

Syllabus

IN THE MATTER OF
A. S. ALOE COMPANY

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

Docket 3820. Complaint, June 14, 1939—Decision, Dec. 15, 1941

Where a corporation engaged in the manufacture and competitive interstate purchase, sale and distribution of surgical equipment, instruments, and supplies, including pressure and suction pumps, sterilizers, thermometers, syringes, and blood pressure measuring instruments, with principal place of business in St. Louis and branch distributing houses in Kansas City and Los Angeles, constituting one of the largest retail dealers in such products in the United States, and an important outlet therefor for manufacturers, jobbers, importers and distributors, and facilitating sales through its said two branches, a staff of approximately 100 traveling salesmen and general distribution to physicians, surgeons, hospitals, laboratories and others of a large number of catalogs, whereby it secured many mail orders;

Knowingly induced and received, through a studied and persistent course of action to induce sellers to grant to it favorable discriminatory prices, the benefit of differentials between the prices paid by it and those paid by its competitors for surgical products, varying from 10 to 40 percent less for such products of like grade and quality than paid by certain of its competitors to such sellers;

With result that the sum of such differentials in price might be to enable it—

1. To issue and distribute, through use of such sum to a substantial degree, large numbers of elaborate catalogs with each issue "larger and more complete than its predecessor" leading to its receiving many mail orders, and serving to introduce and lend prestige to its sales force;

2. To employ a larger and better qualified staff of traveling salesmen and to increase its sales force materially, or to remunerate such salesmen by very liberal commissions based on sales of surgical products, and to enable such salesmen to effect sales by granting excessive trade-in allowances, the used surgical products so traded in becoming the property of the salesman and the allowance being charged against salesman's commission;

3. To build up a demand for its surgical products by presenting free surgical products to the heads of medical departments, and to allow some of its salesmen to grant purchasers discounts from its regular list prices for certain products;

4. To sell a large percentage of its surgical products on liberal credit terms and to advertise such favorable terms, requiring only a small down payment with no interest on deferred payments, which were generally extended from 10 to 18 months and, in some instances, longer periods;

Effect of which discriminations in price, benefits whereof, thus received by it, were denied its competitors, might be substantially to lessen competition and tend to create a monopoly in it in the line of commerce concerned, and to injure, destroy or prevent competition with it in the resale of said surgical products of like grade and quality purchased from said sellers:

Held, That said corporation, in knowingly inducing and receiving such differentials in price which were prohibited by section 2 (a) of the Clayton

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Act, as amended by the Robinson-Patman Act, violated section 2 (f) of first-named statute, as thus amended.

Before *Mr. John P. Bramhall*, trial examiner.

Mr. Edward S. Ragsdale for the Commission.

Lewis, Rice, Tucker, Allen & Chubb, of St. Louis, Mo., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of section 2 of the Clayton Act, as amended by the Robinson-Patman Act approved June 19, 1936 (U. S. C. title 15, sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, A. S. Aloe Co. (hereinafter called Aloe), is a corporation, organized and existing under and by virtue of the laws of the State of Missouri, having its office and principal place of business located at 1819-21-23 Olive Street, St. Louis, Mo.

PAR. 2. Respondent Aloe is now and has been since June 19, 1936, engaged in the business of buying, selling, and distributing surgical equipment, instruments, and supplies (including pressure and suction pumps, sterilizers, thermometers, syringes, blood pressure measuring instruments, chemicals, and other similar products hereinafter designated as surgical products from its principal place of business, and from its two branch distributing houses, one of which is located in Kansas City, Mo., and the other in Los Angeles, Calif.

Respondent facilitates sales by the use of its 2 distributing branches hereinbefore mentioned; a large staff of traveling salesmen, numbering approximately 100, who travel throughout the United States soliciting and securing orders; and the general distribution to physicians, surgeons, hospitals, laboratories, and others, of approximately 100 thousand catalogs, each year, listing and illustrating respectively its surgical products, hospital supplies, and laboratory equipment. The distribution of said catalogs results in respondent Aloe securing many orders for surgical products transmitted to it by mail.

Respondent Aloe is one of the largest dealers in surgical products in the United States, and as a consequence is an essential outlet to sellers of such surgical products, hereinafter referred to, who wish extensive distribution of their surgical products throughout the United States.

Respondent Aloe in the course and conduct of its business is now and since June 19, 1936, has been in substantial competition with

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other corporations, individuals, partnerships, and firms similarly engaged in the business of buying, selling, and distributing surgical products, except insofar as such competition has been affected by the practices which are the subject of this complaint.

PAR. 3. Respondent Aloe and the competitors of respondent Aloe buy said surgical products from a large number of manufacturers, jobbers, importers, and distributors located in the various States of the United States (hereinafter called sellers), who, so far as is known to the Commission, are as follows:

Willmot Castle Co., Rochester, N. Y.
William A. Baum Co., New York City, N. Y.
Empire State Thermometer Co., New York City, N. Y.
Mallinckrodt Chemical Works, New York City, N. Y.
J. Sklar Manufacturing Co., Brooklyn, N. Y.
Star Surgical Instrument Mfg. Co., Chicago, Ill.
Western Instrument & Manufacturing Co., Chicago, Ill.
H. Carstens Manufacturing Co., Chicago, Ill.
Penn Surgical Manufacturing Co., Philadelphia, Pa.
F. Dittmar & Co., Inc., Philadelphia, Pa.

Each of said sellers sell and distribute surgical products in commerce between and among the various States of the United States and the District of Columbia, causing said surgical products to be shipped and transported from their respective places of business in the various States of the United States to respondent Aloe at its principal place of business in St. Louis, Mo., to its two branch distributing points located in Kansas City, Mo., and Los Angeles, Calif., and to respondent Aloe's customers, to competitors of respondent Aloe, and to said competitors' customers located in the various States of the United States and the District of Columbia.

Respondent Aloe and respondent's competitors resell and distribute said surgical products in commerce between and among the various States of the United States and the District of Columbia, causing said surgical products to be shipped and transported from their respective places of business in the various States of the United States to their respective customers located in the various States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of their respective businesses as above described, said sellers have been and are now being induced by respondent Aloe to discriminate in price between different purchasers buying said surgical products of like grade and quality in commerce for use, consumption and resale within the United States by charging said competitors of respondent Aloe higher prices than those charged respondent Aloe. Said discriminations in prices which

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favor respondent Aloe are not uniform on each surgical product sold or from each seller. Respondent Aloe pays said sellers from approximately 10 percent to approximately 30 percent less for said surgical products of like grade and quality than respondent's competitors pay said sellers, depending upon the surgical product and the seller, or either of them.

PAR. 5. The effect of said discriminations in prices, as set forth in paragraph 4 hereof, may be substantially to lessen competition, and to tend to create a monopoly in respondent Aloe in the line of commerce in which respondent Aloe and its competitors are engaged, and to injure, destroy, or prevent competition with respondent Aloe in the resale of said surgical products of like grade and quality purchased from said sellers.

PAR. 6. Respondent Aloe receives information as to the prices paid by its competitors to said sellers for said surgical products, refuses to purchase said surgical products from said seller unless it is granted prices lower than paid by its competitors, and accepts and receives such lower prices on said surgical products and thereby and while engaged in commerce, and in the course of such commerce, as alleged in paragraph 3 hereof, is now and has been since June 19, 1936, knowingly inducing and receiving the discriminations in price alleged in paragraph 4 hereof.

PAR. 7. The foregoing alleged acts of said respondent Aloe are in violation of Section 2 (f) of said act of Congress approved June 19, 1936, entitled "An Act to amend section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13) and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13), the Federal Trade Commission on June 14, 1939, issued and served its complaint in this proceeding upon the respondent, A. S. Aloe Co., a corporation, charging it with knowingly inducing and receiving discriminations in prices from various sellers, in violation of subsection (f) of section 2 of said act as amended.

After the issuance of the complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the alle-

gations of the complaint were introduced by Edward S. Ragsdale, attorney for the Commission, before John P. Bramhall, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding.

After the introduction of said testimony and evidence, Milton H. Tucker, attorney for respondent, waived the introduction of evidence in opposition to the allegations of the complaint, trial examiner's report, filing of briefs, further hearings, and all intervening procedure.

Thereafter the respondent and its attorney entered into a stipulation as to the facts with W. T. Kelley, chief counsel of the Commission, which was approved by the Commission and entered of record. Said stipulation provides that the facts so stipulated, together with the testimony and exhibits introduced by the attorney for the Commission may be taken as the facts in this proceeding.

Thereafter the proceeding regularly came on for final consideration by the Commission upon the complaint, the answer thereto, the testimony and other evidence, and the stipulation as to the facts; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS QS TO THE FACTS

PARAGRAPH 1. Respondent, A. S. Aloe Co., is a corporation organized and existing under and by virtue of the laws of the State of Missouri, having its office and principal place of business located at 1819 Olive Street, St. Louis, Mo.

PAR. 2. Respondent is now and has been since June 19, 1936, engaged in the business of manufacturing, buying, selling, and distributing surgical equipment, instruments, and supplies, including pressure and suction pumps, sterilizers, thermometers, syringes, blood pressure measuring instruments, and other similar products hereinafter designated as surgical products, from its principal place of business and from its two branch distributing houses, one of which is located in Kansas City, Mo., and the other in Los Angeles, Calif.

Respondent is one of the largest retail dealers in surgical products in the United States, and is an important outlet of such surgical products for manufacturers, jobbers, importers and distributors hereinafter referred to, who wish extensive distribution of their surgical products throughout the United States.

Respondent facilitates sales by the use of its 2 distributing branches hereinbefore mentioned; a staff of approximately 100 traveling salesmen who travel throughout the United States soliciting and securing

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orders, and the general distribution to physicians, surgeons, hospitals, laboratories, and others of a large number of catalogs, listing and illustrating respectively its surgical products, hospital supplies, and laboratory equipment. Through such distribution respondent secures many mail orders for surgical products.

Respondent, in the course and conduct of its business, is now and since June 19, 1936, has been in substantial competition with other corporations, and with individuals, partnerships, and firms similarly engaged in the business of buying, selling, and distributing surgical products.

PAR. 3. Respondent and its competitors purchase in the various States of the United States many thousands of various types of surgical products from a large number of manufacturers, jobbers, importers, and distributors (hereinafter called "sellers") who are located in the various States of the United States, some of which are as follows:

American Cystoscope Makers, Inc., New York City.

W. A. Baum Co., Inc., New York City.

Bausch & Lomb Optical Co., Rochester, N. Y.

Empire State Thermometer Co., New York City.

Rieker Instrument Co., Philadelphia, Pa.

Spencer Lens Co., Buffalo, N. Y.

The Vollrath Co., Sheboygan, Wis.

Welch Allyn Co., Auburn, N. Y.

Wilmot Castle Co., Rochester, N. Y.

H. Carstens Manufacturing Co., Chicago, Ill.

P. Dittmar & Co., Philadelphia, Pa.

Penn Surgical Manufacturing Co., Philadelphia, Pa.

J. Sklar Manufacturing Co., Long Island City, N. Y.

Star Surgical Instrument Co., Chicago, Ill.

Western Instrument & Manufacturing Co., Chicago, Ill.

Each of said sellers sells and distributes surgical products in commerce between and among the various States of the United States and in the District of Columbia, and causes such surgical products to be transported from their respective places of business in the various States of the United States to respondent at its principal place of business in St. Louis, Mo., and to respondent's two branch distributing houses. Such sellers also ship surgical products direct to respondent's customers, to competitors of respondent, and to the customers of respondent's competitors located in the various States of the United States and in the District of Columbia.

Respondent and its competitors resell and distribute said surgical products between and among the various States of the United States and in the District of Columbia, and cause said surgical products to be shipped and transported from their respective places of business located in the various States of the United States to their respective customers located in the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their respective businesses as above described, the sellers named in paragraph 3 hereof have charged respondent, and respondent has received the benefit of, lower prices on surgical products sold by said sellers to respondent than said sellers have charged competitors for surgical products of like grade and quality.

The differentials between the prices paid by respondent and by its competitors to such sellers for surgical products of like grade and quality are not uniform on each surgical product. The prices paid by respondent to such various sellers vary from approximately 10 percent to approximately 40 percent less for surgical products of like grade and quality than certain of respondent's competitors pay said sellers, depending upon the surgical product and the seller, or either of them.

Invoices produced by respondent and 28 competitive retail surgical dealers, involving purchases of surgical products of like grade and quality from said sellers, appear in evidence, and comparison of the prices respondent and such competitors paid for said surgical products have been made and are the basis for the tabulation which follows. This tabulation shows the names of the sellers, some of the surgical products sold, the respective prices paid by respondent and some of its competitors for each illustrative surgical product listed, and the percentage of price differential in favor of the respondent for each item listed, and is illustrative of the products of like grade and quality purchased from the sellers named in paragraph 3 hereof:

Sellers and producers	Prices to Aloe	Prices to certain competitors ¹	Percentage of price differential in favor of respondent
<i>American Cystoscope Makers, Inc.</i>			
(2327) Foley retention catheters, each.....	\$1.24	\$1.35	8.15
(591) Acmi antroscope, each.....	30.00	35.00	14.29
(470) Ruddock peritoneoscope, each.....	195.00	227.50	14.29
(176) Ravich lithotriptoscope, complete 27 Fr., each.....	99.00	115.50	14.29
(68A) Special foroblique telescope, each.....	60.00	70.00	14.29

¹ Prices as testified to by various of the 28 competitors.

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Sellers and producers	Prices to Alice	Prices to certain competitors	Percentage of price differential in favor of respondent
<i>W. A. Baum Co., Inc.</i>			
Baumanometers:			
Kompak model, each.....	\$14.75	\$17.70	16.67
Wall model, each.....	12.50	15.00	16.67
300 model, each.....	16.25	19.50	16.67
<i>Bausch & Lomb Optical Co.</i>			
(31-26-60-35) Microscope, each.....	165.00	174.40	5.30
(31-21-54-48) Microscope, each.....	109.50	125.60	12.50
<i>Empire State Thermometer Co.</i>			
20 cc Ideal luer syringe, dozen.....	10.56	12.00	12.00
Insulin syringes 20/40 S. W., dozen.....	4.20	5.00	16.00
2 cc Ideal luer syringe, dozen.....	4.20	5.00	14.00
20x1 Stainless luer needles, gross.....	7.50	9.00	16.67
20x1 Stainless luer needles S. B., gross.....	7.50	9.00	16.67
<i>Ricker Instrument Co.</i>			
(1010) Opal glass, each.....	.66 3/4	.75	11.12
(1011A) Dare hemoglobinometers, each.....	27.00	33.75	20.00
<i>Spencer Lens Co.</i>			
(820) Spencer microtome, each.....	199.50	228.00	12.50
(328) Spencer dark field illuminator, each.....	29.40	33.60	12.50
(361) Spencer microscope lamp, each.....	5.25	6.00	12.50
(33 MH) Microscope in leatherette case, each.....	102.05	125.80	18.75
<i>The Vollrath Co.</i>			
(95) Catheter trays (white ware-1), each.....	.66	.71	7.04
(112) Water pail (white ware-1), each.....	.99	1.07	7.48
(8-1) Sponge bowl (stainless steel-2), each.....	.81	.88	7.95
(134) Solution bowls (white ware-1), each.....	.57	.62	8.06
(10) Pus pans (white ware-1), each.....	.33	.36	8.33
<i>The Vollrath Co.</i>			
(85) Individual teapots (colored ware-3), each.....	.33	.375	12.00
(8 10) Pus pans (stainless steel-2), each.....	.64	.81	20.99
(8 134) Solution bowl (stainless steel-2), each.....	2.065	2.75	24.91
<i>Welch Allyn Co.</i>			
(200) Otoscope head, large handle, speculas, etc., each.....	10.45	13.20	20.83
(982) Ophthalmoscope and No. 216 otoscope, each.....	19.71	24.90	20.84
(106) Ophthalmoscope head, each.....	9.26	11.70	20.85
<i>Wilnot Castle Co.</i>			
Physician sterilizers:			
C-413 model, each.....	25.50	30.60	16.67
C-416 model, each.....	27.50	33.00	16.67
666 model, each.....	120.00	144.00	16.67
<i>H. Carstens Mfg. Co.</i>			
(4680) Medicated sounds 18 fr., dozen.....	10.80	12.00	10.00
(2466) Modernized ford stethoscope, dozen.....	10.80	13.20	18.18
(3099) XL gold plated pessaries 3/4" disc, small and medium, dozen.....	5.67	9.00	37.00
<i>F. Dittmar & Co., Inc.</i>			
(254) Phila. midget scopes, dozen.....	13.20	15.00	12.00
(4862) Guyon's catheter guides, dozen.....	3.00	4.50	33.33
(198) DeLee hillis stethoscope, dozen.....	30.00	48.00	37.50
(5222) Kelly's spincetoscope, dozen.....	20.00	36.00	44.44
<i>Penn Surgical Manufacturing Co.</i>			
(B-960) Penn insufflation apparatus, each.....	27.00	30.00	10.00
(D-390) Bowles stethoscope, dozen.....	10.00	15.00	33.33
(F-9591) Brinkerhoff specula, extra long, dozen.....	45.60	72.00	36.67
(D-11100) Pederson vaginal specula, dozen.....	12.60	21.00	40.00

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Sellers and producers	Prices to Aloe	Prices to certain competitors	Percentage of price differential in favor of respondent
<i>J. Sklar Manufacturing Co.</i>			
(F-492 $\frac{1}{4}$ S) Halstead mosquito forceps str. B. L., dozen.....	\$21.60	\$24.00	10.00
(F-4138) Thompkins rotary compressor, each.....	41.25	49.50	16.67
<i>J. Sklar Manufacturing Co.</i>			
(F-6403 $\frac{1}{4}$ S) Backhaus towel forceps 5 $\frac{1}{4}$ " B. L., dozen.....	23.00	28.80	20.14
(F-350 S) St. scissors 4 $\frac{1}{4}$ S. S., dozen.....	12.38	16.50	24.97
(F-7850) Davidson pneumothorax apparatus, each.....	37.50	50.00	25.00
(F-198) Lumbard's airways (large), dozen.....	16.80	22.50	25.33
(F-1402 $\frac{1}{4}$ S) Allis tissue forceps, dozen.....	23.00	31.20	26.28
(F-6105) Goodell's dilators (large), dozen.....	72.00	108.00	33.33
(F-4510) Brinkerhoff speculums (med.), dozen.....	28.40	45.00	36.80
(F-156) Taylor percussion hammer, dozen.....	4.50	7.20	37.50
<i>Star Surgical Instruments Co.</i>			
(ST 630) Sauer Sluder tonsilectomes, dozen.....	102.00	120.00	15.00
(ST 598) Hurd's tonsil dissectors, dozen.....	7.50	12.00	37.50
<i>Western Instrument & Mfg. Co.</i>			
(369) Jackson trachea tubes 1-2-3-4-5, dozen.....	24.00	30.00	20.00
(883 S) Grooved directors 6", dozen.....	1.80	2.70	33.33
(128 BX) Bowman lachrymal silver probes (3 to 8), dozen.....	3.90	6.00	35.00

PAR. 5. The sum of the differentials in price resulting from the lower prices set forth in paragraph 4, and granted the respondent since June 19, 1936, may be used to a substantial degree to enable the respondent to issue and distribute large numbers of elaborate catalogues to physicians, surgeons, hospitals and laboratories, each issue of such catalogue being "larger and more complete than its predecessor," and may result in respondent receiving many orders by mail and serve to introduce and lend prestige to its sales force.

It may, in part, further enable the respondent to employ a larger and better qualified staff of traveling salesmen and to increase its sales force materially, or to remunerate such salesmen on very liberal commissions based on the sales of surgical products, and to enable such salesmen to effect sales by granting, on occasion, excessive allowances on used surgical products traded in on respondent's new surgical products. Such used surgical products traded in become the property of the salesman, and the amount allowed purchaser is charged against the salesman's commission by respondent.

The lower prices respondent received may, in part, enable respondent in many instances to build up a demand for its surgical products by presenting, free, certain surgical products to the heads of the various medical departments. It may, in part, enable respondent to allow some of its salesmen, in securing orders for certain surgical products, to grant to purchasers discounts from the regular price listed in its catalogues. To illustrate, respondent advised its sale force that a few

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of its salesmen felt that a list price is something from which to base a discount, and that respondent seriously objected to its salesmen cutting prices and using their own discounts when such salesmen do not know anything about the cost involved.

It may, in part, also enable the respondent to sell a large percentage of its surgical products on liberal credit terms and to advertise such favorable terms, which require only a small down payment with no interest charged on deferred payments, which are generally extended from 10 to 18 months, though in some instances longer periods of time are permitted. For example:

A seller wrote respondent complaining of respondent's selling its surgical products on a basis of 20 percent down and the balance over a period of 18 months without interest on deferred payments. The seller advised that it strenuously objected to such terms, saying money is worth something and that the liberal terms could only be given by reason of the extra discounts obtained over what competitors receive. Seller informed respondent that this special discount was extended with the understanding that it would not be used in any way to give respondent a price advantage over competitors.

The respondent replied that its terms were just what they had always been, 20 percent down, balance in 10 months, with a more liberal policy to internes, who were allowed 18 months to pay installments, and it may be that seller's products were sold on the 18-month term occasionally.

Respondent Aloe's competitors who do not receive discriminatory prices from sellers are prevented, in part, from publishing and distributing elaborate catalogues, from employing larger staffs of traveling salesmen; from paying salesmen more liberal commissions; from selling their surgical products on financial terms as liberal as respondent's terms, or allowing discounts from their regular list prices, granting excessive allowances on used surgical products, and presenting as gifts, surgical products, or reducing regular prices, without sacrificing legitimate profits.

PAR. 6. By receiving the benefit of such lower prices as found in paragraph 4, which have the effect set forth in paragraph 5, respondent has received the benefit of discriminations in price which may substantially lessen competition and tend to create a monopoly in respondent in the line of commerce in which respondent and its competitors are engaged, and to injure, destroy, or prevent competition with respondents in the resale of said surgical products of like grade and quality purchased from said sellers.

PAR. 7. At all times since June 19, 1936, respondent received information as to the prices paid by its competitors, illustrations of which

prices are shown in paragraph 4. Such information was received directly from sellers and from their published catalogues, advertisements and discount schedules, as well as from statements from one seller concerning the prices of another seller, and otherwise. The following specific examples indicate respondent's knowledge of receiving the benefit of price differentials:

(a) The respondent received a letter from a seller asking how the revised Robinson-Patman Act will affect its firm on the matter of special discounts and special prices that respondent had enjoyed. The seller further stated, "I am inclined to believe that the act will be upset by the Supreme Court, but in the meantime we are certainly playing with fire." Respondent replied it had been informed that until the Federal Trade Commission takes some action in its specialized line, to fix maximum discounts based on quantity, sellers could give whatever discount they desired; that doubtless small, specialized industries would be let alone unless some one made specific application to the Commission, and for that reason it was not worrying. Respondent again wrote the seller, saying it did not believe the act enforceable, and enclosed a clipping from the U. S. News relative to the difficulties of enforcing the act.

(b) A seller wrote respondent and enclosed a letter seller received from a retail surgical supply dealer, who requested information from seller concerning its future policy with reference to discounts granted Aloe, in view of the passage of the Robinson-Patman Act. The seller suggested to respondent that respondent must have gone into the question of special discounts quite deeply as it relates to business with such firms as the seller's. The seller further advised respondent that in his understanding of the act, both the seller and the buyer, in a proven violation, could be held responsible. The seller suggested, therefore, that it appeared desirable to review their selling arrangements.

(c) The respondent also received a letter from a seller, advising that a gentleman in the trade desired to know if the seller intended to continue selling respondent at special discounts, in view of the Robinson-Patman Act. Seller requested respondent to advise what it thought of the act's effect on their relationship.

(d) Respondent received from some sellers letters and memoranda of information as to standard discounts or net prices to surgical dealers generally, on certain surgical products, which letters pointed out the lower prices or larger discounts granted on similar products to respondent. In certain instances sellers advised respondent that they did not make money on certain surgical products sold to respondent at the prices received from respondent.

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(e) The respondent wrote a seller requesting seller's catalogue with information relative to trade discounts applicable, and additionally requested a memorandum listing the surgical products respondent was purchasing and the special prices it paid for such products.

(f) The respondent was advised of a surgical product distributed by a seller, and of seller's prices to wholesalers, and suggesting, when the seller solicited respondent's business, to keep the prices furnished confidential, but to go to work on the seller and get him down to the wholesale prices, and informant was sure respondent "had not lost any of its ability to do that."

(g) Respondent informed its salesmen that in soliciting orders not to be afraid to tell a prospective customer that prices of surgical products were up a little, as prices have been going up throughout the country, and respondent could not obtain goods from wholesalers and manufacturers at the old prices. Respondent, in the same communication, advised such salesmen, your competitor is suffering worse than we are.

(h) A seller advised respondent that at a conference of surgical supply dealers, several dealers "were of the opinion that all the woes of the local surgical dealers would be eliminated if manufacturers would only discontinue special or preferential discounts given to the Aloe Company."

PAR. 8. At all times since June 19, 1936, respondent has knowingly engaged in practices calculated to, and which did, induce said sellers to grant respondent the discriminatory prices which are illustrated in paragraph 4. For example:

The following examples, which are taken from the respondent's correspondence with said sellers and various bulletins and material issued by respondent to its sales force since June 19, 1936, indicate respondent has knowingly engaged in a studied and persistent course of action to induce sellers to grant respondent favorable discriminatory prices on its purchases of surgical products:

(a) Respondent advised its salesmen that it had persuaded a seller to give it "certain leaders" at prices that even the cheapest lines could not compete with respondent, and whether you are calling on the tiniest institutions or the largest hospitals, these prices cannot possibly be beaten by our competitor. "Certain leaders" may be defined in this instance as surgical products with wide consumer demand.

(b) Respondent complained to a seller that competing distributors were selling a particular surgical product that respondent believed the seller manufactured exclusively for it. The seller replied it had always refrained from making exclusive models for any retailer, but the respondent was given the advantage of showing the particular sur-

gical product first, and the price advantage allowed respondent over all possible competitors should be evidence of seller's willingness to cooperate.

(c) A seller wrote respondent concerning respondent's orders for single products respondent had purchased and requested shipment to be made directly to respondent's customers, or to one of respondent's branches. Seller informed respondent that seller thought it and respondent would be on safer ground if such shipments were billed at the same price given by seller to every other surgical supply dealer, namely, list less 40 percent. Seller further advised respondent that respondent had the same responsibility as seller if the discounts would some day have to be explained.

Respondent later wrote said seller, whose published and established trade discount was 40 percent, that on a recent order for a single surgical product respondent had received a discount of only 40 percent, and requested that the order be charged against respondent's contract order and that an additional amount be allowed respondent, to give it its regular contract discount. The seller acceded to respondent's request by enclosing a credit memorandum for the difference between 40 and 50 percent.

(d) A seller wrote respondent quoting prices on quantity purchases of one of its new surgical products. Respondent replied that if the seller wanted respondent's sales force to work on this product in a big way, it would have to give respondent the maximum quantity discount, although respondent would not purchase in quantity.

(e) Respondent Aloe wrote a seller it was informed that seller was considering a change in its prices, discounts and sales policy, due to complaints from dealers and the Robinson-Patman Act. Respondent stated it did not think seller should be hasty and make any changes in policy without thoroughly investigating possibilities. The respondent said it had made a study of the act, and that seller should consider respondent's loyalty in handling its surgical products to the exclusion of competitive makes, and that respondent had 100 salesmen talking solely this manufacturer's surgical products, and consideration in the way of discounts was due customers furnishing such service, in comparison to small dealers who handle several competitive products. Respondent further stated that if the seller "recognized the ridiculous and foolish claims of the small dealer," it would force concerns such as respondent simply to drop its line, and if other sources were available, respondent would find them, which was a prospect bitter and difficult to contemplate after so many happy years. The seller replied that it appreciated how respondent felt

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regarding a change in discounts, and that it had a plan which it believed would meet with respondent's approval, and that it wanted to work with respondent in every possible way. Thereafter, a secret arrangement, not available to the trade generally, was effected.

CONCLUSION

The Commission concludes that the differentials in prices, as set forth in paragraph 4 hereof, are discriminatory, and are prohibited by section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act approved June 19, 1936 (U. S. C. title 15, sec. 13), and have been knowingly induced and received by respondent, and that the respondent thereby violated section 2 (f) of the Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence in support of the allegations of the complaint introduced before John P. Bramhall, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, and a stipulation entered into between the respondent and its attorney with W. T. Kelley, chief counsel of the Commission, which was approved by the Commission and entered of record, in which stipulation the respondent waived further hearings, the filing of trial examiner's report, briefs, oral argument and all intervening procedure: And the Commission having made its findings as to the facts and its conclusion that the respondent has violated 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 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, section 13).

It is ordered, That the respondent, A. S. Aloe Co., a corporation, its officers, directors, representatives, agents and employees, directly or indirectly, in connection with the purchase of surgical products in interstate commerce and in the District of Columbia, do forthwith cease and desist:

1. From receiving from the American Cystoscope Makers, Inc., the W. A. Baum Co., Bausch & Lomb Optical Co., Empire State Thermometer Co., Rieker Instrument Co., Spencer Lens Co., The Vollrath Co., Welch Allyn Co., Wilmot Castle Co., H. Carstens Manufacturing Co., F. Dittmar and Co., Penn Surgical Manufacturing Co., J. Sklar

Manufacturing Co., Star Surgical Instrument Co., and Western Instrument Manufacturing Co., the benefits of the discriminatory prices set out in the tabulation contained in paragraph 4 of the findings of facts and from receiving from such sellers of surgical products, under like circumstances and conditions, the benefits of discriminations in price of a substantially similar degree, to the extent that any such discrimination shall exceed due allowance for the differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such products are sold and delivered.

2. From continuing or resuming the practice of inducing and receiving discriminations in prices shown in the tabulation contained in paragraph 4 of the Commission's findings as to the facts and conclusion.

3. From knowingly inducing or receiving discriminations in price prohibited by subsection 2 (a) of the Clayton Act as amended from any seller of surgical products in any manner whatsoever.

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

R. T. VANDERBILT COMPANY, INC., AND STANDARD
MINERAL COMPANY, INC.

COMPLAINT, FINDINGS, AND 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, AS AMENDED

Docket 3656. Complaint, Nov. 30, 1938—Decision, Dec. 16, 1941

Where a corporation, which was the sole sales agent and owner of the majority of the issued preferred voting stock of second corporate concern, engaged in mining or quarrying pyrophyllite, important raw material used extensively in the ceramic field, operating one of three deposits in North Carolina which, excepting those in California from which no sales were shown to have been made, were the only deposits in the United States developed in commercial quantities—

Acting in concert to restrict and restrain competition in pyrophyllite and to secure a monopoly in sale thereof for use in the manufacture of semivitreous earthenware; following acquisition by former company of certain patents covering semivitreous earthenware bodies composed of pyrophyllite and other ingredients, but which did not give exclusive right to use said product in manufacture of such ware or to mine or sell it—

- (a) Falsely represented, directly or by implication, through letters sent to competitors and manufacturers of ceramic products, that, by reason of its ownership of said patents, it had the sole right to sell pyrophyllite for use in the manufacture of semivitreous earthenware, and that no one had the right to use said substance in such manufacture without its license or consent; and
- (b) Warned customers and prospective customers of their competitors that the use by them in the manufacture of such earthenware of pyrophyllite purchased from said competitors constituted an infringement of the said patents, and threatened them with infringement suits in the event of such use;
- Not in good faith in order to protect their own rights in connection with the manufacture of products in question, or to obtain a financial return, by licensing the use of such patents, but with intent of diverting trade in said substance to them from their competitors and creating a monopoly in themselves in the sale thereof; and
- (c) Refused to grant licenses under patents involved except to purchasers of said substance from them, and undertook to restrict such licenses to manufacture of earthenware bodies containing pyrophyllite acquired from them; and
- (d) Made sales of said substance to companies producing semivitreous earthenware, with accompanying licenses to use said patents, upon the condition and understanding that the buyers would not use or purchase pyrophyllite from their competitors, and for the purpose of monopolizing commerce therein;