

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.

Complaint

57 F.T.C.

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.

1

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.

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 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 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 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 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