

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, vacated and set aside.

It is further ordered, That the complaint be, and it hereby is, dismissed.

Commissioner Elman is of the opinion that the complaint should be dismissed for failure of proof.

IN THE MATTER OF
GALAXY PUBLISHING CORPORATION ET AL.

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

Docket C-798. Complaint, July 31, 1964—Decision, July 31, 1964

Consent order requiring a New York City publisher of "Galaxy," "Worlds of Tomorrow," "If" and "Magabook" magazines to cease discriminating in paying promotional payments among distributors of its publications by favoring certain distributors with promotional payments which were not available on proportionally equal terms to all other customers of respondent competing with favored distributors.

COMPLAINT

The Federal Trade Commission has reason to believe that the above-named respondents have been and are now violating subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Section 13), as amended; and therefore, pursuant to Section 11 of said Act, it issues this complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Galaxy Publishing Corporation 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 421 Hudson Street, New York, New York. Said respondent, among other things, has been and is now engaged in the business of publishing and distributing various publications including magazines under copyrighted titles including "Galaxy," "Worlds of Tomorrow," "If," and "Magabook." Respondent's sales of such publications have been and are substantial.

Respondents Robert Guinn and Sol Cohen are the principal officers

of respondent Galaxy Publishing Corporation, their address is the same as that of said corporation, and they formulate, direct and control the acts, practices and policies of said corporation.

PAR. 2. Magazines published by respondent Galaxy Publishing Corporation (hereinafter referred to as Galaxy) are distributed by it through its national distributor, Kable News Company. Kable News Company acts as a conduit or intermediary for respondent Galaxy in arranging for the distribution of such publications to local wholesalers located throughout the United States. Said local wholesalers act as conduits or intermediaries for respondent Galaxy in arranging for the distribution of such publications to retailer outlets located in their respective trading areas.

PAR. 3. Respondent Galaxy, through its conduits or intermediaries, Kable News Company and local wholesalers located throughout the United States, 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 the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent Galaxy 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. Among the customers receiving such payments were several companies engaged in the business of operating chains of retail outlets handling magazines among other products. Such payments were made pursuant to negotiations with the favored customers which were either conducted by or approved by respondent Guinn and by respondent Cohen.

PAR. 5. 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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of subsection (d) of Section 2 of the Clayton Act, as amended; 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 aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated subsection (d) of Section 2 of the Clayton Act, as amended, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent Galaxy Publishing Corporations 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 421 Hudson Street, in the city of New York, State of New York.

Respondents Robert Guinn and Sol Cohen are officers of said corporation and their 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 respondent Galaxy Publishing Corporation, a corporation, its officers and directors, and respondents Robert Guinn and Sol Cohen, individually and as officers of said corporation, and respondents' respective employees, agents and representatives, directly or through any corporate or other device, in connection with the distribution, sale, or offering for sale of publication including magazines 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, and paperback books published, distributed, sold or offered for sale by respondents, unless such payment or consideration is affirmatively offered and otherwise made available on proportionally

400

Complaint

equal terms to all other customers competing with such favored customer in the distribution of such publications.

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