

Complaint

IN THE MATTER OF

GADGET-OF-THE-MONTH CLUB, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket 6256. Complaint, Oct. 29, 1954—Decision, Sept. 8, 1955*

Consent order requiring sellers in Los Angeles, Calif., to cease misrepresenting the number to be received within a stated period and the total retail price of "gadgets" sent to members of its Gadget-of-the-Month Club.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. Michael J. Vitale and *Mr. Edward F. Downs* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Gadget-of-the-Month Club, Inc., a corporation, and Don L. Davis, and Mary Lou Moffitt Davis, 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 in that respect as follows:

PARAGRAPH 1. Respondent, Gadget-of-the-Month Club, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business located at 6600 Lexington Avenue, Los Angeles, California. Respondent, Don L. Davis and Mary Lou Moffitt Davis, are President and Secretary-Treasurer, respectively, of corporate respondent. These individuals formulate, direct, and control the policies, acts, and practices of said corporation. The address of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the business of offering for sale, and selling to members of the purchasing public miscellaneous articles of merchandise referred to as "gadgets." In the course and conduct of their business, respondents cause and have caused their said "gadgets" when sold, to be transported from their place of business in the State of California to purchasers thereof located in various other States in the United States, and maintain and at all times mentioned herein have

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maintained, a course of trade in said "gadgets" in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. Respondents sell their gadgets through the sale of subscriptions to what they designate as the Gadget-of-the-Month Club. The annual subscription price for membership in said club is \$12.00 and an additional \$2.00 to the inventors of gadgets who wish to submit their inventions to respondents as possible gadgets to be furnished to subscribers to said club in the future or for general commercial purposes. Respondents' method of attracting the attention of the public to the manner in which their club is operated is through appearances of one of the aforesaid officers of corporate respondent on television programs; as a lecturer before various types of organizations and in articles in newspapers and national magazines. When inquiries from the public concerning subscriptions to the Gadget-of-the-Month Club are received, respondents mail subscription blanks to those inquiring which set out the terms and conditions of membership in the club together with a booklet which also sets out the terms and conditions of membership and a detailed explanation of the manner in which this club is operated. Such material is accomplished by a transmittal letter which also sets out the terms and conditions of membership.

PAR. 4. In the pamphlet, subscription blank, letter referred to above and other literature respondents represent and have represented:

1. That the Gadget-of-the-Month Club, Inc. will mail to each subscriber twelve gadgets within a twelve month period from the date the first mailing is made.

2. That the total retail price for said gadgets is greater than the subscription fee paid.

PAR. 5. The aforesaid representations were and are false, misleading, and deceptive. In truth and in fact:

1. Respondents have not mailed twelve gadgets within a twelve month period from the date of the first mailing to many persons who have subscribed to the Gadget-of-the-Month Club.

2. The total retail price of said gadgets is substantially less than the amount of the subscription fee.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations have had and now have the tendency and capacity to mislead and deceive a substantial

portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and to induce the purchasing public to become subscribers to respondents' Club as a result of such erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On October 29, 1954, the Federal Trade Commission issued its complaint in this proceeding, charging the Respondents with unfair and deceptive acts and practices in connection with the retail sale of miscellaneous articles of merchandise referred to as "gadgets," in violation of the Federal Trade Commission Act.

Thereafter, on November 26, 1954, respondents filed with the Commission their Answer to the complaint, and on June 30, 1955, entered into an agreement with counsel supporting the complaint, and, pursuant thereto, submitted to the hearing examiner an Agreement For Consent Order disposing of all the issues involved in this proceeding.

Respondent Gadget-of-the-Month Club, Inc., is identified in the agreement as a corporation organized and existing by virtue of the laws of the State of California, with its office and principal place of business located at 6600 Lexington Avenue, Los Angeles, California. Respondents Don L. Davis and Mary Lou Moffitt Davis are identified in the agreement as individuals and officers of said corporation, with the same business address.

Respondents admit all the jurisdictional allegations set forth in the complaint, and agree that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance therewith.

All parties agree that the Answer filed by Respondents on November 26, 1954, be withdrawn, and for all legal purposes said answer will hereafter be regarded as withdrawn. All parties expressly waive a hearing before a hearing examiner or the Commission; the making of findings of fact or conclusions of law by the hearing examiner or the Commission; the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which Respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Respondents agree that the order contained in the agreement shall have the same force and effect as if made after a full hearing, presentation of evidence, and findings and

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conclusions thereon. Respondents specifically waive any and all right, power, or privilege to challenge or contest the validity of such order.

It is also agreed that said Agreement For Consent Order, together with the complaint, shall constitute the entire record in this proceeding, upon which the initial decision shall be based. The agreement sets forth that the complaint herein may be used in construing the terms of the aforesaid order, which may be altered, modified, or set aside in the manner provided by statute for orders of the Commission.

The agreement further provides that the signing of the Agreement For Consent Order is for settlement purposes only, and does not constitute an admission by Respondents of any violation of law alleged in the complaint.

In view of the facts outlined above, and the further fact that the order embodied in the aforesaid agreement is identical with the order accompanying the complaint except for clarification of Paragraph 2 thereof by the substitution of the word "price" for the word "value," since respondents' representations therein referred to were with respect to price rather than value, it appears that such order will safeguard the public interest to the same extent as could be accomplished by the issuance of an order after full hearing and all other adjudicative procedure waived in said agreement. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement For Consent Order submitted herein; finds that this proceeding is in the public interest; and issues the following order:

It is ordered, That Respondents, Gadget-of-the-Month Club, Inc., a corporation, and its officers, Don L. Davis and Mary Lou Moffitt Davis, individually and as officers of said corporation, and said Respondents' representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of miscellaneous articles of merchandise, do forthwith cease and desist from:

1. Representing, directly or by implication, that subscribers to the Gadget-of-the-Month Club, or other purchasers of Respondents' merchandise, will receive any specified number of articles of merchandise within any stated period of time, unless the number of articles specified are actually delivered within the stated period of time;

2. Representing that the total retail price of the articles of merchandise delivered to subscribers is greater than the subscription price

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or misrepresenting in any manner the retail price of Respondents' merchandise.

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 8th day of September, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Gadget-of-the-Month Club, Inc., a corporation, and Don L. Davis, and Mary Lou Moffitt Davis, individually and as officers of said corporation, 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.

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IN THE MATTER OF

FREDERICK C. BLOXOM, SR., ET AL.
TRADING AS F. C. BLOXOM & COMPANYCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (c)
OF THE CLAYTON ACT*Docket 6259. Complaint, Nov. 4, 1954—Decision, Sept. 8, 1955*

Consent order requiring copartners engaged in Seattle, Wash., as brokers and as buyers of food products, to cease violating sec. 2 (c) of the Robinson-Patman Act by receiving commissions, brokerage, etc., from sellers on purchases of food products for their own account for resale.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. Edward S. Ragsdale and *Mr. Cecil G. Miles* for the Commission.

Bayley, Fite, Westburg, Madden & Goodin, of Seattle, Wash., for respondents.

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 been, and are now, violating the provisions of subsection (c) of Section 2 of the Clayton Act (U.S.C., Title 15, Section 13), as amended by the Robinson-Patman Act approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents Frederick C. Bloxom, Sr., Frederick C. Bloxom, Jr., and Kinne M. Hawes, individually and as copartners, trading as F. C. Bloxom & Company, have their offices and principal place of business located at 1105 Western Avenue, Seattle, Washington. Said respondents are engaged in the business of buying, selling and distributing fresh fruits and vegetables and other products (all of which are hereinafter referred to as food products).

Respondents' sales for the past several years have averaged from approximately \$1,500,000 to \$2,500,000 annually.

PAR. 2. The respondents, named in the caption hereof individually and as copartners, trading as F. C. Bloxom & Company, for a substantial period of time since January 1, 1942, have been engaged, and are now engaged, in the business of buying, selling, and distributing food products by two separate and distinct methods, namely and principally: (1) as brokers, and (2) as buyers.