

IN THE MATTER OF
SYLVANIA ELECTRIC PRODUCTS, INC.

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

*Docket 8501. Complaint, June 13, 1962—Decision, Feb. 28, 1964 **

Consent order requiring a Waltham, Mass., manufacturer of photographic lighting products, including flash lamps, flood lamps and projection lamps, to cease violating Sec. 2(d) of the Clayton Act by such practices as paying a membership service corporation composed of wholesale druggists at least \$18,000 as compensation for advertising and at least \$2,700 for promotional or other services furnished in connection with the sale of respondent's products, while not making comparable allowances available to all competitors of the favored wholesale druggists.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly described, has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Sylvania Electric Products, Inc., 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 63 Second Avenue, Waltham, Massachusetts.

PAR. 2. Respondent is now and has been engaged in the business of manufacturing, selling and distributing flash lamps, flood lamps, projection lamps and other miscellaneous type of photographic lighting products. It sells its products to drug and sundries wholesalers located throughout the United States. The total sales of re-

*This proceeding was reopened, cease and desist order vacated and the complaint was dismissed on Feb. 24, 1965.

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spondent's photo lamp division during the year 1959 was approximately \$28,885,000.

PAR. 3. In the course and conduct of its business, respondent has engaged, and is now engaging, in commerce, as "commerce" is defined in the Clayton Act, as amended, in that respondent sells and causes its products to be transported from the respondent's principal place of business, located in Massachusetts, to customers located in other states of the United States.

PAR. 4. In the course and conduct of its business in commerce, respondent 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 by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 5. For example, during the year 1959 respondent contracted to pay and did pay to Druggists' Service Company, Inc., a membership service corporation composed of wholesale druggists, at least \$18,000 as compensation or as an allowance for advertising and at least \$2,700 as compensation or in consideration for promotional, consultation, advisory or other services or facilities furnished by or through Druggists' Service Company, Inc., or its members, in connection with the offering for sale or sale of products sold to such wholesale members by respondent. Such compensation or allowances were not offered or otherwise made available on proportionally equal terms to all other customers competing with the wholesale members of Druggists' Service Company, Inc. in the sale and distribution of products purchased from respondent.

PAR. 6. The acts and practices of respondent, as alleged above, are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint, charging the respondent named in the caption hereof with violation of subsection (d) of Section 2 of the Clayton Act, as amended, and an agreement by and between respondent and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondent of all jurisdictional facts alleged in the complaint,

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a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

It appearing that the aforesaid agreement also provides, in effect, that it is subject to the condition that the effective date of the Commission's order entered in this proceeding pursuant to said agreement shall be stayed by the Commission until the Commission issues a final order in the matter of *General Electric Company*, Docket No. 8487 [p. 1238 herein], and that such condition is met inasmuch as service of this Decision and Order will not be made until issuance of the Commission's final order in that matter; and

The Commission having determined that such agreement provides an adequate basis for appropriate disposition of this proceeding and having accepted such agreement, the following jurisdictional findings are hereby made and the following order is entered:

1. Respondent, Sylvania Electric Products Inc., is a corporation organized 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 730 Third Avenue, New York, 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 Sylvania Electric Products Inc., a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in the course of business in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying, or contracting for the payment of, anything of value to, or for the benefit of, any customer of respondent as compensation, or in consideration for advertising, promotional, consultation, advisory or any other services or facilities furnished by or through such customer, in connection with the processing, handling, sale, or offering for sale of flash lamps, flood lamps, projection flash lamps and other miscellaneous types of photographic lighting products manufactured, sold or offered for sale by respondent unless such payment or consideration is made available on proportionally equal terms to all other customers competing with such favored customer in the distribution of such products.

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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.

IN THE MATTER OF

THE READER'S DIGEST ASSOCIATION, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-718. Complaint, Feb. 28, 1964—Decision, Feb. 28, 1964

Consent order requiring a publisher with headquarters in Pleasantville, N.Y., to cease representing falsely, in advertisements in its Reader's Digest Magazine and in pamphlets, brochures and other advertising matter sent to subscribers and others on its mailing list, that phonograph record albums it offered for sale were available only to subscribers to Reader's Digest and that the offer was limited in point of time.

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 The Reader's Digest Association, Inc., a corporation, hereinafter referred to as respondent, has 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. Respondent The Reader's Digest Association, Inc., 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 Pleasantville in the State of New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of phonograph record albums to the public.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its said product, when sold, to be shipped from its place of business in the State of New York to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said product in com-

merce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the sale of its phonograph record albums, respondent has made certain statements and representations by advertisements in its Reader's Digest Magazine and in pamphlets, brochures and other advertising materials sent by direct mail to subscribers and others on its mailing lists, of which the following are typical but not all inclusive:

An exclusive offer for Reader's Digest subscribers only
Once in a lifetime offer for Reader's Digest subscribers only
But our supply of these sets is limited
Remember—only one edition of these records will be published.

PAR. 5. Through the use of the aforesaid statements and representations, and others of similar import but not specifically set forth herein, respondent represented directly and by implication:

- (1) That the sale of the phonograph record albums being offered are available only to subscribers of the Reader's Digest Magazine;
- (2) That the offer is a limited offer in point of time, in that, unless the subscriber acts immediately he will not be able to obtain the phonograph record albums offered in the particular advertisement;

PAR. 6 In truth and in fact:

1. The respondent does not limit the sale of the said phonograph record albums to subscribers of Reader's Digest Magazine exclusively;
2. The respondent does not limit the sale of said phonograph records in point of time. Sales of the phonograph record albums are made continually as long as orders are submitted.

Therefore, the statements and representations as set forth in Paragraph Four hereof were and are false, misleading and deceptive.

PAR. 7. In the conduct of its business, at all times mentioned herein, respondent has been in substantial competition, in commerce with corporations, firms and individuals in the sale of phonograph record albums of the same general kind and nature as those sold by respondent.

PAR. 8. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondent's product by reason of said erroneous and mistaken belief.

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PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, 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 respondent 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 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, The Reader's Digest Association, Inc., 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 Pleasantville, in the State of New York.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent The Reader's Digest Association, Inc., a corporation, and its officers, and respondent's agents, representatives and employees directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of phonograph record albums or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that the sale of respondent's products is being restricted to subscribers to the Reader's Digest Magazine or to any other class or group of persons without clearly and conspicuously disclosing in conjunction with such representation whether such products will be sold subsequently to other groups or to the public.

2. Representing, directly or by implication, that the supply of products being advertised is limited when an adequate supply is, in fact, available to respondent, or that any offer is limited in point of time or in any other manner unless such restriction or limitation is actually imposed, and adhered to, by respondent.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the