

IN THE MATTER OF
GOLDEN PRESS, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(d) OF THE CLAYTON ACT

Docket 8342. Complaint, Apr. 5, 1961—Decision, July 8, 1961

Consent order requiring a Poughkeepsie, N.Y., publisher of children's books to cease violating Sec. 2(d) of the Clayton Act by paying for services furnished by some of its customers while not making allowances available on proportionally equal terms to all competitors of the latter, such as paying favored retail customers for promoting and displaying its publications on newsstands and in retail outlets such as drug chains and department stores, and making the payments on the basis of individual negotiations and not on proportionally equal terms.

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 Golden Press, 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 North Avenue, Poughkeepsie, New York.

PAR. 2. Respondent has been engaged and is presently engaged in the business of publishing and distributing children's books under various titles. Its sales of such books exceed twenty-five million dollars annually. Said children's books are distributed by respondent to customers through its national distributor, Affiliated Publishers, Inc. In its capacity as national distributor for respondent, Affiliated Publishers, Inc. served and is now serving as a conduit or intermediary for the sale, distribution and promotion of publications of the respondent.

PAR. 3. Respondent, either directly or through a conduit or intermediary, 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. 4. 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.

For example, respondent has made said payments or allowances to certain favored retail customers for promoting and displaying its publications on newsstands and in retail outlets such as drug chains and department stores. Respondent made many of said payments to its favored customers on the basis of individual negotiations.

Among said 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* supporting the complaint.

Mr. Selig J. Levitan, of New York, N. Y., for respondent.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The complaint was issued in this proceeding against the above-named respondent on April 5, 1961. It charged respondent with making payments or allowances to some of its customers not made available on proportionally equal terms to other customers in sales in commerce of children's books, contrary to the provisions of Section 2(d) of the Clayton Act.

On April 27, 1961 counsel submitted to the undersigned an agreement dated April 26, 1961 executed by respondent, its counsel and counsel supporting the complaint. The agreement was duly approved by the Director of the Bureau of Litigation.

The hearing examiner finds that said agreement includes all of the provisions required by Section 3.25(b) of the Rules of the Commission, that is:

A. An admission by respondent of all jurisdictional facts alleged in the complaint.

B. Provisions that:

(1) The complaint may be used in construing the terms of the order;

(2) The order shall have the same force and effect as if entered after a full hearing;

(3) The agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission;

(4) The entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement;

(5) The order may be altered, modified, or set aside in the manner provided by statute for other orders;

C. Waivers of:

(1) The requirement that the decision must contain a statement of findings of fact and conclusions of law;

(2) Further procedural steps before the hearing examiner and the Commission.

(3) Any right to challenge or contest the validity of the order entered in accordance with the agreement.

In addition the agreement contains the following permissive provision: A statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

The agreement is entered into subject to the condition that the initial decision based thereon shall become the decision of the Commission in this matter on the same date that the initial decision in the matter of Grosset & Dunlap, Inc., et al., Docket No. 8343 becomes the decision of the Commission.

Having considered said agreement, including the proposed order, and being of the opinion that it provides an appropriate basis for settlement and disposition of this proceeding; the hearing examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Respondent Golden Press, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at North Road, Poughkeepsie, New York, (erroneously cited in the complaint as "North Avenue").

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent Golden Press, 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 children's 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 children's 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 children's book.

Complaint

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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 July 1961, become the decision of the Commission; and, accordingly: