

... products are not pointed, bleached, dyed, tip dyed, or otherwise artificially colored.

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

ZIFF-DAVIS PUBLISHING COMPANY

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

Docket C-312. Complaint, Feb. 7, 1963—Decision, Feb. 7, 1963

Consent order requiring a New York City publisher of magazines and books to cease violating Sec. 2(d) of the Clayton Act by making promotional payments to operators of chains of retail outlets in railroad and bus terminals, airports, hotels and office buildings without making them available on proportionally equal terms to all other competing customers; and, following discontinuance of said allowances, by using a "Retail Display Sales Plan" tailored to the operations of the customers who had previously received favored treatment and never available on proportionally equal terms to those formerly discriminated against—paying \$24,148.61 in allowances since inception of the plan to its most favored customer though that customer had not performed substantially as required.

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 Ziff-Davis Publishing Company is a corporation organized, existing and doing business under and by virtue

of the laws of the State of Delaware, with its principal office and place of business located at One Park 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. Respondent publishes nine monthly magazines, including "Popular Photography" and "Car and Driver." Respondent publishes "Modern Bride" magazine bimonthly. Respondent publishes five annual magazines, including "Photography Annual" and "Electronic Experimenter's Handbook." Respondent has also engaged in the publication of hardback books and paperback books. Respondent's sales of publications during the calendar year 1960 exceeded \$6,700,000.

PAR. 2. Publications published by said respondent are distributed by said respondent to customers through its national distributor, MacFadden Publications, Inc., hereinafter referred to as MacFadden.

MacFadden has acted and is now acting as national distributor for the publications of several independent publishers, including respondent publisher. MacFadden, 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 MacFadden for the benefit of these publishers are the taking of purchase orders and the distributing, billing and collecting for such publications from customers. MacFadden had 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 Ziff-Davis Publishing Company, in dealing with the customers of said respondent, MacFadden served and is now serving as a conduit or intermediary for the sale, distribution and promotion of publications published by said respondent.

PAR. 3. Respondent Ziff-Davis Publishing Company, through its conduit or intermediary, MacFadden, 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 Ziff-Davis Publishing Company 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 cus-

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tomers 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 sale and distribution of such publications.

PAR. 5. As an example of the practices alleged herein, respondent, through its conduit or intermediary, MacFadden, had paid various promotional allowances to certain of respondent's favored retail customers. Said favored customers operated chains of retail outlets located in railroad and bus terminals and airports, as well as in hotels and office buildings. Such allowances were not offered or made available on proportionally equal terms to all of respondent's other customers competing with said favored customers in the sale and distribution of respondent's publications. Such allowances were individually negotiated and were discontinued on or about April 15, 1961.

At approximately the same time that the aforesaid allowances were discontinued, respondent adopted a "Retail Display Sales Plan." This plan purports to be expressly offered to all retailers and purports to be available to all retailer customers of respondent on proportionally equal terms. As a matter of fact, said plan, in its inception and in its operation and administration, was and is tailored to the operations of those customers who had previously received favored treatment from respondent, and said plan is not now and never was available on proportionally equal terms to those customers against whom respondent had discriminated previously. Said "Retail Display Sales Plan" discriminates against respondent's unfavored customers in the following ways:

1. The terms of said plan require each retailer who desires to participate to make application to respondent Ziff-Davis. Respondent did not employ the same means of communicating notice of said plan to its favored customers as was used to notify its nonfavored customers. Respondent communicated directly with its favored customers. Respondent purported to notify its nonfavored customers by one advertisement in a trade journal and by requesting its local distributors to notify each nonfavored customer individually. Many of respondent's nonfavored customers were never made aware of the existence of said display plan.

2. The minimum service required to be performed by respondent's retailer customers in return for the payment of an allowance is full cover display of seven of respondent's monthly magazines for the entire on-sale period, full cover display of respondent's bimonthly

magazine for the entire on-sale period, and full cover display of all of respondent's annual publications for the first 30 days of the on-sale period. Many of respondent's nonfavored customers do not possess the facilities to comply with said display requirement because the nature of their operations requires that at least partial display be afforded a large number of publications in limited space. However, many of respondent's customers who are unable to comply with the terms of said plan are able to afford full cover display to a lesser number of publications.

3. Respondent has discriminated in the administration of said display plan. Respondent informs its nonfavored customers who attempt to become eligible to receive payments pursuant to said plan that it will inspect all newsstands operated by retailers who have registered under said plan. In some instances respondent has made such inspection and has thereafter refused to make payment to the operators of the newsstands inspected on the ground that the requirements of said plan had not been met. At that same time, respondent has entered into secret or tacit agreements or understandings with its favored customers that the newsstands operated by said favored customers would not be inspected by respondent. Two of respondent's favored customers, Union News Company and ABC Vending Corporation, have received substantial sums of money from respondent under the terms of said plan but have not performed substantially as required by said plan.

Since the inception of said plan, respondent's most favored customer, Union News Company, has received approximately \$24,148.61 in allowances from respondent.

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

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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, Ziff-Davis Publishing Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One Park 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 respondent.

ORDER

It is ordered, That respondent Ziff-Davis Publishing Company, a corporation, its officers, agents, representatives and employees, 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 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 respondent, Ziff-Davis Publishing Company, 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.

Complaint

IN THE MATTER OF

NOVIK & CO., INC., ET AL.

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket 8452. Complaint, Nov. 9, 1961—Decision, Feb. 8, 1963

Order requiring one of the four largest importers of bridal veil fabrics in the United States to cease violating the Flammable Fabrics Act by selling imported "silk illusion net" which was so highly flammable as to be dangerous when worn, and furnishing their customers a false guaranty that tests showed the fabrics not to be dangerously flammable.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Novik & Co., Inc., a corporation, Sheffield Novik, Thomas Elliott and Benjamin Silberberg, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated thereunder, 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 Novik & Co., Inc., is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Sheffield Novik, Thomas Elliott and Benjamin Silberberg are president, vice president, and secretary-treasurer, respectively, of Novik & Co., Inc. The individual respondents formulate, direct and control the policies, acts and practices of the said corporate respondent. The business address of all respondents is 41 West 38th Street, New York 18, N.Y.

PAR. 2. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have sold and offered for sale, in commerce; have imported into the United States; and have introduced, delivered for introduction, transported, and caused to be transported, in commerce; and have transported and caused to be transported, after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act, fabric, as that term is defined therein, which fabric was, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

PAR. 3. Respondents, subsequent to July 1, 1954, have furnished their customers with a guaranty with respect to the fabrics, men-