

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,

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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

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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.