

IN THE MATTER OF  
AERATION PROCESSES, INC., ET AL.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a)  
OF THE CLAYTON ACT, AS AMENDED

*Docket 6152. Complaint, Dec. 18, 1953—Decision, June 10, 1954*

Where a corporation engaged in the competitive interstate sale and distribution throughout the United States of the aerated food products "Instantwhip" and "Instantwhip Topping" through some 48 licensees, whom it supplied with containers, processing machinery and equipment, and to whom it sold vanilla and nitrous oxide, and who processed said materials, together with others locally procured into the finished food products "Instantwhip" and "Instantwhip Topping" for sale to drug stores, soda fountains, etc.; four licensees of said corporation, engaged, under its direction and control, in processing and selling said food products in and around the four cities of Worcester, Mass., Providence, R. I., Baltimore, Md., and Bridgeport, Conn.; and seven officers or directors of said corporate licensor, and two of whom were officers also of said four corporate licensees; engaged in their various capacities in the competitive interstate sale and distribution of such products and acting in cooperation with each other—

- (a) Discriminated in price between different purchasers of such food products of like grade and quality by selling said products to some of their customers at higher prices than to others in that said corporate licensor and corporate respondent licensee, Instantwhip-Worcester, Inc., acting by and through their individual respondent officers—
  - (1) Following the adoption on May 1, 1950, of a cumulative monthly discount schedule applicable to all customers in the entire territory of said corporate licensee, and the adoption on January 1, 1951, of a less favorable discount schedule applicable to customers therein, failed to put into effect in Springfield, Mass., and surrounding territory said Jan. 1, 1951, schedule, but kept in effect the former and lower May 1, 1950, discount schedule; and
  - (2) Following the adoption on Jan. 14, 1952, of a less favorable discount schedule applicable to customers located in said licensee's territory, failed to put into effect in Springfield and surrounding territory said schedule, but adopted instead a lower discount schedule;
- (b) Discriminated in price as aforesaid in that said corporate licensor and corporate respondent licensee Instantwhip-Providence, Inc., acting by and through their individual respondent officers—
  - (1) Following the adoption on May 1, 1950, of a cumulative monthly discount schedule applicable to all customers in the entire territory of said Instantwhip, including a "single stop", individual customer schedule and a "multiple stop" schedule applicable to two or more individual customers on the basis of their cumulative purchases under the "multiple stop" schedule, failed to put into effect in the State of Connecticut the "multiple stop" portion of aforesaid discount schedule, but sold to customers in said State solely on the basis of the more favorable "single stop" portion of the schedule in question; and

- (2) Following the adoption on Jan. 1, 1951, of a less favorable cumulative monthly volume discount or schedule of prices applicable to customers located within the territory of said "Instantwhip-Providence," failed to put into effect said schedule in said State, but continued to sell to customers located therein pursuant to the old and lower May 1, 1950, "single stop" schedule of prices, and did not alter or affect the character or extent of said discriminations through increasing the Jan. 1, 1951, discount schedule by one cent, while similarly increasing their May 1, 1950, "single stop" schedule by a like amount;
- (c) Discriminated in price as aforesaid in that said corporate licensor and licensee Instantwhip-Baltimore, Inc., acting by and through their individual respondent officers, while selling, during 1952, their 30% butterfat aerated food products pursuant to a cumulative monthly discount schedule to customers in said licensee's entire territory, failed to put into effect in Washington, D. C., said schedule, but instead, through a branch office, sold to its said Washington customers pursuant to a different and more favorable one; and
- (d) Discriminated in price as aforesaid in that said corporate licensor and corporate licensee Instantwhip-Bridgeport, Inc., acting by and through their individual respondent officers—
  - (1) Following the establishment, on May 1, 1950, of a cumulative monthly volume discount schedule applicable to all customers in the entire area of said corporate licensee, proceeded to establish higher schedules of monthly volume discounts through the New England area during the years 1951 and 1952 than the aforesaid discount schedule; and
  - (2) Following the adoption, on Jan. 1, 1951, of a cumulative monthly discount schedule of prices which were applicable to customers located within the territory of said corporate licensee and which were less favorable than said May 1, 1950, schedule, and were increased on Feb. 11, 1952, by one cent as to each and every price bracket therein contained, continued in force and effect, as to all purchasers located in the territory of said corporate licensee, the old original cumulative monthly discount schedule established on May 1, 1950;

With the result that many retail outlets, by reason of aforesaid discriminatory prices by respondents, discontinued the purchase of such aerated food products from respondents' competitors, either in whole or in part:

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

Before *Mr. Abner E. Lipscomb*, hearing examiner.

*Mr. William C. Kern* and *Mr. Andrew C. Goodhope* for the Commission.

*Mr. John A. Eckler*, of Columbus, Ohio, for respondents.

#### CONSENT SETTLEMENT<sup>1</sup>

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton

<sup>1</sup> See footnote on following page.

## Findings

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Act), as amended by an Act of Congress approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission, on December 18, 1953, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with violation of subsection (a) of Section 2 of said Clayton Act, as amended.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint, hereby:

1. Admit all the jurisdictional allegations set forth in the complaint.
2. Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondents, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.
3. Agree that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

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

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Aeration Processes, Inc., is a corporation organized and existing under the laws of the State of Ohio with its principal office and place of business located at 869 McKinley Avenue, Columbus, Ohio.

Respondent Instantwhip-Bridgeport, Inc., is a corporation organized and existing under the laws of the State of Delaware and has its

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

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on June 10, 1954, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

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

principal office and place of business at 278 East Main Street, Bridgeport, Connecticut.

Respondent Instantwhip-Providence, Inc., is a corporation organized and existing under the laws of the State of Rhode Island and has its principal office and place of business located at 881 Charles Street, North Providence, Rhode Island.

Respondent Instantwhip-Worcester, Inc., is a corporation organized and existing under the laws of the State of Massachusetts and has its principal office and place of business at 1068 West Boylston Street, Worcester, Massachusetts.

Respondent Instantwhip-Baltimore, Inc., is a corporation organized and existing under the laws of the State of Maryland and has its principal office and place of business at 420 West 24th Street, Baltimore, Maryland.

Respondent G. Frederick Smith is an individual and is president of respondent Aeration Processes, Inc.

Respondent Allyne H. Smith is an individual and is vice president and treasurer of respondent Aeration Processes, Inc.; he is also the president of respondents Instantwhip-Bridgeport, Inc., Instantwhip-Providence, Inc., Instantwhip-Worcester, Inc., and Instantwhip-Baltimore, Inc.

Respondent John Elmer Jones, Sr., is an individual and is vice president and secretary of respondent Aeration Processes, Inc.; he is also the secretary of corporate respondents Instantwhip-Bridgeport, Inc., Instantwhip-Providence, Inc., Instantwhip-Worcester, Inc., and Instantwhip-Baltimore, Inc.

Respondent John Elmer Jones, Jr., is an individual and director of corporate respondent Aeration Processes, Inc.

Respondent Ernest R. Oldham is an individual and director of corporate respondent Aeration Processes, Inc.

Respondent R. A. Grieve is an individual and director of corporate respondent Aeration Processes, Inc.

Respondent S. S. Oldham is an individual and director of corporate respondent Aeration Processes, Inc.

PAR. 2. Corporate respondent Aeration Processes, Inc., is a closely held corporation whose principal officers are respondents G. Frederick Smith, President, Allyne H. Smith, Vice President-Treasurer, and John Elmer Jones, Sr., Vice President-Secretary. All of the individual respondents named in these findings direct and control the sales policies and business activities of the corporate respondents with which they are connected in the capacities described in Paragraph 1 and all of said respondents act together and in cooperation with each other in doing the acts and practices hereinafter found.

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PAR. 3. All of said respondents are now, and for many years last past have been, engaged in the sale and distribution throughout the United States of aerated food products under the trade name "Instantwhip" and Instantwhip Topping." Corporate respondent Aeration Processes, Inc., supplies its various licensees, hereinafter more fully described, with containers, vanilla, nitrous oxide, processing machinery and equipment and replacements parts therefor with which such licensees process the said food products. The containers and processing equipment remain the property of Aeration Processes, Inc., even though they are in possession of respondents' licensees, and vanilla and nitrous oxide are sold by Aeration Processes, Inc., to its various licensees. Said licensees generally procure cream mix, vegetable fats and sweetening materials from local sources and together with the said products procured from Aeration Processes, Inc., process same with the processing machinery and equipment similarly obtained into the said finished food products "Instantwhip" and "Instantwhip Topping."

PAR. 4. Respondent Aeration Processes, Inc., has a written license agreement with approximately 48 licensees (hereinafter sometimes referred to as "points"). Pursuant to these agreements, respondents' licensees are permitted to process and sell "Instantwhip" and "Instantwhip Topping" and pay respondent Aeration Processes, Inc., a royalty on each container of such products sold. The licensees sell these filled containers to drug stores, clubs, soda fountains, restaurants, and other similar retail establishments for use on various food products, such as pies, sundaes and other like products.

Respondents Instantwhip-Bridgeport, Inc., Instantwhip-Providence, Inc., Instantwhip-Worcester, Inc., and Instantwhip-Baltimore, Inc., are all corporations that are licensees of respondent Aeration Processes, Inc., and process and sell aerated food products pursuant to a written license agreement which each has with respondent Aeration Processes, Inc. These various corporations sell in and around the various cities whose names are a part of the corporate title of each.

PAR. 5. Corporate respondent Aeration Processes, Inc., acting under the direction of the individual respondents above named who are officials of said corporate respondent, directs and controls the operations, including pricing practices and other policies, of all the other corporate respondents named in these findings with whom said corporate respondent Aeration Processes, Inc., has entered into license agreements.

PAR. 6. All respondents, whether individuals or corporations, are engaged in the various capacities hereinabove described in the business of distributing aerated food products in commerce throughout

the United States or are officials, directors, or stockholders in corporations so engaged. In the course and conduct of their business, the respondents have sold and shipped, and do now sell and ship, the products hereinbefore described in commerce between and among the various States of the United States from the States in which their respective factories or processing plants are located to purchasers thereof located in other States of the United States and the District of Columbia, within the intent and meaning of the word "commerce" as used in said Clayton Act, as amended. There is, and has been at all times herein mentioned, a continuous current of trade in commerce in said products across State lines between respondents and purchasers of respondents' products. Said products are sold and distributed for use, consumption, and resale within the various States of the United States and the District of Columbia.

PAR. 7. In the course and conduct of their business, as aforesaid, the respondents have been and are now engaged in competition in commerce with other persons, corporations, and firms likewise engaged in the business of processing and selling aerated food products between and among the various States of the United States and in the District of Columbia.

PAR. 8. The respondents, in the course and conduct of their business, as hereinabove set forth, have been and now are discriminating in price between different purchasers of aerated food products of like grade and quality by selling said products to some of their customers at higher prices than to other of their customers.

PAR. 9. The discriminations in price referred to in Paragraph 8 hereof have been and now are effective in the northeastern area of the United States and are more particularly described as follows:

1. (a) Corporate respondent Aeration Processes, Inc., and corporate respondent Instantwhip-Worcester, Inc., acting by and through their said individual respondent officials above named, on May 1, 1950, adopted the following cumulative monthly discount schedule applicable to all customers in the entire territory of said corporate respondent Instantwhip-Worcester, Inc.:

| <i>Single Stop</i> |              | <i>Multiple Stop</i> |              |
|--------------------|--------------|----------------------|--------------|
| <i>Containers</i>  | <i>Price</i> | <i>Containers</i>    | <i>Price</i> |
| 1-49 -----         | 35¢          | 1-299 -----          | 35¢          |
| 50-99 -----        | 33¢          | 300-499 -----        | 31¢          |
| 100-149 -----      | 31¢          | 500-999 -----        | 29¢          |
| 150-199 -----      | 30¢          | 1000-up -----        | 27¢          |
| 200-299 -----      | 29¢          |                      |              |
| 300-up -----       | 27¢          |                      |              |

(In all instances where used in these findings, the term "single stop" customers refers to an individual customer whose volume discount was

## Findings

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given on the basis of the purchases made by that individual customer during a monthly period. "Multiple stop" refers to two or more individual customers whose cumulative purchases form the basis for granting the monthly discount under the multiple stop quantity discount schedule applicable.) Moreover, on January 1, 1951, said respondents, with the exception later described, adopted the following cumulative monthly discount schedule applicable to customers located in said territory of the corporate respondent Instantwhip-Worcester, Inc.:

| <i>Single Stop</i> |              | <i>Multiple Stop</i> |              |
|--------------------|--------------|----------------------|--------------|
| <i>Containers</i>  | <i>Price</i> | <i>Containers</i>    | <i>Price</i> |
| 1-100 -----        | 35¢          | 1-300 -----          | 35¢          |
| 101-200 -----      | 33¢          | 301-400 -----        | 33¢          |
| 201-300 -----      | 32¢          | 401-500 -----        | 32¢          |
| 301-up -----       | 31¢          | 501-800 -----        | 31¢          |

However, said discount schedule of January 1, 1951, was not put into effect in Springfield, Massachusetts, and surrounding territory by said respondents but instead the former and lower May 1, 1950, discount schedule was kept in effect by said respondents in said Springfield territory.

(b) Said respondents on January 14, 1952, adopted, with the exception later described, the following cumulative monthly discount schedule applicable to all customers located in the territory of said corporate respondent Instantwhip-Worcester, Inc.:

| <i>Containers</i> | <i>Price</i> |
|-------------------|--------------|
| 1-100 -----       | 37¢          |
| 101-200 -----     | 35¢          |
| 201-300 -----     | 34¢          |
| 301-up -----      | 33¢          |

However, said discount schedule was not put into effect in Springfield, Massachusetts, and surrounding territory, but rather the following lower cumulative monthly discount schedule was adopted by said respondents for said territory:

| <i>Containers</i> | <i>Price</i> |
|-------------------|--------------|
| 1-49 -----        | 37¢          |
| 50-99 -----       | 34¢          |
| 100-149 -----     | 32¢          |
| 150-199 -----     | 31¢          |
| 200-299 -----     | 29¢          |
| 300-up -----      | 27¢          |

2. (a) Corporate respondent Aeration Processes, Inc., and corporate respondent Instantwhip-Providence, Inc., acting by and through their said individual respondent officials above named, on May 1, 1950,

adopted, with the exception later described, the following cumulative monthly discounts schedule applicable to all customers in the entire territory of said corporate respondent Instantwhip-Providence, Inc.:

| <i>Single Stop</i> |              | <i>Multiple Stop</i> |              |
|--------------------|--------------|----------------------|--------------|
| <i>Containers</i>  | <i>Price</i> | <i>Containers</i>    | <i>Price</i> |
| 1-49 -----         | 35¢          | 1-299 -----          | 35¢          |
| 50-99 -----        | 33¢          | 300-499 -----        | 31¢          |
| 100-149 -----      | 31¢          | 500-999 -----        | 29¢          |
| 150-199 -----      | 30¢          | 1000-up -----        | 28¢          |
| 200-299 -----      | 29¢          |                      |              |
| 300-up -----       | 28¢          |                      |              |

However, said respondents did not put into effect the multiple stop portion of said discount schedule above described in the State of Connecticut but sold to customers in the State of Connecticut solely on the basis of the single stop portion of said discount schedule above described.

(b) Furthermore, on January 1, 1951, said respondents adopted, with the exception below noted, the following cumulative monthly volume discount schedule of prices applicable to customers located within the said territory of corporate respondent Instantwhip-Providence, Inc.:

| <i>Single Stop</i> |              | <i>Multiple Stop</i> |              |
|--------------------|--------------|----------------------|--------------|
| <i>Containers</i>  | <i>Price</i> | <i>Containers</i>    | <i>Price</i> |
| 1-100 -----        | 35¢          | 1-300 -----          | 35¢          |
| 101-200 -----      | 33¢          | 301-400 -----        | 33¢          |
| 201-300 -----      | 32¢          | 401-500 -----        | 32¢          |
| 301-up -----       | 31¢          | 501-up -----         | 31¢          |

However, said discount schedule was not put into effect by said respondents in the State of Connecticut and said respondents continued to sell to customers located in Connecticut pursuant to the old and lower May 1, 1950, single stop schedule of discounts.

Although on February 11, 1952, said respondents increased their January 1, 1951, discount schedule by 1¢ and their old May 1, 1950, single stop schedule by 1¢, this did not in any way alter or effect the character and extent of the discriminations in price above described, which continued in full force and effect.

3. Corporate respondent Aeration Processes, Inc., and corporate respondent Instantwhip-Baltimore, Inc., acting by and through their said individual respondent officials above named, during the year 1952 sold their 30% butterfat aerated food products, with the exception later described, pursuant to the following cumulative monthly discount schedule to all customers in the entire territory of said corporate respondent, Instantwhip-Baltimore, Inc.:

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| <i>Single Stop</i> |                  | <i>Multiple Stop</i> |                  |
|--------------------|------------------|----------------------|------------------|
| <i>Containers</i>  | <i>Discount</i>  | <i>Containers</i>    | <i>Discount</i>  |
| 1-50_____          | 45¢ (base price) | 0-300_____           | 45¢ (base price) |
| 51-100_____        | 7½%              | 300-400_____         | 7½%              |
| 101-200_____       | 12½%             | 401-500_____         | 12½%             |
| 200-300_____       | 15%              | 500 up_____          | 15%              |

However, said discount schedule during said period was not put into effect in Washington, D. C., but rather said respondents, through a branch office of said corporate respondent Instantwhip-Baltimore, Inc., sold to its customers in Washington, D. C., pursuant to the following cumulative monthly discount schedule:

| <i>Single Stop</i> |                  | <i>Multiple Stop</i> |                  |
|--------------------|------------------|----------------------|------------------|
| <i>Containers</i>  | <i>Discount</i>  | <i>Containers</i>    | <i>Discount</i>  |
| 1-50_____          | 40¢ (base price) | 0-300_____           | 40¢ (base price) |
| 51-100_____        | 7½%              | 300-400_____         | 7½%              |
| 101-200_____       | 12½%             | 400-500_____         | 12½%             |
| 201-300_____       | 15%              | 500 up_____          | 20%              |
| 301 up_____        | 20%              |                      |                  |

4. Corporate respondent Aeration Processes, Inc., and corporate respondent Instantwhip-Bridgeport, Inc., acting by and through their said individual respondent officials above named, established on May 1, 1950, a cumulative monthly volume discount schedule applicable to all customers in the entire area of said corporate respondent Instantwhip-Bridgeport, Inc., as follows:

| <i>Containers</i> | <i>Price</i> | <i>Containers</i> | <i>Price</i> |
|-------------------|--------------|-------------------|--------------|
| 1-49_____         | 35¢          | 150-199_____      | 30¢          |
| 50-99_____        | 33¢          | 200-299_____      | 29¢          |
| 100-149_____      | 31¢          | 300 up_____       | 27¢          |

Corporate respondent Aeration Processes, Inc., acting by and through its individual respondent officials and by and through the other corporate respondents and their individual respondent officials herein named as respondents, other than corporate respondent Instantwhip-Bridgeport, Inc., proceeded to establish higher schedules of monthly volume discounts throughout the New England area during the years 1951 and 1952 than the said discount schedule of corporate respondent Instantwhip-Bridgeport, Inc. For example, as above found, corporate respondent Aeration Processes, Inc., and corporate respondent Instantwhip-Worcester, Inc., acting by and through their said individual respondent officials above named adopted on January 14, 1952, the following cumulative discount schedule applicable to all customers located in the territory of said corporate respondent Instantwhip-Worcester, Inc.:

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## Conclusion

| <i>Containers</i> | <i>Price</i> |
|-------------------|--------------|
| 1-100 -----       | 37¢          |
| 101-200 -----     | 35¢          |
| 201-300 -----     | 34¢          |
| 301-up -----      | 33¢          |

Likewise, on January 1, 1951, as hereinabove found, corporate respondent Aeration Processes, Inc., and corporate respondent Instantwhip-Providence, Inc., acting by and through their said individual respondent officials above named, adopted the following cumulative monthly discount schedule of prices applicable to customers located within the said territory of said corporate respondent Instantwhip-Providence, Inc.:

| <i>Single Stop</i> |              | <i>Multiple Stop</i> |              |
|--------------------|--------------|----------------------|--------------|
| <i>Containers</i>  | <i>Price</i> | <i>Containers</i>    | <i>Price</i> |
| 1-100 -----        | 35¢          | 1-300 -----          | 35¢          |
| 101-200 -----      | 33¢          | 301-400 -----        | 33¢          |
| 201-300 -----      | 32¢          | 401-500 -----        | 32¢          |
| 301-up -----       | 31¢          | 501-up -----         | 31¢          |

Moreover, on February 11, 1952, as hereinabove found, said respondents increased said January 1, 1951, discount schedule by 1¢ as to each and every price bracket contained in said cumulative monthly discount schedule.

However, corporate respondent Aeration Processes, Inc., and corporate respondent Instantwhip-Bridgeport, Inc., by and through their said individual respondent officials, continued in force and effect as to all purchasers located in the territory of corporate respondent Instantwhip-Bridgeport, Inc., the old original cumulative monthly volume discount schedule established on May 1, 1950.

PAR. 10. As a result of the discriminatory prices of respondents in the sale of aerated food products, as found in Paragraph 9 hereof, and by reason of respondents' said discriminatory prices, many retail outlets discontinued the purchase of aerated food products from respondents' competitors, either in whole or in part.

The effect of the discriminations in price made by the respondents in the sale of aerated food products as set forth in Paragraph 9 hereof may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which respondents are engaged and to injure, destroy, or prevent competition between respondents and their competitors.

## CONCLUSION

The aforesaid discriminations in price by the respondents, as found in Paragraph 9 hereof and having the effects and tendencies as found

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in Paragraph 10 hereof constitute a violation of the provisions of subsection (a) of Section 2 of the Clayton Act, as amended.

## ORDER TO CEASE AND DESIST

*It is ordered,* That each of the respondents Aeration Processes, Inc., a corporation, Instantwhip-Bridgeport, Inc., a corporation, Instantwhip-Providence, Inc., a corporation, Instantwhip-Worcester, Inc., a corporation, Instantwhip-Baltimore, Inc., a corporation, and their respective officers, and G. Frederick Smith, Allyne H. Smith, John Elmer Jones, Sr., John Elmer Jones, Jr., Ernest R. Oldham, R. A. Grieve, and S. S. Oldham, individually, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in the sale of aerated food products in commerce, as "commerce" is defined in the said Clayton Act, do forthwith cease and desist from discriminating in price by selling said aerated food products of like grade and quality to any purchaser at prices lower than those charged other purchasers when the respondents or any of them is in competition with any other seller in the sale of such products.

*It is further ordered,* That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Aeration Processes, Inc.

By (Sgd) John Elmer Jones, Sr.

*Secretary.*

Date: Feb. 19, 1954.

Instantwhip-Bridgeport, Inc.

By (Sgd) John Elmer Jones, Sr.

*Secretary.*

Date: Feb. 19, 1954.

Instantwhip-Providence, Inc.

By (Sgd) John Elmer Jones, Sr.

*Secretary.*

Date: Feb. 19, 1954.

Instantwhip-Worcester, Inc.

By (Sgd) John Elmer Jones, Sr.

*Secretary.*

Date: Feb. 19, 1954.

Instantwhip-Baltimore, Inc.

By (Sgd) John Elmer Jones, Sr.

Date: Feb. 19, 1954.

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## Order

(Sgd) G. Frederick Smith  
G. FREDERICK SMITH

Date: March 20, 1954.

(Sgd) Allyne H. Smith  
ALLYNE H. SMITH

Date: Feb. 19, 1954.

(Sgd) John Elmer Jones, Sr.  
JOHN ELMER JONES, SR.

Date: Feb. 19, 1954.

(Sgd) John Elmer Jones, Jr.  
JOHN ELMER JONES, JR.

Date: Feb. 25, 1954.

(Sgd) Ernest R. Oldham  
ERNEST R. OLDHAM

Date: March 15, 1954.

(Sgd) R. A. Grieve  
R. A. GRIEVE

Date: March 8, 1954.

(Sgd) S. S. Oldham  
S. S. OLDHAM

Date: March 6, 1954.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 10th day of June 1954.

## IN THE MATTER OF

DR. POSNER SHOE CO., INC., FORMERLY KNOWN AS DR.  
A. POSNER SHOES, INC.DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE  
COMMISSION ACT

*Docket 6003. Complaint, June 19, 1952—Decision, June 15, 1954*

Where a corporation engaged in the manufacture and interstate sale and distribution to dealers and the public generally, of its "Dr. Posner's Muscle Builder Shoe", "Dr. Posner's Scientific Shoe", and "Dr. Posner's Ritestart Shoe"; through statements on labels on its shoe boxes and in advertisements in magazines and in folders and circulars—

- (a) Represented falsely that its said "Scientific Shoes" would give correct body balance, perfect posture, better foot and bodily health, and correct walking position and assure the growth of straight feet;
- (b) Represented falsely that its "Muscle Builder Shoes" would prevent pronation, help build muscles, and keep feet healthy;
- (c) Represented falsely that its "Ritestart Shoes" would help give proper posture and correct body balance and assure foot health for children;
- (d) Represented falsely that its said shoes were "health shoes" and as such would prevent and cure abnormalities and disorders of the feet; and
- (e) Represented falsely that use thereof would have a beneficial effect on the condition known as "weak foot", i. e., as used by it in its advertising and literature:

*Held*, That such representations were false, deceptive, and misleading, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Earl J. Kolb*, hearing examiner.

*Mr. Ames W. Williams*, for the Commission.

*Mr. Maurice Knapp*, of New York City, for respondent.

## DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated June 15, 1954, the initial decision in the instant matter of hearing examiner Earl J. Kolb, as set out as follows, became on that date the decision of the Commission.

## INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is before the undersigned Hearing Examiner for final consideration on the complaint, answer thereto and a stipulation as to the facts, in lieu of testimony, which was entered upon the record herein, whereby it was stipulated that the Hearing Examiner may