

IN THE MATTER OF
GUY J. BANTA DOING BUSINESS AS CAL-A-MO
LABORATORIES

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3185. Complaint, July 23, 1937—Decision, Jan. 18, 1939

Where an individual engaged in sale and distribution of reducing preparation under name of "Cal-A-Mo Reducing Bath" to purchasers in State of California and in various other States and in District of Columbia in substantial competition with others engaged in sale of reducing preparations among the various States and in said District of Columbia; in advertising his said product in newspapers of general circulation and through advertising folders and matter printed and circulated throughout the various States and through radio broadcasts:

- (a) Represented that his said product was a reducing preparation which contained ingredients that would get rid of excess fat and that by means thereof the user would be enabled to bathe off excess fat or float fat away and that it dissolved fat and penetrated the pores of the skin so as to cause loss thereof and reduction in weight, and that it was harmless in all cases, through such statements, among others, as "The safe way to reduce," "A healthful, harmless way to bathe off excess fat," "The equivalent of a reducing bath in the famous European spas," "Penetrates your pores and reaches your excess fat," etc; facts being said product contained no ingredients which would get rid of excess fat, it was not a reducing preparation, and did not prove harmless in all cases, and claims and representations made by it as above indicated were false, misleading, and untrue.
- (b) Represented, through use of words "Cal-A-Mo Laboratories" in his trade name and advertising matter, to members of the purchasing public that he owned, operated, or maintained a laboratory for the manufacture, experimentation, or testing of his aforesaid "Cal-A-Mo Reducing Bath" product, facts being said preparation was not made by him but by a drug company and after purchase removed by him from the original package and repackaged and labeled for sale through department and drug stores and drug jobbers.

With effect of misleading a substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and with result that public, acting under mistaken and erroneous belief induced by such false and misleading statements and representations, purchased substantial volume of his aforesaid preparation and trade was unfairly diverted to him from his competitors who truthfully advertise and represent the place of manufacture of their product to the injury of competition in commerce:

Held, That such acts and practices were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition.

Before *Mr. Charles P. Vicini*, trial examiner.

Mr. Reuben J. Martin for the Commission.

Mr. Lee Roy Brigham, of Los Angeles, Calif., for respondent.

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COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Guy J. Banta, an individual trading and doing business under the name and style of "Cal-A-Mo Laboratories," has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Said respondent Guy J. Banta is an individual trading and doing business under the name and style of "Cal-A-Mo Laboratories" with his office and principal place of business located at 706 South Hill Street, in the city of Los Angeles, within the State of California. Said respondent is now, and for more than 1 year last past, has been engaged in the sale of a reducing preparation under the name of "Cal-A-Mo Reducing Bath," and in the distribution thereof between and among the various States of the United States. Respondent causes said reducing preparation when sold by him, to be transported to the purchasers thereof located in the State of California, in various other States of the United States, and in the District of Columbia. There is now, and for more than 1 year last past has been, a constant current of trade and commerce by respondent in said reducing preparation between and among the various States of the United States and the District of Columbia. In the course and conduct of his business, the said respondent is now, and for more than 1 year last past has been in substantial competition in commerce between and among the various States of the United States and in the District of Columbia with various other individuals, firms, partnerships, and corporations likewise engaged in the sale of reducing preparations.

PAR. 2. Said reducing preparation "Cal-A-Mo Reducing Bath," is a preparation composed of epsom salts, oil pine cones, oil white pine, and chamomile flowers, and is intended to be placed in the bath. It is manufactured for said respondent by the Brunswig Drug Co., of Los Angeles, Calif., and is purchased by said respondent from the said Brunswig Drug Co. Said respondent causes the said preparation "Cal-A-Mo Reducing Bath" to be removed from the original package in which it is purchased by him, and the said preparation is then packaged and labeled by said respondent, and sold by said respondent through various department stores, drug stores, and drug jobbers.

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PAR. 3. In the regular course and conduct of his said business as hereinbefore set out, in paragraph 1, said respondent has been and now is engaged in extensive advertising as a means of furthering and aiding in the interstate sale and distribution of his said reducing preparation "Cal-A-Mo Reducing Bath." As media of advertising, said respondent has used, and is now using, newspapers of interstate circulation located in various cities throughout the United States, broadcasts over radio stations with interstate transmission and pamphlets, circulars, and folders distributed with the said product "Cal-A-Mo Reducing Bath." All of said advertisements were and are intended by said respondent, Guy J. Banta, trading and doing business under the name and style of "Cal-A-Mo Laboratories" to be read by the general public and in particular by the purchasers of reducing preparations and to cause and induce said purchasers to buy the reducing preparation "Cal-A-Mo Reducing Bath" sold and distributed by said respondent.

PAR. 4. Said respondent in his said advertisement of the reducing preparation known as "Cal-A-Mo Reducing Bath" and sold by him, has made and is now making various false, deceptive, and misleading statements concerning said preparation. Among the said statements which said respondent has used and is now using in his advertisements in newspapers, pamphlets, and in radio broadcasts are the following:

1. The safe way to reduce.
2. The safe road to slenderness.
3. A healthful, harmless way to bathe off excess fat.
4. Cal-A-Mo is the equivalent of a reducing bath in the famous European spas.
5. Let the soothing, medicinal ingredients of Cal-A-Mo float fat away.
6. Your fat slowly dissolves under the medicinal action of Cal-A-Mo Reducing Bath.
7. You can lose from 2 to 5 lbs. or more from one bath without endangering your health.
8. You don't have to diet—you don't have to take any medicines—you don't have to take vigorous exercises.
9. There are actually thousands of men and women who have reduced weight easily and quickly with Cal-A-Mo.
10. Guaranteed safe reducing treatment.
11. Cal-A-Mo Reducing Bath penetrates your pores and reaches your excess fat.
12. Cal-A-Mo Laboratories.

The above statements, together with many other similar statements of like import made by the said respondent in his said advertisements in newspapers, pamphlets, and in radio broadcasts, are false, deceptive, and misleading because in truth and in fact, said "Cal-A-Mo Reducing Bath" is not a reducing preparation, contains

no ingredients which will get rid of excess fat, and its use will not prove harmless in all cases.

Said respondent, Guy J. Banta, in the regular course and conduct of his said business, trades under the name of "Cal-A-Mo Laboratories" and advertises as "Cal-A-Mo Laboratories" whereas in truth and in fact, said respondent does not own, operate, nor maintain any laboratory for the manufacture, experimentation with, or testing of, the said product "Cal-A-Mo Reducing Bath" and does not manufacture nor test the said product, but simply packages and labels the said preparation which is bought by him in bulk.

PAR. 5. The use by the said respondent, Guy J. Banta, trading and doing business under the name and style of "Cal-A-Mo Laboratories," of the foregoing false, deceptive, and misleading representations alleged to be used by the said respondent in paragraph 4 hereof, have had and do now have the capacity and tendency to mislead and deceive the public into the erroneous and untrue belief that said respondent is engaged in truth and fact in the manufacture of a reducing preparation known as "Cal-A-Mo Reducing Bath" and maintains a laboratory for the purpose of manufacturing, experimenting with, and testing his said product, and that his said product "Cal-A-Mo Reducing Bath" is in truth and in fact, a safe, efficient, and harmless preparation, the use of which will effectively result in the reduction in weight and the loss of excess fat by the user thereof, and has thereby induced and does now induce the consuming public and especially that portion of the public using reducing preparations, acting in said erroneous belief to purchase "Cal-A-Mo Reducing Bath" in preference to reducing preparations offered for sale by manufacturers and other distributors of reducing preparations who do not falsely, deceptively, and misleadingly advertise their said products. As a result of such false, deceptive, and misleading representations on the part of said respondent, trade has been diverted to respondent from such manufacturers and distributors of reducing preparations who do not falsely, deceptively, and misleadingly advertise their respective products, and thereby injury has been done and is being done by the said respondent.

PAR. 6. Said false, deceptive, and misleading representations of said respondent contained in his advertising have resulted in injury to respondent's competitors and to retail dealers and distributors and in prejudice to the buying public and constitute unfair methods of competition in commerce within the intent and meaning of section 3 of an Act of Congress approved September 26, 1914, and entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 23, 1937, issued, and on July 27, 1937, served its complaint in this proceeding upon respondent, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Guy J. Banta, is an individual, trading and doing business under the name and style of "Cal-A-Mo Laboratories," with his office and principal place of business located at 706 South Hill Street in the city of Los Angeles, State of California. Respondent is now, and for more than 1 year last past has been engaged in the sale and distribution of a reducing preparation under the name of "Cal-A-Mo Reducing Bath," in commerce between and among the various States of the United States.

The product, "Cal-A-Mo Reducing Bath," when sold, is transported by respondent from his office and place of business in the State of California to the purchasers thereof located at various points in the State of California and in various other States of the United States and in the District of Columbia.

There is now, and has been, since the time respondent started selling his product, a course of trade and commerce by respondent in said product between and among the various States of the United States and in the District of Columbia.

Respondent is now, and has been, in substantial competition in commerce with various other individuals, firms, partnerships, and corporations likewise engaged in the sale of reducing preparations between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, for the purpose of inducing individuals to purchase the product "Cal-A-Mo," has caused advertisements to be inserted in newspapers of general circulation throughout the United States, and has printed and circulated throughout the various States advertising folders and literature. Respondent has also made use of radio broadcasts in advertising said product.

Among the statements which respondent used in his advertising in newspapers, pamphlets, and over radio broadcasts are the following:

The safe way to reduce.

The safe road to slenderness.

A healthful, harmless way to bathe off excess fat.

Cal-A-Mo is the equivalent of a reducing bath in the famous European spas.

Let the soothing, medicinal ingredients of Cal-A-Mo float fat away.

Your fat slowly dissolves under the medicinal action of Cal-A-Mo Reducing Bath.

You can lose from 2 to 5 lbs. or more from one bath without endangering your health.

You don't have to diet—you don't have to take any medicines—you don't have to take vigorous exercises.

There are actually thousands of men and women who have reduced weight easily and quickly with Cal-A-Mo.

Guaranteed safe reducing treatment.

Cal-A-Mo Reducing Bath penetrates your pores and reaches your excess fat. Cal-A-Mo Laboratories.

Respondent, by use of the name "Cal-A-Mo Laboratories" in his trade name and in his advertising matter, represents to members of the purchasing public that he either owns, operates, or maintains a laboratory for the manufacture, experimentation, or testing of the product "Cal-A-Mo Reducing Bath."

PAR. 3. Respondent's product is a preparation composed of Epsom salts, oil pine cones, oil white pine, and chamomile flowers and is used externally in a bath.

The product is manufactured for respondent by the Brunswick Drug Co., of Los Angeles, Calif.

Respondent causes the said preparation, "Cal-A-Mo Reducing Bath" to be removed from the original package in which it is purchased by him and the preparation is then packaged and labeled by respondent. Respondent sells the product through various department stores, drug stores, and drug jobbers.

PAR. 4. The statements and representations made by respondent, as hereinabove set forth, in his advertising, literature, in newspapers and in catalogs and other advertising media are false, misleading, and untrue.

In truth and in fact, respondent's product "Cal-A-Mo Reducing Bath" is not a reducing preparation. The product contains no

ingredients which will get rid of excess fat, and use of the product does not prove harmless in all cases.

Use of the product will not enable an individual to "bathe off excess fat" or "float fat away."

The product does not dissolve fat when used in the manner prescribed by respondent. The product does not penetrate the pores of the skin in such a manner as to cause loss of fat or to reduce weight.

In truth and in fact, respondent does not own and operate or maintain a laboratory for the manufacture, experimentation, or testing of the product "Cal-A-Mo Reducing Bath."

PAR. 5. There are among the competitors of respondent, individual firms, partnerships, and corporations likewise engaged in the business of distributing and selling in interstate commerce reducing preparations who truthfully advertise their products.

Each and all of the false and misleading representations made by respondent in his advertising in newspapers, circulars, pamphlets, and over the radio, in offering for sale and selling his product, had, and now has the tendency and capacity to and does mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true.

Acting under the mistaken and erroneous beliefs induced by the false and misleading statements and representations herein referred to, the public has purchased a substantial volume of respondent's product, with the result that trade has been unfairly diverted to respondent from his competitors who truthfully advertise their products.

CONCLUSION

The aforesaid acts and practices of respondent are all to the injury and prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Guy J. Banta, individually and trading and doing business under the name and style of Cal-A-Mo Laboratories, or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a pharmaceutical preparation designated "Cal-A-Mo" or any other preparation composed of like or similar ingredients or having the same properties under whatever name sold, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that Cal-A-Mo is a reducing preparation containing ingredients which will get rid of excess fat or that by the use of Cal-A-Mo the user will be enabled to bathe off excess fat or float fat away.

2. Representing that Cal-A-Mo dissolves fat or that it penetrates the pores of the skin in such a manner as to cause loss of fat and reduction in weight, or that Cal-A-Mo contains any ingredient which has a medicinal or therapeutic value or effect in reducing weight or contains any ingredient which affects the metabolism of fat.

3. Representing that the use of Cal-A-Mo is harmless in all cases.

4. Representing, by the use of the word "Laboratories" or any other term of similar meaning or like import as a part of his trade name, or in any other manner, that he owns, operates, or maintains a laboratory for the purpose of manufacturing, testing, or experimenting with his said preparation Cal-A-Mo until and unless he actually owns and operates or directly and absolutely controls a laboratory for said purposes.

5. Making any other similar representations of like import or effect as to the therapeutic or medicinal value of said preparation Cal-A-Mo or the benefits accruing from the use thereof.

It is further ordered, That the respondent Guy J. Banta, an individual trading and doing business under the name and style of Cal-A-Mo Laboratories, shall within 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 hereinabove set forth.

IN THE MATTER OF
CARTER CARBURETOR CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AND OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3279. Complaint, Apr. 5, 1938¹—Decision, Jan. 18, 1939

Where a corporation engaged in manufacture and sale of carburetors and carburetor parts for use in the automobile industry, and which—

1. Constituted one of the two largest manufacturers of carburetors in the United States, with more than 90 percent of passenger cars produced in the year 1937 equipped with its product or that of other concern;

2. Sold and distributed its said products through some 66 regional distributors to whom it granted exclusive territory covering, in the aggregate, the entire United States, some 86 zone distributors, 900 to 1,000 contract service stations, and about 6,000 service stations (a) equipped with cabinets and expert personnel (and supplied by it with a large amount of service and sales bulletins, charts, catalog sheets, and trade information of great value to it in the conduct of its business), and necessary for the effective servicing, both of equipment and "after market" sale of the highly complicated mechanism involved, and customarily maintained for such purposes by manufacturers, generally, of such devices, for the adequate servicing of which the average general garage and automotive dealer is not equipped with necessary parts, training or personnel, and which (b), prior to the below-mentioned acts and practices, were free, in accordance with general custom of such stations, to handle a variety of makes and thus be able to care for the needs of different models of the same manufacturer and various models of different manufacturers, as occasion arose;

Following the acceptance by one of the large automotive manufacturers of a competitive carburetor as equipment on one of the popular and widely sold models made by it, and which was beginning to emerge as the carburetor chiefly competitive with its own, and to the handling of which by its said stations it had not theretofore objected—

- (a) Mailed to all its distributors, contract service stations, cabinet stations, and sales service personnel, its General Bulletin No. 134, notifying service stations that if they took on "a new carburetor line" without its written approval, preferential discount and service information (theretofore extended along with special training in service and repair of carburetors and engine tune-up), and its contract, if any, would be discontinued by its distributor, and instructed its field representatives to insist on enforcement of policy stated as aforesaid, and to see that distributors carried out same, and to aid latter in so doing, and to check on service stations with respect to whether they were handling a new line, so defined as to include competitive carburetor above referred to, and announced that "our outlets must choose" between its own and said competitive carburetor, and that "until they make up their minds twenty-five percent (its standard trade discount) will be their discount," and in the meantime suspended all contracts and special discounts;

¹ Amended.

- (b) Sent a "confidential" bulletin to all regional and zone distributors requesting them to call on all its service stations handling the competitive device or line referred to above, and stating that if they kept "the other line" after a shortly ensuing date specified "mailings to them would be discontinued," and its said contracts, if any, with them would lapse and standard trade discounts referred to would then apply, and thereupon, through its field representatives, distributors, and distributors' salesmen, did call upon service stations and notified and continued to inform them that policy stated in bulletin above set out would be enforced, and told stations found to be handling competing new line that they could not continue to carry same and retain their preferential discount and their contract, if any, with it, and asked them to notify them in writing that they had discontinued such competing line and returned their stock:
- (c) Commenced to contact and seek out, through its field representatives and distributors, service stations through whom distributors thereof, in accordance with usual practice, had entered into sales agreements with a view to developing the after market business of the manufacturer of said increasingly competing line, and informed such stations that if they continued to deal in such particular competitive products they would no longer be permitted to purchase its own at a favorable discount and would cease to receive from its service bulletins and information, and that their contracts, in the case of the contract service stations, would be cancelled, and carried out policy set forth in its aforesaid General Bulletin and "confidential" bulletin, and cancelled contracts with, and reduced discounts available to, some 19 service stations refusing to discontinue dealing in the competitive products before referred to, and in some instances offered service-station privilege of purchasing its products at a more favorable discount than it was then receiving upon condition that it sever its connection with said competitor, while threatening to reduce discount if service stations would not do so;

With the result that, as a consequence of such concerted action by it, its field representatives and distributors, the independent carburetor and ignition stations throughout the country were given choice of losing privilege of handling on favorable terms carburetor which was standard equipment on a majority of automobiles in use and which furnished large part of their carburetor service business, or of giving up new carburetor line which was standard equipment on only a few cars and which, even as to those, had not been in the field long enough to require any substantial amount of service, and that, confronted with such alternatives, many service stations throughout the country cancelled their contracts with the manufacturer of said competitive line, returned their stock, or ceased to deal therein, and, in substantial number, severed their official connection therewith or returned its stock, or both, and, in some cases in which they did not return the stock of said competitor after receiving aforesaid General Bulletin, refrained thereafter from displaying or advertising said competitor's products as service stations contracting with said competitor had undertaken to do, and prominently, by the terms of their sales contracts with it, as well as to maintain mechanical equipment efficiently to service product of said competitor, and kept competitor's stock out of sight and ceased to promote sale thereof; and

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- (d) Entered into or renewed contracts for the sale of its products with more than 900 service stations on the condition or understanding that the purchasers thereof should not use or deal in the goods of a competitor or competitors of it, and fixed the prices charged for its products and discounts from such prices to approximately 7,000 service stations on the condition or understanding that the purchasers thereof should not use or deal in the goods of a competitor or competitors of it, and made such contracts and fixed such prices and imposed such condition and understanding in the course and conduct of its after market interstate business;

With the result that the effect of the contracts and conditions or understandings aforesaid had been and might be to substantially lessen competition and tend to create a monopoly in the sale and distribution of carburetors and carburetor parts in interstate commerce, and effect of its above-described acts and practices was to induce, coerce, and compel a large number of automobile service stations throughout the United States to cease and refuse to deal in or purchase products of competitor aforesaid, and to cancel or violate existing sales agreements with such competitor, and of thereby closing to it a substantial number of actual and potential service stations for its products, diverting business and trade from it and preventing such service stations from selling and dealing in a full line of standard carburetors and parts:

Held, That the sending and giving of such notices, information, and threats, and the taking of such action thereafter and thereunder, and the entering into such contracts and the fixing of such prices, etc., as hereinbefore described, constituted a violation and continued violation of section 3 of Clayton Act, and that its acts and practices as above set forth and indicated were to the prejudice of the public and competitors and constituted unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Before *Mr. John W. Addison*, trial examiner.

Mr. Cyrus B. Austin for the Commission.

Mr. Noah A. Stancliffe and *Mr. George T. Barker* of Hardy, Stancliffe & Hardy, of New York City, *Mr. George R. Erickson*, of St. Louis, Mo. and *King & King*, of Washington, D. C., for respondent.

AMENDED COMPLAINT

Pursuant to the provisions of an Act of Congress, approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act, the Federal Trade Commission having reason to believe that Carter Carburetor Corporation, the respondent above named, has violated the provisions of section 3 of said act; and pursuant also to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," commonly known as the Federal Trade Commission Act,

the Commission having reason to believe that the said Carter Carburetor Corporation has been using unfair methods of competition in commerce, as "commerce" is defined in said Act of Congress; and it appearing that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint stating its charges in such respects as follows:

I

PARAGRAPH 1. The respondent, Carter Carburetor Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 2820-56 North Spring Avenue, St. Louis, Mo.

PAR. 2. Respondent is engaged in the manufacture, distribution, and sale, among other things, of carburetors and carburetor parts for use in the automotive industry. In the course and conduct of its business respondent transports the said products, or causes the same to be transported, from the State and place of their manufacture or location, to its customers and purchasers thereof located in other States of the United States and the District of Columbia; and respondent is, and at all times herein mentioned has been, engaged in trade and commerce in said products between the State where respondent or said products are located and other States of the United States.

PAR. 3. Respondent distributes and sells its said products for use, consumption, or resale within the United States and the District of Columbia, in the same territories and places as, and in substantial competition with, various other persons and corporations engaged in the manufacture, distribution, and sale of carburetors and carburetor parts in commerce between and among the several States.

PAR. 4. Commerce in the sale and distribution of carburetors has two main divisions: First, the sale of carburetors to automobile manufacturers for use as original equipment; second, the sale of carburetors and carburetor parts for replacement and repair of original equipment. Respondent supplied more than 50 percent of carburetors used as original equipment in automobile production for 1937 and with one other manufacturer, supplied more than 95 percent of the carburetors so used.

The replacement and repair business is carried on chiefly by independent automobile service stations, electrical and carburetor repair shops and garages (hereinafter collectively referred to as "service stations") throughout the United States. Respondent sells its products to wholesalers, known as distributors, who contact and sell to the service stations in their respective territories. Said distributors

generally handle only respondent's line of carburetors, are under contract with respondent, and are subject to the control and instructions of respondent in the distribution and terms of sale of respondent's products. Respondent also maintains direct contact with service stations through a staff of field representatives and through dissemination of literature. Respondent's distributors and the service stations handling its products are competitively engaged in the resale of such products, at wholesale and retail, in the various territories and places where said customers, respectively, carry on their business.

PAR. 5. Respondent has entered into contracts, now in force, for the sale and governing the terms of sale of respondent's products, with more than 900 independent automobile service stations throughout the United States. Respondent's distributor servicing the territory in which the service station is located is also a party to such contract. The service stations holding said contracts are for the most part shops specializing in carburetor and electrical service and repair, with special equipment and mechanics specially trained for that work, and doing a large part of the carburetor service and repair business in their respective localities. Pursuant to the terms of said contracts, the service station receives a discount of 50 percent from list prices on carburetors and carburetor parts purchased thereunder, as against lesser discounts available to other service stations and to the retail trade generally. Said contracts generally run for a period of 1 year, subject to renewal, and subject to cancellation by any party on 30 days' notice. The power of respondent and its distributors arbitrarily to terminate such contracts on short notice and the relative importance of respondent's products in the automotive industry tend to make the service stations subservient to respondent's wishes and will as to the conduct of their business; and a large proportion are in truth subservient, lest they lose the benefit of said contracts and the preferential discount available thereunder.

PAR. 5-A. In addition to the above-mentioned contract service stations, respondent's said products are dealt in and carried in stock by approximately 6,000 so-called general cabinet service stations located throughout the United States. Said general cabinet service stations are not under contract with the respondent, but purchase respondent's said products at a discount of 40 percent from list price from respondent's distributors and receive directly from the respondent and from its distributors valuable service and sales bulletins and information.

PAR. 6. It is and has been the accepted trade practice of service stations specializing in automobile carburetor replacements and

repairs to carry a complete line of all carburetors and parts sold or used as original equipment on current makes and models of automobiles so that they can make replacements or repairs on any automobile that may be brought to them for such service. Maintenance of such trade practice is in the interest and to the mutual advantage of the service stations and the public. On or about April 1, 1937, respondent inaugurated, has since actively pursued, and is now engaged in enforcing and maintaining, a policy and practice whereby it refuses to enter into, renew or continue the above-described service station contracts, or to grant or continue said preferential discounts (discounts in excess of 25 percent from list price) to service stations which sell or deal in carburetors and carburetor parts manufactured and placed on the market by a competitor or competitors of respondent not engaged in said business prior to June 23, 1934. One or more of respondent's competitors mentioned in paragraph 3 hereof have engaged in business and placed their carburetor products on the market since that date, distributing and selling a substantial amount of said products both to automobile manufacturers for original equipment and to service stations and shops for replacement and repair. Respondent, by printed bulletins, correspondence, personal calls by its field representatives, and through its distributors, has notified all service stations holding said carburetor sales contracts and all its general cabinet service stations that it and its distributors will reduce the discounts available to said service stations to 25 percent, discontinue service information, and terminate such contracts if the service station continues or commences to sell or deal in the said products of such competitor or competitors. The same policy has been and is being enforced as to service stations seeking new contracts with respondent. Respondent has required its distributors to aid and assist in the enforcement of this policy in their respective territories. Respondent and its distributors have terminated their contracts with certain service stations refusing to accept such conditions, and respondent has instructed its distributors thereafter to allow to such service stations only the 25 percent trade discount. The purpose and result of this policy and practice has been to persuade, intimidate, and coerce many service stations to cancel similar carburetor sales contracts with such competitor or competitors, to discontinue dealing in and selling the products of such competitor or competitors, and to refuse to deal in or purchase the products of such competitor or competitors.

PAR. 7. Each of the two divisions of the carburetor business described in paragraph 4 hereof is dependent upon and necessary to

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the maintenance of the other. The ability of a manufacturer to sell its carburetors to an automobile manufacturer for original equipment depends to a large extent upon a showing that its carburetors and parts are handled by service stations throughout the United States so that owners of cars equipped therewith can obtain satisfactory service. Respondent is a dominant factor in this industry, controlling a large part of the original equipment business. Its policy and practices herein complained of have the effect not only of persuading and coercing service stations to cease or refuse to handle the products of a competitor or competitors, thereby lessening competition in the repair and replacement field, but the consequence of such effect is to impair the marketability of the products of such competitor or competitors for use as original equipment, regardless of the intrinsic merit of the product itself. Said policy and practices are designed to preserve to respondent (and to its single major competitor in the original equipment field, against whom said practices are not directed) the bulk of the business in original equipment and, therefore, in the industry.

PAR. 8. By and pursuant to the policy and practices above described, respondent has made its said service station carburetor sales contracts subject to the condition, and is making and continuing such contracts and making sales thereunder in the course of its said business on the condition and with the agreement or understanding, that the service station purchasers of its products shall not use, sell, or deal in the carburetor products of a certain competitor or competitors of respondent. The effect of such contracts and sales, and such condition, agreement, or understanding, may be to substantially lessen competition or tend to create a monopoly in the distribution and sale of carburetors and carburetor parts in trade or commerce among the several States and such contracts and sales are, therefore, unlawful and in violation of the provisions of section 3 of said Clayton Act.

PAR. 9. Pursuant to and in furtherance of the policy and practices above described, respondent in the course of its said business has fixed a price for its said products and has fixed a discount from such price, available to a substantial class of purchasers of such products upon the condition, agreement, or understanding that such purchasers shall not use, sell, or deal in the carburetor products of a certain competitor or competitors of respondent. The effect of such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in the distribution and sale of carburetors and carburetor parts in trade or commerce among the several States, and the fixing of such price and discount therefrom upon such condition, agreement, or understanding is, therefore, unlawful and in violation of the provisions of section 3 of said Clayton Act.

II

PARAGRAPH 1. Paragraphs 1 to 6, inclusive, of charge I hereof are hereby adopted and made a part of this charge as fully and with the same effect as though here set forth at length.

PAR. 2. Pursuant to and in furtherance of its policy and practices hereinbefore described, respondent, directly and through its distributors, has induced, coerced, and compelled, and has endeavored to induce, coerce, and compel, a substantial number of independent automobile service stations throughout the United States holding or seeking contracts with respondent, or receiving or seeking to obtain a preferential discount in the purchase of respondent's products, to cancel existing carburetor sales contracts between such service stations and a certain competitor or competitors of respondent and to cease and refrain from dealing in and selling the carburetor products of such competitor or competitors. As a means of such inducement, coercion, and compulsion respondent has threatened to withdraw and deny, and in some cases has withdrawn or denied, the benefits of its service station contract and preferential price discount, requiring such service stations either to discontinue existing business relations with such competitor or competitors or forfeit the opportunity to purchase and sell respondent's products on favorable terms. Thereby respondent closes to such competitor or competitors in the distribution and sale of carburetors and carburetor parts a substantial number of actual and potential service station outlets valuable to the consuming public.

PAR. 3. The tendency and effect of the policy methods and practices above complained of is and has been to hinder and lessen competition in the distribution and sale of carburetors and carburetor parts throughout the United States; to obstruct, hamper, and interfere with the normal and natural flow of trade and commerce in such products; to injure those of respondent's competitors against whom said policy is directed by unfairly diverting business and trade from them and depriving them thereof; to prevent a substantial number of service stations from handling and selling a full line of carburetors and parts, to their prejudice and injury; all to the prejudice and injury of the public. Said policy, methods, and practices constitute unfair and unlawful methods of competition within the meaning of section 5 of the aforesaid Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, and the Clayton Act (U. S. Code, title 15, sections 14 and 45) the

Findings

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Federal Trade Commission, on April 5, 1938, issued and served its amended complaint in this proceeding upon respondent, Carter Carburetor Corporation, charging it with violation of section 3 of the Clayton Act and with the use of unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act. Thereafter, hearings were held and evidence was introduced by Cyrus B. Austin, attorney for the Commission, and by Noah A. Stancliffe, George T. Barker, and George R. Ericson, attorneys for respondent, before John W. Addison, trial examiner theretofore duly appointed by the Commission. Thereupon this proceeding regularly came on for final hearing before the Commission on said complaint and briefs and oral arguments of counsel on behalf of Commission and respondents, and the Commission having duly considered the same and being now fully advised in the premises finds that this proceeding is in the public interest and makes its findings as to the facts and conclusions drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Carter Carburetor Corporation, is a Delaware corporation, organized in 1925 with factories and principal offices located at 2820-56 North Spring Avenue, St. Louis, Mo. It is engaged in the business of manufacturing and selling, chiefly, carburetors and carburetor parts for use in the automobile industry. It is the successor of Carter Carburetor Co., a corporation which was engaged in the same business from 1909 to 1921 when it went into bankruptcy.

PAR. 2. The respondent and Bendix Products Corporation are the two largest manufacturers of automobile carburetors in the United States. More than 90 percent of the passenger cars produced in the United States in 1937 were equipped with Carter or Bendix (Stromberg) carburetors. Other carburetors adopted by automobile manufacturers as standard equipment on recent models are Chandler-Groves, on Packard Six, Plymouth, standard model, Lincoln-Zephyr and part of Ford; Marvel on Graham, part of Nash and part of Buick and Tillotson on Willys. Zenith Carburetor Co. is a subsidiary of Bendix and makes carburetors for replacement use on practically all makes of passenger cars and also truck carburetors.

PAR. 3. Carter carburetors were standard equipment on 60 percent of 1937 passenger cars and trucks and on more than half of all passenger cars and trucks sold for 3 years prior to 1937. Respondent's carburetors were standard equipment on 1937 and 1938 models of Chevrolet, Pontiac, Oldsmobile, LaSalle V-8, DeSoto, Hudson, Terraplane, and Reo; also Chrysler-Royal, Plymouth, DeLuxe Model,

Cadillac V-16, Dodge trucks, and some Studebaker cars and trucks. About 70 percent of the Carter carburetors used on Chevrolets are manufactured by the Chevrolet Co. in Bay City, Mich., under licenses from Carter. These are Carter carburetors and the parts are interchangeable with those manufactured by respondent. Respondent also makes and sells a number of carburetors which are designed for use in replacing carburetors of various makes and models on automobiles in use, such as the Universal, the Packard, and the Ford carburetors featured in its sales literature. Respondent sold 1,635,000 carburetors to automobile manufacturers in 1937 for use as standard equipment.

PAR. 4. Trade and commerce in carburetors has two principal branches: First, the sale of carburetors to automobile manufacturers for original equipment of automobiles; second, the sale of carburetors and parts for replacement and service of carburetors in use, commonly referred to as "after-market" business. The acts and practices of respondent complained of have been in connection with the after-market branch of its business, but competition in the original equipment field as well is affected. Respondent's dollar volume of sales in the two branches is in the ratio of about 5 to 2, so that its after-market business amounts to a little less than 30 percent of the total. Respondent sold more than 103,000 replacement carburetors in 1937 in the after-market field, the list prices of such carburetors ranging from \$10 to \$28 each; and the volume of the after-market business was greatly increased by the sale of parts.

PAR. 5. The after-market business in the service of carburetors of a new manufacturer entering the field is at first relatively small and takes 2 or 3 years to develop in any volume, because a carburetor ordinarily does not require replacement or repair during the first year or more of use. On recent models little service is required until after the car has been driven from 12,000 to 14,000 miles. In the early stages of respondent's business, after-market sales amounted to only 5 percent of its total volume. Nevertheless, service-station distribution is necessary at the start so that parts or new carburetors will be available if something goes wrong, and also to be able to assure the automobile manufacturer proper warranty service will be given on the carburetors.

PAR. 6. The carburetor manufacturer customarily warrants his carburetor to the automobile manufacturer to be free from defect of material or workmanship in normal use and service, for the warranty period of the automobile (generally 90 days or 4,000 miles). Respondent has an agreement with practically all of its customers that warranty service will be given, and that repairs during the warranty

period will be taken care of by respondent's service stations and distributors without expense to the automobile maker.

PAR. 7. Most automobile makers desire and rely on the carburetor maker's retail outlets for warranty service and, after the warranty period, for service supplemental to that given by automobile dealers. The automobile dealers also rely on the service stations for a ready supply of carburetor parts for making repairs. Such service can be given by a carburetor maker only through a wide service-station distribution of its products, and the availability of such service is considered by most automobile makers (except Ford and possibly Chevrolet) to be a very important factor in connection with the approval of standard equipment. Lists of "official service stations" are issued by equipment manufacturers and distributed by automobile manufacturers to their dealers for the purpose of making this service available to the dealers and car owners.

PAR. 8. The business of servicing, replacing, and repairing automobiles and automobile equipment is carried on in large part by about 60,000 independent service stations and garages located throughout the United States (not including automobile dealers). Seven thousand or more of these service stations specialize in the service of electrical equipment and carburetors. Practically all stations so specializing carry and sell respondent's products, its products being handled by about 6,000 general cabinet stations and more than 900 contract service stations, as hereinafter described.

PAR. 9. Modern carburetors are complicated mechanisms, respondent's carburetors comprising some 150 to 175 parts. Competent carburetor service requires special equipment and training not possessed by the ordinary garage and garage mechanic or by many automobile dealers. For this reason the 7,000 specialized service stations above referred to handle a great bulk of the carburetor service business and the remaining 53,000 or more independent repair shops are chiefly garages not specializing in, and in most cases not giving, carburetor service.

PAR. 10. It is the established custom of the specialized carburetor and ignition stations to offer service on all makes and models of automobiles in current use and to carry in stock and deal in various competing lines of standard equipment in use on such automobiles, so that service can be given on any car that may be driven in. Most service stations originally specializing in the service of electrical equipment have since taken on carburetor service. The larger and better-equipped service stations now carry practically all lines of such equipment standard on automobiles, and have contracts with

competing manufacturers. A specialized carburetor service station must stock more than one line of carburetors, because the average automobile driver does not know the make of carburetor he has on his car, and different models of the same make of car may carry different carburetors.

PAR. 11. Respondent's original distributors had for years previously been specialized ignition service stations. The great majority of stations now dealing in respondent's products carried other carburetor lines before taking on respondent's line, and still deal in and give service on one or more competing carburetors. Respondent's is one of the newer carburetors in the automotive field, although it has succeeded in acquiring the bulk of the desirable equipment accounts.

PAR. 12. For many years it has been the custom for manufacturers of electrical equipment and carburetors, and their distributors, to enter into contracts with the larger independent service stations throughout the country governing the sale of their products, requiring the service station to carry a stock of the manufacturer's equipment and parts and providing for the price to be paid or discounts to be received by the service station. These contract service stations are known as official service stations of the equipment manufacturer, and are used as service references by the automobile manufacturer.

PAR. 13. Although respondent had some service-station distribution prior to 1927 it did not begin to enter the service field on a large scale until 1930, when it began to sell a general parts cabinet to stations throughout the country. Service stations which have purchased and maintained these cabinets now number about 6,000, are referred to as "general cabinet" stations, and are allowed a discount of 40 percent on purchases of respondent's products, as against respondent's general trade discount of 25 percent.

PAR. 14. In 1932, respondent commenced to enter into service-station contracts, as above described, offering such contracts in many cases to stations already handling Stromberg or other competing carburetors. Respondent now has between 900 and 1,000 official contract service stations (in addition to the 6,000 general cabinet stations), located in the larger towns, cities, and trading areas throughout the United States. These contracts provide that the service station shall receive a discount of 50 percent (in some cases 50 and 10 percent) from list price on purchases of respondent's products and that service station shall sell and exchange such products at prices and discounts "recommended" by respondent. Such contracts also provide that the service station shall give the warranty service above described and certain advertising services. The parties to such contracts are the

respondent, the regional distributor, and the service station. Said contracts are made for a period of 1 year, subject to renewal and subject to cancellation by any party on 30 days' notice.

PAR. 15. Respondent sells and ships its carburetors and carburetor parts f. o. b. St. Louis, to distributors or wholesalers of automotive equipment located in the various States of the United States, who are also under contract with respondent. Regional distributors (66) receive a discount of 60 and 10 percent, and are granted exclusive territory covering in the aggregate the entire United States. Thirty of said regional distributors have territory located in more than one State. Zone distributors (86) may purchase at 60 percent discount for shipment either direct from St. Louis or from the regional distributor.

PAR. 16. Both regional and zone distributors' contracts provide that the distributor shall sell respondent's products at prices and discounts specified by respondent, and respondent, in practice, fixes the prices and discounts at which said distributors sell such products. List prices are published in respondent's catalog. The catalog list prices are the prices used by the distributors and service stations as a basis for the purchase and sale of Carter carburetors and parts.

PAR. 17. Contract service stations purchase from distributors f. o. b. the distributor's city, but parts cabinets are generally shipped to the service station directly from St. Louis, and occasionally other shipments are so made at the distributor's request. General cabinet stations may purchase either from the distributor or a contract service station, at the prices fixed by respondent. Sales to contract service stations constitute the major part of the distributors' sales of respondent's products.

PAR. 18. Respondent has a large mailing list, including all contract and general cabinet service stations and their personnel, and mails to said stations and personnel from time to time, a large amount of service and sales bulletins, charts, catalog sheets, and trade information. This literature is very valuable to the service station in the conduct of its business.

PAR. 19. Respondent employs a staff of 19 field representatives who travel in the field and call upon distributors and service stations, maintaining direct contact between respondent and service stations located throughout the country. The country is divided into four districts, each under the supervision of a district manager, who supervises the work of the field representatives in his district. Respondent conducts short training courses at various distribution points, and a school at its factory in St. Louis, where many service-station mechanics have

received special training in the service and repair of carburetors, and in engine tune-up.

PAR. 20. On or about April 1, 1937, respondent mailed to all its distributors, contract service stations, cabinet stations, and sales-service personnel, its General Bulletin No. 134, notifying the service stations "that if you take on a new carburetor line without our written approval, preferential discount, service information, and Carter contract, if any, will be discontinued by the Carter distributor." A new carburetor was defined as a carburetor made only since the publication of respondent's Bulletin No. 77, which was dated June 23, 1934. Said Bulletin No. 77 was issued only to respondent's distributors, its gist being that if the distributor took on a competing line of carburetors, he could not expect to hold his Carter representation on an exclusive territorial basis. General Bulletin No. 134 is still in effect.

PAR. 21. The manager of respondent's parts and service division instructed respondent's field representatives to insist on the enforcement of the policy stated in Bulletin No. 134, and told them to see that the distributors carried out such policy, and to aid the distributors in carrying it out. He also told them to check up on the service stations that they might visit to see whether the service station was handling a new line of carburetors. On April 5, 1937, he sent a telegram to one of his field representatives in Michigan announcing the issuance of Bulletin No. 134, and stating that "our outlets must choose between Chandler-Groves and Carter" and "until they make up their minds twenty-five percent will be their discount," and in the meantime "suspending all contracts and special discounts." Distributors were to be notified. Copies of this telegram were sent to all of respondent's field men.

PAR. 22. Under date of April 7, 1937, a "confidential" bulletin was sent to all regional and zone distributors requesting them to call on all service stations handling the Chandler-Grove carburetor line, and stating that if service stations kept "the other line" after May 1, "mailings to them would be discontinued" and their Carter contracts, if any, would lapse. The standard trade discount of 25 percent would then apply.

PAR. 23. Thereupon, respondent's field representatives, distributors, and distributors' salesmen called upon the service stations and notified them, and thereafter continued to inform them, that the policy stated in Bulletin No. 134 would be enforced. Service stations found to be handling a new competing line of carburetors were told that they could not continue to carry that line and retain their preferential discount and their Carter contract, if they held such contract, and were asked

to notify respondent in writing that they had discontinued the competing line and returned their stock.

PAR. 24. There appear to be three carburetors which have been made only since June 23, 1934—Chandler-Groves, Mallory, and Fish. Of these, Chandler-Groves is the only one which has been adopted as standard equipment on automobiles. Chandler-Groves carburetors and parts were manufactured by Chandler-Groves Co., a Michigan corporation organized in 1935, with offices and factory in Detroit. Chandler-Groves Co. is a wholly owned subsidiary of Holley Carburetor Co. of Detroit, a concern which has for many years manufactured electrical equipment, and formerly carburetors, for the Ford Motor Co. and other automobile manufacturers. After December 31, 1937, Chandler-Groves Co. ceased to do business, and since that time Chandler-Groves carburetors have been manufactured and sold by Holley Carburetor Co. through Chandler-Groves distributors and service stations.

PAR. 25. In addition to carburetors, the Chandler-Groves Co. at first attempted to develop car heaters, inlet manifolds, fuel pumps, and various other automotive devices. Eventually it developed a single-barrel carburetor of the concentric type. Carburetors of that type in use in 1936 were made chiefly by respondent, whereas Bendix Products Corporation manufactured chiefly carburetors of the duplex or double-barreled type. For that reason, during 1936 and 1937, Chandler-Groves Co.'s competition was mainly with respondent.

PAR. 26. In 1936, Chandler-Groves carburetors were adopted for use as standard equipment on Packard Six and Plymouth PT-50 (truck). In 1937, Chandler-Groves became standard equipment on Plymouth standard model passenger car and, late in the year, was adopted for Lincoln-Zephyr and for a part of Fords. In addition to the foregoing, Chandler-Groves was used on several Dodge and DeSoto export models and on the Chrysler industrial engine. The great majority of the carburetors produced by Chandler-Groves Co. have been for Plymouth and Packard.

PAR. 27. Adoption of the Chandler-Groves carburetor by Plymouth was announced by Chandler-Groves in a bulletin dated March 10, 1937. Previously, all Plymouth passenger cars had been equipped with Carter carburetors. Respondent received a copy of this Chandler-Groves bulletin a short time before respondent issued its General Bulletin No. 134. Prior to that time, respondent had not objected to its service stations handling Chandler-Groves along with other competing lines.

PAR. 28. In developing its after-market business, Chandler-Groves Co. followed the usual service station contract plan hereinabove

described and, prior to April 1, 1937, had entered into sales agreements with a large number of independent service stations in various parts of the United States specializing in electrical and carburetor service. In soliciting these contracts, the Chandler-Groves distributors approached the larger and better-equipped service stations in their respective territories. The Chicago distributor contacted Auto-Lite (electrical equipment) service stations, and the Philadelphia distributor was also an Auto-Lite distributor and was already selling various kinds of electrical equipment to these service stations. The stations thus contracting with Chandler-Groves were established service stations carrying various lines of automotive equipment, and the great majority of them dealt in the products of respondent and other carburetor manufacturers, many of them being holders of respondent's service station contracts.

PAR. 29. About April 1, 1937, respondent, its field representatives and distributors, commenced to contact and seek out said Chandler-Groves service stations and informed them that, if they continued to deal in Chandler-Groves products, they would no longer be permitted to purchase respondent's products at a favorable discount, would cease to receive service bulletins and information from respondent, and in the case of respondent's contract service stations, that such contracts would be canceled. Respondent's instructions to its distributors and field representatives, as indicated by its said General Bulletin No. 134 and its confidential bulletin under date of April 7 have been and are being carried out. Respondent has carried out this policy to the extent of canceling its contracts with and reducing the discounts available to some 19 service stations refusing to discontinue dealing in Chandler-Groves products. In some instances, respondent offered the service station the privilege of purchasing respondent's products at a more favorable discount than the station was then receiving, upon condition that the service station sever its connection with Chandler-Groves, at the same time threatening to reduce the discount if the service stations would not do so.

PAR. 30. As a result of this concerted action by respondent, its field representatives, and its distributors, the independent carburetor and ignition stations throughout the country were given a choice of losing the privilege of handling on favorable terms the carburetor which was standard equipment on a majority of automobiles in use and which furnished a large part of their carburetors service business, or of giving up a new carburetor line which was standard equipment on only a few cars, which, even as to those, had not been in the field long enough to require any substantial amount of service. Confronted with these alternatives many service stations throughout

the country canceled their contracts with Chandler-Groves, returning their Chandler-Groves stock or ceased to deal in Chandler-Groves products. In a few cases the service stations refused to comply with conditions imposed by respondent, but these were mostly Chandler-Groves distributors (wholesalers dealing in respondent's products only on a service station basis). In the 10 months after April 1, 1937, a substantial number of service stations in various parts of the country severed their official service station connection with Chandler-Groves or returned their Chandler-Groves stock, or both. A large majority of these cancelations and returns occurred in April and May 1937.

PAR. 31. About 55 service stations in the Chicago, Milwaukee, Detroit, and Philadelphia areas canceled their Chandler-Groves contracts after April 1, 1937, and in most cases returned their Chandler-Groves stock or ceased to purchase additional stock. After April 1, 1937, the efforts of the distributors in these areas to obtain new Chandler-Groves service-station representation met with little success and many service stations assigned opposition by respondent as the reason for their refusing to sign contracts or purchase stock. The Chicago distributor obtained about 40 service-station contracts for Chandler-Groves prior to April 1, 1937, and only about 10 thereafter; of the 50 contracts obtained, only half were still in force in February 1938, the other half having been canceled by the service stations. None of these cancelations occurred prior to April 1, 1937.

PAR. 32. Of 50 service stations in the Philadelphia area which held Chandler-Groves contracts during all or part of 1937, 36 which did not cancel such contracts purchased an average of \$104 worth of Chandler-Groves products per station during the period of April to December of that year. Fourteen stations which canceled their contracts purchased a net total of \$18 worth of Chandler-Groves merchandise during the same period. While there was very little demand for Chandler-Groves products during the first 3 months of 1937, the 14 stations which later canceled their contracts purchased slightly more per station from January to March than the other 36 stations.

PAR. 33. By the terms of the sales contracts between Chandler-Groves Co. and service stations, the service stations agreed "to prominently display the advertising material of the vendor and to maintain mechanical equipment to efficiently service the product of the vendor." The sale of carburetors is promoted by the display of stock and advertising material. Some service stations did not return their Chandler-Groves stock after receiving respondent's Bulletin No. 134,

but nevertheless refrained thereafter from displaying or advertising Chandler-Groves products, kept such stock out of sight, and ceased to promote the sale thereof.

PAR. 34. Respondent has entered into or renewed contracts for the sale of its products with more than 900 service stations on the condition or understanding that the purchasers thereof shall not use or deal in the goods of a competitor or competitors of respondent.

PAR. 35. Respondent has fixed the prices charged for its products and discounts from such prices, to approximately 7,000 service stations, on the condition or understanding that the purchasers thereof shall not use or deal in the goods of a competitor or competitors of respondent.

PAR. 36. Respondent has made such contracts, fixed such prices, and imposed such condition and understanding, in the course and conduct of its after-market, interstate business.

PAR. 37. The effect of the contracts and the condition or understanding mentioned in paragraph 34 hereof, and of the condition or understanding mentioned in paragraph 35 hereof, has been and may be to substantially lessen competition and tend to create a monopoly in the sale and distribution of carburetors and carburetor parts in interstate commerce.

PAR. 38. The effect of the respondent's above-described acts and practices has been to induce, coerce, and compel a large number of automobile service stations throughout the United States to cease and refuse to deal in or purchase the products of Chandler-Groves Co. and to cancel or violate existing Chandler-Groves sales agreements. Respondent has thereby closed to a competitor a substantial number of actual and potential service station outlets for its products, has diverted business and trade from such competitor, and has prevented such service stations from selling and dealing in a full line of standard carburetors and parts.

CONCLUSIONS

1. By its acts and practices described in paragraphs 20, 21, 22, 23, 29, 34 and 35 of the foregoing "Findings as to the Facts," the respondent, Carter Carburetor Corporation, has violated and is violating section 3 of the Clayton Act.

2. The aforesaid acts and practices of the respondent have been and are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Order

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint, the answer of the respondent, the testimony taken and evidence introduced at hearings before a trial examiner theretofore duly appointed by the Commission, and upon briefs and oral argument of counsel for the Commission and for the respondent, and the Commission having duly considered the same and being of the opinion that the respondent has violated and is violating the provisions of section 3 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act), and the Commission further being of the opinion that the respondent has been and is using unfair methods of competition prohibited by an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (the Federal Trade Commission Act), and having made its report stating its findings as to the facts;

It is ordered, That the respondent, Carter Carburetor Corporation, and its officers, representatives, agents, and employees, in connection with the distribution, sale, and offering for sale of carburetors and carburetor parts in interstate commerce or in the District of Columbia, do forthwith cease and desist:

1. From directly or indirectly making or renewing contracts for the sale of such products to automotive vehicle service stations or other retail dealers on the condition or understanding that such purchasers thereof shall not use or deal in the goods or merchandise of a competitor or competitors of respondent.

2. From directly or indirectly fixing prices for such products, or discounts from such prices, charged or allowed or to be charged or allowed to automotive vehicle service stations or other retailer purchasers thereof on the condition or understanding that such purchasers shall not use or deal in the goods or merchandise of a competitor or competitors of respondent.

3. From directly or indirectly informing or notifying automotive vehicle service stations or other retail dealers in such products, or causing any of them to be informed or notified, that if they use or deal in such products of a competitor or competitors of respondent they will be required to pay a higher price for such products of respondent's manufacture, or will cease to receive service information from respondent, or their service station contracts will be terminated.

4. From requiring or causing any distributor or zone distributor of its products, or other wholesale dealer therein, to do any of the

acts or engage in any of the practices forbidden by paragraphs 1, 2, or 3 hereof; and from requiring or causing any such distributor or wholesaler to charge or threaten to charge a higher price for such products of respondent's manufacture to any purchaser thereof than would be charged if such purchaser did not deal in the goods of a competitor of respondent, or to terminate the service station contract of, or refuse to sell such products to, any automotive vehicle service station or other retailer using or dealing in the goods of a competitor or competitors of respondent.

5. From directly or indirectly inducing or attempting to induce any automotive vehicle service station or other dealer in such products to cease or refuse to deal in such products of a competitor of respondent, or to terminate or violate any contract between such service station or dealer and a competitor of respondent.

It is further ordered, That the respondent, Carter Carburetor Corporation, within 60 days after service upon it of this order, shall file with the Commission a report in writing setting forth in detail the manner and form in which it has complied and is complying with this order.

IN THE MATTER OF
THE ROSS ROY SERVICE, INC., AND KELVINATOR
CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3125. Complaint, May 8, 1937—Decision, Jan. 19, 1939

Where a corporation engaged in compilation of statistical data for use of manufacturers in advertising their respective products and in sale and distribution, in commerce among the various States, of books and literature containing such statistical data to manufacturers and dealers of products to which same apply, in substantial competition with others engaged in business of compilation, sale, and distribution of such data; in consideration of payment of sum of \$11,000 by, and in pursuance of agreement entered into with, second concern engaged in manufacture, sale, and distribution of electrical refrigerators to purchasers in the various States in substantial competition with others engaged in manufacture, sale, and distribution in commerce of such products—

Published, sold, and distributed to some 5,000 dealers and distributors of said concern's refrigerators and at the request of said concern and with its aid, assistance, encouragement, knowledge, acquiescence, and cooperation (1) "Comparative Handbook" in which, thus titled and put out under the name of said corporation it described itself as "An independent organization in no way affiliated with any manufacturer" and the book as an "accurate unbiased source of information," and in which were set forth data theretofore submitted to and approved by said concern relating in part to weight, cabinet, ice capacity, finish, hardware, insulation, temperature, mechanical action, economy, and dependability of mechanical refrigerators made and sold by various companies in the United States with schedules making comparisons between refrigerators of aforesaid concern and those of its competitors shown in red type in every case where one had an advantage over the other in the opinion of said corporation; and (2) bulletins designated as "Confidential" and devoted to publication of statistics, illustrations, and discussion respecting and concerning the merits and demerits of one make of refrigerator and comparison thereof with that of aforesaid concern;

Facts being said handbook and comparisons therein made were not "accurate, authoritative, and unbiased" but on the contrary were biased, inaccurate, and unauthoritative; it was not published entirely independent of all manufacturers but said corporation was subsidized as above set forth by aforesaid concern, refrigerators of equal size and capacity and selling value were not always used in the various tables and comparisons in said handbook and bulletins, and comparisons of temperature, hardware, finish, conveniences, cabinet, compressor and condenser units, insulation, cost of operation, and number of ice cubes frozen per hour, and number of kilowatts used per hour in rooms of various degrees of temperature were erroneously shown in handbook as in favor of the refrigerator made and sold by aforesaid subsidizing concern;