

IN THE MATTER OF
CHAMPION SPARK PLUG CO.

FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SECS. 2 (a) AND 2 (d) AND SEC. 3 OF THE CLAYTON ACT, AS AMENDED, AND OF THE FEDERAL TRADE COMMISSION ACT

Docket 3977. Complaint, June 27, 1947¹—Decision, July 10, 1953

Where a corporation which was one of ten concerns engaged in the manufacture of spark plugs and, with General Motors and the Electric Auto-Lite Co., made more than 80 percent of all the spark plugs produced and sold in the United States; sold its said product (1) to vehicle or engine manufacturers for use by them as original equipment and sold the same also (2) for resale for replacement to automobile manufacturers, wholesalers of automobile parts and accessories, oil companies and others, competitively engaged, along with many of their customers, in the resale of spark plugs at wholesale and retail;

In selling its spark plugs of like grade and quality for resale for replacement since June 19, 1936, at prices which varied substantially as between (1) purchasers buying directly from it, including its distributors, Atlas Supply Co., Socony-Vacuum Oil Co., and certain automobile and truck manufacturers (and prior to 1941 "direct jobbers"); (2) purchasers buying indirectly from it; and (3) purchasers buying directly and purchasers buying indirectly from it—

- (a) Discriminated in price between distributors and certain automobile manufacturers in that in 1947, as illustrative, it sold its said products to said distributors at net prices of 26.1 cents and 24.65 cents in certain types of accounts; to four automobile manufacturers at 24 cents; and to Ford, at a cost to Ford, through latter's payment of the 5 percent excise tax, of about 22 cents;

With results, as a consequence of Ford's advertising and promotional activities, induced in part by the low price paid by Ford for such plugs, that Ford dealers preferred to purchase their requirements of such plugs direct from Ford, and certain of respondent's distributors, including those in competition with Ford for the business of the latter's dealers, lost the accounts;

Where said corporation, in selling its said spark plugs to (1) Atlas Supply Co., which was owned by a subsidiary of Standard Oil Company of New Jersey and the Standard Oil Companies of Ohio, Indiana, Kentucky, and California, purchased respondent's plugs for resale to said various Standard Oil companies, and conducted a complete merchandising program for the resale of automobile parts and accessories, including said plugs, profits of which were divided among said companies on the basis of the merchandise purchases and to (2) Socony-Vacuum Oil Co., which purchased automobile products, including spark plugs, not only for resale through its own outlets but also for its affiliates, and both of which carried on extensive advertising, training and other activities to promote the sale of respondent's spark plugs through independently operated service stations selling their respective products; and to (3) various other distributors—

¹ Amended.

- (b) Discriminated in price in favor of said Atlas and Socony through according them a discount of 10 percent plus 10 percent from respondent's 1947 billing price of 29 cents and thus afforded them a price advantage of 1.16 to 2.61 cents per plug over the 1947 net price to its other distributors of 26.1 cents per plug (and 24.65 cents per plug in certain types of accounts);

With result that Cities Service Oil Co., one of a number of oil companies who did not receive said additional discount, was prevented thereby from fully competing with Standard Oil Companies of Ohio and Indiana and Socony, dealers of which, as a consequence of aforesaid advertising and promotional activities, preferred to purchase their requirements of respondent's plugs from or through them; and a number of distributors who paid a higher price for its plugs than did Atlas and Socony, lost the business of independently operated service stations to such favored concerns; and,

Where said corporation, in selling its said spark plugs to its distributor purchasers at 29 cents each less 10 percent plus 5 percent allowances as "Special Sales Service Compensation", for resale to its "Franchise" or "Basis" accounts, which, under franchises granted by it, bought from its said distributors at varying prices and terms fixed by respondent—and under such control by respondent that sales to such indirect accounts were in all essential respects sales by respondent; which included (1) wholesale accounts classified as "Jobber Basis" accounts and "5,000 Plugs Basis" accounts, charged, in 1947, 29 cents and 32 cents, respectively; and (2) large consumer accounts classified as "C' Fleet Basis" accounts and "Fleet Basis", respectively charged similar amounts—

- (c) Discriminated in price between its distributors and its said indirect purchasers, each of whom was in competition with other purchasers of its spark plugs, and was injured to the extent that it paid a price higher than that paid by its competitors, and thus further discriminated between certain indirect purchasers;

With result that its distributors and, to a lesser extent, the more favored indirect accounts, were able to resell profitably to consumer "Fleet" accounts; and the indirect wholesale accounts paying the higher prices lost the business of all consumer accounts large enough to secure respondent's approval for a "Fleet Basis" agreement, including accounts which they had developed:

Held, That aforesaid discriminatory acts and practices were in violation of subsec. (a) of Sec. 2 of the Clayton Act: and

Where said respondent, which was one of the two largest spark plug manufacturers in the United States; along with General Motors and Electric Auto-Lite, made and sold substantially all the spark plugs purchased by equipment manufacturers, and more than 80 percent of all such products made and sold in the United States; made substantial sales to operators of large fleets of motor trucks or buses; and made about two-thirds of its total sales of spark plugs through its distributors, selling in 1946 a total of more than 58 million spark plugs through such distributors other than Atlas and Socony—

- (d) Entered from time to time into contracts with automobile manufacturers in which there was included a provision, eliminated in 1939, whereby the manufacturers agreed to purchase from respondent their entire requirements of spark plugs for a specified term not exceeding one year and respondent agreed to supply their requirements of such products;
- (e) Executed, prior to 1941, a so-called "Commercial Franchise" agreement with operators of bus and trucking lines and with other large consumers which set

Findings

50 F. T. C.

forth the prices at which such so-called "Fleet" accounts were entitled to purchase their requirements of spark plugs, specified the sources from which they were to obtain such requirements and, through the inclusion of such language as "in consideration of your purchasing Champion Spark Plugs for your requirements, estimated to exceed 5,000 plugs per year, to service your motorized equipment and upon your placing an initial order for 200 plugs for single delivery we extend to you the following special prices, terms and conditions on all your Spark Plug purchases through this date to December 31, 1939, which, in effect, constituted agreements whereby said "Fleet" accounts were given a special low price in consideration of their purchasing such plugs for all their requirements; and

- (f) Entered into agreements with its distributors through two forms, used prior to 1941 and subsequent to 1940, respectively, whereby the distributor, in order to obtain spark plugs at a special low price as specifically set out, undertook a variety of services with respect to said "Franchise" accounts, including the satisfactory servicing of such accounts and periodical reports with respect to their purchases, and which were of such a nature that, notwithstanding disavowals therein of any expressed or implied obligation on the part of the distributor to handle such plugs exclusively, latter, in effect, was required so to do, in order to obtain the special low price involved; interpreted said agreements as imposing such an obligation upon its distributors; refused to enter into distributor agreements with wholesale accounts which refused to agree to handle respondent's plugs exclusively; and threatened cancellation of agreements with distributors who had taken on or indicated an intention to take on competing lines of spark plugs:

Held, That such acts and practices, under the circumstances set forth, were in violation of Sec. 3 of the Clayton Act.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. L. E. Creel, Jr., Mr. Robert R. MacIver, and Mr. J. Wallace Adair for the Commission.

Marshall, Melhorn, Block & Belt, of Toledo, Ohio, for respondent.

Willkie, Owen, Farr, Gallagher & Walton, of New York City, for Kaiser-Frazer Corp., *amicus curiae*.

Mr. L. Arthur Greenstein and Mr. Daniel S. Greenstein, of Philadelphia, Pa., for Berlin Auto Supply Co., *amicus curiae*.

Beaumont, Smith & Harris, of Detroit, Mich., for Hudson Motor Car Co., *amicus curiae*.

Cook, Beake, Miller, Wrock & Cross, of Detroit, Mich., for Nash-Kelvinator Corp., *amicus curiae*.

Bodman, Longley, Bogle, Armstrong & Dahling, of Detroit, Mich., for Packard Motor Car Co., *amicus curiae*.

Ritter & Boesel, of Toledo, Ohio, for Willys-Overland Motors, Inc., *amicus curiae*.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and the provisions of an Act of Congress entitled "An Act to sup-

plement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission on June 27, 1947, issued and subsequently served its amended complaint in this proceeding upon the respondent, Champion Spark Plug Company, a corporation (said amended complaint being issued in the place of and instead of the complaint against the same respondent issued on December 16, 1939), charging said respondent in Count I thereof with violation of subsection (a) of Section 2 of said Clayton Act, as amended; in Count II thereof with violation of subsection (d) of Section 2 of said Clayton Act, as amended; in Count III thereof with violation of Section 3 of said Clayton Act; and in Count IV thereof with violation of Section 5 of the Federal Trade Commission Act.

After the issuance of said amended complaint and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said amended complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the amended complaint, answer thereto, testimony and other evidence, recommended decision of the hearing examiner and exceptions thereto, written briefs of counsel supporting the complaint, counsel for respondent, and counsel for Kaiser-Frazer Corporation, Hudson Motor Car Company, Nash-Kelvinator Corporation, Packard Motor Car Company, and Willys-Overland Motors, Inc., as amici curiae, and oral argument of opposing counsel; and the Commission, having duly considered the matter and having entered its order disposing of the exceptions to the recommended decision of the hearing examiner, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Champion Spark Plug Company (sometimes hereinafter referred to as "Champion"), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in Toledo, Ohio.

PAR. 2. Respondent is engaged in the business of manufacturing and selling spark plugs and spark plug parts. It neither makes nor sells anything else, except that it sells a small amount of spark plug

testing and cleaning apparatus purchased from others. Respondent manufactures its spark plugs in its plants in Toledo, Ohio, and Detroit, Michigan, and causes them to be transported, when sold, to its customers located in all States of the United States and in the District of Columbia. There is and has been at all times herein mentioned a current of trade and commerce in said product manufactured and sold by respondent between the States wherein respondent's plants are located and the other States of the United States. Respondent's spark plugs are sold by it for use, consumption, or resale within the various States of the United States and in the District of Columbia.

PAR. 3. Respondent sells spark plugs throughout the United States in the same territories and places as, and in substantial competition with, other persons and corporations engaged in the manufacture and sale of spark plugs. There are approximately 40 concerns engaged in the business of manufacturing or assembling spark plugs. Respondent, General Motors Corporation (AC Spark Plug Division), The Electric Auto-Lite Company, and 7 other concerns are manufacturers of complete spark plugs. The remaining approximately 30 concerns either assemble spark plug parts made by others or market under their own brand name spark plugs purchased from other manufacturers or assemblers of spark plugs. More than 80 percent of all the spark plugs produced and sold in the United States are manufactured by respondent, General Motors Corporation (AC Spark Plug Division), and The Electric Auto-Lite Company.

PAR. 4. Respondent sells its spark plugs to vehicle or engine manufacturers for use by such manufacturers as original equipment in vehicles or engines manufactured by them. Respondent also sells its plugs to such manufacturers and to others for resale for replacement of original equipment. More spark plugs are sold for replacement than for original equipment. The life of a well-made spark plug is not necessarily shorter than that of the engine in which it is used, but many are replaced during the life of the engine in an effort to secure more economical operation.

The spark plugs sold by respondent for use as original equipment become an integral part of the motor or vehicle in which they are used, and are not resold in competition with spark plugs sold for replacement purposes. The end use market for equipment spark plugs is separate and distinct from and noncompetitive with the replacement market.

Respondent sells spark plugs to be used for replacement purposes to automobile manufacturers, wholesalers of automobile parts and accessories, oil companies, and others. These customers of respondent and many of their customers are competitively engaged in the resale

of spark plugs at wholesale and retail in the various areas where said customers respectively carry on their businesses.

PAR. 5. Respondent has sold its spark plugs to automobile manufacturers for their use in motors and motor vehicles—original equipment plugs—at prices lower than those charged by respondent for its spark plugs of like grade and quality sold to said automobile manufacturers and to others for resale for replacement of original equipment. During the period from 1937 through 1947, respondent's invoice price on spark plugs sold to passenger car manufacturers for their use as original equipment ranged from 5 cents to 7 cents per plug. During the same period, respondent's prices to the said passenger car manufacturers for replacement plugs ranged from approximately 22 cents to 27 cents per plug, and its prices to other direct customers for replacement plugs ranged from approximately 25 cents to 29.7 cents per plug.

It is alleged in Count I of the amended complaint herein that the effect of the aforesaid price differentials between purchasers buying for original equipment and purchasers buying for resale for replacement is and may be to substantially lessen competition or tend to create a monopoly in the line of commerce in which respondent is engaged or to injure, destroy, or prevent competition with respondent in the manufacture, distribution, and sale of spark plugs.

The hearing examiner in his recommended decision found that the allegations of Count I of the amended complaint relating to the price differentials between spark plugs sold for original equipment and for replacement are sustained by the evidence, and his recommended order would prohibit all such price differentials except those which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered. In arriving at his decision, the hearing examiner determined that the prices at which respondent has invoiced spark plugs to automobile manufacturers for use in original equipment and for resale for replacement do not represent the actual prices at which respondent sold such plugs to automobile manufacturers. The actual price, according to the hearing examiner, is determined by averaging the invoice or billing prices on original equipment plugs and on replacement plugs on the basis of volume of each purchased by the manufacturer. By this method of determining the "actual" price on sales to automobile manufacturers, the hearing examiner found that Champion's price on spark plugs sold to Ford Motor Company during 1946 was 16½ cents per plug or approximately 9½ cents per plug below Champion's price to its distributors. In reaching his determination as to the "actual" price

Findings

50 F. T. C.

at which respondent sold spark plugs to automobile manufacturers, the hearing examiner apparently relied to a large extent upon statements made by the respondent in its answer to the amended complaint and to statements by respondent's president in the course of testimony and oral argument before the Commission.

The Commission is of the opinion that the hearing examiner's said finding that respondent sold spark plugs to automobile manufacturers at a single, average price is not supported by the evidence. The price received by a seller or paid by a buyer in any given transaction is determined by the circumstances of the transaction. What the seller, in this case the respondent, may have considered to be the price is not necessarily the determining factor. Equipment plugs and replacement plugs sold by respondent to automobile and truck manufacturers were used in entirely separate business operations. Equipment plugs were used solely in the manufacture of engines. They became an integral part of the engine in which they were used. On the other hand, replacement plugs purchased by automobile and truck manufacturers were used only for resale to dealers. Equipment plugs and replacement plugs were billed on separate invoices at two different prices. The prices set by said manufacturers on new vehicles reflected the invoice cost of equipment plugs and the prices at which they resold replacement plugs were based on the invoice cost of such plugs. None of the spark plugs purchased by automobile manufacturers for use in original equipment were resold by such manufacturers as replacement plugs. Upon consideration of all the circumstances surrounding the transactions between respondent and the automobile and truck manufacturers to whom it sold both equipment and replacement spark plugs, the Commission is of the opinion, and therefore finds, that such spark plugs were sold at two separate and distinct prices.

The hearing examiner also found that the effect of the difference between the "average price" charged automobile manufacturers and the price charged other direct customers for spark plugs for replacement has been to give the said manufacturers a price advantage over the distributors, which price advantage was utilized, in part, in advertising and sales promotional campaigns to stimulate the resale of spark plugs purchased by the manufacturers. Such price differential also, according to the hearing examiner, precludes the smaller spark plug manufacturers from successfully competing for original equipment business, and has contributed to three manufacturers of spark plugs, of which Champion is one, acquiring substantially a complete monopoly in the original equipment and replacement business of all equipment manufacturers and approximately 80-odd percent of all replacement business.

The Commission's aforesaid rejection of the hearing examiner's recommended finding as to the method of determining respondent's price on original equipment and replacement plugs sold to equipment manufacturers constitutes, in effect, a rejection of his recommended finding as to the injury to competition between respondent's customers, or customers of such customers, resulting from respondent's lower prices on original equipment plugs. Moreover, the amended complaint does not allege any injury to competition between purchasers of spark plugs for original equipment and purchasers of spark plugs for resale for replacement. The question to be resolved then, in connection with respondent's lower price on original equipment plugs than on replacement plugs, is whether the effect of such price differentials has been or may be to substantially lessen competition or tend to create a monopoly in the line of commerce in which respondent is engaged, or to injure, destroy, or prevent competition with respondent in the manufacture, distribution, and sale of spark plugs.

Counsel supporting the complaint have sought to show that as a result of respondent's lower price on original equipment plugs, other manufacturers of spark plugs have been excluded from sharing in the original equipment business. They contend that the smaller spark plug manufacturers cannot compete for the original equipment business because they cannot stand the losses involved in respondent's low prices on original equipment business. They also contend that such smaller manufacturers are excluded from large parts of the replacement market because their spark plugs lack the prestige that is acquired by spark plugs which are used as original equipment. The evidence in the record tending to support these contentions is persuasive. However, in the opinion of the Commission, such contentions are not supported by the greater weight of all the evidence. Substantially all of the spark plugs purchased by automobile manufacturers are supplied by three companies: General Motors Corporation (AC Spark Plug Division), The Electric Auto-Lite Company, and respondent. Of the 20 most popular passenger automobiles in 1948, The Electric Auto-Lite Company supplied all equipment plugs for nine models; General Motors (AC Spark Plug Division) supplied all equipment plugs for five models; and Champion supplied all equipment plugs for five models. One model was supplied by all three of the named companies.

There is some evidence in the record tending to show that some competing spark plug manufacturers were unable to sell original equipment plugs to equipment manufacturers because they were either unable or unwilling to sell at the price at which respondent sold, or offered to sell, to equipment manufacturers. For example, an official

Findings

50 F. T. C.

of the Blue Crown Spark Plug Company testified that his company's offers to sell Blue Crown's spark plugs to certain tractor works owned or controlled by Deere & Company and to Kaiser-Frazer Corporation for original equipment at a price of 12 $\frac{3}{4}$ cents per plug, which price was approximately Blue Crown's cost of production, were rejected because the price was too high. It appears, however, that price alone was not the determining factor in causing the said offers of the Blue Crown Spark Plug Company to be rejected. Among other things which caused such rejections was the fact that the Blue Crown spark plugs had not been tested and approved by the concerns to whom the offers were made.

There is substantial evidence in the record that manufacturers of automobiles and other vehicles, in selecting a particular spark plug, take into consideration such factors as the quality and performance of the spark plug in the engine in which it is to be used, the ability and capacity of the spark plug manufacturer to supply the requirements of the purchaser, the public acceptance of the spark plugs, and the availability of the spark plugs and service thereon throughout the United States, as well as the price.

The record does not disclose any undue mortality rate on the part of smaller spark plug manufacturers or any undue loss of business by them which can be attributed to the fact that respondent has sold its original equipment spark plugs at a lower price than it charged for replacement spark plugs.

The Commission, upon consideration of the whole record, is of the opinion, and therefore finds, that the greater weight of the evidence fails to establish that the effect of respondent's price differentials between purchasers buying for original equipment and purchasers buying for resale for replacement has been or may be to substantially lessen competition or tend to create a monopoly in the line of commerce in which respondent is engaged, or to injure, destroy, or prevent competition with respondent in the manufacture, distribution, and sale of spark plugs. In view of this determination, it is not necessary to determine whether, as respondent claims, the lower prices on original equipment plugs were made in good faith to meet equally low or lower prices and the services and facilities offered by its competitors.

PAR. 6. In the course and conduct of its aforesaid business respondent has, since June 19, 1936, sold its spark plugs for replacement of original equipment at prices which have varied substantially as between (1) purchasers buying directly from respondent; (2) purchasers buying indirectly from respondent; and (3) purchasers buying directly and purchasers buying indirectly from respondent.

Direct purchasers of replacement spark plugs from respondent included those accounts classified by respondent as distributors, Atlas Supply Company, Socony-Vacuum Oil Company, and certain automobile and truck manufacturers. Prior to January 1, 1941, respondent also sold directly to accounts classified by it as direct jobbers. The prices charged by respondent for replacement spark plugs sold to certain direct purchasers during the years 1939 through 1947 are shown in the following tabulation:

Price Per Plug Charged Certain Direct Purchasers for Replacement Plugs

[All prices subject to a 2% cash discount]

Type or name of direct purchaser	1939	1940	1941	1942	1943	1944	1945	1946	1947
Distributor:									
Invoice price.....	\$0. 31	\$0. 31	\$0. 31	\$0. 33	\$0. 33	\$0. 33	^C \$0. 33	\$0. 29	\$0. 29
Less 10% ^A	. 279	. 279	. 279	. 297	. 297	. 297	. 297	. 261	. 261
Direct jobber ^B	. 31	. 31							
Atlas Supply Co.:									
Invoice price.....	. 31	. 31	. 31	. 33	. 33	. 33	^C . 33	. 29	. 29
Less 10%-10%.....	. 2511	. 2511	. 2511	. 2673	. 2673	. 2673	. 2673	. 2349	. 2349
Socony-Vacuum Oil Co.:									
Invoice price.....	. 31	. 31	. 31	. 33	. 33	. 33	^C . 33	. 29	. 29
Less 10%.....	. 279	. 279	. 279	. 297	. 297	^D . 297	. 297	. 2349	. 2349
Less 10%-10% ^D							. 2673		
Kaiser-Frazer Corp.....								. 24	
Studebaker Corp.....	. 24	. 24	. 24	. 27	. 27	. 27	^E . 24	. 24	. 24
Hudson Motor Car Co.....	. 24	. 24	. 24	. 27	. 27	. 27	^F . 24	. 24	. 24
Packard Motor Car Co.....	. 24	. 24	. 24	. 27	. 27	. 27	^G . 24	. 24	. 24
Ford Motor Co.....	. 24	. 24	. 24	. 27	. 27	. 27	^H . 24	^I . 22	. 22

^A All distributor accounts were paid an additional 5% rebate on spark plugs they resold to certain types of accounts.

^B This classification was eliminated Jan. 1, 1941.

^C Price reduced to 29¢ Sept. 1, 1945.

^D Additional 10% allowance after Nov. 1, 1944.

^E Price reduced from 27¢ to 26.1¢ on Sept. 1, 1945, and to 24¢ on Nov. 1, 1945.

^F Price reduced from 27¢ to 26.1¢ on Sept. 1, 1945, and to 24¢ on Oct. 12, 1945.

^G Price reduced from 27¢ to 26.1¢ on Sept. 1, 1945, and to 24¢ on Dec. 1, 1945.

^H Price reduced from 27¢ to 24¢ on Sept. 1, 1945.

^I Price reduced from 24¢ to 21¢ on May 2, 1946. However, Ford pays the Federal Excise Tax, which respondent pays for other purchasers. Such tax is 5% of 21¢, making Ford's cost approximately 22¢.

PAR. 7. Respondent has, since June 19, 1936, sold its spark plugs of like grade and quality to its distributors and to automobile manufacturers for resale for replacement at varying and different prices. For example, as indicated in the tabulation in Paragraph Six, respondent's billing or invoice price to its distributors in 1947 was 29 cents per plug. Such billing price was subject, however, to a discount of 10 percent, which was paid by respondent to the distributors quarterly. Thus, respondent's net price to its distributors in 1947 was 26.1 cents per plug. Respondent's distributors were also granted an additional 5 percent rebate on spark plugs they resold to certain types of accounts, and on such sales respondent's net price in 1947 was 24.65 cents per plug. During the same period, respondent's invoice price to Ford Motor Company for spark plugs for resale for replacement was 21 cents per plug. However, Ford paid the Federal Excise Tax on the plugs it

Findings

50 F. T. C.

purchased for resale, while respondent paid such tax on the plugs sold to distributors. Such excise tax was 5 percent and thus Ford's cost on such plugs was approximately 22 cents per plug as against 26.1 cents and 24.65 cents per plug paid by respondent's distributors.

Ford Motor Company resold the spark plugs it purchased from respondent to Ford dealers. Distributors handling respondent's plugs were in competition with Ford Motor Company for the business of many of said Ford dealers. Ford Motor Company has carried on extensive advertising and sales promotional campaigns and has maintained a large force of field men for the purpose of promoting the purchase by Ford dealers of Champion spark plugs and other automobile parts from Ford Motor Company and to aid said Ford dealers in reselling such products. As a result of such advertising and promotional activities on the part of Ford Motor Company and also as a result of exhortations, by Ford's field men, to Ford dealers to purchase from Ford Motor Company, Ford dealers prefer to purchase their requirements of Champion spark plugs from Ford Motor Company. There is evidence in the record that certain of respondent's distributors have lost the business of Ford dealers because of such preference on the part of said dealers to do business with Ford Motor Company. The low prices paid by Ford Motor Company for respondent's spark plugs was one of the factors which caused Ford to engage in the various advertising and promotional campaigns to promote the purchase by Ford dealers of champion spark plugs from Ford Motor Company.

The Commission concludes, and therefore finds, that the effect of respondent's said discriminations in price between distributors and certain automobile manufacturers on spark plugs sold for resale for replacement has been and may be to injure, destroy, and prevent competition with the purchasers paying the lower prices.

PAR. 8. The prices at which respondent has sold its spark plugs to its distributors and to Atlas Supply Company (sometimes hereinafter referred to as "Atlas") and Socony-Vacuum Oil Company (sometimes hereinafter referred to as "Socony") have varied substantially. Respondent has billed or invoiced its spark plugs to its distributors and to Atlas and Socony at the same price, but such billing or invoice price does not represent the prices actually received by respondent. As shown in the tabulation in Paragraph Six hereof, respondent's net price to its distributors in 1947 was 26.1 cents per plug (on spark plugs resold to certain types of accounts the distributor's net price was 24.65 cents per plug). Respondent's billing or invoice price to Atlas and Socony of 29 cents per plug was reduced by discounts of 10 percent and 10 percent, with the result that respondent's net price to those customers in 1947 was 23.49 cents per plug. Thus, during the

year 1947, Atlas and Socony enjoyed a price advantage over respondent's other distributors of a minimum of 1.16 cents per plug and a maximum of 2.61 cents per plug.

Atlas Supply Company is a corporation the entire stock of which is owned by Stanco, Incorporated, and the Standard Oil Companies of Ohio, Indiana, Kentucky, and California. Stanco, Incorporated, is a wholly owned subsidiary of Standard Oil Company of New Jersey. Atlas purchased respondent's plugs for resale to the said various Standard Oil Companies exclusively. It conducted for the various Standard Oil Companies a complete merchandising program for the resale of automobile parts and accessories, including respondent's spark plugs. The profits earned by Atlas were divided among the various Standard Oil Companies on the basis of the total amount of merchandise purchased by each through Atlas. Socony-Vacuum Oil Company purchased automobile products, including spark plugs, not only for resale through its own outlets but also for its affiliates.

Included among respondent's distributors who did not receive the additional discount granted Atlas and Socony were a number of oil companies, of which Cities Service Oil Company was one. Cities Service Oil Company was in competition with the Standard Oil Companies of Indiana and Ohio and with Socony in the sale of respondent's spark plugs. Respondent's failure to grant Cities Service Oil Company the same discounts granted Atlas and Socony has prevented Cities Service Oil Company from fully competing with the said Standard Oil Companies of Indiana and Ohio and Socony. Atlas and Socony each carry on extensive advertising, training, and other sales promotional activities for the purpose of promoting the sale of Champion spark plugs through independently operated service stations which sell Standard Oil and Socony products, respectively. Such advertising and promotional activities have caused these service station dealers to prefer to purchase their requirements of Champion spark plugs from or through the respective Standard Oil Companies and Socony.

There is substantial evidence in the record that a number of respondent's distributors who paid a higher price for Champion spark plugs than did Atlas and Socony lost the business of independently operated service stations to the Standard Oil Companies and Socony.

The Commission concludes, and therefore finds, that the effect of respondent's said discriminations in price between its distributors and Atlas and Socony on spark plugs has been and may be substantial to injure, destroy, and prevent competition with the purchasers paying the lower prices.

As a defense to the above-described discriminations in price between distributors and Atlas and Socony, respondent claims that its lower prices to Atlas and Socony were made in good faith to meet an equally low price of a competitor. The Commission is of the opinion, and finds, that the evidence does not support this defense of the respondent. During the entire period covered by the amended complaint respondent sold spark plugs to Atlas in substantially the same manner as it did prior to the amendment of the Clayton Act on June 19, 1936. Despite testimony to the effect that during this period Atlas received some verbal offers from other spark plug manufacturers quoting lower prices than those which Atlas was paying to respondent, it does not appear that respondent varied its price in any way to meet such offers. Also, during this period Atlas purchased some of its requirements of spark plugs from AC Spark Plug Company. Atlas received no quotations from other competitors of respondent after 1941. However, on September 1, 1945 (or on October 1, 1945) respondent reduced its price to Atlas to less than the price which Atlas was then paying to the AC Spark Plug Company. There is no evidence of any quotations by competitors of respondent to Socony since August 1944. However, on September 1, 1945, respondent reduced its price to Socony by approximately 3 cents per plug and thereafter continued the discriminations in price heretofore described.

Respondent also claims as a defense to the above-described discriminations in price that the price differentials were justified by differences between its cost of selling to distributors and to Atlas and Socony. In support of this defense, respondent has presented statements with supporting testimony purporting to show a comparison of its cost of selling to Atlas and Socony with its cost of selling to all other distributors as a group for the year 1946. Respondent did not maintain its records in such a manner as would permit an accurate determination of its cost of selling to any particular customer. Consequently, for the purposes of its cost justification respondent has attempted to allocate its total selling expenses for the year 1946 as between Atlas and Socony on the one hand and its other 485 distributors on the other, and thereafter to compute an average cost of selling an individual spark plug to the customers in each group. Respondent has thus attempted to divide its 487 distributors into two groups, one group composed of Atlas and Socony and the other composed of its other 485 distributors. Such a grouping fails to take into consideration the fact that among the 485 distributors in one of the groups are those upon whom respondent expended a comparatively small amount of sales effort. For example, there is evidence that respondent expended a comparatively small amount of sales effort

in selling to Cities Service Oil Company, probably less than was expended on sales to Atlas and Socony. However, for the purposes of its cost justification respondent included Cities Service Oil Company in the group to which respondent has allocated a major portion of its selling expenses. Respondent's cost of doing business undoubtedly varied as among its different customers. All of its selling expenses were not applicable on a proportionately equal basis to sales to all of its customers. However, in the absence of a sound basis for determining the actual cost of selling to particular customers, the sales to each customer must bear their proportionate share of the entire selling expense. A cost justification based on the difference between an estimated average cost of selling to one or two large customers and an average cost of selling to all other customers cannot be accepted as a defense to a charge of price discrimination. There are other features of respondent's cost justification which raise basic questions as to the soundness of certain of the procedures followed and allocations made in determining the cost differentials. For example, in one of the tabulations, selling expenses were allocated as between Atlas and Socony on the one hand, and all other distributors on the other, on the basis of an estimate by respondent's president that respondent expended 10 times as much sales effort on sales to regular distributors as it expended on sales to Atlas and Socony. For the purposes of the tabulation, however, a ratio of 5 to 1 was used. The fact that estimates are used in an attempted cost justification does not of itself make such cost justification wholly void of probative value. However, there should be more of a record basis for the estimates used than there was for the estimates used by the respondent in its cost justification.

Upon consideration of the aforesaid statements and supporting testimony presented by respondent in support of its cost justification and rebuttal evidence introduced by counsel supporting the complaint, the Commission finds that the evidence fails to establish that respondent's price differentials in favor of Atlas and Socony made only due allowance for differences in cost of selling to those customers.

PAR. 9. In addition to the purchasers described hereinabove to whom respondent sold spark plugs direct, respondent also negotiated and entered into contracts or agreements with numerous wholesalers, jobbers, and consumers of spark plugs, by which such purchasers were accorded the opportunity of purchasing respondent's spark plugs through Champion distributors at varying prices according to the type of contract or agreement entered into by the particular purchaser. Prior to January 1, 1941, respondent's direct accounts, other than Atlas and Socony and equipment manufacturers, were classified

by respondent as distributors and as direct jobbers. The agreements entered into between Champion and its distributors prior to 1941 provided that Champion would pay to the distributors as "special sales service compensation" 10 percent of its billing price on all spark plugs purchased by the distributors (such payments to be made quarterly), in consideration of the distributors doing certain sales promotional work; satisfactorily servicing franchise accounts; sending Champion periodic reports of purchases by franchise accounts; reporting to Champion the names of dealers not handling Champion spark plugs; making no sales directly or indirectly to any accounts, except those sold as regular dealers at dealers' prices in the territory regularly covered by their salesmen, unless and until such account was approved for a franchise by Champion or Champion had given its written approval to service them; paying their accounts promptly; conducting their business methods and distribution of Champion spark plugs in a manner completely satisfactory to Champion; and giving Champion the right to audit their sales and customers' accounts and orders at any time by any disinterested certified public accountant for the purpose of ascertaining the distribution and sale by them of Champion spark plugs. In supplemental agreements respondent agreed to increase the amount of the payment from 10 percent to 15 percent on all sales by the distributors to Wholesale Franchise and Commercial "C" Franchise accounts.

To obtain a franchise, an applicant made application to Champion on forms prepared by Champion. The application was in the form of an order from a distributor named in the order and was signed by both the applicant and the distributor. The application contained, among other things, the following: "We hereby order from the first named Supplier listed below 250 Champion Spark Plugs * * * and request you to give your approval of a franchise to us upon our agreement to carry a minimum stock of 250 Champion Spark Plugs during the year ——. We estimate our [year] requirements at 1,000 or more plugs, and understand that prices and terms of payment are subject to change without notice." The form used provided a space for Champion's approval of the franchise.

As of January 1, 1941, subsequent to the issuance of the original complaint herein, respondent discontinued its sales to so-called direct jobbers. The agreements entered into between respondent and its distributors subsequent to 1940 were slightly different from those described above. Under the revised agreements distributors were authorized to sell Champion spark plugs in the territory regularly covered by their salesmen upon the terms and conditions set forth in the agreements. Among other things, the agreements specified the prices

which the distributors would pay Champion, as well as the "Resale Prices Established in 'Fair Trade' States—Suggested Resale Prices in Other States and D. C." The distributors agreed to secure the written approval of Champion before selling or servicing Franchise accounts. After January 1, 1945, such Franchise accounts were referred to as "Basis Accounts." Distributors also agreed to report to Champion all sales to such Franchise or Basis Accounts. The agreement provided for the payment by Champion of the 10 percent special sales service compensation; also, the separate arrangement whereby Champion paid the distributor an additional 5 percent on all sales made by the distributor to Wholesale Franchise and Commercial "C" Franchise accounts was continued. The methods and forms used in obtaining Champion's approval before selling to Franchise accounts were substantially the same as those used prior to 1941. Negotiations with applicants for a franchise were carried on by respondent's representatives. The terms and conditions of sales to such Franchise accounts were fixed by Champion. The degree of control exercised by respondent over sales to such Franchise accounts was such that such sales were in all essential respects sales by respondent. These indirect accounts are considered by the Commission to be "purchasers" within the meaning of the Clayton Act, as amended.

The Franchise and Basis accounts which purchased Champion spark plugs through Champion's distributors included wholesale accounts and large consumer accounts. The wholesale accounts were classified by respondent as follows, and in 1947 paid the prices shown:

Jobber Basis Account (29 cents). (From 1942 to 1946, this classification was entitled Jobber Franchise. Prior to 1942, it was entitled Wholesale Franchise.)

5000 Plugs Basis (32 cents). (Classification eliminated January 1, 1948. Prior to 1946 this classification was entitled Merchandise Franchise account.)

Service Franchise. (Classification eliminated January 1, 1946.)

The large consumer accounts were classified by respondent as follows, and in 1947 paid the prices shown:

"C" Fleet Basis (29 cents). (Prior to 1946 this classification was entitled "C" Fleet Franchise.)

Fleet Basis (32 cents). (Classification eliminated January 1, 1948. Prior to 1946 this classification was entitled "B" Fleet Franchise.)

"A" Fleet Franchise. (Classification eliminated January 1, 1946.)

Findings

50 F. T. C.

Respondent sold its spark plugs of like grade and quality directly to its distributors and until January 1, 1941, to direct jobbers and indirectly to its Franchise and Basis accounts, all as classified by respondent, at the prices shown in the following tabulation.

Prices Per Plug Charged Certain Direct and Indirect Purchasers

[All prices subject to a 2% cash discount]

Type of Account	1939	1940	1941	1942	1943	1944	1945	1946	1947
Distributor	\$0.31	\$0.31	\$0.31	\$0.33	\$0.33	\$0.33	^D \$0.33	\$0.29	\$0.29
Less 10%	.279	.279	.279	.297	.297	.297	.297	.261	.261
Distributor	.31	.31	.31	.33	.33	.33	^D .33	.29	.29
Less 10-5%	.2635	.2635	.2635	.2805	.2805	.2805	.2805	.2465	.2465
Direct Jobber ^A	.31	.31							
Wholesale and Commercial "C" Franchise Accounts:									
Wholesale Franchise ^B									
C Fleet Franchise ^B	.325	.325	.325	.34	.34	.34	.34	.29	.29
Jobber Basis ^C									
C Fleet Basis ^C									
Other Franchise Accounts:									
Merchandise Franchise ^B									
5,000 Plug Basis ^C	.34	.34	.365	.365	.365	.365	.365	.32	.32
B Fleet Franchise ^B									
Fleet Basis ^C									
Service Franchise ^B	.37	.37	.40	.40	.40	.40	.40		
A Fleet Franchise ^B									

^A From 1939 through 1940 inclusive.

Classification eliminated Jan. 1, 1941.

^B From 1939 through 1945 inclusive.

Classification eliminated Jan. 1, 1946.

^C From 1946 through 1947 inclusive.

^D Price reduced to 29¢ Sept. 1, 1945.

Each of the aforesaid indirect purchasers of respondent's spark plugs were in competition with other purchasers of respondent's spark plugs in the areas in which they sold. In such competition each indirect account was injured to the extent that the price it paid was higher than the price paid by its competitors. For example, respondent has granted certain consumer accounts which it classified as "Fleet" accounts the privilege of purchasing its spark plugs at prices which were as low or lower than the prices at which many other indirect accounts, who were attempting to sell to the Fleet accounts, purchased. By reason of the lower prices accorded them respondent's distributors, and to a lesser extent the more favored indirect accounts, were able to resell profitably to such Fleet accounts at the prices established by respondent, and as a result, the indirect wholesale accounts paying the higher prices lost the business of all consumer accounts which were large enough to secure respondent's approval for a Fleet Basis agreement. This was true even of accounts which had been developed by the indirect wholesale accounts purchasing at one of the less favored prices.

The Commission concludes, and therefore finds, that the effect of respondent's said discriminations in price between its distributors and

its indirect purchasers and between certain indirect purchasers has been and may be to substantially injure, destroy, and prevent competition with said distributors and with said indirect purchasers who paid lower prices for respondent's spark plugs than their competitors.

PAR. 10. It is alleged in Paragraph Seven of Count I of the amended complaint herein that respondent has sold its various special brands of spark plugs to certain of its purchasers at prices widely varying from the prices paid by other purchasers for its regular Champion brand of spark plugs. It appears that the allegation to the effect that such special brand spark plugs were of the same grade and quality as respondent's regular Champion brand of spark plugs is not sustained by the evidence. The allegations in Paragraph Seven of Count I of the amended complaint should, therefore, be dismissed.

PAR. 11. Prior to 1940 respondent from time to time entered into contracts with some automobile manufacturers under which the automobile manufacturers agreed to purchase from respondent their entire requirements of spark plugs for a specified term not exceeding one year and respondent agreed to supply their requirements of spark plugs. This provision was eliminated from respondent's agreements with automobile manufacturers in 1939.

Prior to 1941 respondent and the operators of bus and trucking lines and other large consumers of spark plugs—so-called "Fleet accounts"—executed a "Commercial Franchise" which set forth the prices at which the Fleet accounts were entitled to purchase their requirements of spark plugs. These documents specified the sources from which the Fleet accounts were to obtain their requirements of spark plugs and provided that in case none of the specified sources were handling Champion spark plugs, such requirements would be supplied by Champion. In separate agreements between respondent and its distributors, the distributors agreed to service franchise accounts in a manner satisfactory to respondent. One of the forms of commercial franchise used during the year 1939 contained the following provision:

In consideration of your purchasing Champion Spark Plugs for your requirements, estimated to exceed 5,000 plugs per year, to service your motorized equipment and upon your placing an initial order for 200 plugs for single delivery, we extend to you the following special prices, terms and conditions on all your Spark Plug purchases from this date to December 31, 1939. (Comm. Ex. 67-A.)

The Commercial Franchises executed by respondent and said Fleet accounts were, in practical effect, agreements between them whereby the Fleet accounts were given the right to purchase Champion spark plugs at a special low price in consideration for their purchasing Champion spark plugs for all their requirements.

Findings

50 F. T. C.

In dealing with its distributors respondent has used two forms of agreements, one prior to 1941 and the other subsequent to 1940. Both of these forms contained provisions to the effect that there was no express or implied obligation on the part of the distributor to handle respondent's spark plugs exclusively. However, notwithstanding these recitals in the contracts, the services to be rendered by the distributors in order to obtain their spark plugs at a special low price, all as specifically set out in the contract, were such that it was not practical for a distributor to handle the spark plugs of a competitor of respondent. (A description of such services is contained in Paragraph Nine above.) The agreements, in effect, required the distributors to handle respondent's spark plugs exclusively in order to obtain a special low price from respondent.

That respondent interpreted its agreements with its distributors as requiring the distributors to handle respondent's plugs exclusively is shown by the fact that respondent has refused to enter into distributor agreements with wholesale accounts because such accounts refused to agree to handle respondent's plugs exclusively, and has canceled and threatened to cancel agreements with distributors who have taken on, or indicated an intention to take on, a competing line of spark plugs. For example, the Scheufler Supply Company, Inc., a wholesale automotive distributor in Great Bend, Kansas, had been trying for 20 years to get a Champion distributorship. Scheufler was told by respondent's vice president that respondent "had only one distributing contract and that was an exclusive contract," and that "they were not giving that kind of a contract unless it was exclusively handled by the distributor and no other plugs handled whatsoever." Scheufler purchased its requirements of Champion spark plugs through a distributor and Scheufler's purchases of Champion spark plugs were greater than all of the other purchases by the distributor through which Scheufler purchased. A salesman of the respondent told a jobber in Newcastle, Pennsylvania, in 1937 that he [the jobber] would have to get his "house in order so that he [respondent's salesman] could extend us a better price," and it was understood by said jobber that in order to get the better price the jobber would have to handle Champion spark plugs on an exclusive basis. Respondent canceled its distributor's contract with Paul Automotive, Inc., Lansing, Michigan, in 1948, after that concern started handling spark plugs manufactured by a competitor of respondent. In May 1948 C. E. Hamlin & Company, Jackson, Michigan, one of respondent's distributors, sought permission to handle Hastings spark plugs and was informed by respondent's district manager that respondent had canceled its distributor's contract with Paul Automotive,

Inc., because that concern had taken on the Hasting plugs. Hamlin was thus persuaded to continue selling Champion spark plugs on an exclusive basis.

The record thus establishes that although respondent's written agreement with its distributors stated that the distributors were not required to handle Champion spark plugs exclusively, the actions of the parties show that their arrangements were in fact exclusive dealing agreements.

Respondent is one of the two largest spark plug manufacturers in the United States in volume of plugs sold. Respondent, General Motors Corporation and The Electric Auto-Lite Company manufacture and sell substantially all of the spark plugs purchased by equipment manufacturers, and more than 80 percent of all the spark plugs manufactured and sold in the United States. Approximately one-sixth of respondent's total sales of spark plugs were to equipment manufacturers. In the year 1946, equipment manufacturers purchased approximately 34,000,000 spark plugs. Respondent's sales to such accounts were not less than one-third of that number. The accounts which were parties to the Fleet Franchise exclusive dealing agreements with respondent were operators of large fleets of motor trucks or busses. The "C" Fleet Franchise, for example, was entered into only with operators of over 500 vehicles. Respondent's sales to such Fleet accounts were substantial. Approximately two-thirds of respondent's total sales of spark plugs were made through its distributors. In 1946 respondent sold a total of more than 58,000,000 spark plugs through its distributors other than Atlas Supply Company and Socony Oil Company. The accounts to which respondent sold spark plugs under exclusive dealing agreements, which sales represented a substantial portion of the total sales of spark plugs in the United States, were closed to competitors of respondent.

Upon the whole record, the Commission concludes, and therefore finds, that the effect of the aforesaid exclusive dealing agreements may be to substantially lessen competition and tend to create a monopoly in the line of commerce in which respondent is engaged.

PAR. 12. Count II of the amended complaint herein charges respondent with violation of subsection (d) of Section 2 of the Clayton Act as amended. The acts and practices of the respondent which counsel supporting the complaint rely upon to support their contention that this charge of the complaint is sustained, and which the hearing examiner found do sustain the charge, are that from June 19, 1936, to January 1, 1941, respondent sold its spark plugs to its customers classified by it as distributors and direct jobbers at the same invoice price; that during this period respondent contracted to pay and did

Findings

50 F. T. C.

pay to distributors quarterly as special sales service compensation for service furnished by its distributors in connection with the resale of its spark plugs an amount equal to 10 percent of their total purchases and an additional amount of 5 percent on all purchases made by distributors for Wholesale Franchise and Commercial "C" Franchise accounts as compensation for servicing all franchise accounts; and that respondent did not make available to its direct jobbers compensation for the rendition of like service on proportionally equal terms.

Respondent discontinued selling direct to customers classified by it as direct jobbers on January 1, 1941. The payments made by respondent to its distributors as "Special Sales Service Compensation" and "Special Warehouse Compensation" were the payments or discounts off billing price described in the findings herein pursuant to the allegations in Count I of the amended complaint. The Commission is of the opinion that the said payments by respondent to its distributors were in fact reductions in the net prices paid by said distributors and that, under the circumstances, Count II of the amended complaint should be dismissed.

Count IV of the amended complaint herein charges that the acts and practices of the respondent alleged in Count I to constitute a violation of subsection (a) of Section 2 of the Clayton Act, as amended, and the acts and practices alleged in Count III to constitute a violation of Section 3 of the Clayton Act, as well as certain of respondent's acts and practices in fixing and maintaining varying and discriminatory resale prices on its spark plugs, all constitute unfair methods of competition and unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Subsequent to the issuance of the amended complaint in this proceeding, the Commission issued a complaint against one of respondent's principal competitors, in which acts and practices similar to those described in Counts I and III of the amended complaint herein are alleged to constitute violations of the amended Clayton Act only. Consequently, in order to avoid unwarranted unequal treatment of competing respondents, the Commission makes no findings as to that portion of Count IV which charges that the acts and practices of the respondent alleged in Counts I and III also constitute a violation of the Federal Trade Commission Act.

Subsequent to the completion of the hearings herein, the Federal Trade Commission Act was amended with respect to certain contracts and agreements which establish minimum or stipulated resale prices (Public Law No. 542, approved July 14, 1952—the McGuire Act). This amendment had the effect of making legal certain of the acts and practices which it is contended the respondent engaged in, in con-

Order

nection with the fixing and maintaining of resale prices. For example, it is contended that respondent's agreements with its distributors which fixed the exact prices at which the distributors were to resell spark plugs were illegal because the Miller-Tydings Act, which permits the fixing of minimum resale prices under certain circumstances, does not permit the fixing of exact resale prices. The aforesaid McGuire Act has the effect of permitting, under certain circumstances, contracts or agreements which prescribe stipulated, or exact, prices, as well as minimum prices. Certain of the respondent's acts and practices which may have been illegal at the time they were committed, may not, therefore, be illegal under the existing law. Under these circumstances, an order to cease and desist such practices would be inappropriate. Furthermore, the amended complaint herein, having been issued prior to the enactment of the aforesaid McGuire Act, may not have sufficiently informed respondent as to its acts and practices in connection with the fixing and maintaining of resale prices challenged therein.

Upon consideration of all the foregoing and the further fact that the order to cease and desist which is being entered herewith pursuant to the charge in Count I of the amended complaint will be effective in preventing respondent from fixing and maintaining discriminatory prices as between its direct and indirect customers who compete with each other in the resale of respondent's spark plugs, the Commission is of the opinion that Count IV of the amended complaint should be dismissed in its entirety.

CONCLUSION

The acts and practices of the respondent as hereinabove found in Paragraphs 6, 7, 8, and 9 are in violation of subsection (a) of Section 2 of the Clayton Act, as amended, and the acts and practices of the respondent as hereinabove found in Paragraph 11 are in violation of Section 3 of said Clayton Act.

Commissioners Howrey and Carretta not participating for the reason that oral argument on the merits was heard prior to their appointment to the Commission.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, answer of the respondent, testimony and other evidence in support of and in opposition to the allegations of said amended complaint taken before a hearing examiner of the Commission theretofore duly designated by it, recommended decision of the hearing examiner with exceptions

thereto, briefs of counsel supporting the complaint, counsel for the respondent, and counsel for Kaiser-Frazer Corporation, Hudson Motor Car Company, Nash-Kelvinator Corporation, Packard Motor Car Company, and Willys-Overland Motors, Inc., as amici curiae, and oral argument of opposing counsel; and the Commission having issued its order disposing of the exceptions to the recommended decision and having made its findings as to the facts and its conclusion that respondent has violated subsection (a) of Section 2 of the Clayton Act, as amended, and Section 3 of said Clayton Act:

It is ordered, That respondent, Champion Spark Plug Company, a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in or in connection with the sale, for replacement purposes, of spark plugs in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

(a) Discriminating, directly or indirectly, in the price of said spark plugs of like grade and quality:

1. By selling to any direct purchaser at net prices higher than the net prices charged any other direct purchaser who in fact competes in the resale and distribution of said spark plugs with the purchaser paying the higher price.

2. By selling to any indirect purchaser at net prices higher than the net prices charged any other direct or indirect purchaser who in fact competes in the resale and distribution of said spark plugs with the purchaser paying the higher price.

(b) Selling or making any contract or agreement for sale of spark plugs on the condition, agreement, or understanding that the purchaser shall not use or deal in or sell the products of a competitor or competitors of the respondent.

(c) Enforcing in any manner or continuing in operation or effect any condition, agreement, or understanding, in or in connection with any existing contract or agreement for sale of spark plugs, which condition, agreement, or understanding is to the effect that the purchaser shall not use or deal in or sell the products of a competitor or competitors of the respondent.

(d) Granting any rebate or fixing any price to any purchaser of spark plugs on the condition, agreement, or understanding that such purchaser shall not use or deal in the products of a competitor or competitors of the respondent.

It is further ordered, That the allegations of Counts II, IV, and Paragraphs Five and Seven of Count I of the amended complaint herein be, and they hereby are, dismissed.

30

Order

It is further ordered, That the respondent, Champion Spark Plug Company, shall, within sixty (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.

Commissioners Howrey and Carretta not participating for the reason that oral argument on the merits was heard prior to their appointment to the Commission.

IN THE MATTER OF
GENERAL MOTORS CORPORATION AND AC SPARK PLUG
COMPANY

FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECS.
(a) AND (d) OF SECS. 2 (a) AND 2 (d) AND SEC. 3 OF THE CLAYTON ACT, AS
AMENDED, AND OF THE FEDERAL TRADE COMMISSION ACT

Docket 5620. Complaint, Nov. 17, 1948—Decision, July 10, 1953

Where a corporation engaged since December 29, 1950, among other things, in the distribution and sale of automobile, truck, tractor, and engine accessories, parts, and supplies, including AC spark plugs, cables, fuel pumps, fuel pump parts, oil filters, oil filter cartridges, and oil filter elements—dealt in by its wholly owned subsidiary prior to the latter's dissolution on said date—which (1) sold said AC products throughout the United States in substantial competition with others, to customers engaged, as were many of their customers, in the resale of said products at wholesale and retail; (2) supplied annually more spark plugs, oil filters, fuel pumps and speedometer cables to the original equipment field than any other manufacturer; and (3) along with Champion Spark Plug Co. and the Electric Auto-Lite Co., made and sold about 90 percent of all spark plugs sold in the United States, and itself accounted for a substantial part of all such plugs there sold for both original equipment and replacement; and (4) sold said AC products at prices which varied as between purchasers buying for original equipment; as between purchasers buying for original equipment and purchasers for resale or replacement; and as between purchasers, both direct and indirect, buying for resale or replacement;

In selling to (1) its various direct purchasers including distributors which handled all AC products and were given a special price for handling AC spark plugs and oil filter cartridges on an exclusive basis; direct jobber accounts who stocked and sold such AC products as they found demand for; and contract accounts, in which were included automobile manufacturers, chain stores, national oil and tire companies and others, whose principal business was other than the wholesaling of automotive supplies, and who were sold on said basis because of their volume of purchases; and (2) its indirect purchasers in which were included indirect jobber accounts, fleet accounts and other dealers who were required to purchase from its distributors or wholesalers, but at prices and on terms and conditions fixed and controlled by it, so that sales thereto were essentially sales by respondent—

(a) Discriminated in price during 1940 in favor of direct distributor purchaser accounts and against direct jobber and indirect accounts through schedules of prices on its spark plugs, oil filters and air cleaners which, as illustrative, ranged, in the case of the plugs, from 27½ cents and 29 cents to its "D" and "DA" accounts, to 31 cents to its direct jobber accounts, and to 32½ cents to 37 cents to its indirect accounts; and from 1936 to 1941 discriminated against its direct jobber accounts through the payment to the distributors, on sales of plugs by it to a jobber at 31 cents per plug, of 10 percent or 3.1 cents per plug;