

Complaint

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IN THE MATTER OF

THE CAPITAL DISTRIBUTING COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(d)
OF THE CLAYTON ACT*Docket C-267. Complaint, Nov. 15, 1962—Decision, Nov. 15, 1962*

Consent order requiring the national distributor for the publications of some 27 publishers—including magazines, comic books, and paperbacks—to cease violating Sec. 2(d) of the Clayton Act by making payments or allowances to certain operators of chain retail outlets in railroad, airport, and bus terminals and outlets in hotels and office buildings, while not making them available on proportionally equal terms to competing drug and grocery chains and other newsstands; and, further, making such payments on the basis of individual negotiation and not on proportionally equal terms.

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 The Capital Distributing Company (hereinafter referred to as Capital) is a corporation organized and doing business under the laws of the State of Connecticut, with its principal office and place of business located at Division Street, Derby, Conn. Said respondent, among other things, has been engaged and is presently engaged in the business of selling and distributing various publications including magazines, comic books and paperback books under copyrighted titles. Respondent's sales of publications during the calendar year 1960 exceeded \$4,000,000.00.

PAR. 2. Respondent John Santangelo, an individual, is the principal officer of respondent Capital. 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. Respondent Capital acts as national distributor for the publications of 27 publishers. Five of such publishers are subsidiary corporations of said respondent; eight of such publishers are not affiliated with respondent Capital but are owned by the same persons; and fourteen of such publishers are wholly unaffiliated.

In its capacity as national distributor for the publications of these publishers, respondent Capital arranges for distribution of these publications to newsstands through local wholesalers. In making such arrangements, respondent Capital performs various services for these publishers including the taking of purchase orders and the distributing, billing and collecting for such publications from customers. Said respondent has also negotiated various promotional arrangements with the retail customers of said publishers.

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

PAR. 4. Respondent Capital 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 Capital 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 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 Capital 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. 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 respondent's publications were:

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Customer:	<i>Approximate Amount Received</i>	
	<i>1960</i>	<i>1961 (Jan.-June)</i>
Greyhound Post Houses, Forest Park, Ill.-----	\$3,937.47	\$1,521.60
Interstate Hosts, Los Angeles, Calif.-----	221.26	188.66
ABC Vending Corp., Long Island City, N.Y.-----	1,020.72	569.86
Fred Harvey, Chicago, Ill.-----	881.21	74.30
Sky Chefs, New York, N.Y.-----	354.94	92.88

Said 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. 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:

1. Respondent, The Capital Distributing Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at Division Street, in the city of Derby, State of Connecticut.

Respondent, John Santangelo, 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 proceeding and of the respondents.

ORDER

It is ordered, That respondents The Capital Distributing Company, a corporation, its officers, and John Santangelo, individually and as an officer of said corporation, 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 magazines, comic books and paperback 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 magazines, comic books and paperback books distributed, 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, comic books and paperback 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 in which they have complied with this order.

IN THE MATTER OF

MINDLIN'S, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS