

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