

IN THE MATTER OF
GENERAL MOTORS CORPORATION, AND GENERAL
MOTORS SALES CORPORATION

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

Docket 3152. Complaint, June 15, 1937—Decision, Nov. 12, 1941

Where a corporate automobile manufacturer, products of which, including parts and accessories made through several subsidiaries, constituted a substantial portion of all those made and sold in the United States, and which operated through five motorcar divisions, named to correspond with the cars made by it; and a sales corporation to and through which it competitively sold such automobile parts, etc., and which (1) supervised its dealers through a large field organization, (2) entered into agreements or "franchises" with them, under which dealer undertook not to sell or use second-hand parts or any not made or authorized by manufacturer, seller had right to check dealer's stock of parts, and dealer, if it thought such stock insufficient, was obligated to order immediately such parts as it might recommend; and (3) construed dealer's obligation to stock only "genuine parts" as covering, in addition to items for repair and replacement, its various accessories also—

In carrying on not as incident to their sale of automobiles, but as substantial portion of their entire business, to the promotion of which they directed numerous activities, sale of "parts" and accessories, which included a great variety of items theretofore sold in competition with the independent jobber and identical therewith, such as ball bearings, battery cables, brake linings, and numerous others; embraced many made by independent manufacturers for aforesaid manufacturer, differing from said manufacturers' similar items, sold through such jobbers, only in their sale, by said sales corporation, under its own identification, as "genuine"; and included many others which were made by many reputable manufacturers and were of like quality and design; or which, not necessary to the car's mechanical operation, had no bearing upon its performance and good-will—

- (a) Adopted a program of acts and practices which were designed to and did intimidate and coerce its dealers and compelled them to purchase parts and accessories solely from said selling corporation, and prohibited purchases from outside sources except in cases of emergency when the "genuine" part or accessory was not available in the warehouse of manufacturer in question; and as a part of said various acts and practices—
- (1) Made its indeterminate dealer franchises a means of coercion and intimidation through its practice of renewing or canceling such franchises at the annual meetings called by the zone managers for their respective districts, at which time each dealer, following personal interviews with representatives of the parts and accessories and other departments, and final interview with the zone manager, as condition to renewal, was required to secure the approval of each and agree with said manager on his prospective requirements;

58

Syllabus

- (2) Coerced, through threat of cancelation implicit in aforesaid practice, dealers into the purchase of parts and accessories beyond their requirements, and, under its plan designed to limit dealer's purchases of parts and accessories to those sold by it, delivered, in many cases, automobiles equipped with various accessories which he had not ordered; shipped to him, with or without cars and without prior order therefor, accessories; and, in many cases, made shipments of parts and accessories, treating as orders therefor, dealer's required projection of future needs;
- (3) Made use of its monthly parts order plan—under which dealer's last monthly order was compared with the present one—to intimidate, coerce and compel dealers to buy parts and accessories;
- (4) Made use of its monthly inspection of the dealers' stocks and establishments to coerce them into purchasing its parts and accessories only, through threatening, directly and by implication, upon discovery of parts and accessories other than those supplied by it, that unless practice was discontinued, recalcitrants' contracts would be canceled; furthering such threats through arrangements for interviews with respective zone managers, in whom, as was known, rested power to recommend cancelation; and
- (5) In some cases delayed new car shipments to dealers who had refused to handle only parts and accessories sold by it, and in certain cases canceled dealers' contracts after controversy over use of parts and accessories, though, ostensibly, upon other grounds;

With the result that independent jobbers who, as competitors, sold the products of independent manufacturers, including numerous items identical with those sold by two corporations in question, and embracing many sold also by said corporations under their own identification as "genuine" replacement parts, and many others not necessary to the car's mechanical operation and having no bearing upon its performance or good-will, were thereafter unable to sell in substantial quantities to dealers such parts and accessories as heaters, radios, antifreeze solutions, spark plugs, and many others; dealers of said sales corporation were intimidated, coerced and compelled to purchase accessories and supplies only from it; substantial trade was diverted to corporations in question from their competitors engaged in the manufacture and interstate sale and distribution of automobile accessories and supplies; competing manufacturers were deprived of a market for their products; and there was a tendency unduly to hinder competition and create a monopoly in said first named corporation in automobile accessories and supplies:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and said corporations' competitors, and constituted unfair methods of competition in violation of section 5 of the Federal Trade Commission Act; and

Where aforesaid corporations—

- (b) Entered into agreements or "franchises" with dealers handling their respective lines of automobiles, parts and accessories and sold their parts on the condition, agreement or understanding that the purchaser would not sell or use parts other than those acquired from them, without limitation to parts' necessity to car's mechanical operation and lack of availability, in like quality and design, from other sources;

With the tendency to create a monopoly in replacement parts used on said manufacturer's cars; of removing as customers of independent manufac-

Complaint

34 F. T. C.

turers and jobbers some 14,000 dealers in cars in question, and all associate dealers and selected independent garages who, under plan pushed by them, had agreed to purchase only parts supplied by dealers of said corporations, estimated for one division alone as amounting to about 15,000 in 1936:

Held, That such acts and practices of said corporations in selling replacement parts on the condition, agreement or understanding that purchaser should not use or deal in those of a competitor had the effect of substantially lessening competition, tended to create a monopoly in products in question and constituted a violation of section 3 of the Clayton Act, as amended.

Before *Mr. John L. Hornor* and *Mr. W. W. Sheppard*, trial examiners.

Mr. Everett F. Haycraft and *Mr. Merle P. Lyon* for the Commission.

Mr. Edward B. Wallace, *Mr. Albert M. Levert* and *Mr. John Thomas Smith*, of New York City, for respondents.

COMPLAINT

Count 1

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that General Motors Corporation and General Motors Sales Corporation, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, General Motors Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its general office and place of business in the city of Detroit, State of Michigan. It is now, and for more than three years last past has been, engaged in the manufacture of automobiles, automobile accessories, automobile parts, and automobile supplies, and in the sale thereof, by and through subsidiaries to automobile retail dealers located throughout the several States of the United States, the territories thereof, and in the District of Columbia, causing said products when sold to be transported from the places of manufacture in various States of the United States to the purchasers thereof located in States other than the place of manufacture thereof, and there is now and has been for more than three years last past, a constant current of trade and commerce in said products between and among the various States of the United States, the territories thereof, and in the District of Columbia.

The said respondent, General Motors Corporation, in the sale of automobiles and automobile parts, through its said subsidiaries to automobile retail dealers, as aforesaid, has entered into and now has contracts or franchises with said automobile dealers for the resale of said products, which said franchises constitute a major asset of said dealers. The number of automobile dealers having such franchises has constituted for more than 3 years last past, and now constitutes, a substantial proportion of all the automobile dealers in the United States.

The number of automobiles manufactured by said respondent and sold through its said subsidiaries as hereinbefore and as hereinafter described, for more than 3 years last past has constituted, and now constitutes, a substantial proportion of all the automobiles manufactured and sold in the United States. The total volume of automobile parts, automobile accessories, and automobile supplies sold by said respondent through its said subsidiaries as hereinbefore and as hereinafter described, has for more than 3 years last past constituted, and now constitutes, a substantial proportion of all the automobile parts, automobile accessories and automobile supplies manufactured and sold in the United States.

In the course and conduct of its said business, as hereinbefore and as hereinafter described, said respondent, General Motors Corporation, has been for more than 3 years last past, and now is, in substantial competition in the sale of automobiles, automobile parts, automobile accessories, and automobile supplies, in commerce between and among the various States of the United States, the territories thereof, and in the District of Columbia, with other corporations and with persons, firms, and partnerships.

PAR. 2. For more than 3 years prior to October 23, 1936, or thereabouts, the sales of automobiles, parts, accessories, and supplies manufactured by said General Motors Corporation were made through and by subsidiary corporations, among which were Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, and Cadillac Motor Car Co., at whose respective factories said General Motors Corporation manufactured the automobiles sold by such subsidiary corporations and at whose respective factories said General Motors Corporation also manufactured automobile parts, accessories and supplies for use in and on automobiles sold by said General Motors Corporation through the aforesaid subsidiaries. For more than 3 years prior to October 23, 1936, respondent General Motors Corporation also sold as described in paragraph 1 hereof, automobile parts, automobile accessories, and automobile supplies through another subsidiary, General Motors Parts Corporation, a Delaware corpora-

Complaint

34 F. T. C.

tion, with its principal office and place of business located in the city of Detroit, State of Michigan; and for more than 3 years prior to October 23, 1936, respondent General Motors Corporation also sold as described in paragraph 1 hereof, automobile parts, automobile accessories, and automobile supplies through said General Motors Parts Corporation, such parts, accessories, and supplies having been manufactured by other corporations subsidiary to respondent General Motors Corporation, and by persons, firms, partnerships, and corporations associated and affiliated, by contractual relationship or otherwise, with said respondent General Motors Corporation or one or more of its subsidiaries.

PAR. 3. On October 23, 1936, or thereabouts, the aforesaid subsidiaries Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, Cadillac Motor Car Co., and General Motors Parts Corporation, were dissolved and all of their assets acquired by respondent General Motors Corporation, which upon such acquisitions organized as a wholly owned and controlled subsidiary respondent General Motors Sales Corporation, a Delaware corporation with its principal office in Detroit, Mich., which since its organization on October 23, 1936, or thereabouts, has conducted and still conducts the business theretofore conducted by said Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, Cadillac Motor Car Co., and General Motors Parts Corporation.

PAR. 4. In the course and conduct of their businesses hereinbefore described, said respondent General Motors Corporation and said Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, Cadillac Motor Car Co., and General Motors Parts Corporation, for more than 3 years prior to October 23, 1936, or thereabouts, by intimidation, oppression, and coercion compelled dealers in makes of automobiles manufactured by said General Motors Corporation, against their will, to purchase accessories and supplies for use on such automobiles only from said Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, Cadillac Motor Car Co., or General Motors Parts Corporation, or from other corporations, or from persons, firms, or partnerships associated or affiliated with said General Motors Corporation, said Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, or Cadillac Motor Car Co., or said General Motors Parts Corporation. As a part of such intimidation, oppression, coercion, and compulsion, said Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, and Cadillac Motor Car Co., during said period shipped to such dealers automobiles equipped with accessories not ordered by such dealers and shipped accessories and supplies (not

attached to automobiles) not ordered by such dealers and threatened such dealers with cancellation of their franchises for selling such automobiles, unless they accepted and paid for such accessories and supplies not ordered by them, and as a part of such intimidation, oppression, coercion, and compulsion, because of the refusal of certain of their dealers to accept unordered accessories and supplies, canceled their respective franchises with such dealers.

PAR. 5. Said respondent, General Motors Corporation, and its subsidiaries, General Motors Parts Corporation, Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, and Cadillac Motor Car Co., by the use of the practices and methods described in paragraph 4 hereof, for more than 3 years prior to October 23, 1936, or thereabouts, diverted substantial trade from manufacturers of automobile accessories and automobile supplies engaged in competition with the corporations named in this paragraph, and with persons, firms, and partnerships associated or affiliated with said corporations, in the sale of said products between and among the various States and territories of the United States and the District of Columbia; and deprived said competitors of a market for the sale of said products manufactured and sold by said competitors as aforesaid; and, did substantial injury to substantial competition and tended unduly to hinder competition and to create a monopoly in General Motors Corporation in commerce, in automobile accessories and automobile supplies, between and among the various States and territories of the United States and in the District of Columbia.

PAR. 6. In the course and conduct of their business hereinbefore described, said respondent, General Motors Corporation, and said respondent, General Motor Sales Corporation, since October 23, 1936, or thereabouts, by intimidation, oppression, and coercion have compelled dealers in makes of automobiles manufactured by said General Motors Corporation, against their will, to purchase accessories and supplies for use on such automobiles only from said General Motors Sales Corporation or from corporations or from persons, firms and partnerships associated or affiliated with said General Motors Corporation or said General Motors Sales Corporation. As a part of such intimidation, oppression, coercion, and compulsion, said General Motors Sales Corporation, since October 23, 1936, or thereabouts, has shipped to such dealers, automobiles equipped with accessories not ordered by such dealers, and has shipped accessories and supplies (not attached to automobiles) not ordered by such dealers, and has threatened such dealers with cancellation of their franchises for selling such automobiles, unless they accepted and paid for such accessories and supplies not ordered by them, and as a part

Complaint

34 F. T. C.

of such intimidation, oppression, coercion, and compulsion, because of the refusal of certain of their dealers to accept unordered accessories and supplies, have cancelled their respective franchises with such dealers.

PAR. 7. Said respondents, General Motors Corporation and General Motors Sales Corporation by the use of the practices and methods described in paragraph 6 hereof, at all times since October 23, 1936, or thereabouts, have diverted and are now diverting substantial trade from manufacturers of automobile accessories and supplies, engaged, in competition with said respondents, in the sale of said products between and among the various States and territories of the United States and in the District of Columbia; and, have deprived and are now depriving said competing manufacturers of a market for the sale of said products manufactured and sold by said competing manufacturers as aforesaid; and, said respondents have done and are now doing substantial injury to substantial competition, and have tended, and are now tending, unduly, to hinder competition and to create a monopoly in General Motors Corporation in commerce, in automobile accessories and automobile supplies, between and among the various States and territories of the United States and in the District of Columbia.

PAR. 8. The above alleged acts and practices of respondents General Motors Corporation and General Motors Sales Corporation are all to the injury and prejudice of the public and said respondents' competitors and constitute unfair methods of competition within the intent and meaning of section 5 of an act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Count 2

The Federal Trade Commission having reason to believe that General Motors Corporation and General Motors Sales Corporation, hereinafter called respondents, have violated and are now violating the provisions of section 3 of the act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), hereby issues this its complaint against said respondents and states its charges with respect thereto as follows, to-wit:

PARAGRAPH 1. For its charges under this paragraph of this count, said Commission relies upon the matters and things set out in paragraph 1 of count 1 of this complaint to the same extent and as though the allegations of said paragraph 1 of said count 1 were set out in

full herein, and said paragraph 1 of said count 1 is incorporated herein by reference and made a part of the allegations of this count.

PAR. 2. For its charges under this paragraph of this count, said Commission relies upon the matters and things set out in paragraph 2 of count 1 of this complaint to the same extent and as though the allegations of said paragraph 2 of said count 1 were set out in full herein, and said paragraph 2 of said count 1 is incorporated herein by reference and made a part of the allegations of this count.

PAR. 3. For its charges under this paragraph of this count, said Commission relies upon the matters and things set out in paragraph 3 of count 1 of this complaint to the same extent and as though the allegations of said paragraph 3 of said count 1 were set out in full herein, and said paragraph 3 of said count 1 is incorporated herein by reference and made a part of the allegations of this count.

PAR. 4. In the course and conduct of its business described in paragraphs 1 and 2 of count 1 of this complaint, respondent, General Motors Corporation, and the aforesaid Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, Cadillac Motor Car Co., and General Motors Parts Corporation, in the course of commerce between and among the various States of the United States and the District of Columbia as described in said paragraphs 1 and 2 of said count 1 of this complaint, for more than 3 years prior to October 23, 1936, or thereabouts, made sales and contracts for the sale of automobile parts on the condition, agreement, and understanding that the purchasers thereof should not deal in the automobile parts of a competitor or competitors of said respondent, General Motors Corporation, and the aforesaid Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, Cadillac Motor Car Co., and General Motors Parts Corporation, the effect of which said sales and contracts for sale upon such condition, agreement, and understanding may have been to substantially lessen competition or tend to create a monopoly in respondent General Motors Corporation, said Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, Cadillac Motor Car Co., and said General Motors Parts Corporation, in commerce between and among the various States of the United States and the District of Columbia in automobile parts.

PAR. 5. The aforesaid acts of said respondent, General Motors Corporation, and of the aforesaid Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, Cadillac Motor Car Co., and said General Motors Parts Corporation constituted a violation of the provisions of section 3 of the hereinabove mentioned act of

Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (the Clayton Act).

PAR. 6. In the course and conduct of their businesses described in paragraphs 1, 2, and 3 of count 1 of this complaint, respondent General Motors Corporation and respondent General Motors Sales Corporation, in the course of commerce between and among the various States of the United States and the District of Columbia, described in said paragraphs of said count, have made sales and now are making sales, and contracts for the sale, of automobile parts on the condition, agreement, and understanding that the purchasers thereof shall not deal in the automobile parts of a competitor or competitors of said respondents, the effect of which said sales and contracts for sale upon such condition, agreement, and understanding may be, or may have been, to substantially lessen competition or to tend to create a monopoly in respondents in commerce between and among the various States of the United States and in the District of Columbia in automobile parts.

PAR. 7. The aforesaid acts of said respondents, General Motors Corporation and General Motors Sales Corporation, constitute a violation of the provisions of section 3 of the hereinabove mentioned act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and pursuant to the provisions of an act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, the Federal Trade Commission, on June 15, 1937, issued and subsequently served its complaint in this proceeding upon the respondents, General Motors Corporation, a corporation, and General Motors Sales Corporation, a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Federal Trade Commission Act, and also charging them with violation of the provisions of section 3 of said act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes." After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Everett

F. Haycraft, attorney for the Commission, and in opposition to the allegations of the complaint by Albert M. Levert, attorney for the respondents, before John L. Hornor and W. W. Sheppard, trial examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Approximately 30,000 pages of testimony were taken before Trial Examiner John L. Hornor, including approximately 11,000 pages of Commission's case in chief. The remaining 8,000 pages of testimony were taken before Trial Examiner W. W. Sheppard. A report upon the entire evidence was submitted by Trial Examiner W. W. Sheppard without objection of counsel for the respondents. Trial Examiner John L. Hornor did not submit a report upon the evidence taken before him or join in the report upon the evidence submitted by Trial Examiner W. W. Sheppard. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers thereto, testimony and other evidence, report of Trial Examiner W. W. Sheppard upon the evidence, and exceptions filed thereto by counsel for the Commission, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel; and the Commission having duly considered the matter and having given detailed consideration to the testimony and other evidence, as well as the report of Trial Examiner W. W. Sheppard upon the evidence, and exceptions filed thereto, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, General Motors Corporation, is a Delaware corporation, with its general office and place of business in the city of Detroit, State of Michigan, and is now, and for several years last past has been, engaged in the manufacture of automobiles under trade names of "Cadillac," "LaSalle," "Buick," "Oldsmobile," "Pontiac," and "Chevrolet," and replacement parts, accessories, and supplies for said automobiles under the trade names of "Cadillac," "LaSalle," "Buick," "Oldsmobile," "Pontiac," "Chevrolet," and "G. M.," which said products have been, since on or about October 23, 1936, sold through and by respondent General Motors Sales Corporation, a Delaware corporation, to dealers located throughout the several States of the United States, and in the District of Columbia, and such products, when so sold, have been, and are now being, transported and shipped from the factories of said respondent General Motors

Findings

34 F. T. C.

Corporation to said dealers located in States other than the State in which said products have been, and are being manufactured. Said respondent General Motors Sales Corporation is a wholly owned subsidiary of respondent General Motors Corporation.

Respondents maintain, and at all times mentioned herein, have maintained a course of trade in said automobiles, replacement parts, accessories, and supplies in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their said business, respondents are now, and for more than 3 years last past have been, engaged in substantial competition in the sale of automobiles, automobile parts, accessories, and supplies, with other corporations and with persons, firms, and copartnerships engaged in the sale and distribution of similar products in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 3. Prior to October 23, 1936, the respondent General Motors Corporation sold its said automobiles, replacement parts, automobile accessories, and supplies manufactured as aforesaid, through and by the following subsidiary corporations, which were operated as divisions of General Motors Corporation, namely, Cadillac Motor Car Co., Buick Motor Co., Olds Motor Works, Pontiac Motor Co., and Chevrolet Motor Co., and also through its subsidiary, the General Motors Parts Corporation, a Delaware corporation, with its principal office and place of business located in the city of Detroit, State of Michigan.

PAR. 4. On or about November 30, 1936, the said Cadillac Motor Car Co., Buick Motor Co., Olds Motor Works, Pontiac Motor Co., Chevrolet Motor Co., and General Motors Parts Corporation were dissolved and their assets acquired by said respondent General Motors Corporation, and the business of selling automobiles, parts, accessories, and supplies theretofore conducted by said corporations was thereafter conducted by said respondent General Motors Sales Corporation.

PAR. 5. Respondent General Motors Corporation, since November 30, 1936, has conducted its operations through five motorcar divisions, namely, Chevrolet Motor Division, Pontiac Motor Division, Olds Motor Works Division, Buick Motor Division, and Cadillac Motor Car Division. Said respondent General Motors Corporation sells the automobiles, replacement parts, accessories, and supplies manufactured by it in its various divisions to General Motors Sales Corporation. Respondent General Motors Sales Corporation is also divided into motorcar divisions corresponding to the various manufacturing divisions of respondent General Motors Corporation.

PAR. 6 Respondent General Motors Sales Corporation, in the sale of automobiles, parts, accessories, and supplies to automobile dealers, maintains its principal or central office in the General Motors Building, city of Detroit, State of Michigan, and maintains regional and zone offices throughout the several States of the United States and employs parts and accessories salesmen, who contact dealers handling cars manufactured by the respondent General Motors Corporation. In this respect said respondent General Motors Sales Corporation operates through separate divisions for each respective make of car sold by it.

PAR. 7 Dealers who are selected by the respondent General Motors Sales Corporation are required to meet certain standards, particularly of a financial nature, dependent upon the locality of the dealer and the territory granted. In addition, said respondent maintains a degree of supervision over such dealers, for which purpose a large field organization is maintained. This field organization may be illustrated by the Chevrolet organization as of June 30, 1937, which is typical. The general sales manager was at the head of the Chevrolet Division of General Motors Sales Corporation, and under him were two assistant general sales managers. Under these were 9 regional managers, each of whom was in charge of a region comprising 3 or more States. Under each regional manager were approximately 47 zone managers, each in charge of a zone comprising a part of one or more States. Under each zone manager were field representatives or district managers, each of whom was assigned to a specific territory, usually a county or other small subdivision. These field representatives made frequent calls on dealers, inquired as to business and economic conditions, offered advice and suggestions, made periodic audits, collected data, and, in general, obtained detailed information concerning dealers' business operations. The distribution of parts and accessories in the respective regions above described was supervised by regional parts and accessories managers. Each zone in turn had a parts and accessories manager, who supervised the distribution of parts and accessories to Chevrolet dealers located in their respective zones. Working under these zone parts and accessories managers were 146 zone parts and accessories salesmen contacting the Chevrolet dealers at regular intervals, usually monthly, promoting the sale of parts and accessories to Chevrolet dealers.

PAR. 8. General instructions are issued in the form of bulletins, circulars, and manuals by parts and accessories managers of the respective divisions of the respondent General Motors Sales Corporation to their respective zone officials, and through them and by them to salesmen for the respective divisions, as to the methods and practices

Findings

34 F. T. C.

to be employed by said salesmen in the sale of said replacement parts, accessories, and supplies sold to the respective dealers located throughout the United States. In addition, oral instructions are given to salesmen by these respective division and zone officials at meetings of said officials and salesmen held from time to time at central, regional, and zone offices.

PAR. 9. One of the most important duties imposed upon the replacement parts and accessories salesmen employed by respondent General Motors Sales Corporation is to see that the respective dealers handle and keep in stock only "genuine" General Motors parts and accessories, which, in practice, means to the dealer, a part or accessory manufactured by or at the instance of General Motors Corporation and sold and distributed by the various divisions of General Motors Sales Corporation. These parts and accessories are identified by either the division trade-mark, the General Motors trade-mark, or sealed parts packages bearing General Motors identification. In practice, as indicated by accessory catalogs and accessory order pads, the term "accessory" is used to include all items other than parts, and covers various items which might otherwise be considered as supplies, such as cleaner, polishing cloth, dressing, polish, etc.

PAR. 10. There are several subsidiaries of General Motors Corporation engaged in the manufacture of parts and accessories. Among these are Delco-Remy Corporation, New Departure Manufacturing Company, A. C. Spark Plug Co., Packard Electric Co., Delco Products Corporation, and Delco Appliance Corporation. The parts and accessories manufactured by these several subsidiaries are sold and distributed by the respondent General Motors Sales Corporation to General Motors dealers. In addition, there was organized a wholly owned subsidiary of General Motors Corporation known as United Motors Service, Inc., which is also engaged in the sale and distribution of parts and accessories, manufactured by these various subsidiaries, through and by means of distributors and jobbers located throughout the United States. It is estimated that there are approximately 3,000 jobbers of United Motors Service, Inc., handling either all or part of United Motors Service line. There are certain items of the United Motors Service line, manufactured by subsidiaries of General Motors Corporation, which are not handled by some of the divisions of the General Motors Sales Corporation. As to such items, the dealer is supplied either direct by the United Motors Service, Inc., or permitted to purchase such items from authorized jobbers of United Motors Service, Inc. The United Motors Service, Inc., does not carry the entire line of General Motors parts, but, instead,

confines itself chiefly to accessories manufactured by the various subsidiaries of General Motors Corporation. While there is evidence in the record that some dealers have from time to time purchased certain items from jobbers of the United Motors Service, Inc., this practice is not encouraged, and even jobbers of the United Motors Service line have had difficulty in selling parts and accessories to General Motors dealers. Furthermore, objections have been made, from time to time, by replacement parts and accessories salesmen of respondent General Motors Sales Corporation, particularly in the Chevrolet Division, to dealers using and stocking accessories and supplies purchased from authorized United Motors Service dealers for the alleged reason that such items did not constitute "genuine" parts or accessories.

PAR. 11. For the purpose of increasing the sale of parts, the respondent General Motors Sales Corporation induces its dealers to become wholesalers or distributors of "genuine" parts among various garages in the vicinity where the dealer is located. The dealer selects several representative garages, designated as "Selected Independents," who have no car sales agreements with any other automobile manufacturer and who will agree to use only "genuine" parts in the repair of General Motors cars. Such selected independent garages are then issued discount cards entitling them to purchase parts from the dealer at a discount of 25 percent, and, in addition, such garages are loaned a "Genuine Parts" sign and furnished other service of an informative and advertising nature by the division zone office. The nature of this arrangement and the allowance of this discount to independent dealers appears in Pontiac's District Managers Training Course, in which it is stated as follows:

Many dealers do not appreciate that Pontiac's net prices on competitive parts are much lower in almost every instance than the jobber's parts. To grant these long discounts Pontiac must insist that dealers purchase all of their parts from Pontiac.

PAR. 12. In order to promote the sale of parts, a distinction has been made between "fast-moving" and "slow-moving" parts. For example, in its "Operating Manual" for the "genuine parts" department for the year 1934, issued by the Chevrolet Motor Co., it was estimated that there were approximately 15,500 parts listed in Chevrolet master parts catalogs, of which only 841 parts, or approximately 6 percent, come within the classification of "fast-moving parts." Since the "fast-moving" parts are the only ones which can be profitably stocked and handled, it is recommended by respondent General Motors Sales Corporation that the dealer stock only such "fast-moving" parts and

Findings

34 F. T. C.

carry a very limited supply of the "slow-moving" parts. For the purpose of facilitating the stocking and handling of the "fast-moving" parts a "balanced parts stock plan" has been developed, which consists of steel bins and a supply of parts which have been carefully selected by the parts department. The dealer, in addition, carries a monthly parts inventory control record and orders parts each month as his supply is depleted.

PAR. 13. A plan somewhat similar to the balanced parts system is used in connection with accessories, except that the dealer, instead of carrying an inventory control record, follows an accessories projection system, which is operated in the same manner as used by the dealer in ordering new cars, whereby each month the dealer estimates the quantity of accessories he will sell during the next 30 days. Such estimates or projections are usually made with the sales representative and are based upon the estimated quantity of accessories in proportion to the sale of new cars.

PAR. 14. The respondent General Motors Sales Corporation enters into agreements popularly known as "franchises" with automobile dealers handling its respective lines of automobiles, parts, and accessories, which said agreements set forth the terms and conditions under which sales of automobiles, parts, and accessories are made to the respective dealers. Under these agreements or franchises, respondent General Motors Sales Corporation grants to the dealers the right to sell motor vehicles, chassis, parts, and accessories in certain defined territory described in an appendix thereto which is made a part of the franchise or agreement. The dealers accept these franchises and agree to make all sales in accordance therewith.

In the appendix to said franchise agreements (except those with dealers located in the State of Texas) the following clause is set forth with respect to the sale of "genuine new Chevrolet parts":

Dealer agrees that he will not sell, offer for sale, or use, in the repair of Chevrolet motor vehicles and chassis, second-hand or used parts, or any part or parts not manufactured by or authorized by the Chevrolet Motor Division, General Motors Sales Corporation.

A similar clause likewise appears in the franchise agreements executed by the other divisions of General Motors Sales Corporation, namely, Pontiac, Oldsmobile, and Buick.

PAR. 15. In the appendix to the agreement between respondent General Motors Sales Corporation and their respective dealers located in the State of Texas, a clause differing from that appearing in its usual contracts is set forth with respect to the sale of "genuine new parts,"

of which the following statement appearing in the contract of the Chevrolet Motor Division is an example:

Dealer agrees that he will not sell, offer for sale, or use, in the repair of Chevrolet motor vehicles and chassis, as genuine new Chevrolet parts, any part or parts not manufactured by or authorized by the Chevrolet Motor Company.

PAR. 16. The agreements or franchises entered into between General Motors Sales Corporation through its various divisions and its respective dealers contain no date of termination but provide that the contract can be canceled by the General Motor Sales Corporation by giving three months' written notice and the payment of certain damages to cover loss of rent for the premises. The dealer may cancel the contract by giving 1 month's written notice of intention to terminate.

PAR. 17. In addition to the clauses above described, the agreements or franchises entered into between respondent General Motors Sales Corporation and its respective dealers contain the following clause with respect to inspection of repair part stocks of the dealers:

Seller shall have the right at any reasonable time in business hours to inspect and check over dealer's stock of repair and replacement parts, and if, in seller's judgment, a sufficient quantity of parts for repair and replacement purposes are not then in dealer's stock, dealer hereby agrees to immediately order such parts as may be recommended by seller.

PAR. 18. In the enforcement of the above provisions of the contract with respect to dealers' selling and using only "genuine" parts and with respect to checking dealers' repair and replacement parts, it was customary for representatives of respondent General Motors Sales Corporation to consider the obligation to purchase only "genuine" parts as extending to and covering various accessories sold by said respondent. Such representatives, in soliciting business from dealers and in checking dealers' supplies to determine necessity of purchasing additional items, have led the dealers to believe that under the terms and conditions of the agreement or franchise the dealer was required to purchase accessories, as well as repair and replacement parts, and, as a result, dealers did purchase accessories, as well as parts, because of such belief.

PAR. 19. The distinction between parts and accessories has been somewhat confusing even to the officials of respondents' various divisions. For example, B. M. Smarr, a witness called by the respondents, stated that he had been in the employ of General Motors Corporation for approximately 19 or 20 years and was supervisor of parts pricing and compiling of parts sales statistics, and determined the parts necessary

Findings

34 F. T. C.

to be serviced by Chevrolet to give complete service coverage on Chevrolet cars. In his testimony this witness stated:

We were a long time finding out what we were going to call parts and what we were going to call accessories. We finally licked that by letting one fellow take care of them all. * * * Sorry to say that was me. I was obliged to put a part number on them. So, if it was an accessory I put a number on it and if it was not an accessory I wouldn't put the number on.

PAR. 20. As new models of cars were developed, many items previously considered as accessories became standard equipment and, as such, came within the classification of parts. There are, consequently, a large number of so-called parts which have no connection with the mechanical operation of the automobile, many of which were formerly accessories and became parts solely because of their inclusion in standard equipment. For example, such items as the following appear in parts catalogs issued by the respondent General Motors Sales Corporation: floor mats, rear-view mirrors, ornamental radiator caps, ash receivers, windshield wipers, sunshades, sun visors, arm rests, etc. The following items, considered at one time as accessories, became parts of the Chevrolet car between the years 1925 and 1936: bumpers, wire wheels, thermostats, wind wings, trunks, spring covers, rear-view mirrors, gasoline gauges, safety glass, air cleaners, metal tire covers, sun visors, vacuum windshield wipers, pedal pads, shock absorbers, arm rests, stop lights, heat indicators, tire locks, and ash receivers.

PAR. 21. The sale of parts and accessories is not incidental to the sale of automobiles or the maintaining of the good will toward the automobiles manufactured and sold by the respondents, but, instead, constitutes a substantial portion of the business transacted by the respondents. The Chevrolet Motor Division distributed to its various zone managers and salesmen, a manual entitled, "Distribution of Automotive Replacement Parts Yesterday and Today," which appears in the record as Commission's Exhibit No. 111. In this manual it was estimated that in 1936 there were ten competitors to one Chevrolet dealer engaged in the sale and distribution of parts and accessories but that by reason of promotional activities adopted by the Chevrolet Division, these competitive odds were overcome, and, during the year 1936, the Chevrolet Division was successful in obtaining 38.5 percent of the estimated potential parts business. As stated in this exhibit, "Chevrolet Motor Division has spent more money than any other manufacturer in the industry, in the development of service, parts, and accessories sales for Chevrolet dealers."

PAR. 22. With reference to accessories, the above exhibit contains the following statements:

For example * * *

Jobbers formerly sold to Automobile Dealers in mixed carload lots * * *.

* Automobile Bumpers,
* Motor Meters,
* Demountable Rims,
* Locking Steering Wheels,
* Door and Transmission Locks,
and

MANY OTHER ITEMS.

And in recent years * * *

CAR DEALERS

* * * have concentrated on the sale of other Accessories in order to obtain needed Gross Profits * * *.

With The Result * * *

that the Jobbers quickly lost the bulk of this business * * *.
because * * *

THEY COULD NOT DEAL IN CUSTOM BUILT ACCESSORIES
FOR EXAMPLE

the jobbers never had a chance to get the
CAR RADIO BUSINESS

The Car Dealers hold this business because most new car accessories are bought by our customers at the time they purchase their new cars from the Dealers.

PAR. 23. Various activities of a promotional nature have been adopted by respondent General Motors Sales Corporation for the purpose of stimulating the sale of parts and accessories, among which are the following, which have been listed in the above exhibit No. 111:

- (1) Annual review, inventory, check-up, and training meeting for dealers and their parts managers.
- (2) Parts managers training course.
- (3) Monthly group meetings.
- (4) Independent garagemen's meeting, conducted by Chevrolet dealers and assisted by Chevrolet field personnel.
- (5) Parts mart magazine for dealers' parts managers.
- (6) Chevrolet dealer's news, featuring training and promotional ideas applying to parts and service activities.
- (7) Monthly film service on parts and accessories retail merchandising.
- (8) Monthly store arrangement and trim service.
- (9) The establishment of 145 parts and accessories representatives to assist dealers in the balancing of their parts and accessories stocks,

Findings

34 F. T. C.

who are trained to promote parts and accessories retail sales for dealers to move merchandise from their shelves in accordance with agreed monthly programs set up by the zone offices.

(10) Monthly inventory control pads supplied to dealers.

(11) Additional 3 percent discount and free freight on certain parts and accessories monthly orders.

(12) Lot net prices on 388 highly competitive items to meet competition.

(13) Parts packaging program in which 1500 items are distributed in sales-producing containers.

(14) The establishment of the broadest and most effective parts distributing system in the industry.

(15) Fifteen thousand selected independent garages signed up for wholesale discount and supplied with parts list material, without cost to them.

(16) Independent garage bin at special price.

(17) Parts advertising in national trade magazines.

(18) Government parts contract "provides mandatory purchases of genuine Chevrolet parts".

(19) Radio service.

(20) Modern parts store program designed for the merchandising of parts and accessories.

(21) Accessories display service.

(22) Special merchandise displays, such as individual counter cards, etc.

(23) Cash prizes to members of dealers' organizations for unusual selling records and performance.

PAR. 24. In the course of its dealings with dealers, the respondent General Motors Sales Corporation adopted acts and practices which were designed to, and did, intimidate such dealers, and which coerced and compelled them to purchase parts and accessories solely from the respondent General Motors Sales Corporation and prohibited purchases from outside sources except in cases of emergency when the "genuine" part or accessory was not available in General Motors' warehouse. There are approximately 14,000 General Motors dealerships, exclusive of associate dealers, located throughout the country, the status of each of which is determined by a franchise agreement which is subject to annual renewal and to cancellation on very short notice, without cause. Although every dealer is an independent businessman, the supervision and control exercised by General Motors Sales Corporation over his business operations is almost as complete as if the dealer were an agent in all respects. Every dealer acquires a substantial investment in buildings, cars,

parts, and accessories, and builds up goodwill in a community. Consequently, a canceled dealership leaves the respondents with one less retail outlet, which can be readily replaced, but leaves the disfranchised dealer without a business and burdened with his substantial investment, in the liquidation of which he is likely to sustain a heavy loss.

PAR. 25. Although the original franchise or agreement made with the dealer runs for an indefinite period of time, it is customary to renew such contracts the latter part of each year for the ensuing year. In this connection it is customary for the zone manager to call meetings of the dealers in each of the districts, at which all dealers attend. After a sales talk, usually by the zone manager, the dealers present are required to attend a series of personal interviews with representatives of various departments of General Motors Sales Corporation, such as the parts and accessories departments, with a final interview with the zone manager, at which time the requirements for the coming year are reviewed, as arrived at in interviews with the various departments, including the parts and accessories department. The dealer is required to secure the approval of each of these representatives and to agree with the zone manager on the subject of car requirements before the franchise agreement is renewed. Such arrangement carries with it an implied threat of cancellation unless satisfactory arrangements are made with the parts and accessories managers, as well as the zone manager, and, to this extent, a number of dealers have been coerced into the purchase of parts and accessories over and above their requirements because of such implied threat of cancellation of the contract.

PAR. 26. As a further means of coercion and compulsion in order to prevent dealers from purchasing parts and accessories from outside sources, the respondent General Motors Sales Corporation has, in many cases, delivered automobiles equipped with various accessories which were not ordered by the dealer, and has shipped accessories to the dealers, with or without cars, without prior order therefor. In addition thereto, it was customary for said respondent to require the dealers to project future requirements in parts and accessories, and in many cases the said respondent thereafter treated such projections as orders and made shipments thereon. The entire plan was so designed as to prevent a dealer from making any purchases from jobbers or other manufacturers and to eliminate all parts and accessories other than those sold and distributed by the respondent General Motors Sales Corporation.

PAR. 27. The following statements which appear in Pontiac's District Managers Training Course are examples of instructions given to district managers by the respondent General Motors Sales Corporation to force the purchase of accessories by dealers:

Check over the dealer's copy of first two current months dealer shipping specifications against last groups agreed upon last month's projection.

Then if dealer has failed to specify as agreed upon, try and sell him on stepping up his group orders on the last shipping specifications (due in zone on 5th of current month) to balance his original order with you.

When dealers fail to order the "C" and "W" groups on their specification sheets as agreed upon, car distributors should automatically include these groups on the dealers' specifications, up to the percentage originally agreed upon by the dealer and district manager. (The "C" and "W" groups referred to in the above quotation appear previously in said training course as "Group C, electric clock" and "Group W, ash receiver, cigar lighter, visor vanity mirror, gear shift bail.")

PAR. 28. Among the forms of intimidation and coercion used by the respondent General Motors Sales Corporation to compel dealers to buy parts and accessories from said respondent are the monthly parts order plan, the monthly inspection of bins, accessories, and establishments of dealers, and inspection of dealers' stock of repair and replacement parts under terms of the franchise agreement authorizing representative of said respondent to make such inspection and authorizing such representative to require the purchase of additional parts as may be considered necessary, which have enabled the said respondent to coerce dealers into purchasing respondent's parts and accessories and to prohibit purchases from outside sources. The requirement that only "genuine" parts be handled by the dealer and the use of identifying tags and markers permit and enable the representatives of said respondent, when checking the dealers' parts, to object to the presence in dealers' supply room of various materials not furnished and supplied by said respondent.

The real purpose of such inspections and the use of monthly parts order plan is typified by Commission's exhibit 59, which is District Managers Training Course and consists of instruction to district managers on parts and accessories. It contains a program of operation of a plan between district managers and their dealers "in developing the greatest potential volume and profit on parts and accessories for their dealers and for Pontiac." In this exhibit there appears the following illustration of methods to be used in soliciting the dealers' monthly parts orders and to get the dealers to send in their orders on due dates:

Checking the dealer's purchases. On each dealer contact, check the last monthly order paid with the present one to see dealer is ordering his parts on 60-day basis. Check his parts bins to see if any outside purchases are being made, and why. Cover outside purchases invoices with parts man and see that future purchases of outside material do not include any parts or accessories supplied by Pontiac.

PAR. 29. In cases where inspections have been made by representatives of the respondent, and parts and accessories other than those supplied by the respondents were found on the dealer's premises, threats have been made, both directly and by implication, that unless the practice on the part of the dealer was discontinued and only parts and accessories supplied by the respondent General Motors Sales Corporation carried in stock, the dealer's contract would be canceled. Such implied threats were further made by the representative or district manager arranging for an interview with the zone manager for the purpose of discussing the dealer's practices, the dealer knowing that the zone manager has the power to recommend the cancellation of his contract. In some cases where a dealer has refused to handle only parts and accessories sold and distributed by the respondent General Motors Sales Corporation, there has been a delay in a shipment of new cars to such dealers. There is also in the record evidence of cancellation of certain contracts after a controversy over the use of parts and accessories has occurred, but which cancellations were ostensibly based upon other grounds.

PAR. 30. The volume of sales of "genuine" Chevrolet parts to Chevrolet dealers by the Chevrolet Division of General Motors Corporation and the Chevrolet Motor Car Co. Division of General Motors Sales Corporation for the years 1929 through 1936 was as follows:

1929 -----	\$35,383,264	1933 -----	\$17,347,625
1930 -----	31,114,662	1934 -----	22,934,544
1931 -----	24,818,527	1935 -----	26,089,779
1932 -----	18,064,509	1936 -----	33,055,912

The volume of sales of "genuine" Chevrolet accessories to Chevrolet dealers by the Chevrolet Division of General Motors Corporation and the Chevrolet Motor Car Co. Division of General Motors Sales Corporation for the years 1929 through 1936 was as follows:

1929 -----	\$8,078,065	1933 -----	\$8,335,900
1930 -----	7,656,581	1934 -----	10,289,902
1931 -----	9,376,246	1935 -----	13,901,277
1932 -----	6,171,463	1936 -----	25,811,532

PAR. 31. The volume of sales of "genuine" Pontiac parts to Pontiac dealers by the Pontiac Motor Division of General Motors Corporation and the Pontiac Division of General Motors Sales Corporation for the years 1932 through the first 6 months of 1937 was as follows:

1932 -----	\$1,562,166	1935 -----	\$1,967,130
1933 -----	1,274,576	1936 -----	2,882,983
1934 -----	1,557,169	1937 (first 6 months) -----	1,821,333

The volume of sales of "genuine" Pontiac accessories to Pontiac dealers by the Pontiac Motor Division of General Motors Corpora-

Findings

34 F. T. C.

tion and the Pontiac Division of General Motors Sales Corporation for the years 1932 through the first 6 months of 1937 was as follows:

1932 -----	\$172,566	1935 -----	\$1,759,890
1933 -----	486,040	1936 -----	3,511,087
1934 -----	1,040,190	1937 (first 6 months) -----	3,047,638

PAR. 32. The volume of sales of "genuine" Oldsmobile parts to Oldsmobile dealers by the Olds Motor Works Division of General Motors Corporation and the Oldsmobile Division of General Motors Sales Corporation for the years 1934 through the first 6 months of 1937 was as follows:

1934 -----	\$1,448,377	1936 -----	\$3,047,432
1935 -----	1,926,285	1937 (first 6 months) -----	1,553,050

The volume of sales of "genuine" Oldsmobile accessories to Oldsmobile dealers by the Olds Motor Works Division of General Motors Corporation and the Oldsmobile Division of General Motors Sales Corporation for the years 1934 through the first 6 months of 1937 was as follows:

1934 -----	\$1,110,225	1936 -----	\$5,091,185
1935 -----	3,358,106	1937 (first 6 months) -----	3,919,724

PAR. 33. The volume of sales of "genuine" Buick parts to Buick dealers by the Buick Motor Co. Division of General Motors Corporation and the Buick Division of General Motors Sales Corporation for the years 1929 through 1936 was as follows:

1929 -----	\$7,912,855	1933 -----	\$3,346,279
1930 -----	7,470,731	1934 -----	2,969,342
1931 -----	6,860,228	1935 -----	2,652,016
1932 -----	4,726,936	1936 -----	3,130,968

The volume of sales of "genuine" Buick accessories to Buick dealers by the Buick Motor Co. Division of General Motors Corporation and the Buick Division of General Motors Sales Corporation for the years 1930 through 1936 was as follows:

1930 -----	\$4,141,034	1934 -----	\$1,081,643
1931 -----	3,711,783	1935 -----	1,964,289
1932 -----	1,781,103	1936 -----	5,455,439
1933 -----	1,035,879		

PAR. 34. One of the classes of competitors to General Motors Sales Corporation in the parts and accessories field is the independent jobber. Prior to 1930 the number of independent jobbers was estimated at approximately 6,000. These jobbers supplied merchandise to independent garages and car dealers and assisted them with technical knowledge and mechanical facilities. They formerly

58

Findings

handled supplies, tools, equipment, specialties, accessories, and a fair line of replacement parts. During the depression years competition in the manufacture of automobiles forced car manufacturers to include, as standard equipment, many items which were formerly sold as accessories. As car manufacturers began to include accessories as standard equipment, the independent jobbers had to find ways and means of replacing this lost business and during the depression years 1930-1933 substantially increased their sales in tools, service equipment, and replacement parts. In order to do this, many jobbers opened and established a number of branches located near their customers, enabling them to intensify their merchandising activities in concentrated areas and to give better service to their parts customers.

PAR. 35. The independent jobbers sell the products of independent replacement part manufacturers, some of whom manufacture for the car manufacturer, including respondent General Motors Corporation, as follows: Ball bearings, battery cables, brake linings, clutch disks and facings, coils, cylinder-head gaskets, fan belts, head lamps, radio hose, king pin replacement units, lamp bulbs, mufflers, piston rings, piston pins, pistons and piston-pin assemblies, spark plugs, spark plug wire sets, valve springs, and many other items.

PAR. 36. Many of such items which are manufactured by independent manufacturers for General Motors Corporation and used by General Motors Sales Corporation as "genuine" replacement parts are identical in quality and design with those sold by these same manufacturers to independent jobbers, the only difference between such parts and those sold by General Motors as "genuine" parts being the stamp placed on the outside of the package by the manufacturer who packages such parts for General Motors Sales Corporation. Other replacement parts handled by independent jobbers as well as General Motors Sales Corporation which are identical, are AC spark plugs, Stromberg and Carter carburetors, piston rings, hydraulic brakes, wheels, and the Borg-Warner clutch. There are also many reputable manufacturers who manufacture parts of like quality and design to those parts manufactured by General Motors Corporation or sold by General Motors Sales Corporation.

PAR. 37. Subsequent to 1933, independent jobbers handling replacement parts and accessories for General Motors cars have been unable to sell such merchandise in substantial quantities to General Motors dealers for use on General Motors cars, being told by parts men of such dealers that they are supposed to buy only "genuine" parts and accessories in packages that bear General Motors trade-

Findings

34 F. T. C.

- mark and are recommended for General Motors cars. Parts and accessories which independent jobbers have been unable to sell to General Motors dealers for the reasons specified above, are heaters, radios, anti-freeze solutions, spark plugs (both AC and Champion), cylinder-head gaskets, manifold gaskets, brake linings, cigar lighters, brake fluid, pistons, piston rings, valves, bearings, ignition parts, gear-shift balls, batteries, ignition cables, spark-plug wires, carburetors, carburetor parts, chemicals and polishes, axles, radiator cleaners, fan belts, clutches, and gears.

PAR. 38. When a General Motors dealer sells a car to a purchaser, there goes with such car a warranty or guaranty by the General Motors Corporation warranting such motor vehicle, including original equipment placed thereon by the manufacturer, except tires, to be free from defects in material or workmanship under normal use and service. The obligation under this warranty is limited to making good at its factory any part or parts within 90 days after delivery of such vehicle to the original purchaser, or before such vehicle has been driven 4,000 miles, whichever event shall first occur. This warranty does not apply to cars which have been repaired or altered outside of an authorized General Motors service station, which, in the judgment of the manufacturer, affects its stability and reliability, or which car has been subjected to misuse, negligence, or accident. The respondents have introduced evidence to the effect that in order to maintain the good will of its various divisions and protect its guaranty it is necessary to maintain supervision over the parts used and sold by its individual dealers. However, all of the parts which come within the restrictive provision of the contract, set out in paragraph 14 hereof, are not necessary to the mechanical operation of the car, and the performance, or lack of performance, of such parts would have no bearing upon either the warranty issued or the good will of the division of General Motors selling a car. Furthermore, there are a large number of parts which are supplied by manufacturers to jobbers which are identical in material and construction with parts furnished by these same manufacturers to General Motors Corporation.

PAR. 39. The number of automobiles manufactured by the respondent General Motors Corporation and sold through its subsidiary, respondent General Motors Sales Corporation, has constituted, and now constitutes, a substantial portion of all the automobiles manufactured and sold in the United States. The General Motors cars in operation constitute approximately 36 percent of all cars and trucks in operation. For the year 1936 there was a total of 25,378,655

cars and trucks in operation in the United States. Of this number, there were 1,129,779 Buicks, 702,671 Oldsmobiles, 1,013,857 Pontiacs, and 6,455,872 Chevrolets, or a total of 9,302,179 General Motors cars, exclusive of Cadillac, in operation in the United States. The total volume of automobile parts and automobile accessories and supplies sold by the respondent General Motors Corporation through its subsidiary, respondent General Motors Sales Corporation, has constituted, and now constitutes, a substantial proportion of all the automobile parts and automobile accessories and supplies manufactured and sold in the United States. For example, during the year 1936, the respondent General Motors Sales Corporation sold \$42,117,-295 in parts and \$39,869,243 in accessories and supplies, exclusive of parts and accessories sold by the Cadillac Division and exclusive of parts and accessories sold by the United Motors Service, Inc. Such sales constitute a substantial portion of the sales of parts and accessories in the United States, and, when limited to parts and accessories for General Motors automobiles, constitute a substantial portion of the parts and accessories sold and used on General Motors automobiles.

PAR. 40. The use by the respondent General Motors Sales Corporation of the acts and practices hereinabove described, has had, and now has, the capacity and tendency to, and does, intimidate General Motors dealers and coerce and compel them to purchase accessories and supplies only from the respondent General Motors Sales Corporation, with the result that substantial trade has been diverted to the respondents from their competitors who are engaged in the manufacture and in the sale and distribution of automobile accessories and supplies in commerce among and between the various States of the United States and in the District of Columbia; and has deprived, and is now depriving, said competing manufacturers of a market for the sale of said products manufactured and sold by said competing manufacturers, as aforesaid; and has had, and now has, a tendency to unduly hinder competition and to create a monopoly in General Motors Corporation in commerce in automobile accessories and supplies between and among the various States of the United States, and in the District of Columbia.

PAR. 41. The Commission further finds that the use by the respondents of the acts and practices hereinabove described, of selling parts on the condition, agreement, or understanding that the purchaser thereof shall not sell or use parts of a competitor, has had, and now has, the effect of substantially lessening competition; and has had, and now has, a tendency to create a monopoly in replacement

Modified Order

34 F. T. C.

parts used on General Motors cars. By means of the provision in the contract that General Motors dealers will not sell, offer for sale, or use, parts not manufactured by or authorized by the General Motors Sales Corporation, practically all dealers in General Motors cars, to the number of approximately 14,000, have been removed as customers and prospective customers of independent manufacturers and jobbers; and there have likewise been removed as customers and prospective customers of such manufacturers and jobbers, all associate dealers and selected independent garages who have agreed to purchase only parts supplied by General Motors dealers, and which garages are estimated as being approximately 15,000 for the Chevrolet Division alone in the year 1936.

PAR. 42. On the completion of the testimony taken in this case, the respondents made a motion before the trial examiner to strike the testimony of certain witnesses. This motion was sustained in part and the testimony of certain witnesses stricken from the record. An appeal from this ruling of the trial examiner was taken by the attorney for the Commission and is now pending before the Commission. The testimony stricken by the trial examiner on this motion is more or less cumulative and not necessary to the decision in this case, and it is, accordingly, not necessary for the Commission to pass upon this motion or consider this testimony in making its findings.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found, are all to the prejudice and injury of the public and of said respondents' competitors, and constitute unfair methods of competition within the intent and meaning of the Federal Trade Commission Act; and the acts and practices of the respondents in selling replacement parts on the condition, agreement, or understanding that the purchaser thereof shall not use or deal in replacement parts of a competitor, has the effect of substantially lessening competition and a tendency to create a monopoly in replacement parts used on General Motors cars, and constitutes a violation of section 3 of the act of the Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act.

MODIFIED ORDER TO CEASE AND DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, testimony and other evidence taken before John L. Hornor

¹ Order published as modified by Commission on June 25, 1942.

Modified Order

and W. W. Sheppard, trial examiners of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, report of Trial Examiner W. W. Sheppard upon the evidence and exceptions filed thereto, briefs filed in support of the complaint and in opposition thereto, and oral arguments of counsel; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act and have violated the provisions of that certain act of the Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, and the Commission having issued its order herein to cease and desist on November 12, 1941, and the respondent having filed with the Commission on June 11, 1942, its request for modification of said order:

It is ordered, That the respondents, General Motors Corporation, a corporation, and General Motors Sales Corporation, a corporation, and their respective officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of automobile accessories, automobile supplies, and other similar products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Requiring automobile dealers in connection with contracts or franchises or selling agreements with said automobile dealers for the sale of new motor vehicles, by means of intimidation or coercion, to purchase or deal in accessories or supplies sold and distributed by the respondents, or by any one designated by them, for use in and on automobiles sold by the respondents.

(2) Canceling, or directly or by implication threatening the cancellation of, any contract or franchise or selling agreement with automobile retail dealers for the sale of new motor vehicles, because of the failure or refusal of such dealers to purchase or deal in accessories or supplies for use in and on automobiles manufactured or sold by the respondents, sold and distributed by the respondents, or by any one designated by the respondents.

(3) Canceling, or directly or by implication threatening the cancellation of, any contract or franchise or selling agreement with automobile retail dealers for the sale of new motor vehicles, for purchasing or dealing in accessories or supplies for use in and on automobiles sold by the respondents, not obtained from respondents or from other sources designated by the respondents.

(4) Shipping accessories or supplies for use in and on automobiles sold by the respondents without prior orders therefor, or canceling,

Modified Order

34 F. T. C.

or directly or by implication threatening the cancellation of any automobile retail dealer contract or franchise or selling agreement for the sale of new motor vehicles, because of a failure or refusal to accept accessories or supplies for use in and on automobiles sold by the respondents shipped without prior order.

(5) Refusing or threatening to refuse, to deliver automobiles to automobile retail dealers in connection with contracts or franchises with said automobile retail dealers for the sale of new motor vehicles because of a failure or refusal of such dealers to purchase or deal in accessories or supplies for use in and on automobiles sold and distributed by the respondents, or by any one designated by them.

(6) The use of any system or practice, plan, or method of doing business, for the purpose, or having the effect, of coercing or intimidating automobile retail dealers who have contracts or selling agreements or franchises of the respondents for the sale of new motor vehicles into purchasing or dealing in accessories or supplies manufactured or supplied by the respondents, or by any one designated by them, for use in and on automobiles sold by the respondents.

It is further ordered, That the respondents, General Motors Corporation, a corporation, and General Motors Sales Corporation, a corporation, and their respective officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with any franchise or agreement for the sale of automobiles or in connection with the sale, or making of any contract for the sale of, automobile parts in commerce as "commerce" is defined in that act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, do forthwith cease and desist from:

Entering into, enforcing, or continuing in operation or effect, any franchise or agreement for the sale of automobiles, or any contract for the sale of, or selling, automobile parts in connection with contracts or franchises or selling agreements with automobile retail dealers for the sale of new automobiles on the condition, agreement, or understanding that the purchasers thereof shall not use or sell automobile parts other than those acquired from the respondents, unless such condition, agreement, or understanding be limited to automobile parts necessary to the mechanical operation of an automobile, and which are not available, in like quality and design, from other sources of supply.

It is further ordered, That the respondents shall, within 30 days after this modified order becomes final, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this modified order.

Syllabus

IN THE MATTER OF
UNITED BUYERS CORPORATION, ET AL.

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

Docket 3221. Complaint, Aug. 31, 1937—Decision, Nov. 13, 1941

Where a corporation, the stockholders of which, during a period of nearly 5 years, consisted of about 51 wholesale grocery concerns in cities in 18 States, competitive with other wholesale grocers, and which functioned as a cooperative buying organization for its stockholders, securing quantity discounts and advertising allowances from sellers for them, furnishing them with market reports and advice, and, among other things, services of trained field men to improve their merchandising methods—

- (a) Received and accepted from sellers, brokerage or commissions upon the purchase of commodities in interstate commerce by itself or by its stockholders, and in transactions in which it acted for and in behalf of, and under the direct control of, its respective stockholder buyers, any benefits received by sellers from its activities being merely incidental to the services rendered by it to its stockholders; and transmitted such brokerage or commissions or allowances to its said stockholder buyers, in services and in money in the form of dividends; and

Where 6 wholesale grocers, stockholder buyers of aforesaid corporation, and fairly representative of the approximately 51 stockholders—

- (b) Received brokerage or commissions upon their purchases made through or for said corporation or under arrangements directed thereto, through transmission to them by said corporation of cash dividends resulting from payment by sellers of brokerage or commissions upon said purchases; and

Where some 7 concerns, typical of more than 300 manufacturers who sold and shipped grocery and allied products in interstate commerce to wholesale grocers, including stockholders of said corporation and their competitors—

- (c) Paid, along with other sellers, brokerage fees and commissions in substantial sums upon the purchases in interstate commerce of said corporation's stockholder wholesale grocers, on transactions in which any benefits received by them, as sellers, from said corporation's activities were incidental merely to the services rendered by it to its stockholder grocers:

Held, That such payment and receipt of brokerage, as above set forth, constituted violations of Section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act.

Before *Mr. W. W. Sheppard* and *Mr. Arthur F. Thomas*, trial examiners.

Mr. Allen C. Phelps and *Mr. J. J. Smith, Jr.* for the Commission.

Mr. I. J. Berkson, of Chicago, Ill., for respondent United Buyers Corporation, and respondent individuals, as officers and directors thereof; with whom also appeared for former *Taylor & Conradi*s, of Washington, D. C.