

IN THE MATTER OF
SEARS, ROEBUCK & COMPANY

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

Docket 4033. Complaint, Feb. 15, 1940—Decision, June 18, 1941

Where a corporation long engaged in the manufacture, among other products, of automobile tires and tubes, and in interstate sale and distribution thereof through its retail stores located in various states; issuing list prices for the use of such stores which, while usually offering such products at certain savings and discounts from said list prices, did not usually sell its tires at prices so designated but varied prices at their discretion, under its authority, on the basis of such price lists, and which customarily made allowances of up to 25 percent of list prices of new tires as a trade-in allowance for purchasers' old tires;

In advertisements of its best grade "Allstate Safety Tread Tire," its "Allstate Non-Skid or Rib-Tread Tire"—also listed by it as a first line tire but sold for less than the former—its second grade "Allstate Standard Tire," and its third line "Allstate Crusader Tire" in connection with Nation-wide tire sales, prepared and published in various newspapers and other periodicals of general circulation by said retail stores under authority granted by it—in which advertisements, as more fully set out below, it made representations with respect to various discounts and savings from regular retail selling prices, from the list prices, and from competitors' list prices, and with respect to grade and quality of a certain tire—

(a) Represented, as illustrative, that insofar as the purported discounts might be interpreted as meaning a discount from the regular retail price, its "Crusader" tires were being sold at a discount or saving of 30 percent to 35 percent, by the statement "Save 30 percent to 35 percent on 'Fleet Tested' Allstate CRUSADER TIRES * * *," followed by list of sizes with prices;

Facts being that such purported savings were exaggerated and untrue for the reason they were not computed on the regular retail price or on any other current price of said tire and the advertised sale prices for the respective sizes of tires provided percentage savings based upon the list prices of 10.8 percent, 10.1 percent, 9.45 percent, 9.8 percent, 10.7 percent, and 10.1 percent, rather than the advertised saving of 30 percent to 35 percent, and if based upon the regular retail selling prices the percentage savings would be even less;

(b) Represented that a 25-percent trade-in allowance for old tires was an extra trade-in allowance and resulted in a 25 percent discount from the regular retail prices; when in fact such a trade-in allowance for old tires was always made, and by most of its stores, and therefore did not provide 25 percent discount from the regular retail selling price;

(c) Represented "HALF PRICE TIRE SALE Buy One All-State At Its Regular Price! Get another at HALF PRICE * * * these prices include the old tires," facts being it was not in effect offering to sell its tires on the basis of two for one and one-half the regular price of one, since a trade-in allowance for old tires was always made, and generally up to 25 percent of list price of new tires, and, computed upon such basis, the sales price of two

tires, as designated in said advertisement, might be exactly the same as that charged in the usual course of business and constituted no savings or discounts from the regular price;

- (d) Represented "Today and Tomorrow * * * a tube for 10¢ IN ADDITION to the lowest price of all time for Allstate Standards," followed by list of sizes with prices; facts being that the designated sales price required the purchaser to pay practically the full price for the tube in each instance, for the reasons that the prices shown were higher than the correct list prices currently in effect, and that the purchaser received no credit for his old tires although he was required to turn them in; the sales price of \$9.59 advertised for tire and tube, taking, as illustrative, the 6.00 x 16, and using the correct list price and giving credit for a 25 percent trade-in allowance for old tires, required the purchaser to pay \$1.30 for the tube rather than 10 cents;
- (e) Representing certain designated prices as customary and usual retail selling prices of its "Non-Skid Allstate Tires" and that by paying such designated amounts and \$3 for a second tire, certain stated savings would be provided on the purchase of two tires; when in fact the prices designated as regular prices were actually list prices, and in the locality in which such advertisement was published the regular retail selling prices of the particular tire were substantially lower than the prices designated in said advertisement, so that the actual savings were substantially less than those set out;
- (f) Represented that certain savings were provided a purchaser of its tires computed upon the list price of competitors' tires, by advertising "YOU SAVE WHEN YOU BUY ALLSTATES! * * * Size 4-Ply 6.00-16 Comparative list price \$14.05 Sears net price with old tire \$8.95, You Save \$5.10"; when, in truth and in fact, such purported savings were exaggerated in that they were based wholly upon list prices and not upon selling prices of competitors' tires; the regular retail selling prices of the major tire companies being customarily substantially lower than their list prices due to trade-in allowances and to other discounts and reductions brought about by competitive situations;
- (g) Represented that by buying, for example, its 4.75 x 16 Allstate Rib Tread and Non-Skid Tires for \$6.63, a saving of \$3.77 was made from the "big tire companies" list price of \$10.40; when in fact the comparison was made between the competitors' list price and its retail selling price, the major tire companies' retail prices being customarily substantially lower than their list prices, as above noted;
- (h) Represented that a purchaser of tires of a major tire company at prices represented as "National List" would be required to pay 40 to 60 percent more for tires of comparable quality than its designated sales prices; facts being said competitor's "National List" were not regular and usual retail selling prices, but, as aforesaid, customarily higher than the latter;
- (i) Represented that it was offering "ALLSTATE Safety Treads" at 50 percent off and at a saving of \$7.97 for the 6.00 x 16 size; when in fact, the amount \$15.95, designated as "List Price," was not the usual retail selling price which was substantially less, and the selling price was therefore not 50 percent off nor the saving as much as \$7.97 when computed upon the regular selling price with old tires;

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- (j) Represented "40% off List Price Sears Fleet Tested CRUSADERS * * * 6.00 x 16 size \$7.40 and your old tire"; facts being that the list price of the 6.00 x 16 "Crusader" at the time of publication of said advertisement was \$9.35, and the stated sale price of \$7.40 provided 20 percent off rather than 40 percent off as claimed; and
- (k) Represented by such statements, among others, as "UP TO 35% TRADE-IN ALLOWANCE! Actually you save up to—45 percent—compared with other first-line tires present list prices! 3-Day Special 'Crusader' Sale Prices!" that the "Crusader" tire was a first-line or first-grade tire, facts being it was, as aforesaid, its third line or grade product;
- (l) Represented further that certain specified savings were provided, based upon the list price of higher priced tires of its competitors; which would not, in fact, provide the represented saving since the list price of competitors' tires is not the usual or customary selling price;

With tendency and capacity to mislead a substantial portion of the purchasing public, which understands and believes represented savings and discounts from "list prices" to be reductions from the regular retail selling prices of the same tires in effect immediately prior to advertised sales, into the erroneous belief that aforesaid representations were true and that its tires and tubes were sold at the savings or discounts advertised, with the result that a portion of such public, because of its mistaken belief, purchased its said products:

Held, That such acts and practices were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Mr. William M. King for the Commission.

Lederer, Livingston, Kahn & Adsit, of Chicago, Ill., and *Mr. Donald Kane and Davies, Richberg, Beebe, Busick & Richardson*, of Washington, D. C., for respondent.

COMPLAINT¹

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Sears, Roebuck & Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Sears, Roebuck & Co., is a corporation, organized, and existing under the laws of the State of Delaware, with its principal office and place of business located in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and for many years last past has been,

¹ Published as amended pursuant to stipulation dated June 10, 1941, to include par. 9 (a) to par. 9 (g), inclusive.

engaged in the sale and distribution, among other products, of automobile tires and tubes.

In the course and conduct of its business, the respondent sells and distributes said automobile tires and tubes to the purchasing public through and by means of various retail stores owned and operated by it and located in various States of the United States and in the District of Columbia, and causes said tires and tubes to be shipped and transported to said retail stores from States other than the States in which such stores are located. Respondent causes said tires and tubes when sold to be transported from its various local stores and other points of origin of shipment to the purchasers thereof located in various States of the United States other than the State from which such shipments originate. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said tires and tubes in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent sells several grades of automobile tires and tubes through its retail stores, its tires being distinguished generally as follows:

1. "Allstate Safety Tread Tires," which is respondent's best grade or first line tire;
2. "Allstate Non-Skid or Rib-Tread Tire," which is respondent's second grade or second line tire;
3. "Allstate Standard Tire," which is respondent's third grade or third line tire;
4. "Allstate Crusader Tire," which is respondent's fourth grade or fourth line tire.

In the sale and distribution of its said tires, through its retail stores, it is the established custom of respondent to make an allowance to a purchaser of new tires of not less than 25 percent of the purchase price of the new tires as a trade-in allowance for old tires. Respondent, from time to time, issues price lists designating the retail price of its various grades of tires. Respondent, however, does not sell its tires, at retail, in accordance with such list price but rather in accordance with a confidential list price furnished to all its retail stores.

PAR. 4. For the purpose of inducing and stimulating the sale of its tires and tubes, the respondent, from time to time, conducts nationwide tire sales through its various retail stores. In connection with such sales the respondent advertises in various newspapers and other periodicals having a general circulation, by means of which advertisements the respondent falsely represents that respondent's tires

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and tubes are being sold at various purported discounts and savings from the regular and usual price of such tires and tubes. Advertising copy to be used in connection with such sales is prepared by respondent at its main office in Chicago, Ill., and is forwarded by respondent to its retail stores and is used by said stores in whole or in part by insertion in local newspaper and other advertising media.

PAR. 5. Among and typical of the false, misleading, and deceptive representations contained in the various advertisements, disseminated as aforesaid, is the following:

Save 30% to 35% on "Fleet Tested" Allstate CRUSADER TIRES. Prices as low as \$4.95 for a 4.40 x 21 size

4.50 x 21 size \$5.35

4.75 x 19 size 5.75

5.25 x 17 size 6.45

5.50 x 17 size 7.10

6.00 x 16 size 8.05

By means of the statements and representations hereinabove set forth and others similar thereto not specifically set forth herein, the respondent represents that its "Crusader" tires are being sold at a saving or discount of 30 percent to 35 percent. In truth and in fact such purported savings are greatly exaggerated and untrue for the reason that such savings are not computed on the regular list price of said tires in effect at the time of such advertisement. Such list prices for said tires in the order in which they appear in said advertisement were as follows: \$5.55, \$5.95, \$6.35, \$7.15, \$7.95, and \$8.59. The advertised sale prices for said tires provide the following percentage saving based upon the regular list price: 10.8 percent, 10.1 percent, 9.45 percent, 9.8 percent, 10.7 percent, and 10.1 percent rather than the advertised saving of 30 percent to 35 percent.

PAR. 6. Another and typical example of the false, misleading, and deceptive representations contained in the various advertisements, disseminated as aforesaid, is the following:

SEARS—

25% OFF

3-Day Tire Sale—

Thursday, Friday and Saturday

25% Trade in allowance for your old,
smooth, dangerous tires on new, safe

Guaranteed "Fleet Tested" ALLSTATE

Tires—Extra Trade in Allowance.

By means of the statements and representations hereinabove set forth and others similar thereto, not specifically set forth herein, respondent represents that a 25 percent trade-in allowance for old tires is a 25 percent discount from usual price and is an extra trade-in allowance. In truth and in fact a 25 percent trade-in allowance

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for old tires is always allowed and therefore does not provide 25 percent discount from the usual price but represents only the regular selling price for respondent's tires, and does not constitute an extra trade-in allowance.

PAR. 7. Another and typical example of the false, misleading, and deceptive representations contained in the various advertisements disseminated as aforesaid, is the following:

AT SEARS—Another Smashing Tire Sale—HALF PRICE TIRE SALE. Buy One Allstate at its Regular Price! Get another at HALF PRICE. Rib-Tread or Non-Skid.

Then follows list of sizes and prices of which the following is an example:

Size	Reg. Price	2nd Tire	Two Tires
6.00 x 16	\$13.50	\$6.75	\$20.25

These Prices Include Your Old Tires.

By means of the statements and representations hereinabove set forth and others similar thereto, not specifically set forth herein, respondent represents that its Allstate tires are being offered at half price. In truth and in fact respondent does not sell its said tires at half price for the reason that it is necessary to purchase one tire at the full price in order to obtain one at half price. Moreover, the advertised price represents no savings whatsoever to a purchaser, since no allowance is made for the customer's old tires. Taking the 6.00 x 16 tire as an example, the advertised sale price for two tires is \$20.25. The regular list price for two tires of this size as shown by said advertisement is \$27. Giving effect to the customary old tire allowance of 25 percent, the usual and customary selling price is \$20.25 for two tires, or exactly the advertised sale price for two tires.

PAR. 8. Another and typical example of the false and misleading representations contained in the various advertisements disseminated as aforesaid is the following:

Today and tomorrow 10¢ BUYS A TUBE with Allstate Standard Tires at These Sensational Savings. We're set to sell a million dollars worth of tires in 1939. We've made commitments obligating us to hit that figure or take a huge loss. This is Sale Sensation No. 3—We can offer it for only 2 more days—a tube for 10¢ IN ADDITION to the lowest price of all time for Allstate Standards

Size	List Price	Reg. Price Tube	You Pay For Tire & Tube With Old Tire
5.25 x 17.....	\$9.35	\$1.15	\$7.59
5.50 x 17.....	10.55	1.45	8.79
6.00 x 16.....	11.80	1.50	9.59
6.25 x 16.....	13.20	1.50	10.59
6.50 x 16.....	14.50	1.50	11.59

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By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that the list price designated in said advertisement is the regular list price for Allstate Standard Tires and is the lowest price of all time for said tires; that by paying the designated price, with old tire, the purchaser is paying only 10 cents for a tube. In truth and in fact, the designated sales price requires the purchaser to pay practically the full price for the tube in each instance, for the reason that the various prices shown in said advertisement are higher than the correct list price in effect at the time of said advertisement and for the further reason that the purchaser receives no credit for his old tires, although he is required to turn them in at the time of the sale. The correct list prices for said tires in the order in which they appear in said advertisement are as follows: \$8.65, \$9.80, \$11.05, \$12.40, and \$13.70. Giving credit for the customary allowance of 25 percent for old tires, the usual selling prices are as follows: \$6.49, \$7.35, \$8.29, \$9.30, and \$10.28. Based on the advertised sales prices, the purchaser is, therefore, required to pay the following amounts for the various sized tubes: \$1.10, \$1.24, \$1.30, \$1.25, and \$1.31, rather than 10 cents as stated in said advertisements.

PAR. 9. Another, and typical, example of the false and misleading representations contained in the various advertisements disseminated as aforesaid is the following:

ALLSTATE TIRES

REGULAR NON-SKID TREAD

Buy First Regular "Allstate" Tire at Regular Low Price Get Another Regular ALLSTATE TIRE FOR ONLY \$3.

Size	First Tire At Reg. Price	Another Tire For Only	With Old Tires	
			You Pay For 2 Tires	Save on Each Pair
5.50-16.....	\$12.75	\$3.00	\$15.75	\$9.75
5.50-17.....	13.20	3.00	16.20	10.20
6.00-16.....	14.35	3.00	17.35	11.35
6.25-16.....	16.15	3.00	19.15	13.15
6.50-16.....	17.40	3.00	20.40	14.40
7.00-16.....	19.75	3.00	22.75	16.75

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, the respondent for example, represents that the regular price of its size 6.00 x 16 regular Allstate Non-Skid tire is \$14.35. In truth and in fact, the regular price of this particular size tire at the time of such sale and in the locality where such sale was advertised, was \$9.57 with

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old tire. Based upon such regular price, two tires would cost \$19.14, whereas at the sale price advertised, two tires would cost \$17.35, representing a saving of \$1.79 instead of \$11.35, as represented by the respondent in said advertisement.

PAR. 9 (a). For the purpose of inducing and stimulating the sale of its tires the respondent has conducted sales through its various retail stores. In connection with such sales various retail stores of the respondent, since March 21, 1938, have caused to be inserted in newspapers and other periodicals having a general circulation, certain advertisements, by means of which, representations have been made that respondent's tires were being offered for sale at certain discounts and savings from the list prices of its tires and at certain savings and discounts from the list prices of competitors' tires, and certain representations have been made with respect to the grade and quality of a certain tire. Such advertising matter was prepared and published by said retail stores under general authority granted by the respondent herein.

PAR. 9 (b). A typical example of the representations contained in the various advertisements disseminated as aforesaid is the following:

YOU SAVE WHEN YOU BUY ALLSTATES!

Sear's direct from factory plan of distribution, eliminating the profit and expenses of jobbers and dealers, enables SEARS to give you more tire value for Your money! * * *

Then follows list of sizes and prices of which the following is an example:

Size	Comparative	Sears net price	You
4-Ply	list price	with old tire	Save
6.00-16	14.05	8.95	5.10

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that certain savings are provided a purchaser of its tires computed upon the list price of competitors' tires. In truth and in fact, such purported savings are exaggerated for the reason that they are based wholly upon the list prices and not upon the selling prices of competitors' tires. The regular retail selling prices of the major tire companies are generally and customarily substantially lower than their list prices due to trade-in allowances for purchasers' old tires and also due to other discounts or allowances as well as other reductions brought about by competitive situations.

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PAR. 9. (c). Another and typical example of the representations contained in the various advertisements disseminated as aforesaid is the following:

TIRE PRICES DOWN.

* * *

Make your price comparisons by using the STANDARD list: the same list the big tire companies use as a basis of comparison! * * * Compare them with any First Line tires of reputable make.

Size 4.75 x 19

Standard List

10.40

6.63

Price includes your old tire.

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that by buying, for example, its 4.75 x 16 All-state Rib Tread and Non-Skid Tire for \$6.63 a saving of \$3.77 is made from the "Big tire companies" list price of \$10.40. This is not the fact since the comparison is made between competitors' list price and respondent's retail selling price. The regular retail selling prices of the major tire companies are generally and customarily substantially lower than their list prices due to trade-in allowances for purchasers' old tires and also due to other discounts or allowances as well as other reductions brought about by competitive situations.

PAR. 9 (d). Another and typical example of the representations contained in the various advertisements disseminated as aforesaid is the following:

* * * Why pay 40% to 60% more when you can get guaranteed equal quality, guaranteed equal safety and guaranteed equal or longer wear—Have ALLSTATES put on your car now and be safe. * * *

Then follows a list of sizes and prices of which the following is an example:

Size	National List	Sears Net Prices
6.00 x 16	14.05	8.95

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that a purchaser of tires of a major tire company at prices represented as "National List" would be required to pay 40 percent to 60 percent more for tires of comparable quality than respondent's designated sales prices. This is not the fact as the prices of said competitors' tires set out under "National List" are list prices and not regular and usual retail selling prices. The regular retail selling prices of the major tire companies are generally and customarily substantially lower than their list prices due to

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trade-in allowances for purchasers' old tires and also due to other discounts or allowances as well as other reductions brought about by competitive situations.

PAR. 9 (e). Another and typical example of the representations contained in the various advertisements disseminated as aforesaid is the following:

50% OFF!

As trade-in allowances for your old tires on Sears famous
ALLSTATE SAFETY TREAD TIRES

Then follows list of sizes and prices of which the following is an example:

Examples of how you save on 4-Ply ALLSTATE Safety Treads

Size	List Price	You Pay	You Save
6.00 x 16	15.95	7.98	7.97

With your old tires

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that it is offering said tires at 50 percent off and at a saving of \$7.97 for the size 6.00 x 16 tire. This is not the fact since the amount \$15.95, designated as "List Price," is not the usual retail selling price of said tire, such selling price being substantially less than the listed price. The selling price is, therefore, not 50 percent off nor is the saving as much as \$7.97 when computed upon the regular selling price with old tires.

PAR. 9 (f). Another and typical example of the representations contained in the various advertisements disseminated as aforesaid, is the following:

40% Off List Price Sears Fleet Tested CRUSADERS * * * 6.00 x 16 size—
7.40 and your old tire.

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that its "Crusader" tire is offered for sale at 40 percent off list price. This is not the fact. For example, the list price of the 6.00 x 16 "Crusader" tire at the time of the publication of said advertisement was \$9.25. The sale price of \$7.40 provided 20 percent off rather than 40 percent off as represented.

PAR. 9 (g). Another and typical example of the representations contained in the various advertisements disseminated as aforesaid is the following:

UP TO 35% TRADE-IN ALLOWANCE!

Actually you save up to—45%—compared with other first-line tires present list prices! 3-Day Special "Crusader" Sale Prices!

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By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that the "Crusader" tire is a first-line or first-grade tire. This is not the fact. At the time of the publication of said advertisement respondent's "Crusader" tire was its third-line or third-grade tire and not its first-line or first-grade tire.

PAR. 10. The use by the respondent of the foregoing false, misleading, and deceptive statements, representations, and advertisements disseminated as aforesaid with respect to the sales prices of its automobile tires and tubes has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and that the respondent's tires and tubes are sold at the saving or discount advertised and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's automobile tires and tubes.

PAR. 11. The aforesaid acts and practices of the respondent as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 15th day of February 1940, issued and thereafter served its complaint in this proceeding upon said respondent, Sears, Roebuck & Co., charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 15, 1940, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into between the Chief Counsel for the Commission and respondent whereby it was agreed that, subject to the approval of the Commission, the complaint might be amended, the respondent waiving the issuance and service of an amended and supplemental complaint, the filing of a supplemental answer to such amended complaint and admitting as true the additional allegations incorporated in the complaint by amendment and that they constituted deceptive and misleading representations. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and its counsel, Lederer, Livingston, Kahn, and Adsit, and Davies, Richberg, Beebe, Busick, and Richardson, and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken

as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without presentation of argument, the filing of briefs, or the filing of a report on the evidence by the trial examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint as amended, answer and stipulations, said stipulations having been approved, accepted and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Sears, Roebuck & Co., is a corporation, organized and existing under the laws of the State of New York, with its principal office and place of business located in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the sale and distribution, among other products, of automobile tires and tubes.

In the course and conduct of its business, the respondent sells and distributes said automobile tires and tubes to the purchasing public through and by means of various retail stores owned and operated by it and located in various States of the United States and in the District of Columbia, and causes said tires and tubes to be shipped and transported to said retail stores from States other than the States in which such stores are located. Respondent causes said tires and tubes when sold to be transported from its various local stores and other points of origin of shipment to the purchasers thereof located in various States of the United States other than the State from which such shipments originate. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said tires and tubes in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent has been selling several grades of automobile tires and tubes through its retail stores, its tires being generally distinguished as follows:

1. "Allstate Safety Tread Tires," which is respondent's best grade or first line tire;

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2. "Allstate Non-Skid or Rib-Tread Tire," which respondent also represents as a first line tire but which is listed and sold for a less price than the "Allstate Safety Tread Tires;"

3. "Allstate Standard Tire," which is respondent's second grade, or second line tire;

4. "Allstate Crusader Tire," which is respondent's third grade, or third line tire.

The respondent issues price lists for the use of its various retail stores which price lists, without additional explanation, might be understood as designating the retail selling price of its various grades of tires. The retail stores do not usually sell respondent's tires at the prices so designated but vary the prices at their discretion under authority granted by the respondent, using such price lists as a basis for determining the sale prices at each particular store. In advertising to the purchasing public, however, it is generally represented by respondent's retail stores that such tires are being offered for sale at certain discounts and savings from the list price so issued by the respondent.

The Commission finds that a substantial portion of the purchasing public understands and believes that advertised savings or discounts are reductions from the regular retail sale prices charged for the same merchandise in the ordinary course of business immediately prior in point of time to such advertised sale; that they understand and believe that "list prices" as used by respondent's retail stores in advertising respondent's tires referred to and meant the regular retail sale prices of the tires advertised for sale and that any represented savings or discounts from such "list prices" were reductions from the regular retail sale prices of the same tires in effect immediately prior in point of time to such advertised sale.

PAR. 4. For the purpose of inducing and stimulating the sale of its tires and tubes, it is the established custom of respondent's retail stores to make allowances of up to 25 percent of the list price of the new tires as a trade-in allowance for the purchasers' old tires. For the same purpose, respondent conducts Nation-wide tire sales through its various retail stores. In connection with such sales the various retail stores of the respondent, since March 21, 1938, have caused to be inserted in various newspapers and other periodicals having a general circulation, as well as in local newspapers, advertisements, by means of which representations have been made that respondent's tires and tubes were being sold at various discounts and savings from the regular retail selling price of such tires and tubes, at certain discounts and savings from the list prices of its tires and at certain savings and discounts from the list prices of

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competitors' tires and certain representations with respect to the grade and quality of a certain tire. Such advertising was prepared and published by said retail stores under authority granted by the respondent herein.

PAR. 5. As illustrative of the representations employed by the retail stores of respondent in advertising certain stated discounts and savings from the regular retail selling prices, is the following:

Save 30% to 35% on "Fleet Tested" Allstate CRUSADER TIRES. Prices as low as \$4.95 for a 4.40 x 21 size

4.50 x 21 size	\$5.35
4.75 x 19 size	5.75
5.25 x 17 size	6.45
5.50 x 17 size	7.10
6.00 x 16 size	8.05

By means of the statements and representations hereinabove set forth, the respondent through one of its retail stores has represented, insofar as the purported discount may be interpreted as meaning a discount from the regular retail price, that its "Crusader" tires were being sold at a saving or discount of 30 percent to 35 percent. Such purported savings were exaggerated and untrue for the reason that such savings were not computed on the regular retail price or on any other price of said tires in effect at the time of such advertisement. The list prices for said tires in the order in which they appeared in said advertisements were as follows: \$5.55, \$5.95, \$6.35, \$7.15, \$7.95, and \$8.59. The advertised sale prices for said tires provided the following percentage saving based upon the list prices: 10.8 percent, 10.1 percent, 9.45 percent, 9.8 percent, 10.7 percent, and 10.1 percent rather than the advertised saving of 30 percent to 35 percent. If based upon the regular retail selling prices the percentage savings would be even less.

PAR. 6. As illustrative of the representations employed by the retail stores of respondent in advertising discounts or savings from list prices, when such advertised discounts or savings represented only the usual trade-in value of customers' old tires, is the following:

SEARS—
25% OFF

3-Day Tire Sale—

Thursday, Friday and Saturday
25% Trade in allowance for your old,
smooth, dangerous tires on new, safe
Guaranteed "Fleet Tested" ALLSTATE
Tires—Extra Trade in Allowance.

By means of the statements and representations hereinabove set forth, respondent, through some of its retail stores, represented that

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a 25 percent trade-in allowance for old tires is an extra trade-in allowance and results in a 25 percent discount from the regular retail price. A trade-in allowance for old tires is always made, and by most of respondent's stores, of up to 25 percent and therefore does not provide 25 percent discount from the regular retail selling price. Since a trade-in allowance up to 25 percent is usually given, it does not constitute an extra trade-in allowance.

PAR. 7. As illustrative of the representations employed by the retail stores of respondent in advertising savings and discounts from regular prices when the usual allowance for old tires was not taken into consideration, is the following:

At SEARS—Another Smashing Tire Sale—HALF PRICE TIRE SALE. Buy One Allstate at its Regular Price! Get Another at HALF PRICE. Rib-Tread or Non-Skid.

Then follows list of sizes and prices of which the following is an example:

Size	Reg. Price	2nd Tire	Two Tires
6.00 x 16	\$13.50	\$6.75	\$20.25

These Prices Include Your Old Tires.

By means of the statements and representations hereinabove set forth, respondent through some of its retail stores has represented that it was offering two Allstate Tires for one and one-half times the regular price of one such tire. The respondent was not offering to sell its tires on the basis of two tires for one and one-half the regular price of one such tire, since, a trade-in allowance for old tires is always made, and by most of the respondent's stores of up to 25 percent of the list price of the new tires. Computed upon this basis the sales price of two tires as designated in said advertisement may be exactly the same as that charged in the usual course of business and constitutes no saving or discount from the regular price of said tires.

PAR. 8. As illustrative of the representations employed by the retail stores of respondent in advertising various savings and discounts in sales of its tires and tubes, based upon the list price of its tires offered for sale, when such advertised list prices were not the true list prices in effect at the time of such sales, is the following:

Today and Tomorrow 10¢ BUYS A TUBE with Allstate Standard Tires at These Sensational Savings. We're set to sell a million dollars' worth of tires in 1939. We've made commitments obligating us to hit that figure or take a huge loss. This is Sale Sensation No. 3—We can offer it for only 2 more days—a tube for 10¢ IN ADDITION to the lowest price of all time for Allstate Standards.

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Size	List Price	Reg. Price Tube	You Pay For Tire & Tube With Old Tire
5.25 x 17.....	\$ 9.35	\$1.15	\$ 7.59
5.50 x 17.....	10.55	1.45	8.59
6.00 x 16.....	11.80	1.50	9.59
6.25 x 16.....	13.20	1.50	10.59
6.50 x 16.....	14.50	1.50	11.59

By means of the statements and representations hereinabove set forth, respondent through one of its retail stores represented that the list price designated in said advertisement was the regular list price for Allstate Standard Tires and was the lowest price of all time for said tires; that by paying the designated price, with old tire, the purchaser was paying only 10 cents for a tube. The designated sales price required the purchaser to pay practically the full price for the tube in each instance, for the reason that the various prices shown in said advertisement are higher than the correct list price in effect at the time of said advertisement and for the further reason that the purchaser received no credit for his old tires, although he was required to turn them in at the time of the sale. The correct list prices for said tires in the order in which they appeared in said advertisement were as follows: \$8.65, \$9.80, \$11.05, \$12.40, and \$13.70. Taking size 6.00 x 16 as an example and using the correct list price of \$11.05, the customary selling price, after giving credit for a 25 percent trade-in allowance for old tires, would be \$8.29. The sales price of \$9.59 for tire and tube would require the purchaser to pay \$1.30 for the tube rather than 10 cents as advertised.

PAR. 9. As illustrative of the representations employed by the retail stores of respondent in advertising various discounts and savings in sales of its tires based on an advertised regular price, when such stated regular price was not the usual regular price because no allowance was made for customers' old tires, is the following:

ALLSTATE TIRES

REGULAR Non-Skid TREAD

Buy First Regular "Allstate" Tire at Regular Low Price Get Another Regular ALLSTATE TIRE FOR ONLY \$3.

Size	First Tire at Reg. Price	Another Tire For Only	You Pay for 2 Tires	Save on Each Pair
5.50-16.....	\$12.75	\$3.00	\$15.75	\$ 9.75
5.50-17.....	13.20	3.00	16.20	10.20
6.00-16.....	14.35	3.00	17.35	11.35
6.25-16.....	16.15	3.00	19.15	13.15
6.50-16.....	17.40	3.00	20.40	14.40
7.00-16.....	19.75	3.00	22.75	16.75

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By means of the statements and representations hereinabove set forth, the respondent represented that the prices designated in said advertisement as regular prices were the customary and usual retail selling prices of its "Non-Skid Allstate Tires" and that by paying the amounts designated in said advertisement and \$3 for a second tire, the stated savings would be provided on the purchase of two tires. These stated savings are exaggerated and untrue since the prices designated as regular prices are actually list prices and not the regular retail selling prices. The regular retail selling prices of this particular tire in the locality in which this advertisement was published were substantially lower than the prices designated in said advertisement. The actual savings, therefore, were substantially less than those set out in said advertisement.

PAR. 10. As illustrative of the representations employed by the retail stores of respondent in advertising certain savings based upon the list price of competitors' tires is the following:

YOU SAVE WHEN YOU BUY ALLSTATES!

Sear's direct from factory plan of distribution, eliminating the profit and expenses of jobbers and dealers, enables SEARS to give you more tire value for Your money! * * *

Then follows list of sizes and prices of which the following is an example:

Size	Comparative	Sears net price	You
4-Ply	list price	with old tire	Save
6.00-16	14.05	8.95	5.10

By means of the statements and representations hereinabove set forth, and other similar thereto not specifically set forth herein, respondent represents that certain savings are provided a purchaser of its tires computed upon the list price of competitors' tires. In truth and in fact, such purported savings are exaggerated for the reason that they are based wholly upon the list prices and not upon the selling prices of competitors' tires. The regular retail selling prices of the major tire companies are generally and customarily substantially lower than their list prices due to trade-in allowances for purchasers' old tires and also due to other discounts or allowances as well as other reductions brought about by competitive situations.

PAR. 11. As illustrative of the representations employed by the retail stores of respondent in advertising savings based upon the list prices of competitors' tires designated as "Standard List" is the following:

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TIRE PRICES DOWN

* * *

Make your price comparisons by using the STANDARD list: the same list the big tire companies use as a basis of comparison! * * * Compare them with any First Line tires of reputable make.

Size 4.75 x 19

Standard List

10.40

6.63

Price includes your old tire.

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that by buying, for example, its 4.75 x 16 All-state Rib Tread and Non-Skid Tire for \$6.63 a saving of \$3.77 is made from the "big tire companies" list price of \$10.40. This is not the fact since the comparison is made between competitors' list price and respondent's retail selling price. The regular retail selling prices of the major tire companies are generally and customarily substantially lower than their list prices due to trade-in allowances for purchasers' old tires and also due to other discounts or allowances as well as other reductions brought about by competitive situations.

PAR. 12. As illustrative of the representations employed by the retail stores of respondent in advertising discounts based upon the list prices of competitors' tires designated as "National List" is the following:

* * * Why pay 40% to 60% more when you can get guaranteed equal quality, guaranteed equal safety and guaranteed equal or longer wear—Have ALLSTATES put on your car now and be safe. * * *

Then follows list of sizes and prices of which the following is an example:

Size	National List	Sears Net Prices
6.00 x 16	14.05	8.95

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that a purchaser of tires of a major tire company at prices represented as "National List" would be required to pay 40 percent to 60 percent more for tires of comparable quality than respondent's designated sales prices. This is not the fact as the prices of said competitors' tires set out under "National List" are list prices and not regular and usual retail selling prices. The regular retail selling prices of the major tire companies are generally and customarily substantially lower than their list prices due to trade-in allowances for purchasers' old tires and also due to other discounts or allowances as well as other reductions brought about by competitive situations.

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PAR. 13. As illustrative of the representations employed by the retail stores of respondent in advertising a certain discount based upon the list price of its own tires is the following:

50% OFF!

As trade-in allowances for your old
tires on Sears famous

ALLSTATE SAFETY TREAD TIRES

Then follows list of sizes and prices of which the following is an example:

Examples of how you save on 4-Ply ALLSTATE Safety Treads

Size	List Price	You Pay	You Save
6.00 x 16	15.95	7.98	7.97

With your old tires

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that it is offering said tires at 50 percent off and at a saving of \$7.97 for the size 6.00 x 16 tire. This is not the fact since the amount \$15.95, designated as "List Price," is not the usual retail selling price of said tire, such selling price being substantially less than the listed price. The selling price is, therefore not 50 percent off nor is the saving as much as \$7.97 when computed upon the regular selling price with old tires.

PAR. 14. As illustrative of the representations employed by the retail stores of respondent in advertising a certain discount from the list price of its own tires when the prices designated as list price were not the correct list prices at the time of the publication of said advertisement is the following:

40% Off List Price Sears Fleet Tested CRUSADERS * * * 6.00 x 16 size—
7.40 and your old tire.

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that its "Crusader" tire is offered for sale at 40 percent off list price. This is not the fact. For example, the list price of the 6.00 x 16 "Crusader" tire at the time of the publication of said advertisement was \$9.25. The sale price of \$7.40 provided 20 percent off rather than 40 percent off as represented.

PAR. 15. As illustrative of the representations employed by the retail stores of respondent in describing the quality of a certain tire is the following:

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UP TO 35% TRADE-IN ALLOWANCE!

Actually you save up to—45%—compared with other first-line tires present list prices! 3-Day Special "Crusader" Sale Prices!

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that the "Crusader" tire is a first-line or first-grade tire. This is not the fact. At the time of the publication of said advertisement respondent's "Crusader" tire was its third-line or third-grade tire, and not its first-line or first-grade tire. Respondent further represents that certain specified savings are provided based upon the list price of higher priced tires of its competitors. This would not provide the represented saving since the list price of competitors' tires is not the usual or customary selling price, such selling price being ordinarily substantially lower than the list price.

PAR. 16. The use by the respondent of the foregoing misleading and deceptive statements, representations and advertisements, disseminated, as aforesaid, with respect to the sales prices of its automobile tires and tubes; the grade, kind or line of its tires and the prices of its competitors' tires has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements were true, and that the respondent's tires and tubes were sold at the savings or discounts advertised; that the grade, kind or line of its tires was as represented and the prices of its competitors' tires were as represented and induced a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's automobile tires and tubes.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 amended complaint of the Commission, the answer of the respondent and a stipulation as to the facts entered into between the respondent and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion

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based thereon and an order disposing of the proceeding, 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, Sears, Roebuck & Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its automobile tires and tubes to the general public in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "List Price" or any other term of similar import or meaning to designate, describe, or refer to prices which are not, in fact, the bona fide regular established selling prices of the tires or tubes advertised and offered for sale, as established by the usual and customary sales in the normal course of business.

2. Representing, directly or indirectly, that any specified amount is the customary, regular, or usual price of any tire or tube advertised and offered for sale when such amount is not, in fact the bona fide actual selling price of such tire or such tube as established by the usual and customary sales in the normal course of business.

3. Representing, directly or indirectly, any specified amounts or percentages as savings or discounts which are not actual savings or discounts computed on the bona fide, usual, and customary selling price for such tires or such tubes in effect immediately prior in point of time to such representation.

4. Representing, directly or indirectly, that any specified savings or discounts are offered a purchaser upon the purchase of certain of its tires or tubes when such savings or discounts are computed upon the regular selling or list prices of higher priced tires or tubes.

5. Representing, directly or indirectly, that a specified tire or tube is offered for sale when such tire or such tube is not so offered but instead another tire or tube of different kind or brand.

6. Representing, directly or indirectly, that any savings or discounts are afforded a purchaser upon the purchase of its tires or tubes when such savings or discounts are computed upon prices of competitors' tires or tubes unless the prices of respondent's tires or tubes and also those of its competitors are the regular current retail selling prices.

7. Representing, directly or indirectly, that a specified tire or tube is of a certain grade, kind, or line when such tire or tube is of a different grade, kind, or line.

8. Representing, directly or indirectly, that its tubes can be bought for a designated amount, or at a designated savings or discount, in combination with a tire or tires when the designated amounts, sav-

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ings, or discounts in such combination offer are not computed upon the regular retail selling prices of each item in the combination. .

9. Representing, directly or indirectly, that certain amounts are the prices of respondent's competitors' tires or tubes unless such amounts are the prices at which such competitors sell their tires or tubes in the ordinary and usual course of business.

10. Representing, directly or indirectly, that specific savings or discounts are afforded a purchaser upon the purchase of tires or tubes when such savings or discounts do not take into account the trade-in allowances usually and customarily made to purchasers in the sale of such tires or such tubes in the ordinary course of business.

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

IN THE MATTER OF
WESTERN AUTO SUPPLY COMPANY

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

Docket 4054. Complaint, Mar. 11, 1940—Decision, June 18, 1941

Where a corporation long engaged in the interstate sale and distribution, among other products, of automobile tires and tubes through its own retail stores located in various States; issuing price lists for its various grades of tires to its said stores, which did not, however, usually sell at the prices so designated but sold at lesser prices brought about by discounts from list prices and by trade-in allowances of 10 percent or more of the list price of new tires purchased for old tires;

In advertisements in connection with sales conducted through its said stores, in various newspapers and other periodicals of general circulation and by catalogs distributed by the stores, copy for which was prepared by it at its main office and forwarded to its retail stores and by them inserted in local newspapers and other advertising media, and in which, as indicated below, it represented that its products were being sold at purported discounts and savings from the regular retail prices—

- (a) Represented by such statements as "20 PER CENT DISCOUNT Off Our Regular Low Prices! Davis DeLuxe Tires" followed by a list of sizes with prices, that by paying the sales price indicated for any particular size tire a saving or discount of 20 percent was provided, based upon the regular sales price; when in fact, such represented discount was untrue for the reason that the listed "Regular Price" made no allowance for the trade-in value of purchaser's old tires, which by the terms of said advertisement were required to be turned in; giving effect to the minimum trade-in allowance of 10 percent for used tires, the saving or discount was approximately 11 percent rather than 20 percent as advertised; and the savings were further exaggerated by reason of the fact that the prices designated as "regular prices" were actually the list prices, and therefore not the prices customarily charged;
- (b) Represented that in the purchase of a Davis DeLuxe Tire during a particular sale, the purchaser received a Davis tube free and saved the difference between the advertised sales price of tire and tube and the listed price for nationally advertised tire and tube; the facts being that such savings were exaggerated and untrue in that the advertised price for its tire and tube made an allowance of 10 percent for purchaser's old tires, while the listed price for nationally advertised tire and tube made no such allowance, although it was customary for dealers to make a trade-in allowance of at least 10 percent; and the quoted prices of nationally advertised tires were the list prices rather than the selling prices, which latter are usually less than list prices without regard to the trade-in value of old tires;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, which understands and believes that represented savings or discounts from "list prices" are reductions from the regular