

Syllabus

IN THE MATTER OF
THE ELECTRIC AUTO-LITE COMPANY

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

Docket 5624. Complaint, Nov. 29, 1948—Decision, July 10, 1953

Where a corporation which was engaged in the manufacture and competitive interstate sale of certain engine and vehicle parts and accessories, including, since 1936, spark plugs; numbered among its customers, to whom it sold spark plugs at varying prices, certain purchasers competitively engaged, as were some of their customers, in the resale of spark plugs at wholesale or retail; since 1936, together with Champion Spark Plug Co. and General Motors Corporation, AC Spark Plug Division, produced and sold about 90 percent of all spark plugs produced and sold in the United States; and, in 1947, made 17.17 percent of all spark plugs—15.77 percent of all replacement plugs, and 26.5 percent of all original equipment plugs—manufactured and used in the United States—

In selling spark plugs for replacement to various customer classifications, embracing, after August 9, 1948, (1) direct accounts including Warehouse Distributors and Direct Jobbers which competed with each other in the sale to certain indirect accounts and to dealers and consumers, competed with vehicle and engine manufacturers who were sold directly, and competed with respondent's indirect accounts in sales to dealers and consumers; and (2) indirect accounts, namely, Registered Jobbers, Contract Jobbers, and Service Jobbers, sales to which, by virtue of the control exercised by respondent, were essentially sales by respondent, and which were in competition with each other in the resale to retail dealers and consumers—

- (a) Discriminated between direct purchasers in that as of Nov. 29, 1948, it sold spark plugs for replacement use to various vehicle and engine manufacturers at 24 cents per plug, while invoicing plugs to its Warehouse Distributors and Direct Jobbers at 29 cents, or to Warehouse Distributors at a net price of 24.94 cents, and 27.35 cents, for resale to Registered Jobbers and to Contract Jobbers, respectively;

With the result that such vehicle and engine manufacturers were enabled by their lower purchasing price to effectively promote the sale of replacement spark plugs to their own distribution outlets, and thus deprive Warehouse Distributors and Direct Jobbers of the opportunity of selling to such accounts; and

- (b) Further discriminated in the prices at which it sold spark plugs for replacement as between (1) direct purchasers, (2) direct purchasers and indirect purchasers, and (3) indirect purchasers, through their price schedules under which, after Aug. 9, 1948, invoice price to Warehouse Distributors was 29 cents and their net prices on sales to Registered Jobbers and Contract Jobbers, as noted above, were 24.94 and 27.35 cents, respectively; price to Direct Jobbers and to Registered Jobbers was 29 cents, and to Contract Jobbers and Service Jobbers was 3 cents;

Effect of which discriminations might be to substantially lessen, injure, destroy or prevent competition between customers receiving the benefit of said discriminations and those who did not:

Held, That such acts and practices, under the circumstances set forth, were in violation of subsec. (a) of Sec. 2 of the Clayton Act as amended.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. L. E. Creel, Jr. and *Mr. J. N. Chapman* for the Commission.

Rathbone, Perry, Kelly & Drye, of New York City, and *Mr. George H. Souther*, 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 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 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, on November 29, 1948, issued and subsequently served its complaint in this proceeding upon the respondent, The Electric Auto-Lite Company (incorrectly named in the complaint as "Electric Auto-Lite Company"), charging it in Count I thereof with violation of subsection (a) of Section 2 of the Clayton Act, as amended, and in Count II thereof with violation of Section 5 of the Federal Trade Commission Act.

After the issuance of said complaint and the filing of respondent's answer thereto, counsel supporting the complaint and counsel for respondent entered into certain written stipulations in which it was stipulated and agreed, among other things, that persons are available who have knowledge of the facts and if they were called as witnesses they would testify as set forth therein, and said stipulations and other evidence were introduced before a hearing examiner of the Commission theretofore duly designated by it. Said stipulations 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 complaint, answer thereto, stipulated 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. Respondent, The Electric Auto-Lite Company (sometimes hereinafter referred to as "Auto-Lite") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located in Toledo, Ohio. It is now and for many years past has been engaged in manufacturing and selling certain engine and vehicle parts and accessories, including spark plugs, which it has manufactured and sold since in or about 1936.

PAR. 2. Respondent, The Electric Auto-Lite Company, transports its said spark plugs, or causes same to be transported, for sale and distribution from its factory in Fostoria, Ohio, to customers located in other States of the United States and in the District of Columbia; and there is and has been at all times since 1936 a continuous current of trade and commerce in spark plugs manufactured and sold by respondent between said State of Ohio where said spark plugs are manufactured and various other States of the United States. Respondent sells its spark plugs for use, consumption, and resale within the United States and the District of Columbia.

PAR. 3. Respondent distributes and sells spark plugs throughout the United States in the same territories and places as, and in substantial competition with, certain other persons and corporations engaged in manufacturing, distributing, and selling spark plugs. Certain of respondent's customers to whom it has sold spark plugs at varying prices as hereinafter found, and some of said customers' customers, are competitively engaged in the resale of spark plugs at wholesale or retail in the various territories and places where said customers, respectively,

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carry on their businesses. Prior to 1936, approximately 90 percent of all spark plugs produced and sold in the United States were manufactured by Champion Spark Plug Company and General Motors Corporation, AC Spark Plug Division. Since 1936, approximately 90 percent of all spark plugs produced and sold in the United States have been manufactured by respondent, Champion Spark Plug Company, and General Motors Corporation, AC Spark Plug Division, although there were at all times herein mentioned 30 or more manufacturers of spark plugs in the United States. In 1947 respondent manufactured 17.17 percent of all spark plugs—15.77 percent of all replacement plugs, and 26.5 percent of all original equipment plugs—manufactured and used in the United States.

PAR. 4. In the course and conduct of its aforesaid business respondent sells and has sold spark plugs of like grade and quality to vehicle and engine manufacturers for use as original equipment at varying prices. As of November 29, 1948, respondent's prices on original equipment spark plugs ranged from 6 cents to 10 cents per plug. There was a differential of 2 cents per plug in the prices at which respondent sold regular equipment spark plugs to two competing manufacturers of trucks; of 1 cent per plug in the prices at which respondent sold equipment spark plugs to two competing manufacturers of tractors; of 1 cent and 2 cents per plug in the prices at which respondent sold equipment spark plugs to three competing manufacturers of marine engines; and of 1 cent per plug in the prices at which respondent sold equipment spark plugs to two competing manufacturers of commercial engines. Prior to October 1, 1948, there were at times differentials of up to 1 cent per plug in the prices charged certain automobile and truck manufacturers who were in competition with each other in the sale of passenger automobiles and trucks.

The hearing examiner in his recommended decision found that respondent's aforesaid price differentials of from 1 cent to 2 cents per plug in the sale of its spark plugs to manufacturers for use as original equipment resulted in competitive injury to those customers paying the higher prices, the injury being particularly reflected in the volume of spark plugs purchased and the use of the profits in promoting the sale of spark plugs for replacement.

The Commission does not believe that this finding by the hearing examiner is supported by the record. During the course of the hearings in this matter, counsel supporting the complaint and counsel for respondent entered into a stipulation in which, among other things, it was stipulated and agreed that "If the Commission shall find and hold in Docket No. 3977 (*In the Matter of Champion Spark Plug Company*) and Docket No. 5620 (*In the Matter of General Motors*,

et al.) that acts and practices of the respondents in said cases of the same kind as acts and practices of Auto-Lite, as shown by the foregoing stipulation and by other proofs in the record, and which may hereinafter be made a part of the record, in this case, may be to substantially lessen competition or injure, destroy, or prevent competition between said respondents and other manufacturers of spark plugs, or between manufacturers of motor vehicles to whom said respondents respectively sell their spark plugs for replacement or for original equipment and other distributors of said spark plugs, then Auto-Lite admits, and this may under those circumstances and conditions be taken as its admission, that the effect of said acts and practices of Auto-Lite may be to the same extent, to lessen competition between Auto-Lite and other manufacturers of spark plugs, or between manufacturers of motor vehicles to whom Auto-Lite sells spark plugs for replacement or for original equipment and other distributors of its spark plugs to whom it sells its spark plugs for resale, or to injure, destroy or prevent such competition."

The Commission has found in Docket 5620, General Motors Corporation, *et al.*, that the evidence in that record does not establish that the price differentials between customers purchasing spark plugs for original equipment, which differentials were substantially the same as those hereinabove described, have resulted in injury to those customers paying the higher prices.

The Commission, upon consideration of the entire record in this proceeding and its findings in Docket 5620, General Motors Corporation, with respect to the same kind of acts and practices as those of respondent described herein, is of the opinion that the allegations of the complaint as to the results of respondent's price differentials between customers purchasing spark plugs for original equipment are not sustained by the evidence, and that, therefore, such allegations should be dismissed.

PAR. 5. In the course and conduct of its aforesaid business, respondent sells and has sold spark plugs for use as original equipment at prices substantially less than those at which it sells and has sold spark plugs of like grade and quality for replacement. For example, respondent has sold original equipment spark plugs to automobile and other manufacturers at prices ranging from 5 cents per plug to 15 cents per plug, the latter price being that charged for spark plugs sold to or for the use of the United States Government during World War II. According to the accounting methods in use by respondent, the cost to it of manufacturing and selling spark plugs for original equipment to certain of its customers has from time to time amounted to more than the price it has received for

such plugs. During the same periods of time respondent sold spark plugs of like grade and quality for replacement at prices ranging from about 15 cents per plug to about 30 cents per plug.

It is alleged in Count I of the complaint herein that respondent's practice of selling its spark plugs for original equipment below cost places upon its purchasers of spark plugs for replacement the injurious, unfair, and oppressive burden of paying a higher price, thus carrying the loss incurred by respondent on the said original equipment sales, and that respondent's practice of selling spark plugs direct to manufacturers for original equipment below the cost of production deprives other sellers of spark plugs of the opportunity of competing for this business.

The hearing examiner in his recommended decision found that "The effect of respondent's sale of its spark plugs for original equipment at a price below cost was to exclude practically all, if not all manufacturers and sellers of spark plugs who did not have both original equipment and replacement business from competing for original equipment business as those, like respondent, who sold for both original equipment and replacement could recoup their losses on sales below cost for original equipment from sales for replacement at the higher prices."

The above-described acts and practices of the respondent are the same kind of acts and practices which the Commission found that the respondents in Docket 3977, Champion Spark Plug Company, and Docket 5620, General Motors Corporation, et al, have engaged in. The Commission found that the records in those two cases did not sustain the allegations in the complaints with respect to the competitive injury resulting from said acts and practices. In view of the stipulation between counsel supporting the complaint and counsel for respondent, referred to and quoted, in part, in Paragraph Four above, the Commission has considered its said finding in Docket 3977 and in Docket 5620 in addition to the entire record in this proceeding, and is of the opinion that the allegations in the complaint as to the competitive injury resulting from respondent's lower, and at times below cost, prices on original equipment spark plugs than on replacement spark plugs are not sustained, and that such allegations should, therefore, be dismissed. It is, therefore, unnecessary to determine whether the defense advanced by respondent that its lower prices on original equipment spark plugs were made in good faith for the purpose of meeting the equally low or lower prices of its competitors and the services and facilities furnished by its competitors is sustained by the evidence in the record.

PAR. 6. In the course and conduct of its aforesaid business, respondent has sold spark plugs for replacement 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.

Respondent has classified the customers to whom it sells spark plugs direct for replacement into three groups, namely, vehicle and engine manufacturers, Warehouse Distributors (formerly Contract Distributors), and Direct Jobbers. Indirect purchasers from respondent were classified by respondent prior to August 1945 as Contract Jobbers, Service Jobbers, Wholesale Jobbers, and Local Jobbers. After August 1, 1945, such indirect purchasers were classified by respondent as Registered Jobbers, Contract Jobbers, and Service Jobbers.

Respondent's printed form of agreements with Contract Distributors (now warehouse Distributors) from 1938 to 1944 provided for the appointment by Auto-Lite of Contract Jobbers, Service Jobbers, Wholesale Jobbers, and Local Jobbers under approved agreements on printed forms. The Contract Distributors agreed to actively promote the sale of Auto-Lite spark plugs to Contract Jobbers "approved by Auto-Lite at the current Distributor Net Price" or "at the current Contract Jobber Net Price"; to Service Jobbers "approved by Auto-Lite at the current Service Jobber Net Price"; to Wholesale Jobbers "approved by Auto-Lite at the current Wholesale Jobber Net Price"; and to Local Jobbers "approved by Auto-Lite at the current Local Jobber Net Price." From 1940 to 1944 respondent's printed form of agreements with Direct Jobbers provided for the appointment by Auto-Lite of Wholesale Jobbers and Local Jobbers under approved agreement on printed forms. The Direct Jobbers agreed "to actively promote the sale of Auto-Lite spark plugs to Wholesale Jobbers approved by Auto-Lite at the current Wholesale Jobber net price." In 1944 respondent deleted the aforesaid provisions relating to the prices at which its Contract Distributors and Direct Jobbers would resell spark plugs from said agreements. However, after 1944 respondent issued and distributed Suggested Resale Price Schedules which contained the prices at which various classifications of purchasers were to be sold. Respondent has at all times mentioned herein followed the practice of requiring approval by it of agreements between Contract Distributors, Warehouse Distributors, and Direct Jobbers and their customers except retail dealers. Respondent has participated in negotiating agreements between Contract Distributors, Warehouse Distributors, and Direct Jobbers and other jobbers of Auto-Lite spark

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plugs other than retail dealers, and any change in the classification of a distributor or jobber of Auto-Lite spark plugs to another classification was subject to the approval of respondent. Respondent exercised such a degree of control over sales by its Contract Distributors, Warehouse Distributors, and Direct Jobbers to Contract Jobbers, Service Jobbers, Wholesale Jobbers, and Local Jobbers prior to August 1, 1945, and to Registered Jobbers, Contract Jobbers, and Service Jobbers after August 1, 1945, that such sales were essentially sales by respondent. Such indirect customers are considered as "purchasers" within the meaning of the Clayton Act, as amended.

As of November 29, 1948, respondent was selling spark plugs for replacement use at 24 cents per plug to the following vehicle and engine manufacturers:

- Auto Car Company.
- Chrysler Motor Parts Corporation.
- International Harvester Company.
- Kaiser-Frazer Parts Corporation.
- Massey-Harris Company, Ltd.
- Nash-Kelvinator Corporation.
- Packard Motor Car Company.
- Willys-Overland Motors, Inc.

Prior to 1948 there were, at times, differentials of up to 5 cents per plug in the prices respondent charged certain vehicle and engine manufacturers who were in competition with each other in the sale of replacement plugs. Also, as of November 29, 1948, respondent was selling spark plugs directly to Warehouse Distributors and Direct Jobbers and indirectly to Registered Jobbers at 29 cents per plug, and indirectly to Contract Jobbers and Service Jobbers at 33 cents per plug. On sales by Warehouse Distributors to Registered Jobbers respondent paid the Warehouse Distributors a commission of 14 percent of the Suggested Resale Price, that is, 29 cents. Thus the net cost to Warehouse Distributors of spark plugs resold by them to Registered Jobbers was 29 cents less 4.06 cents, or 24.94 cents per plug. On sales by Warehouse Distributors to Contract Jobbers respondent paid the Warehouse Distributors a commission of 5 percent of the Suggested Resale Price, that is, 33 cents. Thus the net cost to Warehouse Distributors of spark plugs resold by them to Contract Jobbers was 29 cents less 1.65 cents, or 27.35 cents per plug.

The prices at which respondent has sold spark plugs for replacement use directly to Contract Distributors, Warehouse Distributors, and Direct Jobbers and indirectly to Registered Jobbers, Contract Jobbers, Service Jobbers, Wholesale Jobbers, and Local Jobbers during specified periods are shown in the tabulation following.

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Customer classification	Price per plug			
	1942-43-44 to Aug. 1 1945	Aug. 1, 1945, to Feb. 28, 1947	Mar. 1, 1947, to Aug. 9 1948	After Aug. 9, 1948
<i>Direct Accounts</i>				
Contract Distributors:				
Invoice Price.....	\$0.275			
Less 0.035 on C. J. sales.....	.24			
Less 0.03 on S. J. sales.....	.245			
Less 0.025 on W. J. sales.....	.25			
Less 0.02 on L. J. sales.....	.255			
Warehouse Distributors:				
Invoice Price.....		\$0.245	\$0.245	\$0.29
Less 0.035 on R. J. sales.....		.21		
Less 0.025 on C. J. sales.....		.22		
Less 12½ percent on R. J. sales.....			.214	
Less 7½ percent on C. J. sales.....			.225	
Less 14 percent on R. J. sales.....				.2594
Less 5 percent on C. J. sales.....				.2735
Direct Jobbers:				
Invoice Price.....	.275	.245	.245	.29
Less 0.025 on W. J. and L. J. sales.....	.25			
<i>Indirect Accounts</i>				
Registered Jobbers.....		.245	.245	.29
Contract Jobbers.....	.275	.27	.27	.33
Service Jobbers.....	.29	.29	.29	.33
Wholesale Jobbers.....	.315			
Local Jobbers.....	.33			

Spark plugs purchased by vehicle and engine manufacturers for replacement use were resold by them to their respective distribution outlets for further resale for replacement use. Respondent's Warehouse Distributors and Direct Jobbers were in competition with said vehicle and engine manufacturers in the sale of replacement spark plugs. The lower purchasing price on replacement spark plugs enjoyed by vehicle and engine manufacturers enabled them to effectively promote the sale of such spark plugs to their own distribution outlets and thus deprived respondent's Warehouse Distributors and Direct Jobbers of the opportunity of selling to such accounts.

Respondent's Warehouse Distributors and Direct Jobbers were in competition with each other in their respective trading areas in the sale of spark plugs to certain indirect accounts and to dealers and consumers. Warehouse Distributors and Direct Jobbers were also in competition with respondent's indirect accounts in the sale of spark plugs to dealers and consumers. The indirect accounts to whom respondent sold spark plugs at varying prices as hereinabove shown were also in competition with each other in their respective trading areas in the sale of spark plugs to retail dealers and consumers.

The Commission is of the opinion, and therefore finds, that respondent has discriminated in the prices at which it has sold spark plugs for replacement as between (1) direct purchasers, (2) direct purchasers and indirect purchasers, and (3) indirect purchasers; and that the effect of such discriminations may be to substantially lessen, injure,

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destroy, or prevent competition between the customers receiving the benefit of said discriminations and the customers who do not receive the benefit of said discriminations.

PAR. 7. Count II of the 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, as well as certain acts and practices of the respondent in fixing and maintaining resale prices on its spark plugs, all constitute a violation of Section 5 of the Federal Trade Commission Act.

At about the same time the Commission issued its complaint in this proceeding the Commission also issued a complaint against one of respondent's principal competitors, in which acts and practices similar to those described in Count I of the complaint herein are alleged to constitute a violation 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 II of the complaint in this proceeding which charges that the acts and practices of the respondent alleged in Count I 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 prices (Public Law No. 542, approved July 14, 1952—the McGuire Act). This amendment had the effect of making legal certain acts and practices of the respondent which may have been illegal at the time they were committed. For example, respondent's agreements with its Contract Distributors and Direct Jobbers until 1944, in effect, established the exact prices at which spark plugs were to be resold to certain classes of customers. The Miller-Tydings Act permitted the fixing of minimum resale prices under certain circumstances, but did not specifically 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. Under these circumstances, an order to cease and desist the acts and practices which were formerly, but not now, illegal would be inappropriate. Furthermore, the complaint herein, having been issued prior to the enactment of the aforesaid McGuire Act, may not have sufficiently informed the 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 complaint will be effective in pre-

venting 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 II of the complaint in this proceeding should be dismissed in its entirety.

CONCLUSION

The acts and practices of the respondent as hereinabove found in Paragraph 6 are in violation of subsection (a) of Section 2 of the Clayton Act, as amended.

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 complaint of the Commission, answer of the respondent, stipulated testimony, and other evidence in support of and in opposition to the allegations of said complaint taken before a hearing examiner of the Commission theretofore duly designated by it, recommended decision of the hearing examiner and exceptions thereto, 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 issued its order disposing of the exceptions to the recommended decision of the hearing examiner 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:

It is ordered, That respondent, The Electric Auto-Lite 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 discriminating 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

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fact competes in the resale and distribution of said spark plugs with the purchaser paying the higher price.

It is further ordered, That the allegations in Count I of the complaint relating to respondent's price differences between (1) purchasers buying for original equipment and (2) purchasers buying for original equipment and purchasers buying for resale for replacement, and the allegations in Count II of the complaint, be, and they hereby are, dismissed.

It is further ordered, That the respondent, The Electric Auto-Lite 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.

Decision

IN THE MATTER OF
GENERAL SHOE CORPORATIONDECISION AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6001. Complaint, June 17, 1952—Decision, July 13, 1953

Where a corporate manufacturer of shoes, by means of labels on shoes, advertisements in newspapers and magazines of general circulation, folders, pamphlets, and circulars, and through radio broadcasts—

- (1) Represented falsely that the wearing of its "Storybook Shoes" would hold the foot in its natural position, keep it properly aligned, hold it accurately in the shoe, insure its correct growth, provide strong support for the arch, guard against foot ills and provide better balance;
- (2) Represented falsely that the resilient pads at the heel and arch in children's shoes prevented forward skid, gave arch support, cushioned jolts and protected nerve terminals and the delicate nerve-ends in the heel;
- (3) Represented falsely that the wearing of its "Acrobat Shoes" gave growing feet the proper foundation and combination of features for good health; would keep young feet healthy, eliminate pronation of ankles and keep young ankles straight and strong;
- (4) Represented falsely that the wearing of its "Acrobat Safety Shoes" would start children in good walking habits, set the foot in a straight line, give extra ankle support and set the ankle straight; and that the flexible sole of the shoes permitted the building of muscles and strong sound feet; and
- (5) Represented falsely, directly and by implication, through use of the word "health" in connection with its said shoes, that they were so constructed as to possess aforesaid features or qualities;

When in fact all of said shoes were merely stock shoes made by quantity production methods, and while they contained some features not found in some other stock shoes, the effect of such features in the prevention or correction of foot ailments or in aiding the natural development of the feet was insignificant:

Held: That such acts and practices were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Frank Hier*, hearing examiner.

Mr. B. G. Wilson and *Mr. John M. Doukas* for the Commission.

Bass, Berry & Sims, of Nashville, Tenn., for respondent.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 17, 1952, issued and subsequently served its complaint in this proceeding upon respondent General Shoe Corporation, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the service of said complaint and the filing of respondent's answer thereto, hearings were held at which