

IN THE MATTER OF
ACTUAL PUBLISHING COMPANY, INC., ET AL.

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

Docket C-213. Complaint, Sept. 10, 1962—Decision, Sept. 10, 1962

Consent order requiring the New York City publisher of "Vue," "Romance Time," and "Hollywood Screen Parade" magazines, among others, to cease violating Sec. 2(d) of the Clayton Act by making payments to operators of chain retail outlets in railroad, airport, and bus terminals and outlets in hotels and office buildings, and on the basis of individual negotiation, while not offering such payments on proportionally equal terms to all other customers, 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 Actual Publishing Company, 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 509 Fifth 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 included "Vue," "Romance Time," and "Hollywood Screen Parade." Respondent's sales of publications during calendar year 1960 exceeded \$330,000.00

PAR. 2. Respondent Allen Stearn, an individual, is the president of Actual Publishing Company, Inc. He formulates, directs and controls the acts and practices of said corporate respondent, and his address is the same as that of the corporate respondent.

PAR. 3. Publications published by the corporate respondent are distributed by said respondent to customers through its 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 respondent publisher. Kable, as national distributor of publications published by said respondent 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 participated in the negotiation of various promotional arrangements with the retail customers of said publishers, including said respondent.

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

PAR. 4. Respondent Actual Publishing Company, Inc., through its conduit or intermediary, Kable, 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. 5. In the course and conduct of its business in commerce, respondent Actual Publishing Company, Inc., 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 publica-

tions sold to them by said respondent. Such payments or allowances were not made available on proportionally equal terms to all other customers of said respondent competing in the distribution of such publications.

PAR. 6. As an example of the practices alleged herein, respondent Actual Publishing Company, Inc., 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 said 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 Greyhound Post Houses of Forest Park, Illinois, and ABC Vending Corporation of Long Island City, New York. These customers received \$196.90 and \$91.12, respectively. Said respondent made said payments to its favored customers on the basis of individual negotiations.

PAR. 7. The acts and practices of 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:

Decision and Order

61 F.T.C.

1. Respondent, Actual Publishing Company, 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 509 Fifth Avenue, in the city of New York, State of New York.

Respondent Allen Stearn is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Actual Publishing Company, Inc., a corporation, its officers, and Allen Stearn, individually and as an officer of said corporation, 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.

Complaint

IN THE MATTER OF

GEORGE HORWITZ ET AL. DOING BUSINESS AS
NORTH BERGEN QUILTING COMPANYCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-214. Complaint, Sept. 10, 1962—Decision, Sept. 10, 1962*

Consent order requiring manufacturers of sleeping bags and cot pads in North Bergen, N.J., to cease confusing purchasers as to the finished size of their products by listing the "cut size" in their circulars and other advertising and promotional material and on attached tags or labels, when the actual size was smaller than the cut size.

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 George Horwitz and Milton Horwitz, individually and as copartners doing business as North Bergen Quilting Company, 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. Respondents George Horwitz and Milton Horwitz are individuals and copartners doing business as North Bergen Quilting Company, with their office and principal place of business located at 6035 Hudson Boulevard, North Bergen, N.J.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, advertising, offering for sale, sale and distribution of sleeping bags and cot pads to retailers for resale 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 Jersey to retailers thereof located in various other States of the United States, and in the District of Columbia, 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. Respondents, for the purpose of inducing the purchase of their products, have engaged in the practice of listing in their circu-