

Complaint

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

Docket C-203. Complaint, Aug. 7, 1962—Decision, Aug. 7, 1962

Consent order requiring the Evanston, Ill., publisher of "Golf Digest" magazine, to cease violating Sec. 2(d) of the Clayton Act by making payments—and on the basis of individual negotiation and not proportionally equal—to certain operators of chain retail outlets in railroad, airport, and bus terminals and outlets in hotels and office buildings, while not offering such allowances on proportionally equal terms to all competitors of such outlets, including drug and grocery chains and other newsstands.

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 Golf Digest, Inc. is a corporation organized and doing business under the laws of the State of Illinois, with its office and principal place of business located at 1236 Sherman Avenue, Evanston, Ill. 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 including "Golf Digest". Respondent's sales of publications during the calendar year 1960 exceeded five hundred thousand dollars.

PAR. 2. Publications published by respondent are distributed by respondent to customers through its national distributor, Publishers Distributing Corporation, hereinafter referred to as PDC.

PDC has acted and is now acting as national distributor for the publications of several independent publishers, including respondent publisher. PDC, as national distributor of publications published by 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 PDC for the benefit of these publishers are the taking of purchase orders and the

distributing, billing and collecting for such publications from customers. PDC has also negotiated promotional arrangements with the retail customers of the publishers it represents, on behalf of and with the knowledge and approval of said publishers, including respondent publisher.

In its capacity as national distributor for respondent in dealing with the customers of respondent, PDC served and is now serving as a conduit or intermediary for the sale, distribution and promotion of publications published by respondent.

PAR. 3. Respondent, through its conduit or intermediary, PDC, 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 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 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.

PAR. 5. As an example of the practices alleged herein, respondent has made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including drug chains, grocery chains and other newsstands) competing with the favored customers in the sale and distribution of the publications of respondent publisher. Among the favored customers receiving payments in 1960 which were not offered to other competing customers in connection with the purchase and sale of respondent's publications were:

Customers:	<i>Approximate Amount Received</i>
Union News Co., New York City, N.Y.-----	\$3,899.90
ABC Vending Corp., Long Island City, N.Y.-----	61.62
Fred Harvey, Chicago, Ill.-----	¹ 123.00
Barkalow Bros., Omaha, Nebr.-----	¹ 64.80

¹ Received in 1961.

Respondent made said payments to its favored customers on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

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 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 are 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, Golf Digest, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 1236 Sherman Avenue, in the city of Evanston, State of Illinois.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent Golf Digest, Inc., a corporation, its officers, employees, agents and representatives, 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 compensa-

tion 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 Golf Digest, Inc., 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.

IN THE MATTER OF

DAVID BENIOFF BROTHERS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket C-204. Complaint, Aug. 14, 1962—Decision, Aug. 14, 1962

Consent order requiring San Francisco furriers to cease violating the Fur Products Labeling Act by substituting non-conforming labels for those affixed to fur products by manufacturers or distributors; by labels and invoices which showed the United States to be the country of origin of imported furs; by failing to disclose on labels when furs were artificially colored or fur products were composed of cheap or waste fur; failing to show on labels and invoices the country of origin of imported furs; failing to show on invoices the true animal name of fur and to disclose when furs were natural; and failing in other respects to comply with labeling requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that David Benioff Brothers, Inc., a corporation, and David Benioff, Robert Benioff, Robert Taylor, and John Everett,

individually and as officers of the said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling 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 David Benioff Brothers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

Individual respondents David Benioff, Robert Benioff, Robert Taylor, and John Everett are officers of the said corporate respondent and control, direct and formulate the acts, practices and policies of the said corporate respondent.

Respondents are wholesalers of fur products and have their office and principal place of business at 140 Geary Street, San Francisco, Calif.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, and more especially since 1953, respondents have been and are now engaged in the introduction into commerce and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which has been shipped and received in commerce; and have sold, advertised, offered for sale and processed fur products which have been shipped and received in commerce and upon which fur products substitute labels have been placed by respondents, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Respondents, in selling, advertising, offering for sale and processing fur products which have been shipped and received in commerce, misbranded said fur products by substituting for the labels affixed to such fur products, by manufacturers or distributors pursuant to Section 4 of the Fur Products Labeling Act, labels which did not conform to the requirements of said Section 4, in violation of Section 3(e) of said Act.

PAR. 4. Certain of said fur products were misbranded or otherwise falsely or deceptively labeled in that labels affixed to the said fur products misrepresented the country of origin of the furs contained in the said fur products, in violation of Section 4(1) of the Fur Products Labeling Act.

Among such misbranded fur products but not limited thereto were fur products with labels which showed the country of origin of the furs contained in the fur products to be the United States when in truth and in fact the furs contained in the fur products were imported.

PAR. 5. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Among such misbranded fur products but not limited thereto were fur products with labels which failed:

1. To disclose that the fur contained in the fur products was bleached, dyed or otherwise artificially colored, when such was the fact.

2. To show the country of origin of the imported furs contained in fur products.

PAR. 6. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

1. Labels affixed to fur products failed to show that the fur products were composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces or waste fur when such was the fact, in violation of Rule 20 of said Rules and Regulations.

2. Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not completely set out on one side of labels, in violation of Rule 29(a) of said Rules and Regulations.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products but not limited thereto, were invoices pertaining to such fur products which failed:

1. To show the true animal name of the fur used in the fur product.

2. To show the country of origin of the imported furs contained in fur products.

PAR. 8. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in that said invoices failed to contain a dis-

closure that the fur products were natural when such was the fact, in violation of Rule 19(g) of said Rules and Regulations.

PAR. 9. Certain of said fur products were falsely and deceptively invoiced in that invoices pertaining to the said fur products misrepresented the country of origin of the furs contained in the said fur products, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were invoices which showed the country of origin of the furs contained in the fur products to be the United States, when in truth and in fact the furs contained in the fur products were imported.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents 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 respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents 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 respondents 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 David Benioff Brothers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 140 Geary Street, San Francisco, Calif.

