

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