

Syllabus

IN THE MATTER OF
TRICO PRODUCTS CORPORATION

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

Docket 6050. Complaint, Oct. 3, 1952—Decision, Feb. 12, 1953

Where a corporation engaged in the manufacture and interstate sale and distribution of vacuum-operated windshield wiper motors, arms, linkages, blades, and other automotive safety devices; which, by virtue of patent ownership, was, for all practical purposes, the only manufacturer of that type of windshield wiper motors in the United States during the period between 1922 and 1950; and which sold and distributed its products on an order basis to automobile manufacturers for use as original equipment;

In selling and distributing its products also for resale to 171 warehouse distributors of automotive parts and accessories for resale to general jobbers, specialty jobbers, and service distributors, for resale to automobile parts dealers, garages, and filling stations who sold at retail to the consuming public; in competition with others similarly engaged, as were many of its aforesaid customers and their customers, except as below set forth—

(a) Entered into franchise agreements for the resale of its replacement parts products with various warehouse distributors, whereby they agreed (1) to conform to and carry out its price policies, (2) to offer and grant allowances on exchanges and trade-ins in accordance with prices fixed by it, (3) to carry out its price policies by entering into franchise agreements with their customers, and (4) to enforce said price policies by supervising the performance of the franchise agreements with their customers; and

(b) Sold its replacement parts products only to warehouse distributors who entered into the aforesaid franchise agreements; and

Where most of said warehouse distributors—

(c) Entered into franchise agreements with their customers on a form prepared and supplied by said corporation, which did not become effective until approved by it and had to be renewed each year, by the terms of which said customers agreed (1) to conform to and carry out said corporation's price policies, and (2) to offer and grant allowances on exchanges and trade-ins in accordance with the prices fixed by it; and

Where said corporation—

(d) Regularly issued and distributed to its warehouse distributors price lists and catalogs which contained prices, discounts, and trade-in allowances to which all said resellers of its products had agreed to conform, which in turn were distributed by its warehouse distributors to their customers;

With the result that it illegally fixed, controlled, and maintained the prices, terms and conditions at which its replacement parts products were resold at all levels of distribution:

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Held, That such acts, practices, methods, and agreements, under the circumstances set forth, were all to the prejudice and injury of the public, had a tendency to unduly hinder competition and create a monopoly in it in the sale of said replacement parts products, and constituted unfair methods of competition in commerce.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. Fletcher G. Cohn and *Mr. Paul H. LaRue* for the Commission.

Diebold & Millonzi, of Buffalo, N. Y., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Trico Products Corporation, hereinafter referred to as respondent, has violated the provisions of section 5 of the said Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in these respects as follows:

PARAGRAPH 1. Respondent, Trico Products Corporation, is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 817 Washington Street, Buffalo 3, New York.

PAR. 2. Respondent is now, and since 1920 has been, engaged in the manufacture, distribution and sale of vacuum operated windshield wiper motors, arms, linkages, blades and other automotive safety devices.

PAR. 3. By virtue of its ownership of patents covering the vacuum operated windshield wiper motor, respondent was the only manufacturer of that type of windshield wiper motor in the United States during the period between 1920 and 1950. Although respondent's patents expired in 1942, no competing vacuum operated windshield wiper motor appeared on the market until 1950.

PAR. 4. Respondent sells and distributes its products to automobile manufacturers for use as original equipment. Respondent does not contract with automobile manufacturers with respect to their purchases of its products, but, rather, sells such products to them on an order basis.

Respondent also sells and distributes its products for resale as replacement parts to approximately 171 warehouse distributors of automotive parts and accessories who in turn resell such products to approximately 2914 general jobbers, 163 specialty jobbers and 819 service distributors. The latter resell respondent's products to retail automot-

bile parts dealers, garages and filling stations who sell said products at retail to the consuming public.

PAR. 5. In the course and conduct of its business for many years last past, respondent has been and is now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that it ships or causes to be shipped its products from the State in which they are manufactured to purchasers thereof located in other States and in the District of Columbia, and there is, and has been at all times herein mentioned, a continuous current of trade and commerce in said products between and among the several States of the United States and in the District of Columbia.

PAR. 6. Except insofar as it has been affected, respondent, in the course and conduct of its said business in commerce, has been and is now in competition with persons, firms and other corporations, some of which were and are engaged in similar businesses in commerce.

Also, except insofar as it has been affected, many of respondent's customers, and many of their customers, are competitively engaged in the resale of respondent's products, some in commerce, in the various States where said customers respectively carry on their businesses.

PAR. 7. Respondent, as part of its business, is now entering into and, for many years last past, has entered into franchise agreements for the resale of its replacement parts products with various warehouse distributors of automotive parts and accessories whereby the latter agree, among other things: (1) to conform to and carry out respondent's price policies; (2) to offer and grant allowances on exchanges and trade-ins in accordance with prices fixed by respondent; (3) to carry out respondent's price policies by entering into franchise agreements with their customers; and (4) to enforce said price policies by supervising the performance of the franchise agreements with their customers.

Respondent sells its replacement parts products only to those warehouses distributors who enter into and perform the aforesaid franchise agreements.

PAR. 8. Pursuant to and in furtherance of the requirements of their franchise agreements with respondent, said warehouse distributors enter into franchise agreements with their customers. The franchise agreements between respondent's warehouse distributors and their customers, which are executed on forms prepared and supplied by respondent, do not become effective until approved by respondent, and must be renewed each year. By the terms of said franchise agreements the customers of respondent's warehouse distributors agree, among other things: (1) to conform to and carry out respondent's price poli-

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cies, and (2) to offer and grant allowances on exchanges and trade-ins in accordance with prices fixed by respondent.

PAR. 9. Respondent regularly issues and distributes to its warehouse distributors price lists and catalogs which contain the prices, discounts and trade-in prices to be observed by them and all other resellers of its replacement parts products. Said price lists and catalogs are in turn distributed by respondent's warehouse distributors to their customers.

PAR. 10. By means of the aforesaid franchise agreements by and between respondent and its warehouse distributors and between said warehouse distributors and their customers, plus the requirements of respondent, together with the distribution of the aforesaid price lists and catalogs, respondent has illegally fixed, controlled and maintained the prices, terms and conditions at which its replacement parts products are resold at all levels of distribution.

PAR. 11. The acts, practices, methods and agreements of respondent, as hereinbefore alleged, are all to the prejudice of the public, have a dangerous tendency to unduly hinder competition and create a monopoly in respondent in the sale of vacuum operated windshield wiper motors, arms, linkages, blades and other automotive safety devices for use as replacement parts and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

CONSENT SETTLEMENT¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 3, 1952, issued and subsequently served its complaint on the respondent in the caption hereof, charging it with the use of unfair methods of competition in violation of section 5 of said Act.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purpose of this proceeding, any re-

¹ The Commission's "Notice of Acceptance of Consent Settlement and Order to File Report of Compliance" in said matter follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on February 12, 1953, subject only to the condition that the respondent comply with the requirements of the following paragraph with respect to the filing of a report showing the manner and form in which it has complied with the order to cease and desist; and subject to such condition, said consent settlement was ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

It is accordingly ordered, That the respondent, Trico Products Corporation, shall, within sixty (60) days after service upon it of this notice and order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in the consent settlement entered herein.

view thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint, hereby:

1. Admits all the jurisdictional allegations set forth in the complaint.

2. Consents that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting or denying that it has engaged in any of the acts or practices stated therein to be in violation of law.

3. Agrees that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission has reason to believe are unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondent consents may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Trico Products Corporation, is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 817 Washington Street, Buffalo 3, New York.

PAR. 2. Respondent is now, and since 1920 has been, engaged in the manufacture, distribution and sale of vacuum operated windshield wiper motors, arms, linkages, blades and other automotive safety devices.

PAR. 3. By virtue of its ownership of patents covering the vacuum operated windshield wiper motor, respondent was for all practical purposes the only manufacturer of that type of windshield wiper motor in the United States during the period between 1922 and 1950. Although respondent's basic patent expired in 1942, for all practical purposes, no competing vacuum operated windshield wiper motor appeared on the market until 1950.

PAR. 4. Respondent sells and distributes its products to automobile manufacturers for use as original equipment. Respondent does not contract with automobile manufacturers with respect to their purchases of its products, but, rather, sells such products to them on an order basis.

Respondent also sells and distributes its products for resale as replacement parts to approximately 171 warehouse distributors of automotive parts and accessories who in turn resell such products to approximately 2914 general jobbers, 163 specialty jobbers and 819 service distributors. The latter resell respondent's products to retail automobile parts dealers, garages and filling stations who sell said products at retail to the consuming public.

PAR. 5. In the course and conduct of its business for many years last past, respondent has been and is now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that it ships or causes to be shipped its products from the State in which they are manufactured to purchasers thereof located in other States and in the District of Columbia, and there is, and has been at all times herein mentioned, a continuous current of trade and commerce in said products between and among the several States of the United States and in the District of Columbia.

PAR. 6. Except insofar as it has been affected, respondent, in the course and conduct of its said business in commerce, has been and is now in competition with persons, firms and other corporations, some of which were and are engaged in similar business in commerce.

Also, except insofar as it has been affected, many of respondent's customers, and many of their customers, are competitively engaged in the resale of respondent's products, some in commerce, in the various States where said customers respectively carry on their businesses.

PAR. 7. Respondent, as part of its business, entered into franchise agreements for the resale of its replacement parts products with various warehouse distributors of automotive parts and accessories whereby the latter agreed, among other things: (1) to conform to and carry out respondent's price policies; (2) to offer and grant allowances on exchanges and trade-ins in accordance with prices fixed by respondent; (3) to carry out respondent's price policies by entering into franchise agreements with their customers; and (4) to enforce said price policies by supervising the performance of the franchise agreements with their customers.

Respondent sold its replacement parts products only to those warehouse distributors who entered into the aforesaid franchise agreements.

PAR. 8. Pursuant to and in furtherance of the requirements of their franchise agreements with respondent, most of said warehouse distributors entered into franchise agreements with their customers. The franchise agreements between respondent's warehouse distributors and their customers, which were executed on forms prepared and supplied by respondent, did not become effective until approved by

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respondent, and had to be renewed each year. By the terms of said franchise agreements the customers of respondent's warehouse distributors agreed, among other things: (1) to conform to and carry out respondent's price policies, and (2) to offer and grant allowances on exchanges and trade-ins in accordance with prices fixed by respondent.

PAR. 9. Respondent regularly issues and distributes to its warehouse distributors price lists and catalogs containing the prices, discounts and trade-in prices, to which said distributors and all other resellers of its replacement parts products have agreed to conform. Said price lists and catalogs are in turn distributed by respondent's warehouse distributors to their customers.

PAR. 10. By means of the aforesaid franchise agreements by and between respondent and its warehouse distributors and between said warehouse distributors and their customers, plus the requirements of respondent, together with the distribution of the aforesaid price lists and catalogs, respondent illegally fixed, controlled and maintained the prices, terms and conditions at which its replacement parts products were resold at all levels of distribution.

CONCLUSION

The acts, practices, methods and agreements of respondent, as hereinbefore alleged, are all to the prejudice of the public, have a tendency to unduly hinder competition and create a monopoly in respondent in the sale of vacuum operated windshield wiper motors, arms, linkages, blades and other automotive safety devices for use as replacement parts and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent, Trico Products Corporation, its officers, agents, representatives, and employees, in or in connection with the offering for sale, sale or distribution in commerce between and among the several States of the United States and in the District of Columbia of vacuum operated windshield wiper motors, arms, linkages, blades and other automotive safety devices, do forthwith cease and desist from entering into, carrying out or continuing any agreement or understanding to do or perform any of the following things:

(1) Fix, establish or maintain prices, terms or conditions of sale in the resale of any of said products;

(2) Require, or attempt to require, any purchaser of any of said products to conform to, or comply with, any method of fixing, establishing or maintaining terms, prices or conditions of sale in the resale of said products;

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(3) Require, or attempting to require, any purchaser of any of said products to conform to, or comply with, any schedule or arrangement as to allowances on exchanges or trade-ins connected with, or related to, the resale of such products;

(4) Supervise or enforce, or attempt to supervise or enforce, by any means or methods the maintenance of any prices, terms or conditions of sale in the resale of any of said products.

Provided, however, That nothing herein contained shall be construed to prevent respondent from showing that any contract or agreement hereafter made, which is alleged to be in violation of this order, is permitted by the provisions of the Miller-Tydings Law (Public Law 314, 75th Congress, approved August 17, 1937) or of the McGuire Law (Public Law 542, 82nd Congress, Chapter 745, approved July 14, 1952).

Trico Products Corporation

TRICO PRODUCTS CORPORATION

By RUPERT WARREN,

Vice-Pres.

Dated: January 8, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 12th day of February, 1953, subject only to the condition that the respondent shall, within sixty (60) days after service upon it of a copy of this consent settlement, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in said consent settlement.

Syllabus

IN THE MATTER OF
CHAIN INSTITUTE, INC. ET AL.

COMPLAINT, DECISION, FINDINGS, ORDER, AND DISSENTING OPINION IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SUBSEC. (a) OF SEC. 2 OF AN ACT APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 4878. Complaint, Oct. 9, 1945¹—Decision, Feb. 16, 1953

Where eighteen corporations which were engaged in the manufacture, sale, and distribution to wholesalers, dealers, and consumers, including the United States Government, of substantially all the welded chain, weldless chain, including sash and kindred chain, and tire chains produced in the United States, and were in competition with one another and with other members of the industry, except as noted below; along with their trade association or Institute organized in 1933; its Managing Director engaged as such since 1938 and employed by them for the purpose, among others, of stabilizing prices; and certain officers of said corporate manufacturers who were active in Institute affairs;

Entered into and carried out an understanding or conspiracy among themselves to restrain and suppress competition in the sale of chain and chain products; and in furtherance thereof, acting in concert with one or more of the others—

- (a) Discussed and agreed upon present and future prices on chain and chain products at Institute meetings, exchanged price lists and prior information, and made use of said institute to promote and maintain adherence to the prices agreed upon; and employed said Managing Director to exhort the manufacturer members not to sell their products at less than their published prices;
- (b) Took action to prevent sales at less than published list prices and discounts through inquiring among one another as to whether or why a particular sale or offer to sell had been made at less than the published price; and
- (c) Took measures through their Institute to standardize and simplify their products, through committees of officers of the manufacturers and otherwise;

With the result that a situation was brought about where there was no difference between the chain made by different manufacturers so that a buyer would not pay more for the product of one than for that of another;

- (d) Cooperatively and collectively engaged, through the Institute, an independent traffic consultant to compile a book of freight rates on welded chain from Pittsburgh to destinations throughout the United States, and to revise such compilation, for use in computing delivered prices in accordance with the manufacturers' practice of selling on a Pittsburgh basing-point basis, and sent copies to nonmember manufacturers so that all sellers might be

¹ Amended.