

Complaint

61 F.T.C.

IN THE MATTER OF

ARCHIE COMIC PUBLICATIONS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(d)
OF THE CLAYTON ACT*Docket C-176. Complaint, July 18, 1962—Decision, July 18, 1962*

Consent order requiring three New York City publishers of comic books—including “Archie”, “Jughead”, “Pep”, “Betty and Veronica”, “Katy Keene”, “Laugh”, “The Fly”, and “Katy Keene Pinup”—and their common officers, to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom operated chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services in connection with the handling of respondents’ publications such as taking purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors, including drug chains, grocery chains, and other newsstands.

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 its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Archie Comic Publications, Inc., 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 241 Church 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 comic books under copyrighted titles including “Archie”, “Jughead”, and “Pep”. Said respondent’s total sales of publications during the calendar year 1960 exceeded one million dollars.

PAR. 2. Respondent Close Up, Inc., 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 241 Church 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 comic books under copy-

righted titles including "Betty and Veronica", "Katy Keene", and "Laugh".

PAR. 3. Respondent Radio Comics, Inc., 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 241 Church 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 comic books under copyrighted titles including "The Fly" and "Katy Keene Pinup".

Said respondents operate and do business jointly under the trade name and style of Harvey Comic Group.

PAR. 4. Respondents Louis H. Silberkleit, John L. Goldwater and Maurice Coyne, all individuals, are president, vice president and secretary-treasurer, respectively, of each of the above-named corporations. They formulate, direct and control the acts and practices of said corporate respondents and their addresses are each the same as that of the corporate respondents.

PAR. 5. Publications published by the corporate respondents named herein are distributed by said respondents to customers through their 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 said corporate respondents. PDC, as national distributor of publications published by said respondents and other independent publishers, has performed and 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 publishers it represents, on behalf of and with the knowledge and approval of said publishers, including respondent publishers.

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

PAR. 6. The corporate respondents named herein, through their conduit or intermediary, PDC, have sold and distributed and now sell and distribute their publications in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to

Complaint

61 F.T.C.

competing customers located through various States of the United States and in the District of Columbia.

PAR. 7. In the course and conduct of their business in commerce, the corporate respondents named herein have 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 said respondents. Such payments or allowances were not made available on proportionally equal terms to all other customers of said respondents competing in the distribution of said publications.

PAR. 8. 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 (including drug chains, grocery chains and other newsstands) competing with the favored customers in the sale and distribution of the publications of respondent publishers. 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:

ARCHIE COMIC PUBLICATIONS, INC.

Customer:	<i>Approximate Amount Received</i>
Union News Co., New York, N.Y.-----	\$581.19
Garfield News Co., New York, N.Y.-----	621.00
ABC Vending Corp., Long Island City, N.Y.-----	582.00
Greyhound Post Houses, Forest Park, Ill.-----	2,484.00

CLOSE UP, INC.

Greyhound Post Houses, Forest Park, Ill.-----	429.00
Fred Harvey, Chicago, Ill.-----	¹ 178.00
Barkalow Bros., Omaha, Nebr.-----	¹ 40.00

RADIO COMICS, INC.

Greyhound Post Houses, Forest Park, Ill.-----	275.00
ABC Vending Corp., Long Island City, N.Y.-----	55.00

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.

¹ Received in 1961.

PAR. 9. The acts and practices of said respondents 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 respondents named in the caption hereof with violation of subsection (d) of Section 2 of the Clayton Act, as amended, 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 the 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, Archie Comic Publications, Inc., 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 241 Church Street, in the city of New York, State of New York.

Respondent, Close Up, Inc., 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 241 Church Street, in the city of New York, State of New York.

Respondent, Radio Comics, Inc., 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 241 Church Street, in the city of New York, State of New York.

Respondents, Louis H. Silberkleit, John L. Goldwater and Maurice Coyne are officers of said corporations, and their address is the same as that of said corporations.

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

ORDER

It is ordered, That respondents Archie Comic Publications, Inc., Close Up, Inc., Radio Comics, Inc., all corporations, their respective officers, and Louis H. Silberkleit, John L. Goldwater and Maurice Coyne, individually and as officers of said corporations, and respondents' 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 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 publications including comic books published, sold or offered for sale by respondents, unless such payment or consideration is affirmatively offered and otherwise made available on proportionally equal terms to all of their customers competing with such favored customer in the distribution of such publications including comic books.

The word "customer" as used above shall be deemed to mean 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.

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