

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS, JANUARY 1, 1964, TO MARCH 31, 1964

IN THE MATTER OF

FOSTER PUBLISHING COMPANY, INC., NOW KNOWN AS
NORTH AMERICAN PUBLISHING CO. ET AL.

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

Docket 7698. Complaint, Dec. 21, 1959—Decision, Jan. 7, 1964

Order dismissing complaint charging a Philadelphia publisher of two monthly newspapers for the graphic arts industry and its associate company engaged in the purchase and sale of printing equipment and supplies, with violating the Federal Trade Commission Act, by knowingly inducing and receiving discriminatory advertising allowances from suppliers of graphic arts equipment.

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 Foster Publishing Company, Inc., a corporation, and Foster Type and Equipment Company, Inc., a corporation, and Irwin J. Borowsky, individually and as an officer of said corporations, hereinafter referred to as respondents, have 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:

COUNT I

PARAGRAPH 1. Respondents Foster Publishing Company, Inc., and Foster Type and Equipment Company, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with their principal office and place of

business located at 13th and Cherry Streets in the city of Philadelphia, State of Pennsylvania.

Respondent Irwin J. Borowsky is president of each of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondents.

PAR. 2. Respondent Foster Publishing Company, Inc., is now, and since 1958 has been, engaged in the publishing of two monthly trade newspapers for the graphic arts industry. These newspapers are known as "Printing Impressions National Edition" and "Delaware Valley Printing Impressions". The publishing company mails and has mailed copies of its "Delaware Valley" edition to prospective customers in the States of Pennsylvania, New Jersey and Delaware and also mails and has mailed copies of its "National Edition" to prospective customers throughout the nation. The respondent publishing company also solicits and sells advertising in both of its newspapers from customers throughout the United States, doing an annual business of approximately \$100,000.

Respondent Foster Type and Equipment Company, Inc., is now, and for many years has been, engaged in the purchase and sale of printing equipment and supplies to newspapers, printers and other members of the graphic arts industry. It solicits and sells customers in many parts of the country, but particularly in the States of Pennsylvania, New Jersey and Delaware, with approximate annual sales of \$750,000. Respondent Foster Type and Equipment Company, Inc., advertises the products which it sells, to create customer demand and acceptance therefor throughout the United States.

PAR. 3. Respondents, in the course and conduct of their business, have engaged, and are now engaging, in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent Foster Publishing Company, Inc., since 1958, has been selling advertising space in both its publications to advertisers located in the several States of the United States and has mailed copies of its publications to prospective customers throughout the nation. Respondent Foster Type and Equipment Company, Inc., for many years, has been purchasing products for resale from a number of suppliers located throughout the United States and it causes these products to be transported from the place of manufacture or purchase without the State of Pennsylvania to its place of business within said State and to its customers located in various States throughout the United States. The respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in com-

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

PAR. 4. In the course and conduct of their business as herein described, respondents have been for many years in competition in the sale and distribution of printing equipment and supplies in commerce between and among the various States of the United States, and in the District of Columbia, with other corporations, persons, firms and partnerships.

PAR. 5. In the course and conduct of their business in commerce, respondents have knowingly induced and received payment, or contracted for the payment of, something of value to respondents or for respondents' benefit as compensation or in consideration for services and facilities furnished by or through respondents in connection with respondents' offering for sale or sale of products sold to respondents by many of their suppliers, and which payments were not made available by such suppliers on proportionally equal terms to all other customers of such suppliers competing with respondents in the sale and distribution of such suppliers' products.

PAR. 6. For example, the respondents addressed letters to a number of their suppliers during 1958 stating in part as follows:

PRINTING IMPRESSIONS was started for the purpose of diversifying our present operation and as a cooperative means of furthering our printing equipment business and the manufacturers we represent.

Advertising will not be accepted from anyone competitive to our equipment company, or from manufacturers we do not represent and are in competition to the lines we sell in our Foster Type and Equipment Co.

Your ad in our publication will reach every printing plant, newspaper mechanical superintendent, newspaper business manager, printing school teacher and many private plants at 62% comparable costs.

Example:

Full page ad in Graphic Arts Monthly 1 time rate is \$375.00—Space 4½x6½.

A slightly larger ad in PRINTING IMPRESSIONS would cost \$235.00 at special rate based on 5"x7".

Circulation of both publications the same.

Another Example:

Full page Ad in Inland Printer or Printing Equipment Engineer is \$470.00 average. Circulation of above publication is approximately 13,700.

Above size ad 4 columns wide (8") by 10" deep is \$480.00. Circulation of PRINTING IMPRESSIONS is 4 times greater than above publication.

This is good for both of us and we want to represent successful manufacturers. Both of us will benefit from the business we can get for you in our local area.

Furthermore, every dollar you spend in our publication, we will have our Foster Type & Equipment Co., buy back in your products * * *.

We are flexible. You can bill us and we can bill you and exchange checks. Or, we can enter into a written agreement, guaranteeing advertising space for 12 ads, and you can ship display. Whichever suits your own accounting will be okay with us.

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During the period between July 1, 1958, and June 30, 1959, at least 14 of respondents' suppliers entered into contracts with respondents and as a result agreed to and did pay respondents a total amount exceeding \$30,000 for such advertising.

PAR. 7. Typical of the suppliers, the products which they supplied, and the amounts which they paid the respondents, are the following:

Name of supplier	Location	Products	Amount paid
Lanston Industries, Inc.---	Philadelphia, Pa.	Platemaking and photo-mechanical equipment.	\$6, 500
Wetter Numbering Machine Company, Inc.	Brooklyn, N.Y.	Typographical numbering machines.	1, 500
Anchor Chemical Company, Inc.	Brooklyn, N.Y.	Chemical specialties-----	2, 800
NuArc Company-----	Chicago, Ill---	Vacuum frames, layout tables and dark room lights.	1, 300

PAR. 8. Many of respondents' suppliers, including those listed above, did not offer or otherwise make available similar compensation, or things of value, or allowance for advertising or other service or facility to all of their other customers who were competing with respondents in the sale and distribution of the same suppliers' products. Respondents knew or should have known that they were inducing and receiving a payment or allowance for advertising or other services or facilities from their suppliers which their suppliers were not offering or otherwise making available on proportionally equal terms to other of such suppliers' customers who were competing with respondents in the sale and distribution of such suppliers' products.

PAR. 9. The acts and practices of respondents, as hereinbefore alleged, of inducing and receiving special payments or allowances from their suppliers which were not made available by such suppliers on proportionally equal terms to respondents' competitors, are all to the prejudice and injury of competitors of respondents and of the public; have the tendency and effect of obstructing, injuring and preventing competition in the sale and distribution of printing supplies and equipment and have the tendency to obstruct and restrain and have obstructed and restrained commerce in such merchandise; and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning and in violation of Section 5 of the Federal Trade Commission Act.

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COUNT II

Paragraphs 1 through 4, inclusive, and Paragraph 6 of Count I of this complaint are hereby incorporated into this Count II of this complaint to the same extent and with the same effect as though fully set out herein.

PAR. 10. In the course and conduct of their business, and for the purpose of inducing the sale of advertising space in their publication, "Printing Impressions National Edition", respondents have made certain statements with respect to the circulation of said publication in letters, advertisements and in said "Printing Impressions National Edition" of national circulation, of which the following are typical:

Circulation 60,000 and Circulation of both publications [Graphic Arts Monthly and Printing Impressions] the same.

PAR. 11. Through the use of the aforesaid statements, respondents represented that their circulation of the publication "Printing Impressions National Edition" was 60,000 for each month from September 1958 to September 1959 and that such circulation was the same as Graphic Arts Monthly.

PAR. 12. Said statements and representations were false, misleading and deceptive. In truth and in fact:

(a) The circulation of said "Printing Impressions National Edition" was substantially less than 50,000 for many months during this period.

(b) At all times mentioned herein the circulation of "Printing Impressions National Edition" was not the same as "Graphic Arts Monthly", the circulation of the latter being subject to audit by Business Publications Audit of Circulation, Inc., providing for publication circulation statements of average total qualified circulation and of territorial distribution.

PAR. 13. In the conduct of their business since 1958, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of advertising space in national publications of the same general kind and nature as that sold by respondents.

PAR. 14. The use by respondents 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 these statements and representations were and are true and into the purchase of substantial amounts of advertising space in respondents' publication "Printing Impressions National Edition" by reason of

said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Eugene Kaplan for the Commission.

Fox, Rothschild, O'Brien & Frankel, Philadelphia, Pa., for the respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

JANUARY 24, 1963

The Federal Trade Commission issued its complaint against the above-named respondents on December 21, 1959, charging that said respondents have engaged in unfair competition in violation of Section 5 of the Federal Trade Commission Act as alleged in Counts I and II thereof.

Paragraph 5, Count I, alleges that in the course and conduct of their business in commerce, respondents have knowingly induced and received payment, or contracted for the payment of something of value to respondents or for respondents' benefit as compensation or in consideration for services and facilities furnished by or through respondents in connection with respondents' offering for sale or sale of products sold to respondents by many of their suppliers, and which payments were not made available by such suppliers on proportionally equal terms to all other customers of such suppliers competing with respondents in the sale and distribution of such suppliers' products. This allegation is premised upon the contention that such allowances are violative of Section 2(d) of the Clayton Act, as amended,¹ and

¹ Counsel in support of the complaint also points out that on the question of Section 2(d) violations of the suppliers, there are striking parallels in the record facts herein and the facts in *State Wholesale Grocers, et al. v. The Great Atlantic & Pacific Tea Co., et al.*, 258 F. 2d 831 (7th Cir. 1958) cert. denied, 358 U.S. 947 (1959). In that case, *The Great Atlantic & Pacific Tea Co., a Maryland corporation*, wholly owned and controlled the defendant *The Great Atlantic & Pacific Tea Co., a New Jersey corporation*, and owned as well all of the capital stock of defendant *Woman's Day, Inc.* Thus, under this complaint it was held that grocery suppliers who placed advertising in a magazine owned by corporate subsidiary of the national grocery company and distributed exclusively through such company stores thereby violated Section 2(d) of the Clayton Act proscribing payment for services or facilities for processing or sale unless they made similar payments available on proportionately equal terms to other grocery companies even though such companies did not publish magazines, and that the evidence failed to show that they so made payments available.

