

Syllabus

IN THE MATTER OF

JACOBS MANUFACTURING COMPANY

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

Docket 6061. Complaint, Nov. 19, 1952—Decision, June 24, 1953

Where a corporation which for 50 years had been the leading manufacturer in the United States of industrial chucks for use in the portable machine tool industry, produced and sold about 95% of all such chucks sold in the United States, and had as its largest original equipment customer the manufacturer which occupied a dominant position in the production and sale of portable drills in the United States; and which was in competition, necessarily limited by its dominant position, with other manufacturers of industrial chucks who sold to original equipment manufacturers;

In selling under an annual quantity discount and rebate plan applicable to its sales of drill chucks to manufacturers of motor-driven, hand, or portable tools, and light power-driven machinery for use as original and replacement equipment, pursuant to which it sent a statement to each of such purchasers at the end of the calendar year showing the total amount of purchases for such period, together with a credit memorandum and check for the amount of the discount and rebate earned under the plan, which provided for discounts and rebates amounting to 2.5% on aggregate purchases ranging from \$25,000.00 to \$50,000.00, returned 4.9% on purchases from \$50,000 to \$100,000.00; 7.31% on purchases between \$100,000.00 and \$200,000.00; and 9.63% on purchases of \$200,000.00 and over—

Discriminated in price between its different manufacturer-purchasers in commerce of commodities of like grade and quality by charging some higher prices than it charged others, through the allowance and payment of discounts and rebates under its said annual quantity discount and rebate plan, in which the making of small additional purchases to bring the annual total within a higher discount bracket, resulted in the equivalent of free goods;

With tendency to cause original equipment manufacturer-purchasers to concentrate all their purchases of chucks and parts upon respondent's products, to the exclusion of respondent's competitors and to their injury, and to discourage and prevent prospective competition with respondent by reason of the inducements thus offered to respondent's purchasers to concentrate all purchases of their chuck requirements with it in order to receive the discounts and rebates provided by said plan, under which, as illustrative, such a purchaser in 1950 received a quantity discount and rebate of \$633.18 by reason of purchases amounting to \$25,327.12, qualifying for the first bracket discount by the small additional purchases above \$25,000.00; and

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respondent's largest purchaser received quantity discounts and rebates amounting to nearly \$77,000.00 on purchases slightly under \$798,000.00; Effect of which substantial discriminations in price in commerce might be substantially to lessen competition or tend to create a monopoly in the line of commerce in which it was engaged, or to injure or destroy competition with it and its competitors, or to prevent competition with it by its competitors:

Held, That such discriminations in price, under the circumstances set forth, were in violation of the provisions of Sec. 2 (a) of the Clayton Act as amended.

Before *Mr. William L. Pack*, hearing examiner.

Mr. William H. Smith for the Commission.

Robinson, Robinson & Cole, of Hartford, Conn., 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, has violated and is now violating the provisions of subsection (a) of Section 2 of the Clayton Act (U. S. C. A. Title 15 Sec. 13) as amended by the Robinson-Patman Act approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Jacobs Manufacturing Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located on Jacobs Road, West Hartford, Connecticut.

PAR. 2. For many years past respondent has been, and is now, engaged in the manufacture of industrial chucks, parts, and accessories therefor. The chuck is a mechanical device for holding a tool or piece of work, and is used principally on motor driven, hand and portable tools, drills, lathes, and milling machines.

Respondent's manufacturing activities being limited to the production of chucks, parts and accessories therefor, respondent sells its products to manufacturers of appliances and machines upon which its said products are adaptable, for use as original equipment, and for resale as replacement equipment upon products of their own manufacture. Respondent also sells its products for replacement purposes to machinery dealers, service stations, distributors, wholesale hardware distributors, and other dealers. Respondent's total volume of sales of its products for 1950 was approximately \$4,550,000.

PAR. 3. In the course and conduct of its business, respondent engaged in commerce as "commerce" is defined in the Clayton Act having sold and shipped its products manufactured by it at its factory located in the State of Connecticut, and caused the same to be transported from said State to purchasers located in other States of the United States and in other places subject to the jurisdiction of the United States and in foreign countries. Respondent also sold a substantial quantity of its products to purchasers located in the State of Connecticut. At least one of the purchases involved in each of the discriminations in price hereinafter alleged were in interstate commerce.

PAR. 4. During 1925 respondent inaugurated and put into effect an annual quantity discount and rebate plan applicable to its sales of drill chucks to original equipment manufacturers for use as original and replacement equipment, as hereinbefore described. Under said plan it was usually respondent's practice to send a statement to each of such purchasers at the end of the calendar year showing the total amount of purchases for such period accompanied by a credit memorandum and check for the amount of said discount and rebate earned pursuant to the terms and conditions of said annual quantity discount and rebate plan, which will hereinafter be more particularly described.

PAR. 5. From the time of its inauguration in 1925 to and including 1947 respondent effected various changes in its annual quantity discount and rebate plans both as to the annual volumes of purchases upon which said discounts and rebates were computed, and also as to the percentages of annual volumes of purchases which were allowed and paid.

*Purchasers Classified According to Their Respective Volume Brackets
1950*

1	2	3	4	5	6	7	8
Volume brackets	Discounts and Rebates			Volume of purchases	Dollar discounts and rebates		
	Multiple percentages given	Single percent equivalent	Number of purchasers		Discounts	Rebates	Total
Less than \$25,000....	0.....	0	14	\$127,004.08	0	0	0
\$25,000 to \$50,000....	2½.....	2.5	4	130,780.65	0	\$3,269.51	\$3,269.51
\$50,000 to \$100,000....	2½ and 2½.....	4.94	7	492,640.85	0	26,560.91	26,560.91
\$100,000 to \$200,000....	2½ and 2½ and 2½.....	7.31	7	993,189.30	\$2,915.58	69,726.91	72,642.49
\$200,000 and over....	2½ and 2½ and 2½ and 2½.....	9.63	1	797,733.52	56,888.05	19,943.34	76,831.39
Total.....			33	2,541,348.40	59,803.63	119,500.67	179,304.30

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Respondent's present annual quantity discount and rebate plan has been in effect since 1948, and is illustrated by the table herein set forth which is for the year 1950. This table is substantially correct; but there are some of respondent's manufacturer-purchasers who received discriminatory discounts and rebates which do not conform to the percentages of volumes appearing in said table.

PAR. 6. Respondent generally computes and pays quantity discounts and rebates under its annual quantity discount and rebate plan, as described in Paragraph 5, upon the basis of respondent's net prices charged its several original equipment manufacturer-purchasers. During 1950 respondent sold its drill chucks and parts to thirty-three of such purchasers for use as original equipment and replacement purposes upon motor driven hand and portable tools of their own manufacture, whose total purchases from respondent amounted to \$2,541,348.40. Nineteen of such manufacturer-purchasers, whose purchases amounted to \$2,414,344.32 in 1950 received rebate checks under respondent's annual quantity discount and rebate plan on December 30, 1950, amounting to \$119,500.67. Some of these nineteen manufacturer-purchasers, including the largest, were allowed discounts amounting to \$59,803.63 which were deducted currently by respondent from bills and invoices submitted by respondent to said purchasers for goods bought during 1950. Thus augmented, respondent's total quantity discounts and rebates paid for 1950 based upon the total purchases herein stated are increased from \$119,500.67 to \$179,304.30. The remaining fourteen manufacturer-purchasers whose individual purchases were less than \$25,000 for 1950 received nothing under said plan.

All of said thirty-three purchasers, except two, who were located in the State of Connecticut and who received nothing under respondent's annual quantity discount and rebate plan by reason of insufficient annual volumes of purchases, were located in other States of the United States; and therefore, respondent's sales of its drill chucks and parts to such purchasers were in interstate commerce, as hereinbefore alleged, and were sold by respondent for use, consumption, or resale within the United States, in places subject to the jurisdiction of the United States and the District of Columbia.

PAR. 7. Respondent in the allowance and payment of discounts and rebates by means of its annual quantity discount and rebate plan, as hereinbefore described has been, and is, discriminating in price between its different purchasers, in commerce, of commodities of like grade and quality by charging some of said purchasers higher prices than respondent charges to others.

PAR. 8. Respondent is the largest manufacturer of industrial chucks in the United States. For approximately fifty years respondent has been the leading manufacturer of industrial chucks used in the portable machine tool industry. It produces and sells approximately 95% of all industrial chucks sold in the United States for use in connection with portable machine tools. There are other manufacturers of industrial chucks in the United States who are in competition with respondent in the sale of such chucks and parts to original equipment manufacturers; but by reason of respondent's predominant position in the chuck manufacturing industry which has existed for many years, such competition is necessarily limited. One of respondent's original equipment manufacturer customers, which is its largest, and which purchases all, or substantially all of its chuck requirements from respondent, occupies a dominant position in the production and sale of portable drills in the United States.

PAR. 9. Respondent manufactures and sells a wide variety of industrial chucks suitable to the requirements of the original equipment manufacturers and in sufficient quantities to supply their needs. Respondent's annual quantity discount and rebate plan, as hereinbefore described, tends to cause such original equipment manufacturer-purchasers to concentrate all their purchases of chucks and parts upon respondent's products to the exclusion of respondent's competitors and to their injury. Respondent's annual quantity discount and rebate plan also tends to discourage and prevent prospective competition with respondent by reason of the inducements offered thereby to respondent's original equipment manufacturer-purchasers to concentrate all purchases of their chuck requirements with respondent in order to receive the discounts and rebates provided by said plan. As an illustration, of respondent's original equipment manufacturer-purchasers for 1950, one purchased \$25,327.12 of respondent's chucks and received a quantity discount and rebate of \$633.18. Thus the small additional purchases made by such purchaser to bring it within the 2½ percent discount bracket not only resulted in the equivalent of free goods to that extent, but also to the extent of the difference between the necessary additional goods bought and the total amount of the quantity discount and rebate received. Another purchaser bought \$51,270.47 of respondent's chucks and received a quantity discount and rebate of \$2,531.48, thereby increasing its maximum quantity discount and rebate of 2½ percent on all purchases less than \$50,000 to 4.94 percent on all purchases up to and including \$50,000.00, as well as on those above that amount. Another of respondent's purchasers bought \$101,365.06 of respondent's chucks and received a quantity discount and re-

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bate of \$7,413.90, and thereby increased its maximum quantity discount and rebate of 4.94 percent on all purchases less than \$100,000 to 7.31 percent on all purchases up to and including \$100,000.00, as well as on those above that amount. Respondent's largest purchaser, with purchases of respondent's chucks and parts amounting to \$797,733.52, and the only one in the \$200,000 bracket, in addition to receiving \$19,943.34 from respondent as a quantity rebate at the end of the year, currently received as discounts from invoices of respondent's goods, as alleged, additional quantity discounts amounting to \$56,888.05 which constituted an immediate and distinct incentive to such purchaser, to concentrate its purchases in respondent's products. Similar incentives were given to other of respondent's purchasers as alleged in Paragraph 6.

PAR. 10. Respondent's discriminations in price in commerce, as herein before alleged, are substantial. The effect of such discriminations may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which respondent is engaged, or to injure, or to destroy competition with respondent and its competitors, or to prevent competition with respondent by its competitors.

The discriminations in price, as hereinabove alleged, are in violation of the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

CONSENT SETTLEMENT ¹

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 an Act of Congress approved June 19, 1936, (the Robinson-Patman Act) (15 U. S. C. A. Section 13) the Federal Trade Commission on November 19, 1952, issued and subsequently served its complaint on the respondent named in the caption hereof, charging it with discriminating in price between different purchasers of commodities of like grade and quality in violation of the provisions of subsection (a) of Section 2 of said Clayton Act, as amended.

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on June 24, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

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 purposes of this proceeding, and review 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 the answer and amended answer to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, are to be withdrawn from the record, 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. Agree 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 had reason to believe were 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 Jacobs Manufacturing Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located on Jacobs Road, West Hartford, Connecticut.

PAR. 2. For many years past respondent has been, and is now, engaged in the manufacture of industrial chucks, parts, and accessories therefor. The chuck is a mechanical device for holding a tool or piece of work, and is used principally on motor driven, hand and portable tools, drills, lathes, and milling machines.

Respondent's manufacturing activities being limited to the production of chucks, parts and accessories therefor, respondent sells its products to manufacturers of appliances and machines upon which

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its said products are adaptable, for use as original equipment, and for resale as replacement equipment upon products of their own manufacture. Respondent also sells its products for replacement purposes to machinery dealers, service stations, distributors, wholesale hardware distributors, and other dealers. Respondent's total volume of sales of its products for 1950 was approximately \$4,550,000.

PAR. 3. In the course and conduct of its business, respondent engaged in commerce as "commerce" is defined in the Clayton Act having sold and shipped its products manufactured by it at its factory located in the State of Connecticut, and caused the same to be transported from said State to purchasers located in other States of the United States and in other places subject to the jurisdiction of the United States and in foreign countries. Respondent also sold a substantial quantity of its products to purchasers located in the State of Connecticut. At least one of the purchases involved in each of the discriminations in price hereinafter found to exist, were in interstate commerce.

PAR. 4. During 1925 respondent inaugurated and put into effect an annual quantity discount and rebate plan applicable to its sales of drill chucks to manufacturers of motor driven, hand or portable tools, and light power driven machinery for use as original and replacement equipment, as hereinbefore described. Under said plan it was usually respondent's practice to send a statement to each of such purchasers at the end of the calendar year showing the total amount of purchases for such period accompanied by a credit memorandum and check for the amount of said discount and rebate earned pursuant to the terms and conditions of said annual quantity discount and rebate plan, which will hereinafter be more particularly described.

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Findings

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and were sold by respondent for use, consumption, or resale within the United States, in places subject to the jurisdiction of the United States and the District of Columbia.

PAR. 7. Respondent in the allowance and payment of discounts and rebates by means of its annual quantity discount and rebate plan, as hereinbefore described, has been discriminating in price between its said different manufacturer-purchasers, in commerce, of commodities of like grade and quality by charging some of said purchasers higher prices than respondent charges to others.

PAR. 8. Respondent is the largest manufacturer of industrial chucks in the United States. For approximately fifty years respondent has been the leading manufacturer of industrial chucks used in the portable machine tool industry. It produces and sells approximately 95% of all industrial chucks sold in the United States for use in connection with portable machine tools. There are other manufacturers of industrial chucks in the United States who are in competition with respondent in the sale of such chucks and parts to original equipment manufacturers; but by reason of respondent's predominant position in the chuck manufacturing industry which has existed for many years, such competition is necessarily limited. One of respondent's original equipment manufacturer customers, which is its largest, and which purchases all, or substantially all of its chuck requirements from respondent, occupies a dominant position in the production and sale of portable drills in the United States.

PAR. 9. Respondent manufactures and sells a wide variety of industrial chucks suitable to the requirements of the original equipment manufacturers and in sufficient quantities to supply their needs. Respondent's annual quantity discount and rebate plan, as hereinbefore described, tends to cause such original equipment manufacturer-purchasers to concentrate all their purchases of chucks and parts upon respondent's products to the exclusion of respondent's competitors and to their injury. Respondent's annual quantity discount and rebate plan also tends to discourage and prevent prospective competition with respondent by reason of the inducements offered thereby to respondent's original equipment manufacturer-purchasers to concentrate all purchases of their chuck requirements with respondent in order to receive the discounts and rebates provided by said plan. As an illustration, of respondent's original equipment manufacturer-purchasers for 1950, one purchased \$25,327.12 of respondent's chucks and received a quantity discount and rebate of \$633.18. Thus the small additional purchases made by such purchaser to bring it within the 2½ per cent discount bracket not only resulted in the equivalent of free goods to

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that extent, but also to the extent of the difference between the necessary additional goods bought and the total amount of the quantity discount and rebate received. Another purchaser bought \$51,270.47 of respondent's chucks and received a quantity discount and rebate of \$2,531.48, thereby increasing its maximum quantity discount and rebate of 2½ per cent on all purchases less than \$50,000 to 4.94 per cent on all purchases up to and including \$50,000.00, as well as on those above that amount. Another of respondent's purchasers bought \$101,365.06 of respondent's chucks and received a quantity discount and rebate of \$7,413.90, and thereby increased its maximum quantity discount and rebate of 4.94 percent on all purchases less than \$100,000 to 7.31 percent on all purchases up to and including \$100,000.00, as well as on those above that amount. Respondent's largest purchaser, with purchases of respondent's chucks and parts amounting to \$797,733.52, and the only one in the \$200,000 bracket, in addition to receiving \$19,943.34 from respondent as a quantity rebate at the end of the year, currently received as discounts from invoices of respondent's goods, additional quantity discounts amounting to \$56,888.05 which constituted an immediate and distinct incentive to such purchaser, to concentrate its purchases in respondent's products. Similar incentives were given to other of respondent's purchasers as stated in Paragraph 6.

PAR. 10. Respondent's discriminations in price in commerce, as hereinbefore found are substantial. The effect of such discriminations may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which respondent is engaged, or to injure, or to destroy competition with respondent and its competitors, or to prevent competition with respondent by its competitors.

CONCLUSION

The discriminations in price as hereinabove found to exist are in violation of the provisions of subsection (a) of Section 2 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) as amended by an Act of Congress approved June 19, 1936, (the Robinson-Patman Act).

ORDER TO CEASE AND DESIST

It is ordered, That the respondent Jacobs Manufacturing Company, a corporation, engaged in commerce, as "commerce" is defined in the aforesaid Clayton Act, its officers, representatives, agents and em-

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ployees, directly or through any corporate or other device, in the sale of industrial chucks, parts, and accessories therefor of like grade and quality, do forthwith cease and desist from directly or indirectly discriminating in price between purchasers, who are manufacturers of motor driven, hand or portable tools, or light power driven machinery within the United States, and places subject to the jurisdiction of the United States where either or any of the purchases involved in such discrimination are in said commerce, by selling said products to any of said purchasers at prices which are higher than the prices at which said products are sold by respondent to any other of said purchasers, and where any such sale is made in competition with one or more sellers of said products.

It is further ordered, That the respondent shall, within sixty (60) days after the 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.

JACOBS MANUFACTURING COMPANY,

a corporation

By [S] LOUIS B. STONER

President

[S] FRANK CHAPMAN

Counsel for Respondent.

Date:

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and entered of record on this the 24th day of June, 1953.

Syllabus

IN THE MATTER OF

CZECHO-SLOVAK CRYSTAL IMPORTERS ASSOCIATION,
INC. (IMPORTED CRYSTAL ASSOCIATION, INC.) ET AL.

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

Docket 5988. Complaint, May 12, 1952—Decision, June 25, 1953

While a small percentage of the lighting glass products made for use in the United States is presently manufactured in Japan, Germany, Austria and other foreign countries as well as in the United States, such glass products have generally been deemed to be of inferior quality to Czechoslovakian lighting glass products and have not enjoyed the acceptance in the United States accorded to said Czechoslovakian products.

Where twelve corporations, two partnerships and an individual, which were engaged in importing "lighting glass products"—i. e., glass crystals, prisms, drops, chandeliers, and related products—from Czechoslovakia and other foreign countries for sale and distribution throughout the United States and for use in the manufacture of lighting fixtures for such sale and distribution; would have been in competition with one another, except for the facts below set forth, and were in competition with their customers and with importers who were not members of their association; and for a number of years theretofore imported about 90% of the volume of lighting glass products made in Czechoslovakia for sale and distribution in the United States and thereby dominated and controlled the lighting glass products industry in this country; together with their association, incorporated in 1946 to "advance the business of importers of crystal chandeliers and of all chandelier parts from Czechoslovakia, and to deal with problems concerning or affecting them and of allied and kindred businesses; * * *"—

Cooperated, combined, conspired, agreed, and entered into and carried out an understanding and planned common course of action between and among themselves and others (1) to prevent competing purchasers from importing lighting glass products directly from the suppliers; (2) to fix and establish prices, terms, and conditions of purchase in connection with the importation of such products; and (3) to monopolize within themselves the import, sale and distribution of said products in commerce; and as a part and parcel of said action and practice unlawfully to thwart, hinder, frustrate, and suppress competition—

- (a) Restricted the membership of their association and obtained an agreement from the Czechoslovakian glass import authorities whereby the sale of said products was restricted to members of their association and other importers approved by them;
- (b) Caused said Czechoslovakian glass export authorities to enjoin glass exporters from selling such products to nonmember importers in the United States;