and described hereinafter, have violated and are now violating the provisions of Section 2(a) of the Clayton Act (U.S.C., Title 15, Section 13), as amended, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent General Natural Gas Corporation, sometimes hereinafter referred to as respondent General, is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at Monticello, N.Y.

Respondent Sungas Products of Penna., Inc., sometimes hereinafter referred to as respondent Sungas, is a corporation organized and existing under the laws of the State of Pennsylvania, with its office and principal place of business located at 901 Providence Road, Scranton, Pa.

Respondent Benjamin Cosor is an individual and an officer, director and stockholder of respondent General, and an officer and director of respondent Sungas, with his office and principal place of business located c/o General Natural Gas Corporation, Monticello, N.Y.

Respondent Harold C. Fisher is an individual and an officer, director and stockholder of respondent General and an officer and director of respondent Sungas, with his office and principal place of business located c/o General Natural Gas Corporation, Monticello, N.Y.

Respondent William Schlanger is an individual and an officer, director and stockholder of respondent Sungas, with his office and principal place of business located at 901 Providence Road, Scranton, Pa.

Respondent Eugene J. Schlanger is an individual who is sales manager of respondent Sungas and is an officer in one or more corporations, the capital stock of which is owned in whole or in part by respondent Sungas. His office and principal place of business is located at 901 Providence Road, Scranton, Pa.

PAR. 2. Respondent General has been and is now engaged, directly or indirectly, in the purchase of liquefied petroleum gas, commonly referred to as "bottled gas", and in the sale thereof to its various

subsidiary or affiliated companies including respondent Sungas, and through said companies, distributes such products to purchasers in various states in the United States. Said respondent is also a holding company, having control of a majority of the capital stock of various subsidiary corporations engaged in the sale and distribution of bottled gas and appliances in the several states principally along the Atlantic coast. Said respondent General owns approximately two-thirds of the total outstanding capital stock of respondent Sungas and exercises control over the operations and policies of respondent Sungas.

Respondent Sungas has been and is now engaged, directly or indirectly, in the sale and distribution of liquefied petroleum gas, commonly referred to as "bottled gas", at wholesale and retail, in the States of Pennsylvania, New Jersey and New York. Said respondent uses the trade name "Sungas" to describe the bottled gas sold and distributed by it.

Said respondent is also engaged, directly or indirectly, in the sale and distribution of gas and electric appliances at wholesale and retail in the States of Pennsylvania, New Jersey and New York.

Respondent General, through respondent Sungas owns or controls, in whole or in part, certain other corporations, approximately twelve in number, all engaged in the sale and distribution of bottled gas under the trade name of "Sungas" at either wholesale or retail, and all being incorporated in the State of Pennsylvania. Among such other corporations are Sungas Service Company, Inc., and Laurel Lake Gas Company, both of which are engaged in the sale and distribution at retail of bottled gas obtained from respondent Sungas and marketed under the trade name of "Sungas".

Respondent General, through respondent Sungas also owns and controls Sungas Hazleton, Inc., a corporation which was organized in January 1959, to sell and distribute at retail "Sungas" bottled gas and appliances in the area surrounding Hazleton, Pa.

PAR. 3. The corporations owned or controlled by respondents General and Sungas, including Sungas-Hazleton, Inc., Sungas Service Company, Inc., and Laurel Lake Gas Company, serve as agencies or instrumentalities through which respondents General and Sungas sell their products, including bottled gas. The operations of such corporations are controlled and directed by respondent Sungas, which in turn is controlled by respondent General.

The individual respondents Benjamin Cosor and Harold C. Fisher are responsible, either directly or indirectly, for the acts and practices of respondent General through ownership of capital stock and the exercise of control over, and formulation of, the policies and operations of said respondent General as officers and directors of said

respondent, in the carrying out and execution of such policies and acts and practices.

The individual respondents Benjamin Cosor, Harold C. Fisher and William Schlanger, are responsible, either directly or indirectly, for the acts and practices of respondent Sungas through the ownership of capital stock and the exercise of control over, and formulation of, the policies and operations of said respondent Sungas, as officers and directors of said respondent, in the carrying out and execution of such policies and acts and practices.

Individual respondent Eugene J. Schlanger has been and is now sales manager of respondent Sungas and also manages the business of several other corporations engaged in the compressed gas business in Pennsylvania and which corporations are owned or controlled by respondent General through respondent Sungas. Respondent Eugene J. Schlanger has aided and abetted the policies and practices of respondents General and Sungas and respondents Benjamin Cosor, Harold C. Fisher and William Schlanger by formulating, executing and carrying out such policies and practices in his occupation as sales manager of respondent Sungas, and is also responsible, either directly or indirectly, for the acts and practices of respondents General and Sungas.

PAR. 4. Respondents have been and are now in the course and conduct of their said business, engaged in commerce, as "commerce" is defined in the Clayton Act, in that they, directly or indirectly, sell and distribute bottled gas and other products to purchasers thereof located in States other than the State of origin of shipment and, directly or indirectly, cause such products, when sold, to be shipped and transported from the state of origin to purchasers located in other States. There is now, and has been, a constant course and flow of trade and commerce in such products between said respondents in the state of origin and purchasers located in other States.

PAR. 5. In the course and conduct of their said business, respondents have been and are now in competition with other corporations, partnerships and individuals in the sale and distribution in commerce of bottled gas and gas and electric appliances.

Some of the customers of respondents are in competition with each other and with customers of competitors of respondents in the purchase and resale of bottled gas and appliances.

PAR. 6. Respondents in the course of such commerce, as aforesaid, have been and are now, either directly or indirectly, discriminating in price between different purchasers of bottled gas by selling such products to some purchasers at substantially higher prices than the prices at which sales are made of products of like grade and quality

to other purchasers, some of whom are engaged in competition with the less favored purchasers in the resale of such products.

For example, since January 1959, said respondents, either directly or indirectly, have charged and do now charge \$4.95 per 100 pound cylinder or bottle of liquefied petroleum gas, to some customers, and said respondents have charged and do now charge prices ranging from \$10.00 to \$12.00 to other customers, some of whom are in competition with the favored customers for the same quantity of liquefied petroleum gas of like grade and quality.

PAR. 7. The corporations owned or controlled in whole or in part by respondents General and Sungas have been organized or acquired, either directly or indirectly, by said respondents General, Sungas, Benjamin Cosor, Harold C. Fisher and William Schlanger for the purpose of expanding the scope of operations in the sale and distribution of their products, particularly bottled gas referred to as "Sungas".

Sungas Hazleton, Inc., established and financed by said respondents and owned and controlled, directly or indirectly, by them, was organized to sell bottled gas under the name "Sungas" at retail, at prices substantially lower than those at which the same product of like grade and quality was sold at the same time through other retail outlets owned or controlled by said respondents. In so doing said respondents, as well as respondent Eugene J. Schlanger, have sought to eliminate competition in the bottled gas business in the Hazleton area.

PAR. 8. The discriminations in price on the part of respondents being substantial, the effect thereof may be substantially to lessen competition or to tend to create a monopoly in the lines of commerce in which respondents and the purchasers receiving the preferential prices are engaged and to prevent, injure and destroy competition between respondents and their competitors and between and among purchasers of such products from respondents.

PAR. 9. The discriminations in price, as hereinbefore alleged, are in violation of the provisions of Section 2(a) of the Clayton Act, as amended.

Mr. Lewis F. Depro supporting the complaint.

Levine and Levine, of Liberty, N.Y., for respondents, *Mr. Lazarus I. Levine*, of Counsel.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On February 15, 1960, the Federal Trade Commission issued its complaint in this proceeding against all the above-named respondents, charging them with violating Section 2(a) of the Clayton Act,

as amended, by the Robinson-Patman Act. Respondents are charged in said complaint with discriminating in price between different purchasers of liquefied petroleum gas, and related products, by selling such products to some purchasers at substantially higher prices than the prices at which sales are made of products of like grade and quality to other purchasers, some of whom are engaged in competition with the less favored purchasers in the resale of such products. A true and correct copy of the complaint was served upon respondents, and each of them, as required by law. Thereafter respondents appeared by counsel and entered into an agreement dated May 4, 1960, which purports to dispose of all of this proceeding as to all of the respondents without the necessity of conducting formal hearings. The agreement has been legally executed on behalf of all the respondents. It has been signed by respondents' counsel, and by counsel supporting the complaint, and has been approved by the Director and the Associate Director of the Bureau of Litigation of the Federal Trade Commission. The May 4, 1960 agreement contains the form of a consent cease and desist order which the parties have agreed is dispositive of the issues involved in these proceedings. On May 10, 1960, the said agreement was submitted to the undersigned hearing examiner for consideration in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

In and by the said agreement of May 4, 1960, the parties:

Admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations;

Agree that the record upon which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement;

Agree that the agreement shall not become part of the official record unless and until it becomes a part of the decision of the Commission; and that the agreement is for settlement purposes only;

Agree that the cease and desist order entered pursuant to said agreement may be entered without further notice to respondents, and that, when so entered, it shall have the same force and effect as if entered after a full hearing; that such order may be altered, modified or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

Respondents, in and by said agreement waive: Any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all rights they may have to challenge or contest the order to cease and desist entered in accordance with the agreement.

The agreement specifically provides that the order to cease and desist provided for in the agreement is not intended to require uniform prices throughout the country.

This proceeding having now come on for final consideration upon the complaint and the aforesaid agreement of May 4, 1960, containing consent cease and desist order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint, and provides for an appropriate disposition of this proceeding as to all parties, the agreement of May 4, 1960, hereby is accepted, approved, and ordered filed at the time this decision becomes the decision of the Federal Trade Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings; and

The undersigned hearing examiner, having considered the agreement and proposed order, and being of the opinion that the acceptance thereof will be in the public interest, makes the following findings and issues the following order:

FINDINGS

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;

2. Respondent, General Natural Gas Corporation, is a corporation 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 in the City of Monticello, State of New York.

Respondent, Sungas Products of Penna., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 901 Providence Road, in the City of Scranton, State of Pennsylvania.

Respondent Benjamin Cosor is an individual and an officer, director and stockholder of General Natural Gas Corporation and an officer and director of Sungas Products of Penna., Inc., with his office and principal place of business located in care of General Natural Gas Corporation, in the City of Monticello, State of New York.

Respondent Harold C. Fisher is an individual and an officer, director and stockholder of General Natural Gas Corporation and an officer and director of Sungas Products of Penna., Inc., with his office and principal place of business located in care of General Natural Gas Corporation, in the City of Monticello, State of New York.

Respondent William Schlanger is an individual and an officer, director and stockholder of Sungas Products of Penna., Inc., with his office and principal place of business located at 901 Providence Road, in the City of Scranton, State of Pennsylvania.

Respondent Eugene J. Schlanger is an individual and an employee of Sungas Products of Penna., Inc., with his office and principal place of business located at 901 Providence Road, in the City of Scranton, State of Pennsylvania.

3. Respondents are engaged in "commerce" as that term is defined in the Clayton Act, as amended by the Robinson-Patman Act, and in the Federal Trade Commission Act.

4. The complaint filed in this proceeding states a good cause of action against the respondents under the Clayton Act, as amended; and this proceeding is in the public interest.

Now, therefore,

It is ordered, That respondent General Natural Gas Corporation and Sungas Products of Penna., Inc., corporations, and respondents Benjamin Cosor, Harold C. Fisher, William Schlanger and Eugene J. Schlanger, individuals, and their officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale and distribution of liquefied petroleum gas and related products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Discriminating in price by selling such products of like grade and quality to any purchaser at prices higher than those granted to other purchasers, who in fact compete with the unfavored purchaser in the resale and distribution of such products, or where respondents in the sale of such products are in competition with any other seller.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 6th day of July 1960, become the decision of the Commission; and, accordingly:

It is 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 the order to cease and desist.

IN THE MATTER OF
MIDAS, INC., ET AL.

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

Docket 7771. Complaint, Feb. 4, 1960—Decision, July 7, 1960

Consent order requiring a Chicago distributor to cease representing falsely by radio and television, magazine and other advertising, and advertising script

Complaint

furnished its retail dealers, that their automobile mufflers were unconditionally guaranteed for the life of the automobiles on which they were installed.

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 Midas, Inc., a corporation, and Gordon Sherman, Robert Schroeder and Robert M. Jacob, individually and as officers of said 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 as follows:

PARAGRAPH 1. Respondent Midas, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 4101 West 42nd Place, in the City of Chicago, State of Illinois. The individual respondents Gordon Sherman, Robert Schroeder and Robert M. Jacob are President and Treasurer, Vice President, and Secretary, respectively, of said corporate respondent, have the same address as the corporate respondent, and control, direct and formulate the acts, practices and policies of said corporate respondent.

PAR. 2. Respondents are now, and for more than two years last past have been, engaged in the advertising, offering for sale, sale and distribution of automobile mufflers. Respondents ship, and cause to be shipped, their said mufflers, when sold, from the State of Illinois to their franchised retail dealers, many of whom are located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing sales of their products, the respondents have made certain statements and representations on television, radio, in magazines of national circulation and trade journals, and in brochures, circulars, mats, signs, radio and television script furnished to its retail dealers. Among and typical, but not all inclusive, of the statements and representations so made are the following:

You can keep your car forever and never have to buy another muffler. That's what the Midas guarantee means

Guarantee in writing for the life of your car

No charge for installation, its free!

Two . . . a woman likes these words "A lifetime guarantee". Nothing evasive. No vaguely worded "warranty". No fine print doubletalk. It says "guaranteed for the life of your car"

. . . There's never a labor charge for muffler installation at any Midas shop

PAR. 4. The respondents, through the use of the aforesaid statements and representations, and others similar thereto, represent, directly and by implication, that their mufflers are unconditionally guaranteed for the life of the automobiles on which they are installed.

PAR. 5. Said statements and representations were, and are, false, misleading and deceptive. In truth and in fact, respondents' mufflers are not guaranteed for the life of the purchaser's automobile but only for such period as he owns the vehicle, and such guarantee is not unconditional but is subject to limitations not revealed in such advertising.

PAR. 6. By the aforesaid practices, respondents place in the hands of retailers means and instrumentalities by and through which they may mislead the public as to the guarantee of said mufflers.

PAR. 7. Respondents, at all times mentioned herein, have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of auto mufflers.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 9. 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. William A. Somers supporting the complaint.

Mr. David Silbert, of Chicago, Ill., for respondents.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on February 4, 1960, charging them with the use of unfair and deceptive acts and practices and unfair methods

of competition, in commerce, in violation of the Federal Trade Commission Act, by misrepresenting the nature and extent of the guarantee given on the automobile mufflers sold by them. After being served with said complaint, respondents appeared by counsel and entered into an agreement, dated April 29, 1960, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents, by counsel for said respondents, and by counsel supporting the complaint, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint, and have agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with said agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing, and that the complaint may be used in construing the terms of said order. It has also been agreed that the aforesaid agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Midas, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Illinois. Respondents Gordon Sherman, Robert Schroeder and Robert M. Jacob are individuals and officers of said corporate respondent. Said

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corporate and individual respondents have their office and principal place of business located at 4101 West 42d Place, Chicago, Ill.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondent Midas, Inc., a corporation, and its officers, and Gordon Sherman, Robert Schroeder and Robert M. Jacob, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of automobile mufflers, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting, in any manner, the nature or extent of the guarantee of a product.
2. Representing that a product is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform are clearly disclosed.
3. Placing any means or instrumentality in the hands of others by and through which the public may be misled as to the guarantee of a product.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 7th day of July 1960, become the decision of the Commission; and, accordingly:

It is 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 the order to cease and desist.

 IN THE MATTER OF

RAYCO MANUFACTURING COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 3 OF THE CLAYTON ACT

Docket 7734. Complaint, Jan. 7, 1960—Decision, July 9, 1960

Consent order requiring one of the nation's largest suppliers of automobile seat covers, convertible tops, mufflers, and related products, to cease entering

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into exclusive-dealing contracts or illegal price-fixing agreements with its independent retail dealers under which it required them also to enter into conspiracies among themselves to sell at uniform prices, etc., to carry a full line of its products or such quantities as it might determine, to advertise its products only in cooperation with other purchasers, accept all its advertising of prices and make payments to it therefor, and under which it had power to arbitrarily terminate agreements with dealers who violated aforesaid requirements, which said dealers were policed by its "Zone Supervisors'" periodic checks upon their operations.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties named in the caption hereof and hereby made respondents herein, and hereinafter designated and described more particularly, have been and are using unfair methods of competition and unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. Sec. 45), and have been and are violating Section 3 of the Clayton Act (15 U.S.C. Sec. 14), and it appearing to the Commission that a proceeding by it would be to the interest of the public, the Commission hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

Charging violations of Section 5 of the Federal Trade Commission Act, the Commission alleges:

PARAGRAPH 1. Respondent Rayco Manufacturing Company, Inc., hereinafter referred to as Rayco, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 220 Straight Street, Paterson, N.J.

PAR. 2. Respondent Joseph Weiss, hereinafter referred to as Weiss, is an individual and is President of Rayco. Weiss formulates, directs and controls the acts, policies and practices of Rayco, and has his office and principal place of business at the same address as Rayco. The methods, acts and practices hereinafter alleged with respect to Rayco are also alleged with respect to Weiss because of his personal and official responsibility for their adoption and use.

PAR. 3. Rayco has been engaged since 1946 in the manufacture of automobile seat covers and related products, and in the sale and distribution of automobile seat covers, convertible tops, mufflers and related products, which products are sold under the trade name Rayco, and which are hereinafter referred to as Rayco products. Rayco products are nationally advertised and are sold in various

states of the United States and the District of Columbia. Rayco is the largest, or one of the largest, manufacturers and distributors of automobile seat covers in the United States, its sales currently approximating seven million dollars annually.

Except for six recently established subsidiary retail stores, Rayco now sells, and since 1950 has sold, Rayco products only to independent retail dealers, hereinafter referred to as Rayco dealers, with whom Rayco has executed written contracts. Rayco dealers are located in various States of the United States and in the District of Columbia, and Rayco products, when sold, are transported from Rayco's place of business in the State of New Jersey to the retail stores of Rayco dealers located in other states of the United States and in the District of Columbia. Rayco, at all times mentioned herein, has maintained, and now maintains, a constant current of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. Rayco's volume of business in said products in commerce has been and is substantial.

PAR. 4. In the course and conduct of its business, as herein described, Rayco, at all times mentioned herein, has been in substantial competition in the offering for sale and in the sale of automobile seat covers, convertible tops, mufflers and related products in commerce between and among the various States of the United States and in the District of Columbia, with other corporations and with persons, firms and partnerships.

PAR. 5. In the course and conduct of its business, as aforesaid, Rayco has made and is making sales and contracts of sale of Rayco products to Rayco dealers on the expressed and implied conditions, agreements and understandings that said dealers shall not use, or deal in, or sell the automobile seat covers, convertible tops, mufflers or other products supplied by a competitor or competitors of Rayco, or any other products.

Such restrictive conditions, agreements and understandings are implied and enforced by Rayco's method of selling to and policing and supervising the businesses of Rayco dealers. They are also specifically required by Rayco's standard "Dealer Franchise Agreement", pursuant to the terms of which Rayco has contracted to sell its products to all Rayco dealers, which provides, in part, as follows:

The Dealer specifically covenants and agrees: . . . 2. To purchase solely and exclusively from the Supplier, all seat covers and seat cover materials and all other items and materials used for repairs, replacements and additions to any part of automobiles, paying therefor the prevailing invoice prices. 3. To purchase from the Supplier, all other items offered for sale by it through "RAYCO AUTO SEAT COVER" Stores. However, should the Dealer prefer not to purchase any one or more of such auxiliary items of merchandise re-

ferred to in this paragraph, then, and in such case the Dealer hereby covenants and agrees that he will not purchase such item or items from any other source.

Rayco's competitors and others have been, and are now, unable to make sales to Rayco dealers which they could have made but for the conditions, agreements and understandings described herein. Rayco dealers have been restricted and hampered in their businesses as a result of being unable to purchase products competitive with Rayco products at lower prices or upon other more favorable terms than those granted by Rayco, and as a result of being unable to purchase products other than those sold and distributed by Rayco.

PAR. 6. In the course and conduct of its business, as aforesaid, Rayco has established and maintains a policy whereby it fixes certain specified prices and discounts at which Rayco products are to be resold by Rayco dealers. Such prices and discounts are published in price lists and advertisements prepared by Rayco, or are otherwise made known to said dealers by Rayco, either directly or through its employees or representatives, and Rayco dealers are required to adhere to such prices and discounts.

The direct effect of said policy and practices of Rayco has been to cause Rayco dealers to sell Rayco products at the prices and discounts fixed and established by Rayco; to prevent said dealers from selling Rayco products at prices, either greater or less than those fixed and established by Rayco, which they might deem adequate and warranted by their respective selling costs and by trade and competitive conditions generally; to suppress competition among said dealers in the distribution and sale of Rayco products; to suppress competition among said dealers and others in the distribution and sale of automobile seat covers, convertible tops, mufflers and related products; and to deprive the ultimate purchasers of such products of the advantages in price which they would otherwise obtain from a free and unobstructed flow of commerce in such products.

PAR. 7. In the course and conduct of its business, as aforesaid, Rayco has entered into and is now carrying out conspiracies with Rayco dealers, and has required Rayco dealers to enter into and carry out conspiracies among themselves, to sell Rayco products at uniform prices, discounts, terms and conditions of sale fixed and established or approved by Rayco, for the purpose and with the effect of lessening and suppressing competition among said dealers and with others in the distribution and sale of automobile seat cov-

ers, convertible tops, mufflers and related products, and of depriving the ultimate purchasers of such products of the advantages in price which they would otherwise obtain from a free and unobstructed flow of commerce in such products.

PAR. 8. In the course and conduct of its business, as aforesaid, in furtherance of the restrictive conditions, agreements and understandings expressed and implied in its contracts and course of dealing with Rayco dealers, as alleged in Paragraph 5 hereof, and in pursuance of the policy and conspiracies to fix and maintain resale prices, discounts, terms or conditions of sale, as alleged in Paragraphs 6 and 7 hereof, Rayco has employed, and now employs, the following methods, acts and practices, among others:

(a) Rayco has caused to be inserted in its contracts with Rayco dealers certain oppressive conditions and agreements involving, among other things, the right of Rayco to terminate such contracts under conditions which adversely affect the future business activity of the dealers whose contracts are terminated or cancelled. To this effect, Rayco's standard "Dealer's Franchise Agreement" provides, in part:

Should the Dealer violate any of the undertakings and covenants hereinabove contained, the Supplier shall have the right to terminate this agreement and/or agreements, giving ten days notice to the Dealer of its desire to do so, and the terms of this contract shall end on the day fixed in the aforesaid notice of termination. . . .

In the event of the termination of this agreement before the expiration of any term . . . such termination date shall be further known as the "severance date," and the Dealer hereby covenants and agrees that he will not re-enter either directly or indirectly as agent, servant, employee, individual, proprietor, or as officer of a corporation the business of merchandising, sale or installation of automobile seat covers, and convertible tops, for a period of five (5) years from said "severance date" in the City of ----- or within a radius of fifteen (15) miles of the City Limits of the City of ----- nor within a radius of fifteen (15) miles of any "RAYCO AUTO SEAT COVER" store wherever such store shall be located at the time the dealer shall desire to re-enter said business. The Dealer hereby agrees that the Supplier shall have the absolute legal right to promptly enjoin any violation of this covenant by appropriate summary proceedings filed in any competent Court having jurisdiction over the Dealer.

The power of Rayco under said contract provisions arbitrarily to terminate such contracts and to restrict the future business activity of any dealer whose contract has been so terminated causes Rayco dealers to be subservient to Rayco's wishes and will in the conduct of their businesses and to acquiesce in requirements imposed by Rayco with respect thereto.

(b) Rayco has caused to be inserted in its contracts with Rayco dealers the following provision, requiring said dealers to carry a full line of Rayco products:

Dealer must always maintain his inventory in compliance with the recommendations and advice of the Supplier, and as further provided by the Supplier's "Master Inventory Chart." Deviations therefrom for any reason whatsoever, regardless of season, from the specific and varied inventory requirements of such "Master Inventory Chart," are not permissible unless Supplier consents thereto in writing.

Rayco's "Master Inventory Chart" includes all Rayco products.

(c) Rayco has required and requires that Rayco dealers refrain from any and all independent advertising of prices and products; that Rayco dealers acquiesce in any and all advertising undertaken by Rayco, including advertising of prices; that such advertising be in common with other Rayco dealers at Rayco's option; that Rayco dealers pay Rayco at regular intervals, as an advertising assessment, a certain percentage set by Rayco of the dealer's retail sales or of the dealer's purchases from Rayco; and that the advertising which Rayco provides for any given dealer has no necessary, direct or constant relation to the amount of the advertising assessment paid to Rayco by such dealer. Rayco has also required and requires that Rayco dealers conform with and abide by any and all promotional or other merchandising requirements established by Rayco.

(d) Rayco has maintained, and now maintains, a number of field representatives, designated "Zone Supervisors", who are instructed by Rayco to call, and who do periodically call, on Rayco dealers, and, by various methods, check upon the operations of said dealers for the purpose of ascertaining whether or not they are using, dealing in or selling products supplied by competitors of Rayco or by others; whether or not they are adhering to the resale prices and discounts set by Rayco, either directly or through said Zone Supervisors; and whether or not they are otherwise failing to comply with the requirements of Rayco in the operation of their businesses.

PAR. 9. The acts and practices of respondents, as herein alleged, are all to the injury and prejudice of competitors of respondents, of purchasers from respondents, and of the public; have a tendency and effect of obstructing, hindering, lessening and preventing competition in the sale of automobile seat covers, convertible tops, mufflers and related products in commerce within the intent and meaning of the Federal Trade Commission Act; and constitute unfair methods of competition and unfair acts and practices in violation of Section 5 of the Federal Trade Commission Act.

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COUNT II

Charging violations of Section 3 of the Clayton Act, the Commission alleges:

Paragraphs 1, 2, 3, 4 and 5: The allegations of paragraphs 1, 2, 3, 4 and 5 of Count I of this complaint are incorporated herein by reference and constitute the allegations of paragraphs 1, 2, 3, 4 and 5 of Count II, except that the reference in paragraph 3 of Count I to the Federal Trade Commission Act is eliminated herein, and reference to the Clayton Act is substituted therefor.

PAR. 6. In the course and conduct of its business, as aforesaid, in furtherance of the restrictive conditions, agreements and understandings, expressed and implied, in its contracts and course of dealing with Rayco dealers, as alleged in paragraph 5 hereof, Rayco has employed, and now employs, the following methods, acts and practices, among others:

(a) Rayco has caused to be inserted in its contracts with Rayco dealers certain oppressive conditions and agreements involving, among other things, the right of Rayco to terminate such contracts under conditions which adversely affect the future business activity of the dealers whose contracts are terminated or cancelled. To this effect, Rayco's standard "Dealer Franchise Agreement" provides, in part:

Should the Dealer violate any of the undertakings and covenants hereinabove contained, the Supplier shall have the right to terminate this agreement and/or agreements, giving ten days notice to the Dealer of its desire to do so, and the terms of this contract shall end on the day fixed in the aforesaid notice of termination. . .

In the event of the termination of this agreement before the expiration of any term . . . such termination date shall be further known as the "severance date," and the Dealer hereby covenants and agrees that he will not re-enter either directly or indirectly as agent, servant, employee, individual, proprietor, or as officer of a corporation the business of merchandising, sale or installation of automobile seat covers, and convertible tops, for a period of five (5) years from said "severance date" in the City of ----- or within a radius of fifteen (15) miles of the City Limits of the City of ----- nor within a radius of fifteen (15) miles of any "RAYCO AUTO SEAT COVER" store wherever such store shall be located at the time the dealer shall decide to re-enter said business. The Dealer hereby agrees that the Supplier shall have the absolute legal right to promptly enjoin any violation of this covenant by appropriate summary proceedings filed in any competent Court having jurisdiction over the Dealer.

The power of Rayco under said contract provisions arbitrarily to terminate such contracts and to restrict the future business activity of any dealer whose contract has been so terminated, causes Rayco dealers to be subservient to Rayco's wishes and will in the conduct

of their businesses and to acquiesce in requirements imposed by Rayco with respect thereto.

(b) Rayco has caused to be inserted in its contracts with Rayco dealers the following provision, requiring said dealers to carry a full line of Rayco products:

Dealer must always maintain his inventory in compliance with the recommendations and advice of the Supplier, and as further provided by the Supplier's "Master Inventory Chart." Deviations therefrom for any reason whatsoever, regardless of season, from the specific and varied inventory requirements of such "Master Inventory Chart," are not permissible unless Supplier consents thereto in writing.

Rayco's "Master Inventory Chart" includes all Rayco products.

(c) Rayco has required and requires that Rayco dealers refrain from any and all independent advertising of the products in which they deal; that Rayco dealers acquiesce in any and all advertising undertaken by Rayco; and that Rayco dealers conform with and abide by any and all promotional or other merchandising requirements established by Rayco. Under said requirements, Rayco has the power to regulate, and does regulate, the advertising and promotion of products sold by Rayco dealers so as to prevent said dealers from advertising or otherwise offering for sale any products other than Rayco products.

(d) Rayco has maintained, and now maintains, a number of field representatives, designated "Zone Supervisors," who are instructed by Rayco to call, and who do periodically call, on Rayco dealers and, by various methods, check upon the operations of said dealers for the purpose of ascertaining, among other things, whether or not they are using, dealing in, or selling products supplied by competitors of Rayco, or by others.

PAR. 7. The effect of said sales and contracts for sale on such conditions, agreements and understandings, and of the acts and practices in furtherance thereof, may be to substantially lessen competition, and to injure, destroy and prevent competition in the line of commerce in which Rayco is engaged and in the line of commerce in which Rayco dealers are engaged; or may be to tend to create a monopoly in Rayco in the commerce aforesaid in automobile seat covers, convertible tops, mufflers, and related products.

PAR. 8. The aforesaid acts and practices of Rayco constitute violations of Section 3 of the Clayton Act.

Mr. Wilmer L. Tinley and *Mr. Martin F. Connor* supporting the complaint.

Mr. Lowell B. Mason, of Washington, D.C., and *Mr. Joseph L. Klein*, of New York, N.Y., for respondents.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on January 7, 1960, charging them in Count I thereof with the use of unfair methods of competition and unfair acts and practices, in commerce, in violation of Section 5 of the Federal Trade Commission Act by entering into various agreements, with retail dealers, and using various practices, restricting said dealers in the sale of competitive products and fixing the resale prices of respondents' products; and in Count II thereof with violating Section 3 of the Clayton Act by entering into agreements and understandings with retail dealers that said dealers shall not use, deal in, or sell the products of respondents' competitors. After being served with said complaint, respondents appeared by counsel and filed their answer thereto. Thereafter the parties entered into an agreement, dated May 12, 1960, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents, by counsel for said respondents, and by counsel supporting the complaint, and approved by the Director and Associate Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint, and have agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with said agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing, and that the complaint may be used in construing the terms of said order. It has also been agreed that the aforesaid agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an

appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Section 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Rayco Manufacturing Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 221 State Highway No. 4, in the City of Paramus, State of New Jersey (formerly 220 Straight Street, Paterson, N.J.). Individual respondent Joseph Weiss is president of the corporate respondent, and has the same address as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act and the Clayton Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That the respondent, Rayco Manufacturing Company, Inc., a corporation, and its officers, and respondent Joseph Weiss, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of automobile seat covers, convertible tops, mufflers and any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Clayton Act, do forthwith cease and desist from:

1. Selling or making any contract or agreement for the sale of any such products on the condition, agreement, or understanding, expressed or implied, that the purchaser thereof shall not use, or deal in, or sell, or shall not advertise or otherwise promote the sale of any such products supplied by any competitor or competitors of respondents, or of products supplied by any others; or that the purchaser thereof shall not use, or deal in, or sell, or shall not advertise or otherwise promote the sale of, any such products supplied by any competitor or competitors of respondents, or of products supplied by any others, without the prior consent of respondents;

2. Selling or making any contract or agreement for the sale of any such products on any conditions, agreement, or understanding, expressed or implied, which in any manner or to any extent shall

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limit the freedom of the purchaser thereof to use or deal in or sell or advertise or otherwise promote the sale of any such products supplied by any competitor or competitors of respondents, or of products supplied by any others;

3. Selling or making any contract or agreement for the sale of any such products on the condition, agreement or understanding, expressed or implied, that the purchaser thereof shall not advertise, offer for sale, or sell, any such products at prices and discounts other than those specified or fixed by the respondents;

4. Entering into, cooperating in or carrying out any planned common or concerted course of action, or any understanding, agreement or conspiracy with independent dealers in any such products, or with any others, to fix, establish or maintain the prices, discounts, terms or conditions of sale of any such products;

5. Selling, or making any contract or agreement for the sale of, any such products on the condition, agreement or understanding, expressed or implied, that the purchaser thereof shall be required to: (a) carry a full line of respondents' products; or (b) carry such specified quantities of respondents' several products as may be determined by respondents; or (c) refrain from the independent advertising of any such products, or any other products, or of the prices thereof; or (d) enter into cooperative advertising of prices with other purchasers thereof; or (e) accept or acquiesce in any and all advertising of prices undertaken on his behalf by respondents; or (f) make payments to the respondents, or at the direction of the respondents, to defray the costs of any advertising where done in furtherance of any of the acts and practices from which respondents are required to cease and desist by this paragraph and paragraphs 1, 2, 3 and 4 hereof;

6. Entering into any contract, agreement or understanding which will permit respondents to cancel, or cancelling, or, directly or by implication, threatening to cancel, any contract, franchise or selling agreement with purchasers of any such products because of the failure or refusal of such purchasers to comply with any of the conditions, agreements or understandings referred to in paragraphs 1, 2, 3 or 5 hereof;

7. Entering into any contract, agreement or understanding which enjoins, or by any means enjoining or attempting to enjoin, any purchasers of any such products from engaging in the business of buying and selling any such products for a period of five years following the termination of any contract, agreement or understanding with respondents, or for any other period; provided, however, that nothing contained herein shall be construed so as to prevent purchasers of any such products from respondents from voluntarily

terminating any such contract subject to such reasonable restrictions concerning their re-entry into business as may be lawful within the jurisdiction in which any such purchaser is located;

8. Policing, enforcing or continuing in operation or effect any condition, agreement, understanding, act or practice from which respondents are ordered to cease and desist by the foregoing sections hereof;

9. Performing any act of intimidation or coercion through statements, oral or written, made by representatives of respondents, either at the time when a purchaser agrees to purchase any such products from respondents or during the course of any calls made upon such purchasers at their places of business or at any other place, or using any other plan, practice, system or method of doing business, for the purpose or with the effect of intimidating, coercing, or requiring purchasers of any such products from respondents to do anything which respondents are ordered to cease and desist from requiring such purchasers to do by any of the foregoing paragraphs hereof.

Provided, however, That nothing herein contained shall be construed to limit or otherwise affect any resale price maintenance contracts which respondents may enter into in conformity with Section 5 of the Federal Trade Commission Act as amended by the McGuire Act (15 U.S.C. Sec. 45).

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 9th day of July 1960, become the decision of the Commission; and, accordingly:

It is 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 the order to cease and desist.

IN THE MATTER OF

KADIAK FISHERIES COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(c) OF THE CLAYTON ACT

Docket 7562. Complaint, Aug. 6, 1959—Decision, July 13, 1960

Consent order requiring Seattle packers of canned salmon and other sea food products to cease violating Sec. 2(c) of the Clayton Act by such practices