IN THE MATTER OF

EXCHANGE DISTRIBUTING COMPANY

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

Docket 8061. Complaint, July 29, 1960—Decision, July 9, 1962

Order requiring a Birmingham, Ala., wholesale distributor of citrus fruit, vegetables, and produce, to cease receiving unlawful brokerage on purchases of citrus fruit from Florida packers for resale, such as allowances of 10¢ per box of 1⅗ bushels and 5¢ per carton of ⅘ bushels, equal to the standard brokerage fee on sales made through brokers.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly described, has been and is now violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Exchange Distributing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business located at 1019 First Avenue, North, Birmingham, Alabama, with mailing address as Post Office Box 1689, Birmingham, Ala.

PAR. 2. Respondent is now, and for the past several years has been, engaged in business primarily as a wholesale distributor, buying, selling and distributing citrus fruit and produce, and other food products, all of which are hereinafter sometimes referred to as food products. Respondent purchases its food products from a large number of suppliers located in many sections of the United States. The

annual volume of business done by respondent in the purchase and sale of food products is substantial.

PAR. 3. In the course and conduct of its business for the past several years, respondent has purchased and distributed, and is now purchasing and distributing, food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, from suppliers or sellers located in several States of the United States other than the State of Alabama, in which respondent is located. Respondent transports or causes such food products, when purchased, to be transported from the places of business or packing plants of its suppliers located in various other States of the United States to respondent who is located in the State of Alabama, or to respondent's customers located in said State, or elsewhere. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the purchase of said food products across state lines between respondent and its respective suppliers of such products.

PAR. 4. In the course and conduct of its business for the past several years, but more particularly since January 1, 1959, respondent has been and is now making substantial purchases of food products for its own account for resale from some, but not all, of its suppliers, and on a large number of these purchases respondent has received and accepted, and is now receiving and accepting, from said suppliers a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith.

For example, respondent makes substantial purchases of citrus fruit from a number of packers or suppliers located in the State of Florida, and receives on said purchases, a brokerage or commission, or a discount in lieu thereof, usually at the rate of 10 cents per 1⅗ bushel box, or equivalent. In many instances respondent receives a lower price from the supplier which reflects said commission or brokerage.

PAR. 5. The acts and practices of respondent in receiving and accepting a brokerage or a commission, or an allowance or discount in lieu thereof, on its own purchases, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13).

Mr. Cecil G. Miles and *Mr. Basil J. Mezines* for the Commission.

Mr. Edward M. Friend, Jr., and *Sirote, Permutt, Friend & Friedman*, of Birmingham, Ala., for respondent.

1 Initial Decision

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

The complaint in this proceeding charges respondent with violating subsection 2(c) of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13),[1] by receiving and accepting from its suppliers of food products, especially citrus fruits, a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof. It also charges that, "more particularly since January 1, 1959, respondent has been and is now making substantial purchases of food products for its own account for resale from some, but not all, of its suppliers, and on a large number of these purchases respondent has received and accepted, from said suppliers a commission, brokerage, or other compensation, or allowance or discount in lieu thereof." Respondent's answer denied the charges of the complaint and stated that it "purchases, as a rule, from the shipper who gives Respondent the lowest price on the quality of merchandise they desire to purchase, and thereafter sells such merchandise at market price."

At hearings in Birmingham, Alabama, and Lakeland, Florida, counsel supporting the complaint completed their case-in-chief and at a hearing in Birmingham on October 23, 1961, respondent completed presentation of its evidence, the record was closed, and an order fixed December 8, 1961, as the date for the parties to file proposed findings, conclusions and suggested order. Such proposed findings, conclusions, and suggested order have been filed.

Respondent has maintained throughout this proceeding that, if a commission in lieu of brokerage were paid to it by its suppliers during the relevant period, such payments were made without its having requested them, and without its knowledge.

Based upon the entire record in this proceeding, including the exhibits which have been received in evidence, the examiner makes the findings of fact and conclusions hereinafter set forth. Findings proposed by the parties which are not made in the form in which they have been proposed, or in substantially that form, hereby are rejected. The fact that no finding in this opinion summarizes the evidence in the manner in which the parties have requested it to be summarized does not mean that the hearing examiner has not con-

[1] "That it shall be unlawful for any person engaged in commerce, in the course of such commerce to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation was so granted or paid."

sidered such evidence. It means merely that the examiner deems the evidence which is summarized in his findings to be sufficiently probative, substantial, and material to dispose of the issues. All motions made by the parties which have not previously been ruled upon, or which are not herein specifically ruled upon, hereby are overruled and denied.

Based upon the entire record, the evidence, the exhibits, and the pleadings, the examiner makes the following:

FINDINGS OF FACT

1. The complaint states a good cause of action against the respondent. The Federal Trade Commission has jurisdiction over the respondent and the subject matter of this proceeding; and this proceeding is in the public interest.

2. Exchange Distributing Company, respondent, is a Delaware corporation with its principal and sole place of business located at 1019 First Avenue North, Birmingham, Ala. Respondent is now, and for several years last past, including the year 1959, has been engaged primarily as a wholesale distributor of food products, including citrus fruits, vegetables, and produce. Respondent was and is buying, selling and distributing the aforesaid citrus fruit and food products, which move to it across state lines. Respondent purchases its citrus fruit and other food products from a large number of suppliers located in many states of the United States other than the State of Alabama in which respondent is located and in different states thereof. Respondent transports or causes such food products, when purchased, to be transported from its suppliers' places of business or packing plants to respondent in the State of Alabama or to its customers located in said state or elsewhere.

3. Respondent is engaged in "commerce" as that term is defined in the Clayton Act, as amended.

4. The business transacted by respondent for the year 1959 to the present time was substantial, being between $3,000,000 and $4,000,000 per annum. Respondent was one of four business concerns conducting similar business in the Birmingham area which had substantially the same sales volume. Tom Pippen is president of the respondent corporation, and has been with the company since June 1946. He has "general supervision over the buying, selling, accounting, warehousing, receiving, shipping, and credit." Mr. Pippen purchased all the citrus fruit for respondent, commencing in January 1959 and continuing to the dates of the hearing. His purchases were negotiated in long distance telephone conversations with the suppliers located

in Florida, and averaged approximately 150 to 175 truckloads of fruit annually.

5. During the relevant period the price of citrus fruit was quoted to respondent by the growers on the basis of a "Bruce box" containing 1⅗ bushels. The price was generally quoted, especially in trade journals, in increments of 25 cents, i.e., $2.50, $2.75, or $3.00 a Bruce box. In the citrus fruit industry, a "carton" is half of a Bruce box and contents, and its price would be half the price of a Bruce box. Some suppliers made separate charges of 5 cents for a carton and 10 cents for a Bruce box, over and above the cost of the citrus, while other suppliers absorbed this cost. The wholesale citrus fruit industry is highly competitive and a difference of a few cents, i.e., 5 cents per carton or 10 cents per Bruce box constitutes a material price differential to the purchasers. When sales of citrus fruit were made through brokers, the standard brokerage fee was 10 cents per Bruce box of 1⅗ bushels, or 5 cents per carton, or one-half box of ⅘ bushel.

6. Although Mr. Pippen testified that he did not at any time make any request upon any supplier for any allowance in lieu of brokerage, nor was he offered any, and that all of the negotiations between respondent and its suppliers were carried on at arms' length in which the respondent was attempting to purchase citrus products at the very lowest possible price, Mr. Pippen knew that the citrus fruit growers who supplied respondent also employed brokers and that these brokers were paid a commission for their services.

7. During the relevant period respondent received and accepted "a commission, or brokerage, or other compensation or an allowance or discount in lieu thereof," on purchases of citrus fruit from, among others, Newbern Groves, Inc., of Tampa, Florida, Keen Fruit Corporation of Frostproof, Florida, and Orange Fruit Company of Maitland, Florida. The discount or allowances received from these packers was equal to the fee paid to brokers.

Packing house manifests of Orange Fruit Company, in which Exchange Distributing Company of Birmingham, Alabama, is the consignee, show an allowance of brokerage on the face of such manifests. When an allowance was made to compensate for "decay loss" the words "decay loss" appear. On these manifests the fruit was priced in 25-cent increments. On the manifests where the brokerage is deducted from the quoted price the net is shown, i.e., CX–152, where the fruit is priced at $2.65 net or $2.90 net.

Keen Fruit Corporation reported transactions in which it paid an allowance in lieu of brokerage.

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Newbern Groves made an allowance in lieu of brokerage of 5 cents per carton and 10 cents per Bruce box to respondent on all its citrus fruit purchases during the relevant period. This allowance did not have to be and was not specifically negotiated because over the years such allowance had become a general practice and gradually became the "custom" in the industry. Newbern discontinued the allowances in July or August 1960 but did not inform the respondent that the practice was being discontinued, "because it was not necessary" (Tr. 101).

8. During the relevant period respondent purchased most of its citrus fruit requirements from Orange Fruit Company, Keen Fruit Corporation and Newbern Groves, Inc. Although Mr. Pippen contacted other suppliers of citrus fruit, he purchased most of respondent's requirements from these suppliers because they quoted him the lowest prices.

9. The allowances in lieu of brokerage to respondent were at times paid by deduction from the market price stated on invoices, and at other times prices were quoted to respondent and negotiated on a net basis, i.e., the price quoted to respondent was the price which respondent would pay net, after the allowance in lieu of brokerage had first been deducted.

10. In the course and conduct of its business for the past several years, but more particularly since January 1, 1959, respondent has been and is now making substantial purchases of food products for its own account for resale to its customers. On a large number of these purchases respondent has received and accepted from its suppliers a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith. The practice of the Florida citrus producers of making an allowance in lieu of brokerage to their customers, including this respondent, was an accepted custom in the industry. The practice was generally known and followed. If the allowance were not made, the purchaser would take his business to a supplier who would make the allowance. Respondent either knew, or because of its many years of experience in the produce industry should have known, that it was receiving such brokerage or commission or a discount in lieu thereof.

Applying the accepted court and commission decisions [1] to these facts, the examiner makes the following

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[1] *Biddle Purchasing Co.* v. *FTC,* 96 F. 2d 687; *Great Atlantic & Pacific Tea Co.* v. *FTC,* 106 F. 2d 667; *FTC* v. *Broch & Co.,* 363 U.S. 166 (1960); Thomasville Chair Company, Docket No. 7273 (Commission opinion dated March 13, 1961); Haines City Citrus Growers Assn., et al., Docket No. 7144 (Commission opinion dated May 19, 1961); and William Buehl Eidson, et al., Docket No. 8064 (Commission opinion dated January 3, 1962).

CONCLUSIONS OF LAW

1. The complaint filed herein states a good cause of action against the respondent; the Federal Trade Commission has jurisdiction over the respondent and over the subject matter of this proceeding. This proceeding is in the public interest. Respondent is engaged in commerce as "commerce" is defined in the Clayton Act, as amended.

2. Counsel supporting the complaint have proved the material and essential allegations thereof by reliable, substantial, probative and material evidence in this record.

3. During the time covered by this complaint, respondent received and accepted from its suppliers of food products, especially citrus fruits, a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof in connection with said purchases. Said acts by said respondent were and are in violation of, and are proscribed by, Section 2(c) of the Clayton Act, as amended (15 U.S.C. Sec. 13). Therefore,

It is ordered, That respondent, Exchange Distributing Company, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of citrus fruit or any other food products, in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

> Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of citrus fruit or any other food products for respondent's own account, or where respondents are the agents, representatives, or other intermediaries acting for or in behalf, or are subject to the direct or indirect control, of any buyer.

Decision of the Commission and Order to File Report of Compliance

This matter having been heard by the Commission upon respondent's exceptions to the hearing examiner's initial decision; and

The Commission having considered the entire record, including the briefs of counsel for respondent and counsel in support of the complaint, and having determined that the hearing examiner's findings and conclusions are fully substantiated on the record and that except for an inadvertent error to be corrected herein, the order contained in

the initial decision is appropriate in all respects to dispose of this matter:

It is ordered, That the initial decision be modified by striking from the order that part thereof beginning on the fifth line of indented paragraph on page 7 with the words "or where respondents" and ending on the last line of indented paragraph with the word "buyer" and substituting therefor the following:

> "or where respondent is the agent, representative, or other intermediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer."

It is further ordered, That respondent's exceptions to the initial decision be, and they hereby are, denied.

It is further ordered, That the hearing examiner's initial decision, filed January 18, 1962, as modified herein, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondent, Exchange Distributing Company, a corporation, shall, within sixty (60) days after service upon it of this decision, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in the aforesaid initial decision, as modified.

IN THE MATTER OF

JOHNSON PUBLISHING COMPANY, INC.

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

Docket C-157. Complaint, July 10, 1962—Decision, July 10, 1962

Consent order requiring the Chicago publisher of "Ebony", "Jet", "Tan", "Hue", and "Negro Digest" magazines to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom operated chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services in connection with the handling of respondent's publications such as taking purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors, including drug chains, 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 violat-

ing 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 Johnson Publishing Company, 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 1820 South Michigan Avenue, Chicago, 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 "Ebony", "Jet", "Tan", "Hue" and "Negro Digest". Respondent's sales of publications during the calendar year 1960 exceeded four million dollars.

PAR. 2. Publications published by respondent are sold and distributed throughout various States and the District of Columbia by respondent through local wholesalers to retail outlets.

Each local wholesaler whose services are used by respondent has acted and is now acting as wholesaler for the publications of several independent publishers, including respondent publisher. These wholesalers, in dealing with the retail customers of respondent, have served and are now serving as conduits or intermediaries for the sale, distribution and promotion of publications published by respondent. "Ebony" and "Jet" are the two most popular and widely circulated Negro magazines in the United States and are sold and distributed throughout various States by respondent through local wholesalers to retail customers.

PAR. 3. Respondent, through its conduits or intermediaries, the local wholesalers, 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, and during the first six months of 1961, which were not offered to other competing customers in connection with the purchase and sale of respondent's publications were:

Customer:	*Approximate Amount Received Jan. 1, 1960–June 30, 1961*
ABC Vending Corp., Long Island City, N.Y.	$3,599.92
Garfield News Co., New York, N.Y.	484.22
Greyhound Post Houses, Forest Park, Ill.	1,293.57
	Jan. 1, 1960–May 31, 1961
Union News Co., New York, N.Y.	6,672.16

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 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 Johnson Publishing Company, 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 1820 South Michigan Avenue, in the city of Chicago, 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 Johnson Publishing Company, 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 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 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 Johnson Publishing Company, 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

GERNSBACK PUBLICATIONS, INC.

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

Docket C-158. Complaint, July 10, 1962—Decision, July 10, 1962

Consent order requiring the New York City publisher of "Radio-electronics" magazine to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom operated chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services in connection with the handling of respondent's publications such as taking purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors, including drug chains, 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 Gernsback Publications, Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 154 West 14th Street, New York, N.Y. 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 "Radio-Electronics". Respondent's sales of publications during the calendar year 1960 exceeded two hundred thousand dollars.

PAR. 2. Publications published by respondent are distributed by respondent to customers through its national distributor, Independent News Company, Inc., hereinafter referred to as Independent News.

Independent News has acted and is now acting as national distributor of publications of several independent publishers, including respondent publisher. Independent News, 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 Independent News for the benefit of these publishers are the taking of purchase orders and the distributing, billing and collecting for such publications from customers. Independent News also had participated in the negotiations of various promotional arrangements with the retail customers of said publishers, including said respondent.

In its capacity as national distributor for respondent in dealing with the customers of respondent, Independent News served and is now serving as a conduit or intermediary for the sale, distribution and promotion of publications published by respondent. "Radio-Electronics" is one of the most popular and widely-read magazines of its type in the United States and is distributed throughout various States by Independent News through local distributors to retail outlets.

PAR. 3. Respondent, through its conduit or intermediary, Independent News, 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, and during the first six months of 1961, which were not offered to other competing customers in connection with the purchase and sale of respondent's publications were:

Customer:	Approximate Amount Received 1960	1961 (Jan.–June)
Union News Co., New York City, N.Y.	$4,306.96	$2,252.20
ABC Vending Corp., Long Island City, N.Y.	138.64	72.40

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 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 Gernsback Publications, Inc., 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 154 West 14th Street, in the city of New York, State of 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 Gernsback Publications, 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 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 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 Gernsback Publications, 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

MERCURY PRESS, INC.

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

Docket C-159. Complaint, July 10, 1962—Decision, July 10, 1962

Consent order requiring the New York City publisher of "Fantasy & Science Fiction" and "Bestseller Mystery" magazines to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom operated chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services in connection with the handling of respondent's publications such as taking purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors, including drug chains, 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 Mercury Press, Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 347 East 53rd Street, New York, N.Y. 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 "Fantasy & Science Fiction" and "Best-seller Mystery." Respondent's sales of publications during the calendar year 1960 exceeded one hundred ninety 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:	*Approximate Amount Received*
Union News Co., New York City, N.Y.	$6,126.38
ABC Vending Corp., Long Island City, N.Y.	124.01
Fred Harvey, Chicago, Ill.	1,261.50

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 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 Mercury Press, Inc., 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 347 East 53d Street, in the city of New York, State of 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 Mercury Press, 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 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 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 Mercury Press, 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

FEATURE PUBLICATIONS, INC., ET AL.

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

Docket C-160. Complaint, July 10, 1962—Decision, July 10, 1962

Consent order requiring the New York City publishers of magazines, comic books, and paperback books including "True Men", "Young Love", "Army Fun", "Young Romance", "Guilty", and "Broadway Laughs", to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom operated chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services in connection with the handling of respondents' publications such as the taking of purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors, including drug chains, grocery chains, and other newsstands.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, have violated and are 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 Feature Publications, Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 32 West 22d Street, New York, N.Y. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including magazines, comic books and paperback books under copyrighted titles including "True Men", "Young Love", "Army Fun", "Young Romance", "Guilty", and "Broadway Laughs". Respondent's sales of publications during the calendar year 1960 exceeded three hundred fifty thousand dollars.

PAR. 2. Respondent Paul Epstein, an individual, is the president of Feature Publications, Inc. He formulates, directs and controls the

acts and practices of said corporate respondent and his address is the same as that of the corporate respondent.

PAR. 3. Publications published by respondent are distributed by respondent to customers through its national distributor, Independent News Company, hereinafter referred to as Independent News.

Independent News has acted and is now acting as national distributor for the publications of several independent publishers, including respondent publisher. Independent News, 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 Independent News for the benefit of these publishers are the taking of purchase orders and the distributing, billing and collecting for such publications from customers. Independent News also had participated in the negotiation of various promotional arrangements with the retail customers of said publishers, including said respondent.

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

PAR. 4. Respondent Feature Publications, Inc., through its conduit or intermediary, Independent News, 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. 5. In the course and conduct of its business in commerce, respondent Feature Publications, Inc., 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.

PAR. 6. As an example of the practices alleged herein, respondent Feature Publications, Inc., 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 said respondent publisher. Among the favored customers receiving payments in 1960, and during the first six months of 1961, which were not offered to other competing customers in connection with the purchase and sale of respondent's publications were:

	Approximate Amount Received	
Customer:	*1960*	*1961 (Jan.–June)*
Interstate Hosts, Los Angeles, Calif	$ 60.91	$ 56.90
ABC Vending Corp., Long Island City, N.Y	53.22	35.97
Union News Co., New York City, N.Y	6,134.00	4,502.54

Said 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. 7. 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 Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of subsection (d) of Section 2 of the Clayton Act, as amended, and 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 the 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 Feature Publications, Inc., 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 32 West 22nd Street, in the city of New York, State of New York.

Respondent Paul Epstein is President of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent and his address is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

It is ordered, That respondents Feature Publications, Inc., a corporation, its officers, and Paul Epstein, individually and as an officer of Feature Publications, Inc., and respondents' 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, paperback books and comic 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, paperback books and comic books published, sold or offered for sale by respondents, unless such payment or consideration is affirmatively offered and otherwise made available on proportionally equal terms to all of their other customers competing with such favored customer in the distribution of such publications including magazines, paperback books and comic books.

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 form in which they have complied with this order.

Complaint

IN THE MATTER OF

BALLANTINE BOOKS, INC.

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

Docket C-161. Complaint, July 11, 1962—Decision, July 11, 1962

Consent order requiring a New York City publisher of paperback books to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom operated chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services in connection with the handling of respondent's publications such as taking purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors, including drug chains, 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 Ballantine Books, Inc., is a corporation organized and doing business under the laws of the State of New York with its office and principal place of business located at 101 Fifth Avenue, New York, N.Y. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including paperback books under copyrighted titles. Respondent's sales of publications average four hundred fifty thousand copies per month.

PAR. 2. Publications published by respondent are distributed by said respondent to customers through its national distributor, Kable News Company, hereinafter referred to as Kable.

Kable has acted and is now acting as national distributor for the publications of several independent publishers including said respondent. Kable, as a national distributor of publications published by said 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 Kable for the benefit of these publishers are the taking of purchase orders and the distributing, billing and collecting for such publications from customers.

Kable has also negotiated promotional arrangements with the retail customers of the publishers it represents, on bahalf of and with the knowledge and approval of said publishers, including respondent.

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

PAR. 3. Respondent Ballantine Books, Inc., through its conduit or intermediary, Kable, 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 Ballentine Books, Inc., 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.

PAR. 5. As an example of the practices alleged herein, respondent Ballantine Books, Inc., 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. Said respondent has also made payments or allowances to retail customers who operate drug chains and grocery chains. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers of respondent competing with the favored customers in the sale and distribution of publications of said respondent. Among the favored customers receiving payments in 1960, and during the first six months of 1961, which were not offered to other competing customers in connection with the purchase and sale of respondent's publications were:

	Approximate Amount Received	
Customer:	*1960*	*1961 (Jan.–June)*
Interstate Hosts, Los Angeles, Calif	$930.00	$1,050.00
Fred Harvey, Chicago, Ill	708.00	303.00
Greyhound Post Houses, Forest Park, Ill	208.00	97.00
Drug Fair, Washington, D.C	1,032.00	706.00

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 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, Ballantine Books, Inc., 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 101 Fifth Avenue, in the city of New York, State of 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 Ballantine Books, 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 paperbook 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 paperback books 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 paperback books.

The word "customer" as used above shall be deemed to mean anyone who purchases from Ballantine Books, 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

IDEAL PUBLISHING CORPORATION

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

Docket C-162. Complaint, July 11, 1962—Decision, July 11, 1962

Consent order requiring the New York City publisher of "Movie Life", "Movie Stars", "TV Star Parade", and "Personal Romances" magazines to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom operated chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services in connection with the handling of respondent's publications such as taking purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors, including drug chains, 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 Ideal Publishing Corporation is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 295 Madison Avenue, New York, N.Y. 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 "Movie Life", "Movie Stars", "TV Star Parade" and "Personal Romances". Respondent's sales of publications during the calendar year 1960 exceeded one and one-half million 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:	*Approximate Amount Received*
Greyhound Post Houses, Forest Park, Ill	$3,343.54
ABC Vending Corp., Long Island City, N.Y	289.98
Fred Harvey, Chicago, Ill	4,647.72
Barkalow Bros., Omaha, Nebr	406.14
Interstate Hosts, Los Angeles, Calif	197.16

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 re-

spondent 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 Ideal Publishing 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 295 Madison Avenue, in the city of New York, State of 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 Ideal Publishing Corporation, 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 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 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 Ideal Publishing Corporation, 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

FLYING EAGLE PUBLICATIONS, INC., ET AL.

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

Docket C-163. Complaint, July 11, 1962—Decision, July 11, 1962

Consent order requiring the New York City publisher of "Manhunt" and "Nugget" magazines to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom operated chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services in connection with the handling of respondent's publications such as taking purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors, including drug chains, grocery chains, and other newsstands.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, have violated and are 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 Flying Eagle Publications, Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 545 Fifth Avenue, New York, N.Y. 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 "Manhunt" and "Nugget". Respondents' sales of publications during the calendar year 1960 exceeded four hundred fifty thousand dollars.

PAR 2. Respondent Michael St. John, an individual, is the president of respondent Flying Eagle Publications, Inc. He formulates, directs and controls the acts and practices of said corporate respondent and his address is the same as that of the corporate respondent.

PAR. 3. Publications published by respondent Flying Eagle Publications, Inc., are distributed by said respondent to customers through its national distributor, Kable News Company, hereinafter referred to as Kable News.

Kable News has acted and is now acting as national distributor for the publications of several independent publishers, including respondent publisher. Kable News, 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 Kable News for the benefit of these publishers are the taking of purchase orders and the distributing, billing and collecting for such publications from customers. Kable News also had participated in the negotiation of various promotional arrangements with the retail customers of said publishers, including said respondent.

In its capacity as national distributing for respondent Flying Eagle Publications, Inc., in dealing with the customers of said respondent, Kable News served and is now serving as a conduit or intermediary for the sale, distribution and promotion of publications published by said respondent.

PAR. 4. Respondent Flying Eagle Publications, Inc., through its conduit or intermediary, Kable News, 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. 5. In the course and conduct of its business in commerce, respondent Flying Eagle Publications, Inc., 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 said respondent competing in the distribution of such publications.

PAR. 6. As an example of the practices alleged herein, respondent Flying Eagle Publications, Inc., 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 said respondent publisher. Among the favored customers receiving payments in 1960, and during the first

six months of 1961, which were not offered to other competing customers in connection with the purchase and sale of respondent's publications were:

Customer:	Approximate Amount Received 1960	1961 (Jan.–June)
Interstate Co., Los Angeles, Calif	$151.92	$127.29
Greyhound Post Houses, Forest Park, Ill	372.18	186.90
ABC Vending Corp., Long Island City, N.Y	317.16	78.32
Union News Co., New York City, N.Y	1,634.60	1,889.25

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. 7. 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 Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of subsection (d) of Section 2 of the Clayton Act, as amended, 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 the 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 Flying Eagle Publications, Inc., 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 545 Fifth Avenue, in the city of New York, State of New York.

Respondent Michael St. John is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of

said corporation, and his 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 respondents Flying Eagle Publications, Inc., a corporation, its officers, and Michael St. John, individually and as an officer of Flying Eagle Publications, Inc., and respondents' 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 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 published, sold or offered for sale by respondents, unless such payment or consideration is affirmatively offered and otherwise made available on proportionally equal terms to all of their 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 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 form in which they have complied with this order.

IN THE MATTER OF

PAPERBACK LIBRARY, INC.

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

Docket C-164. Complaint, July 13, 1962—Decision, July 13, 1962

Consent order requiring a New York City publisher of paperback books to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom operated chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services in connection with the handling of respondent's publications such as taking purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors, including drug chains, 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 Paperback Library, Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 152 West 42nd Street, New York, N.Y. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including paperback books under copyrighted titles.

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 distrib-

uting, billing and collecting for such publications from customers. PDC also has negotiated various promotional and display arrangements with the retail customers of such publishers, with the knowledge and approval of such publishers, including said respondent.

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 drug chains. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including newsstands, grocery chains and other drug chains) competing with the favored customers in the sale and distribution of the publications of respondent publisher. Among the favored customers receiving payments in 1961 which were not offered to other competing customers in connection with the purchase and sale of respondent's publications were:

Customer:	*Approximate Amount Received*
Drug Fair, Washington, D.C.	$514.17
Sun Ray Drug, Philadelphia, Pa.	550.00

Respondent made said payments to its favored customers on the basis of individual negotiations.

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 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 Paperback Library, Inc., 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 152 West 42nd Street, in the city of New York, State of 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 Paperback Library, 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 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 paperback books published, sold or offered for sale by respondent, unless such payment or consideration is affirma-

tively 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 paperback books.

The word "customer" as used above shall be deemed to mean anyone who purchases from Paperback Library, 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

THE RING, INC.

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

Docket C-165. Complaint, July 13, 1962—Decision, July 13, 1962

Consent order requiring the New York City publisher of "Ring" and other magazines to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom operated chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services in connection with the handling of respondent's publications such as taking purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors, including drug chains, 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 The Ring, Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 307 West

49th Street, New York, N.Y. 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 "Ring". Respondent's sales of publications during the calendar year 1960 exceeded two hundred fifty 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 afforded 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:	*Approximate Amount Received*
Union News Co., New York City, N.Y.	$4,284.12
Greyhound Post Houses, Forest Park, Ill.	823.10
ABC Vending Corp., Long Island City, N.Y.	150.12

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 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 The Ring, Inc., 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 307 West 49th Street, in the city of New York, State of 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 The Ring, 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 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 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 The Ring, 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

BERKLEY PUBLISHING CORPORATION

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

Docket C-166. Complaint, July 13, 1962—Decision, July 13, 1962

Consent order requiring a New York City publisher of paperback books to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom operated

chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services in connection with the handling of respondent's publications such as taking purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors, including drug chains, 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 Berkley Publishing Corporation is a corporation organized and doing business under the laws of the State of Delaware, with its office and principal place of business located at 15 East 26th Street, New York, N.Y. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including paperback books under copyrighted titles. Respondent's sales of such publications average three hundred fifty thousand copies per month.

PAR. 2. Publications published by respondent are distributed by respondent to customers through its national distributor, Kable News Company, hereinafter referred to as Kable.

Kable has acted and is now acting as national distributor for the publications of several independent publishers, including respondent publisher. Kable, 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 Kable for the benefit of these publishers are the taking of purchase orders and the distributing, billing and collecting for such publications from customers. Kable also has negotiated various promotional and display arrangements with the retail customers of such publishers, with the knowledge and approval of such publishers, including said respondent.

In its capacity as national distributor for respondent in dealing with the customers of respondent, Kable 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, Kable, 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 drug chains, and to other retail customers who operate chain retail outlets located 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 other drug chains and newsstands and grocery chains) competing with the favored customers in the sale and distribution of the publications of respondent publisher. Among the favored customers receiving payments in 1960, and during the first six months of 1961, which were not offered to other competing customers in connection with the purchase and sale of respondent's publication were:

	Approximate Amount Received	
Customer:	*1960*	*1961 (Jan.–June)*
Interstate Hosts, Los Angeles, Calif	$603.92	$461.74
Fred Harvey, Chicago, Ill	841.66	230.04
Greyhound Post Houses, Forest Park, Ill	533.78	110.84
Drug Fair, Washington, D.C	957.39	424.63

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 as requested 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, Berkley Publishing Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 15 East 26th Street, in the city of New York, State of 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 Berkley Publishing Corporation, 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 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 paperback books 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 paperback books.

The word "customer" as used above shall be deemed to mean anyone who purchases from Berkley Publishing Corporation, 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

REGENT GAMES, INC., ET AL.

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

Docket C-167. Complaint, July 13, 1962—Decision, July 13, 1962

Consent order requiring affiliated distributors of sporting goods and games in New York City to cease setting forth in catalogues as customary retail prices, amounts in excess of usual selling prices in the trade areas concerned; and failing to disclose the foreign origin of merchandise by such practices as selling badminton sets comprised of various items on which the name of the foreign country of origin was set forth inconspicuously on their wrappings and with only the address of an American company on the outer container.

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 Regent Games, Inc., a corporation, Popular Sports, Inc., a corporation, and Irving Lawner and Joseph Lipman, individually and as copartners trading as Regent Sports Co. and as officers of each 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:

PARAGRAPH 1. Respondent Regent Games, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 131 Varick Street, in the city of New York, State of New York.

Respondent Popular Sports, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its address is the same as that of the aforestated corporate respondent.

Respondents Irving Lawner and Joseph Lipman are individuals, and are copartners, trading as Regent Sports Co., and are officers of each of the aforestated corporate respondents. They formulate, direct and control the acts and practices of each of the corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as that of the aforestated corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of sporting goods and games to retailers for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other states of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, respondents, for the purpose of inducing the purchase of their said products, have caused a catalogue to be published and distributed to purchasers of their said products. Said catalogue describes the numerous articles of merchandise offered for sale by respondents, and in connection therewith sets forth a price amount for each of the said articles of merchandise.

Typical and illustrative of such listings are the following:

Regent Badminton Set------ P 8 ------ $3.00
CC21 Croquet Set------ $5.95
TTS8 Table Tennis Set------ $7.45
BG41 Fielders' Glove------ $10.40
Four-Player Badminton Set------ SP37 ------ $10.40

Imprinted on a card contained in said catalog are the words, "Confidential Discount Notice For Distributors (wholesale) all prices listed in this catalog subject to 50% and 10% discount."

PAR. 5. Through the use of the aforesaid statements and others similar thereto but not specifically set out herein, respondents have represented, directly or indirectly, that the aforestated price amounts and the other price amounts set out in their said catalogue were the prices at which the merchandise referred to was usually and customarily sold at retail in all of the trade areas in which said articles of merchandise were offered for sale.

PAR. 6. In truth and in fact, the said price amounts were not the prices at which the merchandise referred to was usually and customarily sold at retail in all of the trade areas where said articles of merchandise were sold, but were in excess of the price or prices at which the merchandise was generally sold in said trade areas. The aforesaid statements and representations were, therefore, false, misleading and deceptive.

PAR 7. Certain of respondents' badminton sets are packaged in containers which in large and conspicuous letters set forth the following:

Deluxe Badminton Set by Popular Sports Company,
New York 11, N.Y.,

or

Regent Badminton Set, Regent Sports Company,
New York, N.Y.

Each of the badminton sets is comprised of a number of individual items which are contained in the box. The country of origin of the various pieces is set forth in small and inconspicuous lettering on the articles or their wrappings. Purchasers of said badminton sets can determine the country of origin only by opening the box and carefully examining each article.

PAR. 8. Through the use of the aforesaid statements on the exterior of the containers in which the said badminton sets are sold, respondents have affirmatively represented that said badminton sets are manufactured in the United States of America. Furthermore the name of the country of origin imprinted in small and inconspicuous letters and concealed in the manner aforesaid is wholly and completely inadequate to advise or apprise purchasers of the true country of origin of the said badminton sets.

PAR. 9. The aforestated representation that said badminton sets are of domestic origin is false, misleading and deceptive. Many of the component parts of said sets are manufactured in various foreign countries.

PAR. 10. When merchandise, including sporting goods and games, is offered for sale to the purchasing public and such merchandise is not marked or is not adequately marked showing that it is of foreign origin, such purchasing public understands and believes that such merchandise is of domestic origin, a fact of which the Commission takes official notice.

PAR. 11. A substantial portion of the purchasing public prefers merchandise, including sporting goods and games, that is manufactured in the United States over such merchandise that is manufactured

in foreign countries of which fact the Commission also takes official notice.

PAR. 12. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of sporting goods and games of the same general kind and nature as those sold by respondents.

PAR. 13. By the aforesaid practices respondents place in the hands of retailers and dealers the means and instrumentalities by and through which they may mislead and deceive the public as to the country of origin and usual and regular retail selling price of said products.

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 said statements and representations were and are true and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief.

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 methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of 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 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 the 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 agree-

ment, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Regent Games, Inc., 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 131 Varick Street, in the city of New York, State of New York.

Respondent Popular Sports, Inc., 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 the above stated address. Respondents Irving Lawner and Joseph Lipman are individuals, and are copartners, trading as Regent Sports Co., and are officers of each of the aforestated corporate respondents, and their address is the same as that of the aforestated corporate respondents.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Regent Games, Inc., a corporation, and its officers, and Popular Sports, Inc., a corporation, and its officers, and Irving Lawner and Joseph Lipman, individually and as copartners trading as Regent Sports Co. and as officers of each of said corporations, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sporting goods, games or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any amount is the usual and customary price of merchandise in the trade area or areas where the representations are made when it is in excess of the generally prevailing price or prices at which said merchandise is sold in said trade area or areas.

2. Representing, directly or indirectly, in advertising or in labeling that products manufactured in any foreign country are manufactured in the United States.

3. Offering for sale or selling products which are, in whole or in substantial part, of foreign origin, without clearly and conspicuously disclosing on such products the country of origin thereof, and if the products are enclosed in a package or carton, clearly and conspicuously disclosing on such package or carton

that all or a part of the contents thereof are imported and that the country of origin of foreign made products is set forth on each said product.

4. Furnishing or otherwise placing in the hands of retailers or dealers in said products the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things hereinabove prohibited.

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 form in which they have complied with this order.

IN THE MATTER OF

MORRIS GREENBAUM ET AL. TRADING AS MORRIS GREENBAUM & BRO.

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

Docket C-168. Complaint, July 13, 1962—Decision, July 13, 1962

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by failing to show on labels the true animal name of fur used in a fur product and the identification of the manufacturer, etc.; failing to show on labels and invoices when fur was artificially colored; invoicing as natural, furs which were bleached, dyed, etc.; and furnishing false guaranties that certain of their fur products were not misbranded.

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 Morris Greenbaum, Jacob Greenbaum and Nathan Greenbaum, individually and as copartners trading as Morris Greenbaum & Bro., 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. Respondents Morris Greenbaum, Jacob Greenbaum and Nathan Greenbaum are individuals and copartners, trading as

Morris Greenbaum & Bro., with their office and principal place of business located at 330 Seventh Avenue, New York, N.Y.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the manufacture for 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 manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded or otherwise falsely or deceptively labeled in that said fur products were labeled to show that the fur contained therein was natural when in fact such fur was bleached, dyed or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. 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 show the true animal name of the fur used in the fur product.

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

3. To show the name, or other identification issued and registered by the Commission of one or more of the persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale, in commerce, or transported or distributed it in commerce.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural when in fact such fur was bleached, dyed, or otherwise artificially colored, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that they were not invoiced as required under the provisions of Section 5(b)(1) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were invoices pertaining to such fur products which failed to disclose that the fur contained in the fur products was bleached, dyed, or ortherwise artificially colored, when such was the fact.

PAR. 7. The respondents furnished false guaranties that certain of their fur products were not misbranded, falsely invoiced or falsely advertised, when respondents in furnishing such guaranties had reason to believe that the fur products so falsely guaranteed would be introduced, sold, transported or distributed, in commerce, in violation of Section 10(b) of the Fur Products Labeling Act.

PAR. 8. 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 the 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. Respondents Morris Greenbaum, Jacob Greenbaum and Nathan Greenbaum are individuals and copartners, trading as Morris Greenbaum & Bro., with their office and principal place of business located at 330 Seventh Avenue, New York, N.Y.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Morris Greenbaum, Jacob Greenbaum and Nathan Greenbaum, individually and as copartners trading as Morris Greenbaum & Bro. or under any other trade name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale, in commerce, or the transportation or distribution in commerce of any fur product; or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution, of any fur product which has been made in whole or in part of fur which has been shipped and received in commerce as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Representing directly or by implication on labels that the fur contained in fur products is natural, when such is not the fact.

B. Failing to affix labels to fur products showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

2. Falsely or deceptively invoicing fur products by:

A. Representing directly or by implication on invoices that the fur contained in fur products is natural, when such is not the fact.

B. Failing to furnish invoices to purchasers of fur products showing all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

3. Furnishing a false guaranty that any fur product is not misbranded, falsely invoiced or falsely advertised when the respondents have reason to believe that such fur product may be introduced, sold, transported or distributed in commerce.

It is further ordered, That the respondent 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 form in which they have complied with this order.

Complaint

IN THE MATTER OF

LADY CAROL DRESSES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-169. Complaint, July 13, 1962—Decision, July 13, 1962

Consent order requiring New York City manufacturers of wearing apparel to cease violating the Flammable Fabrics Act by selling in commerce dresses which were so highly flammable as to be dangerous when worn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Lady Carol Dresses, Inc., a corporation, and Jack Pearlstein, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated under the Flammable Fabrics 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 Lady Carol Dresses, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Individual respondent Jack Pearlstein is President of the corporate respondent and formulates, directs and controls the acts, practices and policies of said corporate respondent, including those hereinafter set forth.

Respondents are manufacturers of articles of wearing apparel, including dresses, with their office and principal place of business located at 501 Seventh Avenue, New York, N.Y.

PAR. 2. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have manufactured for sale, sold and offered for sale, in commerce; have imported into the United States; and have introduced, delivered for introduction, transported and caused to be transported, in commerce; and have transported and caused to be transported for the purpose of sale or delivery after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act, articles of wearing apparel, as the term "article of wearing apparel" is defined therein, which articles of wearing apparel were, under Sec-

tion 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

Among the articles of wearing apparel mentioned above were dresses.

PAR. 3. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have manufactured for sale, sold and offered for sale, articles of wearing apparel made of fabric which was, under Section 4 of the Act, as amended, so highly flammable as to be dangerous when worn by individuals, and which fabric had been shipped and received in commerce as the terms "article of wearing apparel", "fabric" and "commerce" are defined in the Flammable Fabrics Act.

Among the articles of wearing apparel mentioned above were dresses.

PAR. 4. Respondents, subsequent to July 1, 1954, have furnished their customers with a guaranty with respect to the articles of wearing apparel, mentioned in paragraphs 2 and 3 hereof, to the effect that reasonable and representative tests made under the procedures provided in Section 4 of the Flammable Fabrics Act, as amended, and the Rules and Regulations promulgated thereunder, show that said articles of wearing apparel are not, in the form delivered by respondents, so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals. There was reason for respondents to believe that the articles of wearing apparel covered by such guaranty might be introduced, sold, or transported in commerce.

Said guaranty was false in that with respect to said articles of wearing apparel, reasonable and representative tests had not been made.

PAR. 5. The acts and practices of respondents herein alleged were and are in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder and as such 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.

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 Flammable Fabrics 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 the 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, Lady Carol Dresses, Inc., 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 501 Seventh Avenue, in the city of New York, State of New York.

Respondent Jack Pearlstein is an officer of said corporation and his 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, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Lady Carol Dresses, Inc., a corporation, and its officers, and Jack Pearlstein, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

1. (a) Importing into the United States; or

(b) Manufacturing for sale, selling, offering for sale, introducing, delivering for introduction, transporting or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce;

any article of wearing apparel which, under the provisions of Section 4 of the Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

2. Manufacturing for sale, selling or offering for sale any article of wearing apparel made of fabric, which fabric has been shipped or received in commerce, and which, under Section 4 of the Flam-

mable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

3. Furnishing to any person a guaranty with respect to any article of wearing apparel which respondents, or any of them, have reason to believe may be introduced, sold or transported in commerce, which guaranty represents, contrary to fact, that reasonable and representative tests made under the procedures provided in Section 4 of the Flammable Fabrics Act, as amended, and the Rules and Regulations promulgated thereunder, show and will show that the article of wearing apparel, or the fabric used or contained therein, covered by the guaranty, is not, in the form delivered or to be delivered by the guarantor, so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals, provided, however, that this prohibition shall not be applicable to a guaranty furnished on the basis of, and in reliance upon, a guaranty to the same effect received by respondents in good faith signed by and containing the name and address of the person by whom the article of wearing apparel or fabric was manufactured or from whom it was received.

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 form in which they have complied with this order.

In the Matter of

ROSE DUVAL TRADING AS ROSE DUVAL

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-170. Complaint, July 13, 1962—Decision, July 13, 1962

Consent order requiring the operator of a retail dress shop in New York City to cease violating the Flammable Fabrics Act by selling in commerce scarves which were so highly flammable as to be dangerous when worn.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Rose Duval, an individual trading as Rose Duval, herein-

after referred to as respondent, has violated the provisions of said Acts, and the Rules and Regulations promulgated under the Flammable Fabrics 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 Rose Duval is an individual trading as Rose Duval, with her office and principal place of business at 846 Lexington Avenue, New York, N.Y. The proposed respondent operates a retail dress shop at the above indicated location.

PAR. 2. Respondent, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, has sold and offered for sale, in commerce; has imported into the United States; and has introduced, delivered for introduction, transported, and caused to be transported, in commerce; and has transported and caused to be transported for the purpose of sale or delivery after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act, articles of wearing apparel, as the term "article of wearing apparel" is defined therein, which articles of wearing apparel were under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

Among such articles of wearing apparel mentioned herein, but not limited thereto, were scarves.

PAR. 3. The aforesaid acts and practices of respondent herein alleged were and are in violation of the Flammable Fabrics Act and of the Rules and Regulations promulgated thereunder, and as such 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.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, 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 com-

plaint, 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 Rose Duval is an individual trading as Rose Duval with her office and principal place of business located at 846 Lexington Avenue, in the city of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Rose Duval, an individual, trading as Rose Duval, or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

(a) Importing into the United States; or

(b) Selling, offering for sale, introducing, delivering for introduction, transporting, or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce,

any article of wearing apparel which, under the provisions of Section 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon her of this order, file with the Commission a report in writing setting forth in detail the manner and form in which she has complied with this order.

IN THE MATTER OF

FINE QUILTING CORP. ET AL.

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

Docket C-171. Complaint, July 13, 1962—Decision, July 13, 1962

Consent order requiring manufacturers of quilted interlining materials in Bronx, N.Y., to cease violating the Wool Products Labeling Act by failing to show

on labels on such materials the true generic names of the constituent fibers and the percentage thereof, and failing in other respects to comply with labeling requirements; and to cease such unfair practices as stating on invoices and shipping memoranda that certain quilted interlining materials sold to their jobber and manufacturer customers were "Not less than 50% Rep. wool, 50% Unknown fiber" when the fabrics contained substantially different fibers and in different quantities than so represented.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Fine Quilting Corp., a corporation, and Lazar Deutsch and Samuel Mandel, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, 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 Fine Quilting Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Lazar Deutsch and Samuel Mandel are the President and the Secretary-Treasurer of the corporate respondent, respectively. Said individual respondents cooperate in formulating, directing and controlling the acts, policies and practices of the corporate respondent including the acts and practices hereinafter referred to. All of the respondents have their office and principal place of business located at 442 E. 166th Street, Bronx, New York. Respondents are manufacturers of quilted interlining materials.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since 1953, respondents have introduced into commerce, manufactured for introduction into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, wool products, as the terms "commerce" and "wool product" are defined in the said Act.

PAR. 3. Certain of said wool products were misbranded by the respondents in that they were not stamped, tagged, labeled or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under the said Act.

Among such misbranded wool products, but not limited thereto, were wool products, namely quilted interlining materials, with labels which failed:

1. To show the true generic names of the fibers present;

2. To show the percentage of such fibers.

PAR. 4. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that the required information descriptive of the fiber content was set out on labels in abbreviated words or terms, in violation of Rule 9 of the Rules and Regulations as aforesaid.

PAR. 5. The acts and practices of respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and of the Rules and Regulations promulgated thereunder, 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.

PAR. 6. Respondents are now, and for some time last past, have been engaged in the offering for sale, sale and distribution of products, namely quilted interlining materials in commerce. The respondents' said business, in part, is that of manufacturing said quilted interlining materials from materials purchased from various suppliers in and about Metropolitan New York. The respondents sell these products to jobbers and to manufacturers who in turn manufacture coats and other wool products and sell the same to customers throughout the United States. The respondents maintain, and at all times mentioned herein, have maintained, a substantial course of trade of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Respondents in the course and conduct of their business as aforesaid, have made statements on invoices and shipping memoranda to their customers misrepresenting the character and fiber content of certain of their said products.

Among such misrepresentations, but not limited thereto, were statements representing certain quilted interlining materials to be "Not less than 50% Rep. wool, 50% Unknown fiber"; whereas, in truth and in fact, the said fabrics contained substantially different fibers and quantities of fibers than were represented.

PAR. 8. The acts and practices set out in paragraphs 6 and 7 have had, and now have, the tendency and capacity to mislead and deceive purchasers of said fabrics as to the true content thereof and to cause them to misbrand products manufactured by them in which said materials are used.

PAR. 9. The acts and practices of the respondent set out in paragraphs 6 and 7 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, in commerce, within the intent and meaning of 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 Wool Products Labeling Act of 1939, 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 the 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, Fine Quilting Corp., 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 442 East 166th Street, in the city of Bronx, State of New York.

Respondents Lazar Deutsch and Samuel Mandel 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, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Fine Quilting Corp., a corporation, and its officers, and Lazar Deutsch and Samuel Mandel, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for intro-

duction, into commerce, or the offering for sale, sale, transportation, delivery for shipment, or distribution, in commerce, of quilted interlining materials or other wool products, as "commerce" and "wool product", are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding wool products by:

1. Failing to securely affix to or place on each such product, a stamp, tag, label or other menns of identfication showing in a clear and conspicuous manner, each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

2. Setting forth the required information descriptive of the fiber content on labels in abbreviated words or terms.

It is further ordered, That respondents Fine Quilting Corp., a corporation, and its officers, and Lazar Deutsch and Samuel Mandel, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of quilted interlining materials or other fiber products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of constituent fibers contained in such products on invoices or shipping memoranda applicable thereto, or in any other manner.

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 form in which they have complied with this order.

IN THE MATTER OF

UNITED STATES RUBBER COMPANY

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

Docket C-172. Complaint, July 13, 1962—Decision, July 13, 1962

Consent order requiring a manufacturer of motor vehicle tires to cease making deceptive pricing and savings claims for its tires, batteries and accessories by such practices as publishing in newspaper advertising a higher and fictitious "Mfr's list price", followed by a lower "sale price" and representing falsely that the difference constituted savings from usual prices, and furnishing its dealers and retail outlets with advertising mats and price lists containing similar statements.

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 United States Rubber Company, a corporation, hereinafter referred to as respondent, has 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:

PARAGRAPH 1. Respondent United States Rubber Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 1230 Avenue of the Americas, in the city of New York, State of New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacture, sale and distribution of, among other things, motor vehicle tires.

PAR. 3. In the course and conduct of its business, respondent sells said products, including motor vehicle tires, by means of independent dealers, company-owned stores and through other retail outlets located in the various states of the United States, and in the District of Columbia. Respondent causes said motor vehicle tires to be shipped from its factories, located in several states, to its various types of dealers and retail outlets located in various other states of the United States, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. For the purpose of inducing the purchase of its motor vehicle tires, respondent has published, or caused to be published, in newspapers distributed through the United States mail and by other means, advertisements, among which the following is typical:

* * * * * * *

First Time on Sale
1960 New-Car Equipment Tire
U.S. Royal
Safety 8 Tire

* * * * * * *

$8 to $11 OFF Mfr's List Prices

Blackwall Tubeless

Size	*Mfr List Price*	*Sale Price*
7.50–14	$27.95	$19.95
6.70–15		
8.00–14	30.65	22.50
7.10–15		
8.50–14	33.60	24.88
7.60–15		
9.00–14	37.40	27.95
8.00–15		
9.50–14	38.75	28.95
8.20–15		

* * * * * * *

By use of the words "mfr's list price" in the above advertisement to designate the stated higher amounts, respondent represented, directly or by implication, that such higher amounts were the usual and customary prices at which such motor vehicle tires were sold at retail in the trade area or areas where the representations were made and that the difference between such stated higher amounts and the amounts designated as "sale prices" represented savings from the usual and customary retail prices for such motor vehicle tires. In truth and in fact, such manufacturer's list prices are fictitious and are in excess of the usual and customary retail prices for said motor vehicle tires in the trade area or areas where the representations were made and the difference between such stated higher amounts and the amounts designated as "sale prices" does not represent savings from the usual and customary retail prices.

PAR. 5. Respondent has also engaged in the practice of furnishing to its various types of dealers and retail outlets advertising mats and price lists containing prices designated as manufacturer's list prices, thereby placing in the hands of its dealers and retail outlets the means and instrumentalities whereby they may represent, directly or by implication, that such manufacturer's list prices are the usual and customary retail prices for said merchandise. In truth and in fact, such manufacturer's list prices are fictitious and in excess of the usual and customary retail prices for said merchandise in the trade area or areas where the representations are made.

PAR. 6. In the conduct of its business, and at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of products of the same general kind and nature as that sold by respondent.

PAR. 7. The use by respondent of the aforesaid false, misleading and deceptive 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 said representations were and are true and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, 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 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, United States Rubber Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 1230 Avenue of the Americas, in the city of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent United States Rubber Company, a corporation, and its officers, and respondent's agents, representatives

and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of tires, batteries and accessories, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) Any amount is the usual and customary price of merchandise in any trade area when it is in excess of the generally prevailing price or prices at which said merchandise is sold in said trade area.

(b) Any saving from a trade area price or from the customary and usual price of the advertiser is afforded in the purchase of respondent's merchandise unless the price at which such merchandise is offered constitutes a reduction from the generally prevailing price or prices at which said merchandise is sold in the trading area in which the representation is made or the price at which it is customarily and usually sold by the advertiser.

2. Misrepresenting in any manner the savings available to purchasers of respondent's merchandise or the amount by which the price of merchandise has been reduced from the price at which it is customarily sold by respondent or its competitors in the usual course of business in the trade area or areas where the representations are made.

3. Using the words or terms "Mfr's list price", or any other words or terms of similar import, to refer to prices of merchandise unless such amounts are the prices at which the merchandise is usually and customarily sold in the trade area in which such representations are made.

4. Placing in the hands of distributors, retailers or others advertising material or other printed matter representing in any manner that any amount is the usual and customary retail price of merchandise when it is in excess of the price at which the merchandise is usually and customarily sold at retail in the trade area or areas where the advertising material or printed matter is displayed or otherwise used.

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.

Complaint

IN THE MATTER OF

DIXIE-CENTRAL PRODUCE CO., INC., ET AL.

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

Docket 8475. Complaint, Apr. 2, 1962—Decision, July 14, 1962

Order requiring a Columbia, S.C., corporate food wholesaler and one of its directors to cease accepting illegal brokerage on purchases of food products made through a brokerage business operated by said individual—such as commissions on substantial purchases of potatoes from several Illinois suppliers—in violation of Sec. 2(c) of the Clayton Act.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly described, have been and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act as amended (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Dixie-Central Produce Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of South Carolina, with its office and principal place of business located at State Farmers Market, Columbia, S.C. This organization is a closed corporation, the entire stock of which is owned by relatives and members of the same family.

Respondent Chris P. Leventis, an individual, served as President of respondent Dixie-Central Produce Co., Inc., from 1951 until January 1, 1960. He is presently a member of the Board of Directors and one of the corporate respondent's largest stockholders, owning approximately 16% of all capital stock. Said respondent Chris P. Leventis, while partially retired, participates in the acts, practices and policies adopted by the corporate respondent Dixie-Central Produce Company.

Respondent Dixie-Central Produce Company, Inc., is engaged in business primarily as a wholesale distributor, buying, selling and distributing fresh fruit, produce, frozen foods and canned goods, hereinafter sometimes referred to as food products. This respondent purchases its food products from a large number of suppliers located in many sections of the United States and its volume of business in the purchase and sale of such products is substantial.

PAR. 2. In addition to being a member of the Board of Directors and a substantial owner of respondent Dixie-Central Produce Company, Inc., respondent Chris P. Leventis is also doing business as Dixie Brokerage Company, a sole proprietorship, under and by virtue of the laws of the State of South Carolina, with his office and principal place of business located on the premises of respondent Dixie-Central

Produce Co., Inc., at State Farmers Market, Columbia, S.C. This respondent is now, and for the past several years has been, engaged in the brokerage business through the Dixie Brokerage Company, purportedly representing various principals located throughout the United States in connection with the sale and distribution of food products. However, all the business done by Dixie Brokerage Company consist of sales to Dixie-Central Produce Co., Inc., partially owned and controlled by respondent Chris P. Leventis as indicated above. In representing these principals, respondent Chris P. Leventis, or the Dixie Brokerage Company, is paid a brokerage fee or commission at varying rates depending on the product and amount sold. In discussing the brokerage activities of this company, both the individual respondent Chris P. Leventis and the Dixie Brokerage Company will sometimes hereinafter be referred to collectively as the Dixie Brokerage Company.

PAR. 3. In the course and conduct of its business for the past several years, respondent Dixie-Central Produce Co., Inc., has purchased and distributed, and is now purchasing and distributing, food products, in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, from suppliers or sellers located in several states of the United States other than the State of South Carolina, in which respondent is located. Respondent transports or causes such products, when purchased, to be transported from the places of business or packing plants of its suppliers located in various other States of the United States to respondent who is located in the State of South Carolina or to respondent's customers located in said state or elsewhere. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the purchase of said food products across state lines by the respondent and its respective suppliers of such food products.

Respondent Chris P. Leventis, in the course and conduct of his brokerage business under the name of Dixie Brokerage Company, has been and is now selling and distributing food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, for his suppliers located in the various states of the United States other than the State of South Carolina in which respondent is located. Said respondent has transported or caused said food products, when sold, to be transported from his principals' places of business to the buyers' places of business located in other states, or to their customers located therein. Thus there has been at all times mentioned herein a continuous course of trade in commerce in the sale of said food products across state lines by the respondent and his principals, or customers thereof.

PAR. 4. In the course and conduct of their business for the past several years, but more particularly since January 1, 1959, the respond-

ents have made numerous and substantial purchases of food products from some of their suppliers through the Dixie Brokerage Company, and on a large number of these purchases Chris P. Leventis, through the Dixie Brokerage Company, has received and accepted and is now receiving and accepting from said suppliers a commission, brokerage or other compensation or an allowance or discount in lieu thereof, in connection therewith. For example, respondent Dixie-Central Produce Co., Inc., makes, or has made, substantial purchases of potatoes from several suppliers located in the State of Illinois through the Dixie Brokerage Company, and on these purchases the Dixie Brokerage Company has received and accepted and is now receiving and accepting from said suppliers a commission or brokerage. In view of the ownership and control described above, the said Dixie Brokerage Company on such purchases is acting for and in behalf of the buyer, or is subject to the direct or indirect control of the buyer, the Dixie-Central Produce Co., Inc., by reason of the stock ownership therein of respondent Chris P. Leventis.

PAR. 5. The acts and practices of respondents in receiving and accepting a brokerage or commission, or an allowance or discount in lieu thereof, on their own purchases through the brokerage company owned and controlled by Chris P. Leventis, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13).

Mr. Basil J. Mezines and *Mr. Donald A. Surine* for the Commission.

Whaley & McCutchen, by *Mr. Thomas E. McCutchen*, of Columbia, S.C., for respondents.

INITIAL DECISION BY ANDREW C. GOODHOPE, HEARING EXAMINER

The complaint herein was issued and duly served upon respondents by registered mail on April 6, 1962. The complaint charged the illegal receipt of brokerage payments from suppliers of food products to the respondents in violation of Section 2(c) of the Clayton Act, as amended (15 U.S.C. Sec. 13; 49 Stat. 1526). On May 2, 1962, respondents by their counsel filed an answer to the complaint "* * * admitting all the material allegations of the complaint to be true * * *". In addition, the respondents' answer stated that they "* * * acquiesce in the issuance of an order in the language and in the form of order attached to and served with the complaint herein." On May 8, 1962, the respondents by their counsel filed an amended answer in which they repeated the admissions quoted above and also waived the right to file proposed findings and conclusions which right had been reserved in their first answer. This waiver was conditioned upon the Commission issuing an order not at variance from the order attached to the complaint. Counsel in support of the complaint have

filed a motion in which they waive the filing of proposed findings and move that the record be closed and an initial decision be entered based only upon the pleadings. Since both parties have agreed to the propriety of the order as contained in the Commission complaint and the examiner being of the opinion that the order provides an appropriate disposition of this proceeding, this motion is granted.

In their answers, respondents point out that only about 10% of their purchases of food products through brokers was through the respondent Dixie Brokerage Company, and that the purchases through respondent Dixie Brokerage Company amounted to only 1% of their total purchases of food products from all sources. Respondents further point out that they were unaware that their transactions through the Dixie Brokerage Company violated any law until this complaint issued.

Neither of these pleas can affect the outcome of this proceeding. The maxim of *de minimis non curat lex* cannot be applied to this proceeding. In the first place, while respondents' receipt of illegal brokerage may have been connected with only a small percentage of their total business, there are no figures in the record as to respondents' total purchases from all brokers or all sources upon which to predicate a finding as to the actual dollar amounts involved. Secondly, Section 2(c) of the Clayton Act, as amended, requires no charge or finding of injury as a result of the receipt of the illegal brokerage. *Biddle Purchasing Co.* v. *FTC*, 96 F. 2d 687, 690 (2d Cir. 1938), 2 S.&D. 447, *cert. den.* 305 U.S. 634 (1938); *Oliver Brothers, Inc.* v. *FTC*, 102 F. 2d 763, 766 (4th Cir. 1939), 3 S.&D. 86; *Great A & P Tea Co.* v. *FTC*, 106 F. 2d 667, 675 (3d Cir. 1939), 3 S.&D. 146. Consequently, since any receipt of illegal brokerage violates Section 2(c) without more, the only avenue for a hearing examiner to pursue, after the Commission has decided to proceed in a particular case, is to find a violation if it exists and enter an appropriate order to cease and desist. Since, in this case, respondents have admitted violations, the examiner is left with no choice in the matter.

Respondents' second plea is that they were unaware of their violation and had no intent to violate the Act. This may well be true, but where a clear cut violation of the Act has been admitted, the fact that it was not intentional is of no moment. To inject an element of intent into Section 2(c) proceedings could only serve to unduly burden the Commission in a fashion not intended by either the Act itself or by Congress in performing its statutory duty of enforcing the Act. The Commission's order to cease and desist in this matter is prospective in nature and is not punitive of past violations of the Act even though based on such violations. *FTC* v. *Ruberoid Co.*, 343 U.S. 470, 473 (1952), 5 S.&D. 388.

67 Initial Decision

FINDINGS OF FACT

1. Respondent Dixie-Central Produce Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of South Carolina, with its office and principal place of business located at State Farmers Market, Columbia, S.C. This organization is a closed corporation, the entire stock of which is owned by relatives and members of the same family.

Respondent Chris P. Leventis, an individual, served as President of respondent Dixie-Central Produce Co., Inc., from 1951 until January 1, 1960. He is presently a member of the Board of Directors and one of the corporate respondent's largest stockholders, owning approximately 16% of all capital stock. Said respondent Chris P. Leventis, while partially retired, participates in the acts, practices and policies adopted by the corporate respondent Dixie-Central Produce Company.

Respondent Dixie-Central Produce Company, Inc., is engaged in business primarily as a wholesale distributor, buying, selling and distributing fresh fruit, produce, frozen foods and canned goods, hereinafter sometimes referred to as food products. This respondent purchases its food products from a large number of suppliers located in many sections of the United States and its volume of business in the purchase and sale of such products is substantial.

2. In addition to being a member of the Board of Directors and a substantial owner of respondent Dixie-Central Produce Company, Inc., respondent Chris P. Leventis is also doing business as Dixie Brokerage Company, a sole proprietorship, under and by virtue of the laws of the State of South Carolina, with his office and principal place of business located on the premises of respondent Dixie-Central Produce Co., Inc., at State Farmers Market, Columbia, S.C. This respondent is now, and for the past several years has been, engaged in the brokerage business through the Dixie Brokerage Company, purportedly representing various principals located throughout the United States in connection with the sale and distribution of food products. However, all the business done by Dixie Brokerage Company consists of sales to Dixie-Central Produce Co., Inc., partially owned and controlled by respondent Chris P. Leventis as indicated above. In representing these principals, respondent Chris P. Leventis, or the Dixie Brokerage Company, is paid a brokerage fee or commission at varying rates depending on the product and amount sold. In discussing the brokerage activities of this company, both the individual respondent Chris P. Leventis and the Dixie Brokerage Company will sometimes hereinafter be referred to collectively as the Dixie Brokerage Company.

3. In the course and conduct of its business for the past several years, respondent Dixie-Central Produce Co., Inc., has purchased and

distributed, and is now purchasing and distributing, food products, in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, from suppliers or sellers located in several states of the United States other than the State of South Carolina, in which respondent is located. Respondent transports or causes such products, when purchased, to be transported from the places of business or packing plants of its suppliers located in various other States of the United States to respondent who is located in the State of South Carolina or to respondent's customers located in said state or elsewhere. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the purchase of said food products across state lines by the respondent and its respective suppliers of such food products.

Respondent Chris P. Leventis, in the course and conduct of his brokerage business under the name of Dixie Brokerage Company, has been and is now selling and distributing food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, for his suppliers located in the various states of the United States other than the State of South Carolina in which respondent is located. Said respondent has transported or caused said food products, when sold, to be transported from his principals' places of business to the buyers' places of business located in other states, or to their customers located therein. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the sale of said food products across state lines by the respondent and his principals, or customers thereof.

4. In the course and conduct of their business for the past several years, but more particularly since January 1, 1959, the respondents have made numerous and substantial purchases of food products from some of their suppliers through the Dixie Brokerage Company, and on a large number of these purchases Chris P. Leventis, through the Dixie Brokerage Company, has received and accepted and is now receiving and accepting, from said suppliers a commission, brokerage or other compensation or an allowance or discount in lieu thereof, in connection therewith. For example, respondent Dixie-Central Produce Co., Inc., makes, or has made, substantial purchases of potatoes from several suppliers located in the State of Illinois through the Dixie Brokerage Company, and on these purchases the Dixie Brokerage Company has received and accepted and is now receiving and accepting from said suppliers a commission or brokerage. In view of the ownership and control described above, the said Dixie Brokerage Company on such purchases is acting for and in behalf of the buyer, or is subject to the direct or indirect control of the buyer, the Dixie-Central Produce Co., Inc., by reason of the stock ownership therein of respondent Chris P. Leventis.

CONCLUSION

The acts and practices of respondents in receiving and accepting a brokerage or commission, or an allowance or discount in lieu thereof, on their own purchases through the brokerage company owned and controlled by Chris P. Leventis, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13).

ORDER

It is ordered, That respondent Dixie-Central Produce Co., Inc., a corporation, and Chris P. Leventis, individually and as a Director and stockholder of Dixie-Central Produce Co., Inc., and respondents' agents, representatives and employees, directly or through any corporate, partnership, sole proprietorship or other device in connection with the purchase of food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

> Receiving or accepting, directly or indirectly from any seller, anything of value as a commission, brokerage or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of food products for respondents' own account, or on purchases made through the Dixie Brokerage Company, or any other brokerage organization, where and so long as, any relationship exists between the brokerage organization and the respondents named herein, either through ownership, control or management.

It is further ordered, That respondent Chris P. Leventis, individually and doing business as Dixie Brokerage Company, or under any other name, and his agents, representatives, and employees, directly or through any corporate, partnership, sole proprietorship or other device, in connection with the purchase or sale of food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

> Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of food products for his own account, or for the account of the Dixie Brokerage Company, or for the account of the Dixie-Central Produce Co., Inc., so long as any relationship exists between the brokerage organization and the buyer organization, either through ownership, control or management, or where respondent Chris P. Leventis, or the Dixie Brokerage Company, is the agent, representative or other inter-

mediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer, including the Dixie-Central Produce Co., Inc.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 4.19 of the Commission's Rules of Practice, effective June 1, 1962, the initial decision of the hearing examiner shall, on the 14th day of July 1962, become the decision of the Commission; and accordingly:

It is ordered, That 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 form in which they have complied with the order to cease and desist.

IN THE MATTER OF

EDGAR GEVIRTZ TRADING AS REGAL FURS

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

Docket 8446. Complaint, Oct. 12, 1961—Decision, July 17, 1962*

Order requiring a Los Angeles furrier to cease violating the Fur Products Labeling Act by failing to disclose the names of animals producing furs on labels and invoices and in advertising; failing to set forth on labels the name of the manufacturer, etc.; failing to disclose on invoices when fur was dyed, and invoicing "Japanese Mink" as "mink"; by advertising which falsely represented that fur prices were "at actual cost", that he owned a factory producing his fur products, that his products were guaranteed, and that "sale prices" attached to products were reduced from usual prices; by failing to maintain adequate records as a basis for pricing claims; and by failing in other respects to comply with requirements of the Act.

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 Edgar Gevirtz, an individual trading as Regal Furs, hereinafter referred to as respondent, has 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:

*As amended January 15, 1962.

PARAGRAPH 1. Edgar Gevirtz is an individual trading as Regal Furs with his office and principal place of business located at 623 West 7th Street, Los Angeles, Calif.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act of August 8, 1952, respondent has been and is 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 has sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled in that labels containing fictitious prices were affixed to such 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:

(1) Contained a purported "sale price", thereby falsely and deceptively representing directly or by implication that the prices of such fur products were reduced from the prices at which respondent regularly and usually sold such fur products in the recent regular course of business.

(2) Contained a sale price which was, in fact, fictitious in that such price was in excess of the price at which such fur products were actually sold.

PAR. 4. 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. Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to disclose:

1. The name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur; and

2. The name or other identification issued and registered by the Commission, of one or more of the persons who manufacture such fur product for introduction into commerce, introduce it into commerce, sell it in commerce, advertise or offer it for sale in commerce, or transport or distribute it in commerce.

PAR. 5. 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. Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with non-required information, in violation of Rule 29(a) 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; and

3. Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced by respondent, in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

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

1. The name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur;

2. That the fur contained in the fur products was dyed when such was the fact.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced with respect to the name of the animal that produced the fur from which the fur product had been manufactured, 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 fur products which were invoiced as being "mink", when they were in fact "Japanese mink".

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 the following respects:

1. Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations; and

2. Required item numbers were not set forth on invoices, in violation of Rule 40 of said Rules and Regulations.

PAR. 9. Certain of said fur products were falsely and deceptively advertised, in violation of the Fur Products Labeling Act, in that respondent caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act, and the Rules and Regulations promulgated thereunder, which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

Among such advertisements, but not limited thereto, were advertisements of respondent which appeared in the Los Angeles Times, a newspaper published in Los Angeles, California, having a wide circulation in California and in other States of the United States. By means of said advertisements and others of similar import and meaning, not specifically referred to herein, respondent falsely and deceptively advertised fur products, in that said advertisements:

1. Failed to disclose the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur contained in the fur product, in violation of Section 5(a)(1) of the Fur Products Labeling Act.

2. Represented prices of fur products to be "at actual cost" when such was not the fact, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of said Rules and Regulations.

3. Represented, directly or by implication, that respondent owned or operated a factory producing fur products sold by him, when such was not the fact, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

4. Represented, directly or by implication, that fur products were guaranteed without disclosing the nature and extent of the guarantee or the manner and form in which the guarantor would perform thereunder, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 10. Certain of said fur products were falsely and deceptively advertised in that labels containing fictitious prices were affixed to such fur products. Among such falsely and deceptively advertised fur products, but not limited thereto, were fur products with labels which:

(1) Contained a purported "sale price", thereby falsely and deceptively representing directly or by implication that the prices of such fur products were reduced from the prices at which respondent regularly and usually sold such fur products in the recent regular course of business, in violation of Section 5(a)(5) of the Fur Products Label-

ing Act and Rule 44 of the Rules and Regulations promulgated thereunder.

(2) Contained a sale price which was, in fact, fictitious in that such price was in excess of the price at which such fur products were actually sold, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 11. In advertising fur products for sale, as aforesaid, respondent made pricing claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Regulations under the Fur Products Labeling Act. Respondent in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such pricing claims and representations were based in violation of Rule 44(e) of the said Rules and Regulations.

PAR. 12. The aforesaid acts and practices of respondent, 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 in commerce under the Federal Trade Commission Act.

Mr. Robert W. Lowthian and *Mr. Eugene H. Strayhorn* supporting the complaint.

Hertzberg & Geretz, by *Mr. Harrison W. Hertzberg*, of Los Angeles, Calif., for respondent.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

The Federal Trade Commission issued the complaint against the respondent on October 12, 1961. On November 6, 1961, counsel supporting the complaint filed a motion with the examiner to amend the complaint. Copy of the motion was served upon respondent who failed to file a reply thereto and on January 15, 1962, the examiner issued an order amending the complaint as requested by counsel supporting the complaint. Respondent filed an answer to the amended complaint, and hearings were held on February 12 and 13, 1962, in Los Angeles, California.

The amended complaint alleged in substance that the respondent Edgar Gevirtz trading as Regal Furs violated certain provisions of the Fur Products Labeling Act and certain of the Rules and Regulations promulgated thereunder. Respondent's answer to the amended complaint admitted and denied certain of the allegations set forth therein.

This proceeding is before the hearing examiner for final consideration upon the complaint as amended, answer, testimony and other

evidence, and proposed findings of fact and conclusions filed by counsel for respondent and by counsel supporting the complaint.

Consideration has been given to the proposed findings of fact and conclusions submitted by both parties, and all proposed findings of fact and conclusions not hereinafter specifically found or concluded are rejected and the hearing examiner, having considered the entire record herein, makes the following findings of fact, conclusions drawn therefrom and issues the following order:

FINDINGS OF FACT

1. Respondent Edgar Gevirtz is an individual trading as Regal Furs with his office and principal place of business located at 623 West 7th Street, Los Angeles, Calif. This fact is admitted by respondent in his answer to the amended complaint.

2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been and is 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 has 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, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act. Respondent admitted that he had been and was presently engaged in the fur business and that he realized the existence of the Fur Products Labeling Act and that in the business in which he was engaged he was subject to the provisions of that Act. The record shows, and the examiner finds, that the respondent advertised [1] "fur products", as the term is used in the Act, in both the Los Angeles Times and the Herald Express newspapers that have interstate circulation.

3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled in that labels containing fictitious prices were affixed to such 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:

(A) Contained a purported "sale price", thereby falsely and deceptively representing directly or by implication that the prices of such fur products were reduced from the prices at which respondent regularly and usually sold such fur products in the recent regular course of business.

[1] Commission exhibits 1 through 24 were advertisements placed in the Los Angeles Times and Commission exhibit 68 is an exhibit of an advertisement placed in the Herald Express. See *Morton's Inc., et al.* v. *FTC*, 286 F. 2d, 158.

(B) Contained a sale price which was in fact fictitious, in that the "sale price" represented the price which the respondent regularly used in selling his fur products. Respondent had a dual ticket method of operating, according to the testimony of the Commission witness Anderson. One label (regular label) contained two coded items, (1) a letter code which was the cost of the garment, (2) a numerical code of seven digits which was explained as follows: Disregard the first two and the last two digits and the remaining three digits are the "usual retail selling price" of the garment. (R. 69, 70) The other ticket affixed to the fur garment was a "special sale" tag. (CX 28, 30) These tags were red, on which was written the words "Special sale", under which were two white boxes. In the upper box were the words "Regular price" and the lower box the words "Sale price".

Anderson testified that of the many fur products he examined there was no writing in the box marked "Regular price" however in all cases the "sale price" box was filled in with a price mark which, according to the uncontroverted testimony of the witness Anderson, was identical to the coded "retail selling price".

The "sale price" set forth on the tickets of some 59 "fur products" (CX 31) examined by the witness Anderson was in truth and in fact fictitious because in all cases the "usual retail selling price" of the garment was the same as the "special sale price". The respondent's explanation of the type operation he engaged in is set forth at page 216 of the record:

> In our type of operation, we try to get the ticket price that we put on the garment. In order for us to stay in business, we try to get that price; but competition being as keen as it is, if a customer comes in my store and walks out because she thinks it is cheaper elsewhere and is the same quality, then I certainly am going to sell it for less money, because my operation depends on volume selling.

The fact of the matter is that "special sale" "at actual cost" meant nothing to the respondent but a gimmick to bring prospective customers into his place of business where if a sale were made it would be made at respondent's regular retail sale price or at a bartered price arrived at by the respondent according to what the customers would pay. There was no "special sale" price nor were there any "at actual cost" sales. These terms were used by the respondent in advertising fur products merely as "sucker bait" to bring in the unwary customers who had two choices: (1) buy at the respondent's regular price, which they were led to believe was a bargain, or (2) haggle with the respondent until a price was agreed upon so that respondent would not lose the sale.

4. 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. Among such misbranded fur products, but not limited thereto, were fur products which labels failed to disclose:

A. The name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur; and

B. The name or other identification issued and registered by the Commission of one or more of the persons who manufacture such fur product for introduction into commerce, sell it in commerce, advertise it or offer it for sale in commerce, or transport or distribute it in commerce.

Commission Exhibits 48, 49, and 52 are label facsimiles introduced into evidence and, according to the testimony of the Commission witness Anderson, the information on these three documents is insufficient in the following respects:

CX 48—The label does not contain the name of any animal, any fur bearing animal, as such animal is found in the Fur Products Name Guide.

CX 49—A part of the information appears in handwriting—no registered identification number appears on the label.

CX 52—A part of the information is in handwriting. Non-required information is mingled with required information. The tag does not contain a registered identification number.

The only explanation presented by the respondent in this regard was that errors are bound to occur when you deal with so many garments. Respondent's explanation was not convincing and, in addition, the witness Anderson stated that the exhibits referred to were but a few examples of the many errors he found during his investigation of the respondent's business.

5. 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:

A. 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 the labels (CX 54), in violation of Rule 29(a) of said Rules and Regulations; and

B. Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels (CX's 47, 49, 50, 51, 52 and 55), in violation of Rule 29(b) of said Rules and Regulations.

6. Certain of said fur products were falsely and deceptively invoiced by the respondent in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

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

A. The name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur; Commission Exhibits 25, 60, 65 and 66.

B. That the fur contained in the fur products was dyed when such was the fact. Commission Exhibit 26 is an invoice that fails to disclose that the fur product was dyed when such was the fact. Mr. Kaufman, a fur expert, testified for the Commission (R. 44, 45), that the fur product covered by Commission Exhibit 26 was in fact a dyed fur product. Respondent failed to disclose this information on the invoice.

7. Certain of said fur products were falsely and deceptively invoiced with respect to the name of the animal that produced the fur from which the fur product had been manufactured, in violation of Section 5(b)(2) of the Fur Products Labeling Act. Commission Exhibit 25 is an invoice covering a fur product that was identified as "mink" when, in truth and in fact, the fur product sold by respondent was a "Japanese Mink" fur product. Mink is of the genus-species Mustela Vison and Mustela Lutreola, whereas Japanese Mink is of the genus-species Mustela Itatsi. (Fur Products Name Guide)

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 the following respect:

Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form in violation of Rule 4 of said Rules and Regulations. (CX's 59, 61, 62, 64 and 65)

Respondent admitted the deficiencies in the above referred to exhibits but contends that they were unintentional. The Commission has already ruled on this issue *In the Matter of Samuel A. Mannis and Company* (Docket No. 7062) where the Commission stated:

In a proceeding for violation of the Fur Act, it is not necessary to show that a respondent has knowingly failed to comply with the requirements of the Act or the Rules and Regulations promulgated thereunder or that he intended to deceive

the public. It is also unnecessary to establish that any existence of misbranding, false invoicing or misrepresentation in advertising resulted in deception of the public, nor is it necessary to show that such a practice has the capacity and tendency to deceive the public.

This opinion was affirmed by the United States Court of Appeals for the Ninth Circuit in a decision rendered August 28, 1961. *Samuel A. Mannis and Company* v. *FTC*, 293 F. 2d, 774.

Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act, in that respondent caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act, and the Rules and Regulations promulgated thereunder, which advertisements were intended to aid, promote, and assist, directly or indirectly, in the sale and offering for sale of said fur products.

Among such advertisements, but not limited thereto, were advertisements of respondent's which appeared in the Los Angeles Times, a newspaper published in Los Angeles, California, having a wide circulation in California and in other States of the United States. By means of said advertisements and others of similar import and meaning, not specifically referred to herein, respondent falsely and deceptively advertised fur products, in that said advertisements:

Failed to disclose the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur contained in the fur product, in violation of Section 5(a)(1) of the Fur Products Labeling Act.

Respondent argues that, while he might be technically in error, all of the alleged missing information was set forth in the advertisements. This argument is without merit and must be rejected since Rule 38(a) of the Rules and Regulations promulgated under the Fur Products Labeling Act requires that:

In advertising furs or fur products, all parts of the required information shall be stated in close proximity with each other and, if printed, in legible and conspicuous type of equal size.

10. Respondent falsely and deceptively advertised fur products in that said advertisements:

Represented prices of fur products to be "at actual cost", when such was not the fact, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the Rules and Regulations promulgated thereunder.

As an example, the respondent advertised Mink "at actual cost" while at the same time he offered a "Fox or Mink-trimmed cashmere sweater free." The testimony of the respondent and that of Mr. Anderson is more than sufficient to sustain the above finding. The respondent stated that he added the cost of the sweater to the price of the fur product, thus the sweater was not given to the purchaser free, nor was the fur product sold at "actual cost." Mr. Anderson testified that in the sale of a fur product to one of the customers, Mrs. Housel, respondent made a profit of $145.00.

The record shows that during the period the "at actual cost" sale ran, some 25 sales were made of products advertised, and in no case was the fur product sold at actual cost.

There is no doubt and the examiner finds that the respondent's advertisements in Commission Exhibits 12, 13, 14, 15, 22, 23, 24, 71, 72, 74, 76, 77 and 78 were false and deceptive.

11. Respondent falsely and deceptively advertised that he owned or operated a factory producing fur products sold by him, when such was not the fact, in violation of Section 5(a)(5) of the Fur Products Labeling Act. Respondent caused advertisements to be made, Commission Exhibits 12 and 13, that respondent was operating a manufacturing plant manufacturing fur products, when such was not the fact. Mr. Anderson testified that he examined respondent's premises on July 18 and July 25, 1960, at a time when respondent advertised "We must keep our factories running despite bad economic conditions", and that he found no evidence of a manufacturing plant. Respondent himself stated that he did not "run a regular manufacturing place like a wholesaler to sell wholesale." The respondent's statements in the advertisements holding himself out as a manufacturer of fur products were false and deceptive.

12. By means of the advertisements set forth in Commission Exhibits 2, 7, 8, 16 and 17, respondent falsely and deceptively advertised fur products, in that said advertisements:

Represented, directly or by implications, that fur products were guaranteed without disclosing the nature and extent of the guarantee or the manner and form in which the guarantor would perform thereunder, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

The Commission has held that the use of the word "guaranteed" in advertisements, unless additional information is given disclosing the nature and extent of the guarantee, is deceptive. See *Samuel A. Mannis and Company*, Docket No. 7062.

13. Certain of said fur products were falsely and deceptively advertised in that labels containing fictitious prices were affixed to such fur labels. Among such falsely and deceptively advertised fur products, but not limited thereto, were fur products with labels which:

(A) Contained a purported "sale price", thereby falsely and deceptively representing directly or by implication that the prices of such fur products were reduced from the prices at which respondent regularly and usually sold such fur products in the recent regular course of business in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44 of the Rules and Regulations thereunder.

(B) Contained a sale price which was, in fact, fictitious in that such price was in excess of the price at which such fur products were actually sold, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

The facts in the case at hand clearly reveal that the respondent's products were advertised in the Los Angeles Times on July 29, 1959. They were further advertised by means of a representation or notice, namely, a bright red "special sale" ticket hung on the garments with the purported "sale price" thereon. This notice implied, by the use of the blank "regular price" box and the filled in "sale price" box, that the fur products had, in fact been reduced from a higher regular and usual price.

These tags were plainly hung on each garment so as to catch the eye of the prospective customers enticed into the store by the prior advertisements. (R. 96, 182)

These sales tags convey to the prospective purchaser the idea of a saving. A clear impression of this fact is set forth and this impression due to the falseness of the claims, is misleading. The labels advertise a false price to the public. Such practices are false and deceptive and the public must be protected against them.

14. In advertising fur products for sale, as found above, respondent made pricing claims and representations of the type covered by subsections (a), (b), (c) and (d) of Rule 44 of the Regulations under the Fur Products Labeling Act. Respondent, in making such claims and representations, failed to maintain full and adequate records disclosing the facts upon which such pricing claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

Although the respondent contends that he maintained records and that he made them available to Mr. Anderson, the record in this proceeding is clear that respondent failed to maintain books and records

sufficient to meet the requirements of the Act and Regulations. No records were ever made available to Mr. Anderson whereby a complete check could be made of either respondent's operations or his pricing claims.

CONCLUSIONS

The acts and practices of the respondent hereinabove found are false, misleading and deceptive and are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

This proceeding is in the public interest, and an order to cease and desist the above found unlawful practices should issue against respondent.

ORDER

It is ordered, That Edgar Gevirtz, an individual trading as Regal Furs, or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Falsely or deceptively labeling or otherwise identifying such products by any representation, directly or by implication:

(1) That the prices of such products are reduced from the prices at which respondent has usually or customarily sold such products, when such is not the case.

(2) That savings are available to purchasers of respondent's fur products, when such is not the case.

B. Falsely or deceptively labeling or otherwise identifying any such product, during any period such product is labeled as on sale, by any representation, directly or by implication, that any amount is the sale price of such products when such amount is in excess of the price at which the product is actually sold during such sale period.

C. Failing to affix labels to fur products showing in words and figures plainly legible all the information required to

be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

D. Setting forth on labels affixed to fur products: Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting.

E. Failing to set forth all the information required to be disclosed by Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on one side of labels.

2. Falsely or deceptively invoicing fur products by:

A. Failing to furnish invoices to purchasers of fur products showing all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

B. Setting forth on invoices pertaining to fur products the name or names of any animal or animals other than the name or names of the animal producing the fur product as specified in the Fur Products Name Guide and as prescribed under the Rules and Regulations.

C. Setting forth information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

D. Failing to set forth on invoices the item number or mark assigned to a fur product.

3. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote, or assist, directly or indirectly, in the sale or offering for sale of fur products, and which:

A. Fails to set forth all the information required to be disclosed by each of the subsections of Section 5(a) of the Fur Products Labeling Act.

B. Represents directly or by implication that prices of fur products are "at actual cost" or words of similar import when such is not the fact.

C. Represents in any manner, contrary to fact, directly or by implication, that prices of such products are reduced from the prices at which respondent has usually or customarily sold such products in the recent regular course of business.

D. Represents in any manner, during any period any such product is on sale, that any amount is the sale price of such product when such amount is in excess of the price at which the product is actually sold during such sale period.

E. Represents in any manner that savings are available to purchasers of respondent's fur products, when such is not the fact.

F. Represents directly or by implication that respondent owns or operated a factory, or words of similar import, when such is not the fact.

G. Represents directly or by implication that fur products are guaranteed, unless the nature and extent of such guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously set forth.

4. Making claims and representations of the types covered by subsections (a), (b), (c), and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims and representations are based.

FINAL ORDER

The Commission by its order of June 21, 1962, having placed this case on its docket for review; and

The Commission now having concluded that the initial decision of the hearing examiner is appropriate in all respects to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner filed May 8, 1962, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondent Edgar Gevirtz shall, within sixty (60) days after service upon him of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF

BELMONT PRODUCTIONS, INC.

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

Docket C-173. Complaint, July 17, 1962—Decision, July 17, 1962

Consent order requiring a New York City publisher of paperback books to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom oper-

ated chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services in connection with the handling of respondent's publications such as taking purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors, including drug chains, 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 Belmont Productions, Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 66 Leonard Street, New York, N.Y. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including paperback books under copyrighted titles.

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 also has negotiated various promotional and display arrangements with the retail customers of such publishers, with the knowledge and approval of such publishers, including said respondent.

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 drug chains. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including newsstands, grocery chains and other drug chains) competing with the favored customers in the sale and distribution of the publications of respondent publisher. Among the favored customers receiving payments in 1961 which were not offered to other competing customers in connection with the purchase and sale of respondent's publications were:

Customer:	*Approximate Amount Received*
Drug Fair, Washington, D.C.	$514.17
Sun Ray Drug, Philadelphia, Pa.	550.00

Respondent made said payments to its favored customers on the basis of individual negotiations.

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 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, Belmont Productions, Inc., 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 66 Leonard Street, in the city of New York, State of 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 Belmont Productions, 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 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 paperback books 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 paperback books.

The word "customer" as used above shall be deemed to mean anyone who purchases from Belmont Productions, 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

STERLING GROUP, INC., ET AL.

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

Docket C-174. Complaint, July 18, 1962—Decision, July 18, 1962

Consent order requiring two New York City publishers of magazines including "Movie Mirror", "Real Confessions", "TV & Movie Screen", "Movie Mirror Yearbook", "Beauty Mirror", "TV Picture Life", "Teen Time", and "Hollywood Secrets Annual", and their common president, to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom operated chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services in connection with the handling of respondents' publications such as taking purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors including drug chains, grocery chains, and other newsstands.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, have violated and are 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:

PAR. 1. Respondent Sterling Group, Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 260 Park Avenue South, New York, N.Y. Said respondent, among other things, has been engaged in the business of publishing and distributing various publications including magazines under copyrighted titles including "Movie Mirror", "Real Confessions", "TV & Movie Screen", "Movie Mirror Yearbook" and "Beauty Mirror". Said respondent's sales of publications during the calendar year 1960 exceeded nine hundred thousand dollars.

PAR. 2. Respondent Publication House, Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 260 Park Avenue South, New York, N.Y. Said respondent, among other things, has been engaged in the business of publishing and distributing

various publications including magazines under copyrighted titles including "TV Picture Life", "Teen Time" and "Hollywood Secrets Annual". Said respondent's sales of publications during the calendar year 1960 exceeded three hundred thousand dollars.

PAR. 3. Respondent Morris S. Latzen, an individual, is the president of both corporate respondents named herein. He formulates, directs and controls the acts and practices of said corporate respondents and his address is the same as that of the corporate respondents.

PAR. 4. Publications published by respondent Sterling Group, Inc., and by respondent Publication House, Inc., are distributed by said respondents to customers through their 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 said corporate respondents. PDC, as national distributor of publications published by said respondents 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 publishers.

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

PAR. 5. Respondents Sterling Group, Inc., and Publication House, Inc., through their conduit or intermediary, PDC, have sold and distributed and now sell and distribute their 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. 6. In the course and conduct of their businesses in commerce, said corporate respondents have paid or contracted for the payment of something of value to or for the benefit of some of their 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 corporate respondents. Such payments or allowances were not made available on proportionally equal terms to all

other customers of said respondents competing in the distribution of such publications.

PAR. 7. As an example of the practices alleged herein, said corporate respondents have 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 said corporate respondents. Among the favored customers receiving payments in 1960 which were not offered to other competing customers in connection with the purchase and sale of respondents' publications were:

STERLING GROUP, INC.

Customer:	*Approximate Amount Received*
Union News Co., New York, N.Y.	$6,691.47
Greyhound Post House, Forest Park, Ill.	1,444.70
ABC Vending Corp., Long Island City, N.Y.	141.60

PUBLICATION HOUSE, INC.

Union News Co., New York, N.Y.	2,258.63
ABC Vending Corp., Long Island City, N.Y.	71.22

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

PAR. 8. 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 Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of subsection (d) of Section 2 of the Clayton Act, as amended, 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 the 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, Sterling Group, Inc., 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 260 Park Avenue South, in the city of New York, State of New York.

Respondent, Publication House, Inc., 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 260 Park Avenue South, in the city of New York, State of New York.

Respondent, Morris S. Latzen is an officer of each of said corporations, and his address is the same as that of said corporations.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

It is ordered, That respondents Sterling Group, Inc., and Publication House, Inc., both corporations, their respective officers, and Morris S. Latzen, individually and as an officer of said corporations, and respondents' 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 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, sold or offered for sale by respondents, unless such payment or consideration is affirmatively offered and otherwise made available on proportionally equal terms to all of their 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 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 form in which they have complied with this order.

IN THE MATTER OF

KABLE NEWS COMPANY

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

Docket C-175. Complaint, July 18, 1962—Decision, July 18, 1962

Consent order requiring a Mount Morris, Ill., publisher of magazines and paperback books to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom operated chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services in connection with the handling of respondent's publications such as taking purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors, including drug chains, 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 Kable News Company 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 16 South Wesley Avenue, Mount Morris, Ill. Said respondent, among other things, has been engaged and is presently engaged in the business of selling and distributing various publications including magazines and paperback books which are published by independent publishers under

copyrighted titles. Respondent's total sales of publications during the period from January 1, 1960, through June 30, 1961, exceeded $26,000,000.

Said respondent has acted and is now acting as national distributor for the publications of several independent publishers. As national distributor, respondent has performed and is now performing various services for the benefit of such publishers including the taking of purchase orders and the distributing, billing and collecting for such publications from customers. Respondent has also participated and now participates in the negotiations of various promotional and display arrangements with the retail customers of the publishers it represents.

While dealing with the customers of the publishers it represents in its capacity as national distributor, respondent has served and is now serving as a conduit or intermediary for the sale, distribution, and promotion of publications published by said publishers.

PAR. 2. In its capacity as national distributor for publications of various independent publishers, respondent is in charge of the newsstand sales of all such publications. Respondent has distributed and now distributes such publications to retail outlets through local wholesalers. These local wholesalers have served and are now serving as conduits or intermediaries for the sale, distribution and promotion of the publications for which respondent serves as national distributor.

PAR. 3. Respondent 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 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 including magazines and paperback books sold to them by 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.

PAR. 5. As an example of the practices alleged herein, respondent Kable News Company 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 build-

ings. 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 said respondent. Among the favored customers receiving payments in 1960, and during the first 6 months of 1961, which were not offered to other competing customers in connection with the purchase and sale of said respondent's publications were:

	Approximate Amount Received	
Customer:	*1960*	*1961 (Jan.–June)*
Airport Canteen, Chicago, Ill	$804.09	$529.77
Fred Harvey, Chicago, Ill	3,178.23	1,302.32
Interstate Hosts, Los Angeles, Calif	2,413.03	2,804.24
Greyhound Post Houses, Forest Park, Ill	4,656.87	1,751.35
ABC Vending Corp., Long Island City, N.Y	3,030.93	1,189.19
Union News Co., New York, N.Y	23,044.62	11,532.58

In the year 1960, respondent paid a total of $42,787.32 to recipients located in the cities of New York, New York; Boston, Massachusetts; Philadelphia, Pennsylvania; Chicago, Illinois and Washington, D.C.

Respondent made such payments to its favored customers on the basis of individual negotiations. Among such 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 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 Kable News Company, 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 16 South Wesley Avenue, in the city of Mount Morris, 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 Kable News Company, 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 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 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 its 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 Kable News Company, 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.