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Complaint

It is further ordered, That the 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 this order.

IN THE MATTER OF

NATIONAL POLICE GAZETTE CORPORATION

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

Docket C-151. Complaint, June 22, 1962—Decision, June 22, 1962

Consent order requiring the New York City publisher of "National Police Gazette" to cease paying promotional allowances to some customers but not to their competitors, in violation of Sec. 2(d) of the Clayton Act—such as a payment of \$2,078.20 to Union News Co., New York City—and basing such allowances on individual negotiations resulting in proportionally unequal terms to even 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, Sec. 13), as amended by the Robinson-Patman Act, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent National Police Gazette Corporation is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 250 West 57th Street, New York, N.Y. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including magazines under copyrighted titles including "National Police Gazette". Respondent's sales of publications during the calendar year 1960 exceeded sixty thousand dollars.

PAR. 2. Publications published by respondent are distributed by respondent to customers through its national distributor, Publishers Distributing Corporation, hereinafter referred to as PDC.

PDC has acted and is now acting as national distributor for the publications of several independent publishers, including respondent publisher. PDC, as national distributor of publications published by respondent and other independent publishers, has performed and

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is now performing various services for these publishers. Among the services performed and still being performed by PDC for the benefit of these publishers are the taking of purchase orders and the distributing, billing and collecting for such publications from customers. PDC has also negotiated promotional arrangements with the retail customers of the publishers it represents on behalf of and with the knowledge and approval of said publishers, including respondent publisher.

In its capacity as national distributor for respondent in dealing with the customers of respondent, PDC served and is now serving as a conduit or intermediary for the sale, distribution and promotion of publications published by respondent.

PAR. 3. Respondent, through its conduit or intermediary, PDC, has sold and distributed and now sells and distributes its publications in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, 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 has 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, grocery chains and other newsstands) competing with the favored customers in the sale and distribution of the publications of respondent publisher. Among the favored customers receiving payments in 1960 which were not offered to other competing customers in connection with the purchase and sale of respondent's publications were:

<i>Customers</i>	<i>Approximate amount received</i>
Union News Co., New York City.....	\$2, 078. 20
Greyhound Post Houses, Forest Park, Ill.....	601. 60
ABC Vending Corp., Long Island City, N.Y.....	219. 48

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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 Clayton Act, as amended.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of subsection (d) of Section 2 of the Clayton Act, as amended, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, National Police Gazette Corporation, is a corporation organized, 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 250 West 57th Street, in the city of New York, State of 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 National Police Gazette Corporation, a corporation, its officers, employees, agents and representatives, 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:

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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 affirmatively offered and 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.

The word "customer" as used above shall be deemed to mean anyone who purchases from National Police Gazette Corporation, 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.

It is further ordered, That the 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 this order.

IN THE MATTER OF

NOVEL MANUFACTURING CORP. ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket C-152. Complaint, June 22, 1962—Decision, June 22, 1962

Consent order requiring New York City distributors of top playhouses to cease making misrepresentations in advertising concerning safety and flameproof features of the playhouses and other products, as well as the material, construction, size, pricing, etc., as in the order below indicated.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Novel Manufacturing Corp., a corporation, and Russell Weith and Alan Weston, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Novel Manufacturing Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 31 Second Avenue in the city and State of New York.

Respondents Russell Weith and Alan Weston are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of, among other things, a toy product, designated by respondents as a playhouse, to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their playhouses, respondents have made certain statements and representations with respect to the nature, characteristics, safety factors, material and composition, size, dimensions, height, use, type of construction and price of respondents' products as well as the character of the business of respondents, in advertisements in magazines of national circulation, of which the following is typical:

safety . . . flameproof and waterproof . . .
 Big enough for 2-3 kids!
 Huge . . . kingsize . . .
 Nine feet square.
 23 cubic feet in size.
 Approx. 3 Ft. High
 Use year round, indoors or outdoors.
 Walls and Door . . . Peaked roof
 sets up in a jiffy . . .
 Western-Style cabin
 FRONTIER CABIN
 . . . realistically imprinted in authentic brown split-log design
 a comparable \$3.98 value now only \$1.00.
 This sale price is made possible by your buying directly from the factory.
 We are the largest Mfrs. and Distrs. of playhouses in the U.S.
 Over 250,000 satisfied customers.

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PAR. 5. By and through the use of the aforesaid statements and representations, and others similar thereto but not specifically set forth herein, respondents have represented, and are now representing, directly or by implication:

1. That said products are safe for use by children of tender years.
2. That the material employed in the manufacture of the product is flameproof.
3. That the size, dimensions, usable space and height of the product are fairly and accurately represented in the text and illustrations contained in respondents' advertisements.
4. That the product is complete and ready for use.
5. That the product is inherently and independently rigid and can stand erect without the addition of, or necessity for, substantial interior structural support.
6. That the type of material and manner of construction employed by respondents results in a product of such durability, sturdiness and stability as to afford safe shelter for children from the elements of the weather year round.
7. That a product of like grade and quality is usually and regularly sold at retail in the trade area or areas where the representation is made at a price of \$3.98, and purchasers of respondents' product would realize a saving of the difference between the represented \$3.98 price and respondents' price of \$1.00.
8. That the purchaser is buying the product direct from the factory.
9. That the respondents are manufacturers of the product produced in their own factory.
10. That respondents have sold over 250,000 units of this product and that all of said sales have resulted in satisfied customers.

PAR. 6. Said statements and representations were and are false, misleading and deceptive. In truth and in fact:

1. The product is not safe for use by children of tender years without conspicuous and adequate warning to the adult purchasing public of the dangers of fire and asphyxiation.
2. The material employed in the manufacture of the product is not flameproof.
3. The size, dimensions, usable space and height of the product are not fairly and accurately represented in the text and illustrations contained in respondents' advertisements.
4. The product is not complete and ready for use.
5. The product is not inherently and independently rigid and cannot stand erect without the addition of, or the necessity for, substan-

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tial interior structural support such as a card table, which must be supplied by the purchaser.

6. The type of material and manner of construction employed by respondents does not result in a product of such durability, sturdiness and stability as to afford safe shelter for children from the elements of the weather year round.

7. A product of like grade and quality is not usually and customarily sold at retail in the trade area or areas where the representation is made at a price of \$3.98, and purchasers of respondents' product would not realize a saving of the difference between the said higher and lower price amounts.

8. The purchaser is not buying the product direct from the factory.

9. The respondents are not manufacturers of the product operating their own factory.

10. Respondents do not have over 250,000 satisfied customers.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by

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respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Novel Manufacturing Corp. is a corporation organized, 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 31 Second Avenue in the city of New York, State of New York.

Respondents Russell Weith and Alan Weston are officers of said corporation and their address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Novel Manufacturing Corp., a corporation, and its officers, and Russell Weith and Alan Weston, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of playhouse toy products, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) By use of the terms flameproof, fireproof, fire-resistant, fire-retardant, or any other terms or descriptions, that the product is non-combustible or free from the hazard of fire.

(b) That the type of material and manner of construction employed by respondents results in a product of such durability, sturdiness and stability as to afford safe shelter for children from the elements of the weather year round.

(c) By or through the use of any pictorial illustration or textual description that the product is larger or more commodious than is actually the fact.

(d) That their product is of a value comparable to any other product retailing at a higher price unless the merchandise to which their

product is compared is at least of like grade and quality in all material respects and is generally available for purchase at the comparative price in the same trade area, or areas, where the claim is made.

(e) That any saving is afforded in the purchase of respondents' product as compared to the purchase of another product unless the merchandise to which respondents' product is compared is at least of like grade and quality in all material respects and is generally available for purchase at the comparative price in the same trade area, or areas, in which the claim is made.

(f) That the purchaser is buying the product direct from the factory.

(g) That the respondents are manufacturers of the product.

(h) That respondents have any particular number of satisfied customers, unless such claim is based upon affirmative proof of customer satisfaction exclusive of the number of sales.

2. Failing to disclose clearly and conspicuously that there is danger to children of fire or asphyxiation from the use of the product.

3. Failing to disclose clearly and conspicuously that the product is not complete or ready for use.

4. Failing to disclose clearly and conspicuously that the product is not inherently or independently rigid without the addition of, or necessity for, substantial interior structural support.

It is further ordered, That the respondents herein 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