

Complaint

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IN THE MATTER OF

HOLT, RINEHART AND WINSTON, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(d) OF THE CLAYTON ACT*Docket 8344. Complaint, Apr. 5, 1961—Decision, Aug. 22, 1961*

Consent order requiring a New York City publisher to cease violating Sec. 2(d) of the Clayton Act by paying some customers allowances which were not offered on proportionally equal terms to their competitors, such as payments to large retail newsstand chains for promoting its "Field & Stream" magazine, including 5¢ a copy to The Union News Co., New York City; 4½¢ a copy to ABC Vending Corp., New York City, and Fred Harvey, Chicago; and 3½¢ a copy to Commuter News Co., Inc., New York City, and ABC Cigar Co., San Francisco—many of which payments were proportionally unequal even among the favored 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 Holt, Rinehart and Winston, Inc., 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 530 Fifth Avenue, New York 36, New York. Said respondent has been engaged and is presently engaged in the business of publishing and distributing various publications including magazines under copyrighted titles. Some of the popular magazines published by respondent and distributed by it through its national distributor, Curtis Circulation Company, Inc., include "Field and Stream," "Popular Gardening," "New Homes Guide" and "Home Modernizing Guide." Respondent's sales of the aforesaid publications in 1959 were approximately \$606,000.

PAR. 2. Respondent's publications are distributed through Curtis Circulation Company, Inc., which has acted and is now acting as national distributor for these publications. Among the services performed and still being performed by Curtis Circulation for the benefit of respondent in connection with the sale and distribution of its publications 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 publisher. In its capacity as national distributor for respondent, Curtis Circulation served and is now serving as a conduit or intermediary for the sale, distribution and promotion of the publications of the respondent. These publications are distributed throughout various states through local distributors to retail customers.

PAR. 3. Respondent through its conduit or intermediary, Curtis Circulation, 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.

PAR. 5. 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 (including drug chains and other newsstands) competing with the favored customers in the sale and distribution of the publications of respondent.

Among the favored customers receiving promotional allowances or payments in 1959 which were not offered to other competing customers in connection with the purchase and distribution of respondent's publication "Field & Stream" were:

<i>Customer</i>	<i>Promotional payment per copy</i>
The Union News Company, New York, N.Y.-----	\$0.05
ABC Vending Corp., New York, N.Y.-----	.045
Fred Harvey, Chicago, Ill.-----	.045
Commuter News Co., Inc., New York, N.Y.-----	.035
ABC Cigar Company, San Francisco, Calif.-----	.035

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. 6. 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. William E. Stockhausen of *Satterlee, Warfield & Stephens* for respondent.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on April 5, 1961. The complaint charged the respondent with violating subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, by the payment of promotional allowances to certain chain retail outlets operating in transportation terminals, hotels and office buildings, which allowances were not offered to other competing customers.

On May 29, 1961, counsel submitted to the undersigned hearing examiner an agreement executed by respondent, its counsel, and counsel supporting the complaint providing for the entry without further notice of a consent order. 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 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 further provides that the word customer as used in the 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.

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 Holt, Rinehart and Winston, Inc., is a corporation, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business formerly located at 530 Fifth Avenue, New York 36, New York, and presently located at 383 Madison Avenue, New York 17, New York.

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

ORDER

It is ordered, That respondent, Holt, Rinehart and Winston, Inc., a corporation, 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 publications including magazines 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 publications including magazines published, sold or offered for sale by respondent, unless such payment or consideration is

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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 publications including magazines.

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 22d day of August 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondent herein 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 in which it has complied with the order to cease and desist.