

Modifying Order

IN THE MATTER OF

TIME INCORPORATED, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1919. Decision, May 13, 1971—Modifying Order, June 9, 1980*

This order reopens proceeding and modifies a consent order issued on May 13, 1971, 78 F.T.C. 1004, 36 FR 11916, against a major New York City magazine publisher and its wholly-owned subsidiary, Family Publications Services, Inc., by adding to subparagraph (g) of the "It is further ordered" paragraph of the order a modification which deals with the matter of confidential treatment of the material terms of any contract between Time Incorporated and the "paid-during-service" companies.

ORDER REOPENING THE PROCEEDING AND MODIFYING CEASE AND
DESIST ORDER

Time Incorporated (Time Inc.) filed a request that the proceeding be reopened pursuant to Rule 2.51 of the Commission's Rules of Practice on October 17, 1979. In its request, Time Inc. stated that prior to the issuance of the consent order, Time Inc. had been engaged through its wholly-owned subsidiary, Family Publications Service, Inc. (Family) in door-to-door and telephone sales of magazine subscriptions to the public at a fixed contract price paid in monthly installments for a term of years [This sale method is still in use and is referred to in the industry as the "Paid-During-Service" (PDS) plan]; and that three months prior to issuance of the order, Family ceased PDS sales, and Time Inc. has not directly engaged in PDS sales since that time.

Time Inc. also stated that it is at a competitive disadvantage vis-a-vis other magazine publishers, because it had been unable to use the service of independent PDS companies due to the order which requires that the sale and collection practices of any company retained by Time Inc. to sell its magazines under a PDS plan, must conform to the provisions of the order, and that Time Inc. must discontinue dealing with those companies whose practices violate the order and must institute a monitoring program adequate to reveal whether the retained companies are complying with the requirements of the order.

Time Inc. requested that it be relieved from these requirements of the order because all the PDS companies have refused to sell its magazines and to be bound by the order.

The Commission informed Time Inc. by letter dated December 19, 1979 that it had determined to deny the October 17, 1979 request, but that it was willing to reopen the proceeding and modify the order as

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set forth in that letter. Time Inc. filed another request to reopen on March 20, 1980, accepting the modification proposed by the Commission with a suggested addition to paragraph (1)(a), which addition deals with the matter of confidential treatment of the material terms of any contract between Time Inc. and the PDS companies. By letter dated April 7, 1980, Time Inc. informed staff that it accepts the substitute addition to paragraph (1)(a) herein, as proposed by the Commission's counsel. Thereafter the Commission issued an order to show cause why the proceeding should not be reopened and the order should not be modified.

Time Inc. has not filed an answer to the order to show cause within thirty days after date of service of that order, and it has, thus, consented to the proposed modification. The Commission has determined that it is in the public interest to reopen the proceeding and to modify the final order in Docket C-1919.

Therefore, it is ordered, That the proceeding is hereby reopened and the Decision and Order issued on May 13, 1971, is hereby modified by adding the following language after subparagraph (g) of the *It is further ordered* paragraph of the order:

Provided, however, That the provisions of this order shall not be applicable to Time Inc. if Time Inc. can establish that Time Inc. (either directly or through any subsidiary or other entity in which the Company shall have a substantial financial or stock interest or over which it shall exercise control) is not engaged in the business of advertising, selling, offering for sale or the distribution of magazines by subscriptions to purchase any such magazines through a "paid-during-service" plan¹ ("PDS") or through a "cash sale" plan (as "cash sale" is defined in the order in C-1919), and provided that:

(1) In the event Time Inc. or any of its Subsidiaries and/or Affiliates shall authorize any third party to offer for sale any subscription to a Time Inc. publication through a "PDS" type plan or through a "cash sale" plan:

(a) Time Inc. shall promptly furnish the Federal Trade Commission with the name and address of such third party together with a copy of the contract when executed, provided that Time Inc. may request that the material terms of such contract be accorded confidential treatment in accordance with Section 4.10 of the Commission's Rules of Practice, 16 CFR 4.10; and

(b) the agreement with such third party will provide that the third party must disclose, in writing, to its customer the cost of each publication sold and the terms and conditions of payment for same and provide the customer in a clear and conspicuous manner a three business day right of cancellation or a right to cancel the subscription order at any time after receipt of the written disclosure; and

(c) if Time Inc. obtains information that the third party is not furnishing the customer with the written disclosures and/or not providing the three day right of cancellation, Time Inc. shall remind the third party of its obligations under the agreement and if the third party refuses to abide by the agreement Time Inc. shall cancel the agreement.

(d) Time Inc. shall preserve, for a period of three years after receipt, each complaint

¹ This would include any paid-during-service business obtained through door-to-door or telephone solicitation.

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received by Time Inc. about the sale of a subscription to a Time Inc. magazine sold through a "PDS" plan or "cash sale" plan, and shall make them available during such period to the Federal Trade Commission at its request, together with the identity of the "PDS" agency which sold such subscription; and

(e) Time Inc. will, upon notice of any customer's request, made either to the third party seller or to Time Inc., cancel any subscription to a Time Inc. publication and provide a pro-rata refund of the subscription price of the publication(s) to the customer when the request for cancellation alleges or indicates that the seller engaged in any practices prohibited by the order in Docket C-1919.

(2) In the event Time Inc. or any of its Subsidiaries and/or Affiliates or any other entity in which the Company shall have a substantial financial or stock interest or over which it shall exercise control shall engage in "PDS" business or "cash sale" business it shall give the Federal Trade Commission at least sixty days prior notice of its intention to engage in such business.

Commissioner Pitofsky did not participate.

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IN THE MATTER OF

SEARS, ROEBUCK AND CO., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 9104. Decision, April 28, 1980—Modifying Order, June 10, 1980*

This order modifies a previous order to cease and desist issued April 28, 1980, 95 F.T.C. 414, 45 FR 36372, against a Chicago, Ill. department store chain, by adding the terms "dehumidifiers" and "freezers" to the definition of "major home appliances" contained in order Paragraph I(1).

ORDER CORRECTING INADVERTENT OMISSION FROM FINAL ORDER

By motion filed May 21, 1980, complaint counsel have requested that the Commission modify its final order in this matter to add the terms "dehumidifiers" and "freezers" to the definition of "major home appliances" contained in the order.

Complaint counsel are correct in their suggestion that the omission of these two terms from the order was inadvertent. At page 18 of the Commission's decision it indicated its desire to adopt the definition proposed by Judge Hanscom, with the omission of the catch-all provision ("and any other product that falls into the category of major home appliances") and with the addition of the terms "stoves" and "ovens". The final order appended to the decision omits mention of dehumidifiers and freezers, even though these were contained in Judge Hanscom's order as recited on page 17 of the Commission's decision. To correct this inadvertent omission, the final order will be modified. Therefore,

It is ordered, That Paragraph I(1) of the Final Order in this matter be modified to read:

"Major home appliance" means air conditioning units (room or built-in), clothes washers, clothes dryers, disposers, dishwashers, trash compactors, refrigerators, refrigerator/freezers, freezers, ranges, stoves, ovens (including microwave ovens), humidifiers, and dehumidifiers.