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It is further ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF
MYSTERY PUBLISHING COMPANY ET AL.

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

Docket C-208. Complaint, Aug. 24, 1962—Decision, Aug. 24, 1962

Consent order requiring two New York City publishers of "Dude" magazine, and "Gent", "Real", and "See" magazines, respectively, with a common

Complaint

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national distributor, to cease violating Sec. 2(d) of the Clayton Act by making individually negotiated payments or allowances not proportionally equal, to certain operators of chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, while not making such allowances available on proportionally equal terms to 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 Mystery Publishing Company 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 505 8th Avenue, 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 "Dude." Respondent's sales of publications during the period from January 1, 1960, through June 30, 1961, exceeded seven hundred thousand dollars.

PAR. 2. Respondent Excellent 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 505 8th Avenue, 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 "Gent," "Real," and "See." Respondent's sales of publications during the period from January 1, 1960, through June 30, 1961, exceeded one million four hundred thousand dollars.

PAR. 3. Publications published by the respondents named herein are distributed by said respondents to customers through their national distributor, Kable News Company, hereinafter referred to as Kable. Kable has acted and is now acting as national distributor for the publications of several independent publishers, including the respondents named herein. Kable, 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 Kable for the benefit of these publishers are the taking of purchase orders and the distributing, billing and collecting for such publications from

customers. Kable 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 said respondents, in dealing with the customers of said respondents, Kable served and is now serving as a conduit or intermediary for the sale, distribution and promotion of publications published by said respondents.

PAR. 4. Respondents Mystery Publishing Company and Excellent Publications, Inc., through their conduit or intermediary, Kable, 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 competing customers located throughout various states of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of their business in commerce, respondents Mystery Publishing Company and Excellent Publications, Inc. 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 such publications.

PAR. 6. As an example of the practices alleged herein, respondents Mystery Publishing Company and Excellent Publications, Inc. 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 said respondent publishers. Among the favored customers receiving payments in 1960, and during the first six months of 1961, which were not offered to other competing customers in connection with the purchase and sale of respondents' publications were:

Customers:	MYSTERY PUBLISHING COMPANY	
	Approximate Amount Received	
	1960	1961 (Jan.-June)
ABC Vending Corp., Long Island City, N.Y.-----	\$242.00	\$90.48
Union News Co., New York, N.Y.-----	500.00	2,502.90
Interstate Hosts, Los Angeles, Calif.-----	185.71	103.74

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EXCELLENT PUBLICATIONS, INC.

ABC Vending Corp., Long Island City, N.Y.-----	321.55	125.54
Union News Co., New York, N.Y.-----	12,191.89	4,376.37
Interstate Hosts, Los Angeles, Calif.-----	129.95	149.37
Greyhound Post Houses, Forest Park, Ill.-----	344.16	220.38

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. 7. 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 Mystery Publishing Company 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 505 Eighth Avenue, in the city of New York, State of New York.

Respondent Excellent 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 505 Eighth Avenue, 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 respondents.

ORDER

Is is ordered, That respondents Mystery Publishing Company and Excellent Publications, Inc., both corporations, their respective 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 :

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 respondents, unless such payment or consideration is affirmatively offered and otherwise made available on proportionally equal terms to all of their 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 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 in which they have complied with this order.