

Syllabus

IN THE MATTER OF
UNITED STATES RUBBER COMPANY AND U. S. TIRE
DEALERS CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSECS. (a) AND (d) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED
OCT. 15, 1914.

Docket 3685. Complaint, Jan. 6, 1939—Decision, Apr. 25, 1939

Where a corporation which was engaged chiefly in producing, manufacturing, distributing, and selling rubber and rubber products of many kinds, including automotive vehicle tires, i. e., casings and tubes, directly and through certain wholly owned or controlled subsidiary corporations, some of which, in turn, owned or controlled, through voting stock ownership, still other operating companies, and which, together with its various subsidiaries, was one of the four largest manufacturers of tires in the United States, selling and distributing its tires, directly and through its subsidiaries, in competition with others engaged in manufacture and sale of such products, to and through, principally, (1) manufacturers of automotive vehicles using tires for original equipment and spares, (2) certain wholesalers, mail order houses, and retail store chains for whom tires were made by it and who resold same under their own private brands or trade-marks, and (3) wholesale and retail tire dealers and service stations numbering many thousands and located in many cities and towns throughout the United States; and operations of which various wholesalers, mail order houses, retail store chains, and wholesale and retail tire dealers and service stations, as above set forth, were competitive in resale by said wholesalers, mail order houses, and chains of said tires purchased from it and its subsidiaries under private brands or trade-marks in competition with other dealers selling tires of said corporation and subsidiaries under their own brands, and also, in some places, in resale of its said products at retail between customers purchasing such tires as "distributors" (and service stations of oil companies purchasing as "distributors") and "service station dealers" and other retailers purchasing tires from said corporation and subsidiaries or their distributors—

(a) Discriminated in price between certain mail order houses and chain stores and other purchasers, through sale to such mail order houses and chains of large quantities of tires bearing the brands, markings, and designs specified, respectively, by said purchasers, at prices different and lower than the prices charged and allowed by it to other purchasers of its tires of like grade and quality bearing its own brands, and under contracts entered into with such mail order houses and chains, by whom tires thus purchased by them and bearing their own brands, markings, and designs were resold and offered for resale throughout the United States or in large territories therein, in substantial competition with other dealers in tires manufactured by it under its own brands, and by other manufacturers;

With the result that effect of such discrimination in price had been and might be substantially to lessen competition and to create a monopoly of the line of commerce in which it and its subsidiaries were engaged, and in line of commerce in which purchasers from it, as above set forth, were engaged, and to

injure, destroy and prevent competition with it and its manufacturing subsidiaries and with mail order houses and chain store customers in question, in sale, and distribution of such products; and

Where said corporation, and subsidiary engaged chiefly in distribution and sale of rubber products, including tires made by said corporation and by other corporations owned or controlled by it, and which distributed to tire jobbers, distributors, and dealers at wholesale and at retail and, at least prior to January 1, 1939, through company-owned stores, such tires, and merchandising and pricing policies of which subsidiary were determined, dictated, and controlled by said corporation, and which had same president, secretary, treasurer, and comptroller as did such corporation—

- (b) Discriminated in price between certain large purchasers of tires bearing their brands and other purchasers of their tires, through contracts entered into for sale of their said tires at prices different and lower, after deducting amounts of various discounts, commissions, and rebates not allowed to all purchasers, than the prices charged and allowed by them for tires of same grade and quality to other customers whose purchases or requirements were smaller in amount than those of such dealers, oil companies and others with whom they entered into such contracts, and who, knowingly receiving benefit of such discriminations, competed in many places and territories in resale of their said tires at retail and to commercial accounts with other customers of said corporation and subsidiary, who did not receive benefits of such lower net prices, and vendee or service stations of which oil companies resold such tires at retail in many localities in competition with tire dealers purchasing directly from said corporation and subsidiary and their customers;

With result that effect of such discrimination in price had been and might be substantially to lessen competition and tend to create a monopoly in the line of commerce in which said corporation and subsidiary were engaged, and to injure, destroy, and prevent competition with them and with their customers receiving the benefit of such discrimination, and with the customers of their customers aforesaid who had knowingly received benefit thereof;

- (c) Discriminated in price between certain purchaser users and consumers of tires, including so-called commercial accounts, and other retail purchasers for tires of same grade and quality, through selling former at prices different and lower than prices charged latter through retail stores which they owned and operated in certain of the principal cities in the United States, in competition with other retail tire dealers in their respective sales territories;

With result that effect of such discrimination in price had been and might be substantially to injure, destroy, and prevent competition with them in the retail distribution and sale of tires in the sales territories in which their company-owned stores were located:

Held, That such varying prices or price differentials, as hereinabove referred to, did not make only due allowance for differences in cost of manufacture, sale, or delivery resulting from differing methods or quantities in which tires were sold or delivered by them, or either of them, to the purchasers respectively involved, and that said corporation, and said corporation and its aforesaid subsidiary, by discriminating in price between different purchasers of tires of like grade and quality, as hereinabove set forth, violated subsection (a) of section 2 of the Clayton Act as amended; and

Where said corporation and its subsidiary—

- (d) Paid and contracted to pay to certain oil companies to which they sold large quantities of tires, and which (1), while principally engaged in distribution and sale of oil and petroleum products, were also engaged in sale of automobile equipment and accessories, (2) marketed tires thus purchased chiefly through oil and gasoline stations which they either owned and operated or leased to the operators, and (3) were permitted thus to purchase tires from said corporation and subsidiary on terms, as to trade, functional, quantity, and volume discounts allowed, at least as favorable as the best terms accorded by said corporation and subsidiary to wholesale tire dealers, certain discounts or "overriding" commissions, which commissions were paid as compensation and in consideration for services furnished by such oil companies in connection with sales and involving exercise of influence and the giving of merchandise and assistance by said oil companies in securing such customers and sales for said corporation and subsidiary, and which "overriding" commissions were in addition to the allowance of the discounts above referred to and applied to sales made by said corporation and its subsidiary to more than 2,800 service stations, widely distributed throughout the greater part of the United States, and were not available on proportionally equal terms to other customers of said corporation and subsidiary competing with said oil companies in the distribution of such tires:

Held, That such payments and contracts to pay to those engaged in distribution and sale of oil and petroleum products, and purchasing such tires from said corporation or its subsidiary, on sales by either said corporation or subsidiary to operators of gasoline stations and jobbers selling products distributed and sold by those engaged in distribution of oil and petroleum products, etc., as above set forth, as compensation, or in consideration, for any services furnished by or through them in connection with sale or offer of casings and tubes or tires manufactured, sold or offered by either said corporation or subsidiary, and not made available on proportionally equal terms to all other customers of said corporation and subsidiary competing with said oil companies in distribution of such tires, constituted violation of subsection (d) of section 2 of the Clayton Act as amended.

Mr. Cyrus B. Austin for the Commission.

Arthur, Dry & Dole, of New York City, for respondents.

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" (U. S. C. title 15, sec. 13, the Clayton Act), as amended, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the above-named respondents, and each of them, have violated the provisions of subsections (a) and (d) of section 2 of said act, as amended, hereby issues its complaint stating its charges in that respect as follows:

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PARAGRAPH 1. Respondent United States Rubber Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with principal office and place of business located at 1790 Broadway, New York, N. Y. Said respondent is engaged chiefly in the business of producing, manufacturing, distributing, and selling rubber and rubber products of many kinds, including automotive vehicle tire casings and tubes (hereinafter referred to as "tires"). Said business was formerly carried on by said respondent directly under its own name, but since 1935 said respondent has produced, manufactured, distributed, and sold said products chiefly by and through certain wholly owned (or controlled through 100 percent voting stock ownership) subsidiary corporations, some of which in turn own or control through voting stock ownership still other operating companies.

PAR. 2. The principal operating subsidiary of respondent United States Rubber Co. engaged in the manufacture and sale of tires is United States Rubber Products, Inc. (hereinafter referred to as "Products Corporation"), a Delaware corporation organized (under a different name) in 1928. All of the capital stock of said corporation is owned by said respondent. Its principal office is located in said respondent's office building at 1790 Broadway, New York City, and the presidents, first vice presidents, secretaries, treasurers, and comptrollers, respectively, of the two companies are the same persons. Most of the tires manufactured and sold by said respondent in the United States are manufactured and sold by it through and by the instrumentality of said Products Corporation. The production, merchandising, and pricing policies of said Products Corporation are determined, dictated, and controlled by said respondent.

PAR. 3. Respondent owns all of the capital stock of Meyer Rubber Co., a corporation. Meyer Rubber Co. owns approximately 63 percent of the voting stock of Gillette Rubber Co. (hereinafter referred to as "Gillette"), a Wisconsin corporation with principal office located at Eau Claire in that State. Meyer Rubber Co. also owns all of the voting stock of the Samson Corporation (subject to the right of holders of the Samson Corporation 6 percent noncumulative preferred stock to vote when no dividends have been paid for more than 1 year, which right, when in effect, reduces the voting power held by Meyer Rubber Co. to about 58 percent). Meyer Rubber Co. and the Samson Corporation own about 98 percent of the voting stock of Samson Tire and Rubber Corporation (hereinafter referred to as "Samson"), a Delaware corporation with principal office located in Los Angeles, Calif. Both Gillette and Samson are engaged in the business of manufacturing and selling tires. Respondent United

States Rubber Co., through the exercise of voting power held as above stated, has the power to and does determine, dictate, and control the production, merchandising, and pricing policies of Gillette and of Samson.

PAR. 4. Respondent U. S. Tire Dealers Corporation (hereinafter referred to as "Dealers Corporation") is a corporation organized in 1936 and existing and doing business under and by virtue of the laws of the State of Delaware, with principal office located at 1790 Broadway, New York, N. Y. All of the capital stock of said respondent is owned by respondent United States Rubber Co. Said Dealers Corporation is an operating subsidiary of United States Rubber Co., being engaged chiefly in the distribution and sale of rubber products, including tires, manufactured by other corporations owned or controlled by United States Rubber Co. Tires are distributed and sold by said Dealers Corporation to tire jobbers, distributors, and dealers (both wholesalers and retailers), through company-owned stores, and to consumers. The merchandising and pricing policies of said Dealers Corporation are determined, dictated, and controlled by respondent United States Rubber Co.; and the presidents, secretaries, treasurers, and comptrollers, respectively, of said respondents are the same persons.

PAR. 5. Respondent United States Rubber Co., together with its said subsidiaries, is one of the four largest manufacturers of tires in the United States. The three principal outlets to and through which said respondent, through its subsidiaries, sells and distributes its tires are (1) manufacturers of automotive vehicles using tires for original equipment and spares, (2) certain wholesalers, mail order houses, and retail store chains for whom tires are manufactured by respondent and who resell the same under their own private brands or trade-marks, (3) wholesale and retail tire dealers and service stations, numbering many thousand, located in many cities and towns throughout the United States. Sales to such tire dealers of tires bearing respondents' brands are made by respondent Dealers Corporation pursuant to "distributor sales agreements" and "service station dealer sales agreements," entered into from year to year, which provide that tires will be sold to the distributor or dealer at the prices shown in said respondents' current price list known as "United States Prices," less certain trade, functional, quantity, and volume discounts.

PAR. 6. In the course and conduct of their respective businesses said respondents, and each of them (United States Rubber Co. through its said subsidiaries), transport tires, or cause the same to be transported from the places where such tires are manufactured or stored to their customers and purchasers thereof located in other

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States of the United States and the District of Columbia; and there is and has been at all times herein mentioned a current of trade and commerce in respondents' tires between the States wherein respondents' factories or warehouses are located and various other States of the United States. Said tires are sold by said respondents for use, consumption, or resale within the United States and the District of Columbia.

PAR. 7. Respondents distribute and sell tires in the same territories and places as, and in competition with, various other persons and corporations engaged in the manufacture and sale of tires. Through the stores owned and operated by respondent Dealers Corporation in some 20 cities in the United States, respondents compete in the sale of tires with independent wholesale and retail tire dealers doing business in the same sales territories. The wholesalers, mail order houses, and retail store chains which purchase tires from respondent United States Rubber Co. and its subsidiaries under private brands or trade-marks resell such tires in many parts of the United States in competition with other tire dealers selling United States brands of tires. Competition also exists in many places in the resale of respondents' tires at retail between customers purchasing such tires as "distributors" (and service stations of oil companies which purchase as distributors), and "service station dealers" and other retailers purchasing tires from respondents or their distributors.

PAR. 8. In the course and conduct of its interstate business above described, respondent United States Rubber Co., through its subsidiaries Products Corporation, Gillette, and Samson, sells and has sold large quantities of tires to Montgomery Ward & Co., Inc., Atlas Supply Co., Western Auto Supply Co., Western Auto Supply Agency of Los Angeles, and Arkansas Fuel Oil Co., bearing brands, markings, and designs specified, respectively by said purchasers. Each of said purchasers resells such tires, and offers the same for resale, throughout the United States or in large territories therein, in substantial competition with other dealers in tires manufactured by said respondent under its own brands and by other manufacturers. Said respondent has since June 19, 1936, sold such special brand tires to said named purchasers, respectively, and has entered into contracts with each of them for the sale of such tires, at prices different and lower than the prices charged and allowed by it to other purchasers of its tires of like grade and quality bearing its own brands. By so doing respondent has discriminated in price between each of said named purchasers and other purchasers of its tires.

PAR. 9. The effect of the discrimination in price described in paragraph 8 hereof has been and may be substantially to lessen competi-

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tion and tend to create a monopoly in the line of commerce in which respondent United States Rubber Co. and its subsidiaries are engaged, and in the line of commerce in which the purchasers from respondent named in said paragraph 8 are engaged; and to injure, destroy, and prevent competition with said respondent and its manufacturing subsidiaries, and with their said named customers, in the sale and distribution of tires.

PAR. 10. Respondents in the course and conduct of their said business since June 19, 1936, have sold tires bearing respondents' brands to different purchasers at substantially differing prices resulting from the allowance to some purchasers of various discounts, commission, and/or rebates which have not been allowed to all purchasers. Respondents sell, have sold, and have entered into contracts for the sale of their tires to certain dealers, oil companies, and others purchasing such tires in large quantities or volume at prices different and lower (after deducting the amounts of such discounts, commissions, and rebates) than the prices charged and allowed by them for tires of the same grade and quality to other customers whose purchases or requirements are smaller in amount. By so doing respondents have discriminated in price between such large purchasers and other purchasers of their tires. Said large purchasers have knowingly received the benefit of such discrimination. In many places and territories said large dealers compete in the resale of respondents' tires at retail and to commercial accounts with others of respondents' customers not receiving the benefit of such lower net prices; and service stations operated by or purchasing such tires from said oil companies resell the same at retail in many localities in competition with tire dealers purchasing directly from respondents and with their customers.

PAR. 11. The effect of the discrimination in price described in paragraph 10 hereof has been and may be substantially to lessen competition and tend to create a monopoly in the line of commerce in which respondents are engaged, and to injure, destroy, and prevent competition with respondents and with their customers receiving the benefit of said discrimination and with the customers of respondents' said customers who have knowingly received the benefit of said discrimination.

PAR. 12. In the course and conduct of their said business respondents have offered for sale and sold their tires, since June 19, 1936, through retail stores owned and operated by respondents in 20 or more of the principal cities in the United States. In the conduct of such business said stores are engaged in competition with other retail tire dealers in their respective sales territories. Through said stores respondents have sold and offered to sell tires to certain users and consumers there-

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of, including so-called "commercial accounts," at prices different and lower than the prices charged other retail purchasers for tires of the same grade and quality, thereby discriminating in price between such purchasers.

PAR. 13. The effect of the discrimination in price described in paragraph 12 hereof has been and may be substantially to injure, destroy, and prevent competition with respondents in the retail distribution and sale of tires in the sales territories where their company-owned stores are located.

PAR. 14. In the course and conduct of their said business respondents have entered into contracts for the sale of their tires, which contracts are now in force, and have sold large quantities of such tires thereunder to certain corporations principally engaged in the distribution and sale of oil and petroleum products but also engaging in the sale of automobile equipment and accessories. The tires purchased by said oil companies are marketed by them chiefly through oil and gasoline stations either owned and operated by them or leased by them to the operators. Said oil companies purchase tires from respondents on terms, as to trade, functional, quantity, and volume discounts allowed, at least as favorable as the best terms accorded by respondents to wholesale tire dealers. Respondents have contracted for the payment and have paid to certain of said oil companies, since June 19, 1936, in addition to the allowance of the aforementioned discounts, a commission of $7\frac{1}{2}$ percent (formerly 5 percent on sales to jobbers) on sales of tires by respondents and their distributors to operators of oil stations and jobbers selling the petroleum products of said oil companies, as compensation and in consideration for the services of such oil companies in connection with such sales, where such sales are secured through the influence and merchandising assistance of said oil companies. Respondents have contracted to pay and have paid, and are now following the practice of paying such "overriding" commissions, amounting to substantial sums of money, to their following customers, among others: Socony-Vacuum Oil Co., Inc., and its operating subsidiaries and affiliates; American Oil Co.; Pan-American Petroleum Corporation; Tide Water Associated Oil Co. The said agreements for the payment of such commission to said named customers apply to sales made by respondents to more than 2,800 service stations widely distributed throughout the greater part of the United States. Such commission and the payment thereof in consideration for such services are not available on proportionally equal terms to all other customers of respondents competing with said oil companies in the distribution of such tires.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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," (the Clayton Act), as amended, the Federal Trade Commission, on January 6, 1939, issued its complaint against the above-named respondents and caused such complaint to be served as required by law, charging that said respondents were and had been discriminating in price between different purchasers from them of automotive vehicle tire casings and tubes of like grade and quality in interstate commerce, in violation of the provisions of section 2 (a) of said act, and had been paying commissions to certain of such purchasers for services furnished by them in connection with the sale of such tire casings and tubes, in violation of the provisions of section 2 (d) of said act.

Respondents duly filed their joint answer to said complaint, which answer admits all the material facts alleged in said complaint excepting the facts alleged in paragraph 2 thereof. As to paragraph 2 of the complaint, the answer alleges that United States Rubber Products, Inc., an operating subsidiary of respondent U. S. Rubber Co., was dissolved and wholly liquidated on or about December 31, 1938, and that said respondent United States Rubber Co., succeeded to the business theretofore carried on by United States Rubber Products, Inc., in the manufacturing and selling of automotive vehicle tire casings and tubes. Said answer further waives the taking of evidence and all other intervening procedure herein and consents that upon said complaint and answer an order be issued requiring said respondents to cease and desist from the acts and practices alleged in said complaint to be in violation of the provisions of said act.

This proceeding regularly coming on to be heard upon said complaint and answer, filing of briefs, and presentation of oral argument have been waived, the Commission, having duly considered the same and being fully advised in the premises, and being of the opinion that the respondents and each of them have been and are violating the provisions of subsections (a) and (d) of section 2 of the Clayton Act, now makes these its findings as to the facts:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent United States Rubber Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with principal office and place of business located at 1790 Broadway, New York, N. Y. Said respondent is engaged chiefly in the business of producing, manufacturing, dis-

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tributing, and selling rubber and rubber products of many kinds, including automotive vehicle tire casings and tubes (hereinafter referred to as "tires"). Said respondent produces, manufactures, distributes, and sells said products directly and through certain wholly owned or controlled subsidiary corporations, some of which in turn own or control through voting stock ownership still other operating companies.

PAR. 2. Prior to January 1, 1939, the principal operating subsidiary of respondent United States Rubber Co. engaged in the manufacture and sale of tires was United States Rubber Products, Inc., a Delaware corporation organized in 1928. All of the capital stock of said corporation was owned by said respondent and its principal office was located in said respondent's office building at 1790 Broadway, New York City. On or about December 31, 1938, said United States Rubber Products, Inc., was dissolved and wholly liquidated and respondent United States Rubber Co. succeeded to its business of manufacturing and selling tires.

PAR. 3. Respondent owns all of the capital stock of Meyer Rubber Co., a corporation. Meyer Rubber Co. owns approximately 63 percent of the voting stock of Gillette Rubber Co. (hereinafter referred to as "Gillette"), a Wisconsin corporation with principal office located at Eau Claire in that State. Meyer Rubber Co. also owns all of the voting stock of the Samson Corporation (subject to the right of holders of the Samson Corporation 6 percent noncumulative preferred stock to vote when no dividends have been paid for more than 1 year, which right, when in effect, reduces the voting power held by Meyer Rubber Co. to about 58 percent). Meyer Rubber Co. and the Samson Corporation own about 98 percent of the voting stock of the Samson Tire & Rubber Corporation (hereinafter referred to as "Samson"), a Delaware corporation with principal office located in Los Angeles, Calif. Both Gillette and Samson are engaged in the business of manufacturing and selling tires. Respondent United States Rubber Co., through the exercise of voting power held as above stated, has the power to and does determine, dictate, and control the production, merchandising, and pricing policies of Gillette and of Samson.

PAR. 4. Respondent U. S. Tire Dealers Corporation (hereinafter referred to as "Dealer Corporation") is a corporation organized in 1936 and existing and doing business under and by virtue of the laws of the State of Delaware, with principal office located at 1790 Broadway, New York, N. Y. All of the capital stock of said respondent is owned by respondent United States Rubber Co. Said Dealers Corporation is an operating subsidiary of United States Rubber Co., being engaged

chiefly in the distribution and sale of rubber products, including tires, manufactured by respondent United States Rubber Co. and by other corporations owned or controlled by United States Rubber Co. Tires are distributed and sold by said Dealers Corporation to tire jobbers, distributors, and dealers (both wholesalers and retailers), and, at least prior to January 1, 1939, through company-owned stores. The merchandising and pricing policies of said Dealers Corporation are determined, dictated, and controlled by respondent United States Rubber Co.; and the presidents, secretaries, treasurers, and controllers, respectively, of said respondents are the same persons.

PAR. 5. Respondent United States Rubber Co., together with its said subsidiaries, is one of the four largest manufacturers of tires in the United States. The three principal outlets to and through which said respondent, directly and through its subsidiaries, sells and distributes its tires are (1) manufacturers of automotive vehicles using tires for original equipment and spares, (2) certain wholesalers, mail order houses, and retail store chains for whom tires are manufactured by respondent and who resell the same under their own private brands or trade-marks, (3) wholesale and retail tire dealers and service stations, numbering many thousand, located in many cities and towns throughout the United States. Sales to such tire dealers of tires bearing respondents' brands are made by respondent Dealers Corporation pursuant to "distributor sales agreements" and "service station dealer sales agreements," entered into from year to year, which provide that tires will be sold to the distributor or dealer at the prices shown in said respondents' current price lists known as "United States Prices," less certain trade, functional, quantity, and volume discounts.

PAR. 6. In the course and conduct of their respective businesses said respondents, and each of them, transport tires, or cause the same to be transported, from the places where such tires are manufactured or stored to their customers and purchasers thereof located in other States of the United States and the District of Columbia; and there is and has been at all times herein mentioned a current of trade and commerce in respondents' tires between the States wherein respondents' factories or warehouses are located and various other States of the United States. Said tires are sold by said respondents for use, consumption or resale within the United States and the District of Columbia.

PAR. 7. Respondents distribute and sell tires in the same territories and places as, and in competition with, various other persons and corporations engaged in the manufacture and sale of tires. Through the stores owned and operated by respondent Dealers Corporation in various cities in the United States, respondents competed in the sale of

tires with independent wholesale and retail tire dealers doing business in the same sales territories. The wholesalers, mail order houses, and retail store chains which purchase tires from respondent United States Rubber Co. and its subsidiaries under private brands or trade-marks resell such tires in many parts of the United States in competition with other tire dealers selling United States brands of tires. Competition also exists in some places in the resale of respondents' tires at retail between customers purchasing such tires as "distributors" (and service stations of oil companies which purchase as distributors), and "service station dealers" and other retailers purchasing tires from respondents or their distributors.

PAR. 8. In the course and conduct of its interstate business above described, respondent United States Rubber Co., directly and through its subsidiaries Gillette and Samson (and prior to 1939 through United States Rubber Products, Inc.), sells and has sold large quantities of tires to Montgomery Ward & Co., Inc., Atlas Supply Co., Western Auto Supply Co., Western Auto Supply Agency of Los Angeles, and Arkansas Fuel Oil Co., bearing brands, markings, and designs specified, respectively by said purchasers. Each of said purchasers resells such tires, and offers the same for resale, throughout the United States or in large territories therein, in substantial competition with other dealers in tires manufactured by said respondent under its own brands and by other manufacturers. Said respondent has since June 19, 1936, sold such special brand tires to said named purchasers, respectively, and has entered into contracts with each of them for the sale of such tires, at prices different and lower than the prices charged and allowed by it to other purchasers of its tires of like grade and quality bearing its own brands. By so doing respondent has discriminated in price between each of said named purchasers and other purchasers of its tires.

PAR. 9. The effect of the discrimination in price described in paragraph 8 hereof has been and may be substantially to lessen competition and tend to create a monopoly in the line of commerce in which respondent United States Rubber Co. and its subsidiaries are engaged, and in the line of commerce in which the purchasers from respondent named in said paragraph 8 are engaged; and to injure, destroy, and prevent competition with said respondent and its manufacturing subsidiaries, and with said named mail order house and chain store customers, in the sale and distribution of tires.

PAR. 10. Respondents in the course and conduct of their said business since June 19, 1936, have sold tires bearing respondents' brands to different purchasers at substantially differing prices resulting from the allowance to some purchasers of various discounts, commissions,

and/or rebates which have not been allowed to all purchasers. Respondents sell, have sold, and have entered into contracts for the sale of their tires to certain dealers, oil companies, and others purchasing such tires in large quantities or volume at prices different and lower (after deducting the amounts of such discounts, commissions, and rebates) than the prices charged and allowed by them for tires of the same grade and quality to other customers whose purchases or requirements are smaller in amount. By so doing respondents have discriminated in price between such large purchasers and other purchasers of their tires. Said large purchasers have knowingly received the benefit of such discrimination. In many places and territories said large dealers compete in the resale of respondents' tires at retail and to commercial accounts with others of respondents' customers not receiving the benefit of such lower net prices; and service stations operated by or purchasing such tires from said oil companies resell the same at retail in many localities in competition with tire dealers purchasing directly from respondents and with their customers.

PAR. 11. The effect of the discrimination in price described in paragraph 10 hereof has been and may be substantially to lessen competition and tend to create a monopoly in the line of commerce in which respondents are engaged, and to injure, destroy, and prevent competition with respondents and with their customers receiving the benefit of said discrimination and with the customers of respondents' said customers who have knowingly received the benefit of said discrimination.

PAR. 12. In the course and conduct of their said business since June 19, 1936, and during the years 1936, 1937, and 1938, respondents have offered for sale and sold their tires through retail stores owned and operated by respondents in certain of the principal cities in the United States. In the conduct of such business said stores were engaged in competition with other retail tire dealers in their respective sales territories. Through said stores respondents sold and offered to sell tires to certain users and consumers thereof, including so-called "commercial accounts," at prices different and lower than the prices charged other retail purchasers for tires of the same grade and quality, thereby discriminating in price between such purchasers.

PAR. 13. The effect of the discrimination in price described in paragraph 12 hereof has been and may be substantially to injure, destroy, and prevent competition with respondents in the retail distribution and sale of tires in the sales territories where their company-owned stores are located.

PAR. 14. It does not appear from the facts before the Commission that the price differentials described in paragraphs 8, 10, and 12

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hereof make only due allowance for, and it is therefore found that said differentials do not make only due allowance for, differences in cost of manufacture, sale, or delivery resulting from differing methods or quantities in which tires are sold or delivered by said respondents, or either of them, to the purchasers described, respectively, in said paragraphs.

PAR. 15. In the course and conduct of their said business respondents have entered into contracts for the sale of their tires, which contracts are now in force, and have sold large quantities of such tires thereunder to certain corporations principally engaged in the distribution and sale of oil and petroleum products but also engaging in the sale of automobile equipment and accessories. The tires so purchased by said oil companies are marketed by them chiefly through oil and gasoline stations either owned and operated by them or leased by them to the operators. Said oil companies are permitted to purchase tires from respondents on terms, as to trade, functional, quantity, and volume discounts allowed, at least as favorable as the best terms accorded by respondents to wholesale tire dealers. Respondents have also contracted for the payment of and have paid to certain of said oil companies, since June 19, 1936, in addition to the allowance of the aforementioned discounts, a commission of 7½ percent (formerly 5 percent on sales to jobbers) on sales of tires by respondents and their distributors to operators of oil stations and jobbers selling the petroleum products of said oil companies. Said commission has been paid as compensation and in consideration for the services furnished by such oil companies in connection with such sales, the nature of such services being the exercise of influence and the giving of merchandising assistance by said oil companies in securing such customers and sales for respondents. Respondents have contracted to pay and have paid, and are now following the practice of paying such "overriding" commissions, amounting to substantial sums of money, to their following customers, among others: Socony-Vacuum Oil Co., Inc., and its operating subsidiaries and affiliates; American Oil Co.; Pan-American Petroleum Corporation; Tide Water Associated Oil Co. The said agreements for the payment of such commissions to said named customers apply to sales made by respondents to more than 2,800 service stations widely distributed throughout the greater part of the United States. Such commissions and the payment thereof in consideration for such services are not available on proportionally equal terms to all other customers of respondents competing with said oil companies in the distribution of such tires.

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CONCLUSIONS

The Commission concludes:

1. That respondent United States Rubber Co., by discriminating in price between different purchasers of tires of like grade and quality as set forth in paragraph 8 of the foregoing findings, has violated and is violating subsection (a) of section 2 of the Clayton Act, as amended.

2. That respondents United States Rubber Co. and U. S. Tire Dealers Corporation, and each of them, by discriminating in price between different purchasers of tires of like grade and quality as set forth in paragraph 10 and in paragraph 12 of said findings, have violated and, as to the discrimination set forth in said paragraph 10, are violating subsection (a) of subsection 2 of the Clayton Act as amended.

3. That respondents United States Rubber Co. and U. S. Tire Dealers Corporation, and each of them, by engaging in the acts and practices described in paragraph 15 of said findings, have violated and are violating subsection (d) of section 2 of the Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the joint answer of the respondents by which said respondents admit all the material allegations of fact in said complaint (excepting the allegations of paragraph 2 thereof) and waive the taking of testimony and all intervening procedure, and the Commission being of the opinion upon the facts so admitted that said respondents, and each of them, have violated the provisions of subsections (a) and (d) of Section 2 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) as amended, and having made its report stating its findings as to the facts.

It is ordered, That the respondent, United States Rubber Co. and its officers, representatives, agents, and employees, in connection with the distribution and sale of automotive vehicle tire casings and tubes in commerce between the several States of the United States and in the District of Columbia, do forthwith cease and desist from discriminating in price, either directly or indirectly, or by or through its subsidiaries U. S. Tire Dealers Corporation, Meyer Rubber Co., Gillette Rubber Co., the Samson Corporation, Samson Tire & Rubber Corporation, or any of them, or by or through any other persons or corporations owned or controlled by it through stock ownership or

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otherwise, between Montgomery, Ward & Co., Inc., Atlas Supply Co., Western Auto Supply Co., Western Auto Supply Co. of Los Angeles, and Arkansas Fuel Oil Co., or any one or more of them, and other purchasers of such products of like grade and quality by selling such products to Montgomery, Ward & Co., Atlas Supply Co., Western Auto Supply Co., Western Auto Supply Co. of Los Angeles, or Arkansas Fuel Oil Co. at net realized prices different and lower than the net realized prices at which such products of like sizes, grade, and quality are sold to other purchasers thereof for resale, except to the extent that such differential or differentials shall make only due allowance for differences in cost of manufacture, sale, or delivery, if any, resulting from differing methods or quantities in which such products are to such purchasers sold or delivered. "Net realized price" for the purposes of this order shall mean the net amount of money paid by a purchaser for such a tire casing or tube after taking into account all discounts (excepting uniform cash discounts available to all purchasers), commissions, rebates, refunds, and other price adjustments; provided, that any such price adjustments depending upon varying costs of sale and delivery shall be concluded expeditiously after the end of the annual or shorter period for which such costs are computed.

It is further ordered, That the respondents United States Rubber Co. and U. S. Tire Dealers Corporation, and their respective officers, representatives, agents, and employees, in connection with the distribution and sale of automotive vehicle tire casings and tubes bearing said respondents' brands in commerce between the several States of the United States and in the District of Columbia, do forthwith cease and desist (a) from discriminating in price, directly or indirectly, between different purchasers of such tire casings and tubes of like grade and quality by granting or allowing the cumulative discounts (dependent upon and varying according to total volume of purchases during a specified period) heretofore granted and allowed by said respondents; (b) from discriminating in price, directly or indirectly, between different purchasers of such tire casings and tubes of like grade and quality competing in the resale thereof, by granting or allowing to some of such purchasers discounts, commissions, and rebates heretofore granted and allowed in connection with the sale of such tire casings and tubes as set forth in paragraph 10 of said findings as to the facts, which are not granted or allowed to other such purchasers; (c) from discriminating in price, directly or indirectly, between different purchasers of such tire casings and tubes of like grade and quality by means of price differences resulting from the granting or allowing of any other such discounts, commissions, re-

bates, or price reductions, where the effect of such price differences may be substantially to lessen competition or tend to create a monopoly in a line of commerce in which either of respondents or any of their customers are engaged, or to injure, destroy, or prevent competition with either of respondents or with any of their customers, or with any customers of a customer of either of said respondents who has knowingly received the benefit of such discrimination, except where such discounts, rebates, or price reductions make only due allowance for differences in cost resulting from differing methods or quantities in which such tire casings or tubes are to such purchasers sold or delivered; provided, however, that nothing contained in this paragraph or in the next following paragraph hereof shall be construed as preventing either of said respondents from showing that any discount, commission, rebate, or lower price hereafter granted or allowed by it, not granted or allowed to other purchasers, was given in good faith to meet an equally low price of a competitor.

It is further ordered, That the respondents, United States Rubber Co. and U. S. Tire Dealers Corporation, and their respective officers, representatives, agents, and employees, in connection with the distribution and sale of automotive vehicle tire casings and tubes in commerce between the several States of the United States through retail stores owned or operated by either of said respondents, do forthwith cease and desist from discriminating in price, directly or indirectly, between different purchasers of such products of like grade and quality by selling such products to some users and consumers thereof, including so-called "commercial accounts," at prices different and lower than the prices charged other retail purchasers thereof, except to the extent that such differential or differentials shall make only due allowance for differences in cost of manufacture, sale, or delivery, if any, resulting from differing methods or quantities in which such products are to such purchasers sold or delivered.

It is further ordered, That the respondents, United States Rubber Co. and U. S. Tire Dealers Corporation, and their respective officers, representatives, agents, and employees, in connection with the distribution and sale of automotive vehicle tire casings and tubes in commerce between the several States of the United States and in the District of Columbia, do forthwith cease and desist from paying or contracting to pay to any person, firm, or corporation engaged in the distribution and sale of oil and petroleum products and purchasing such tire casings and tubes from either of said respondents for resale (including the oil companies named in paragraph 15 of said findings as to the facts), a commission of 7½ percent on sales by either of said

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respondents to operators of oil and gasoline stations and jobbers selling products distributed or sold by such person, firm, or corporation, or any other payment or commission as compensation or in consideration for any services furnished by or through such person, firm, or corporation in connection with the sale or offering for sale of tire casings and tubes, manufactured, sold, or offered for sale by either of said respondents, unless such payment or commission is made available on proportionally equal terms to all other customers of said respondents competing with such person, firm, or corporation in the distribution of such tire casings and tubes.

It is further ordered, That each of said respondents, within 60 days after the service upon them of this order, shall file with the Commission a report in writing setting forth in detail the manner and form in which they have complied and are complying with this order.

Syllabus

IN THE MATTER OF
QUALITY BAKERS OF AMERICA ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF PARA. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3218. Complaint, Aug. 28, 1937—Decision, Apr. 27, 1939

Where a corporation, stock of which was held exclusively by some seventy non-competitive wholesale baking concerns located in various sections of the United States, and which constituted membership of said bakers' unincorporated association, designed and used to facilitate and further the objectives, operations, policies, and business of said corporation and the stockholders of said corporation, which,

(1) Was engaged in purchasing commodities as purchasing agent for its stockholders and members, as aforesaid, of said association;

(2) Constituted the operative agency acting in behalf of said association and members thereof;

(3) Conducted numerous activities for said association members, including services as to purchasing, production, engineering, accounting, sales promotion, advertising, planning, publications, and management assistance;

(4) In executing orders placed with it by its said stockholders and association members, transmitted such orders and purchased commodities from one or more of a group of over 200 manufacturers, processors, producers, or distributors located in many different States; and

(5) Was compensated or reimbursed for the cost of such various services under definite arrangements and agreements, entered into between it and the association on the one hand and the members thereof on the other, by which it was agreed that one-half of the brokerage paid on each member's orders should be applied to the credit of the particular member's dues and remaining half applied by the board of directors, as it shall determine, for service purposes for the benefit of the members of the association in question; and

(6) Supplied to stockholders, whose credits for brokerage fees exceeded the amounts charged against them for dues, benefit of special services not included in the services rendered to all stockholders—

(a) Accepted and received, as above set forth, brokerage fees from sellers on purchases of commodities made by its stockholders, while acting as the agent, representative, and intermediary of such stockholders and in their behalf, and while owned and controlled by them, and rendering no service to those selling commodities to it and paying it such brokerage fees, but rendering services to its stockholders in connection with purchase of commodities by them or with operation of their respective businesses, and no selling services to any seller of commodities or services in connection with the sale of a commodity to it or to its stockholders; and

Where wholesale baking concerns, stockholders of said corporation and members of said association, engaged in purchasing commodities, including flour and many other food materials, and a great variety of supplies and equip-