

Complaint

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Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF

UNIVERSAL PUBLISHING & DISTRIBUTING CORPORATION

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

Docket C-1066. Complaint, May 13, 1966—Decision, May 13, 1966

Consent order requiring a New York City publisher of paperback books and magazines, to cease discriminating among its competing customers in payment of promotional allowances, in violation of Section 2(d) of the Clayton Act.

COMPLAINT

The Federal Trade Commission, having reason to believe that Universal Publishing & Distributing Corporation, a corporation, sometimes hereinafter referred to as respondent, 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, Section 13), hereby issues its complaint stating its charges in respect thereof as follows:

PARAGRAPH 1. Respondent Universal Publishing & Distributing Corporation 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 800 Second Avenue, New York, New York. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing, selling and distributing various publications, including magazines and paperback books, under copyrighted titles. Respondent's total sales of publications for its fiscal year ending March 31, 1963 were \$4,594,182 and its total sales for the year ending March 31, 1964 were \$5,957,720.

PAR. 2. Paperback books and magazines published by respondent are distributed to customers by respondent's national distributor, Kable News Company, located in Mount Morris, Illinois. In

its capacity as distributor for respondent, Kable News Company served, and is now serving, as a conduit or intermediary between respondent and respondent's customers for the sale, distribution and promotion of paperback books and magazines published by respondent.

Respondent also distributes paperback books and magazines directly to some wholesalers and to retailers such as chain stores, sporting goods stores and hardware stores.

PAR. 3. Respondent and its conduit or intermediary, Kable News Company, have sold and distributed and now sell and distribute respondent's 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 has 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 respondent. Such payments or allowances were not made available on proportionally equal terms to all other customers of respondent competing in the distribution of such publications.

Such payments were made by respondent to its favored customers on the basis of individual negotiations, and, even among the favored customers, many of whom were in competition, such payments were not made on proportionally equal terms.

PAR. 5. 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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent 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 respondent with violation of Section 2(d) of the Clayton Act, as amended; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an ad-

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mission by the respondent 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 respondent 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 respondent has violated Section 2(d) 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 Universal Publishing & Distributing Corporation 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 at 800 Second 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 Universal Publishing & Distributing Corporation, a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of publications, 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 directly or indirectly 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 respondent unless such payment or consideration is affirmatively offered and otherwise made available on proportionally equal terms to all of respondent's other customers competing with such favored customer in the distribution of such publications, including magazines and paperback books.

The word "customer" as used above shall be deemed to mean anyone who purchases from respondent, acting either as principal

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or agent, or from a distributor, where such transaction with such purchaser is essentially a sale by 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.
