

Complaint

IN THE MATTER OF
GUARANTEED PARTS CO., INC.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(a) OF THE CLAYTON ACT*Docket 6987. Complaint, Dec. 13, 1957—Decision, Sept. 24, 1958*

Consent order requiring a manufacturer of automotive ignition replacement parts, in Seneca Falls, N.Y., which sold to some 300 wholesalers throughout the United States, many of them banded together in buying groups, to cease discriminating in price in violation of Section 2(a) of the Clayton Act by means of a discount schedule (ranging from 3 percent to 20 percent, depending on annual purchases) under which smaller independent wholesalers paid higher prices than their competitors buying in greater volume; and by giving members of buying groups discounts of 20 percent to 30 percent without regard to their annual purchases, thereby favoring them over the small independents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described has violated and is now violating the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson Patman Act, approved June 19, 1936, (U.S.C., Title 15, Sec. 13) hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Guaranteed Parts Co., Inc., respondent herein, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in Seneca Falls, N.Y.

PAR. 2. Respondent is engaged in the business of manufacturing and selling automotive ignition replacement parts. Respondent's total sales in 1956 exceeded \$1,000,000.

Respondent sells and distributes said automotive replacement parts from its principal place of business in Seneca Falls, N.Y., to approximately 300 automotive replacement parts wholesalers located throughout the United States and in the District of Columbia. Respondent in the sale of such parts has at all times relevant herein been and now is engaged in commerce, as "commerce," is defined in the amended Clayton Act.

PAR. 3. Among respondent's approximately 300 wholesaler

Complaint

55 F.T.C.

customers are many who have banded together into organizations commonly referred to as jobbers groups, buying groups or, simply, groups. Such customers are hereinafter referred to as group wholesalers and those not affiliated with a group are referred to as independent wholesalers.

Such group wholesalers and independent wholesalers are frequently located in the same trade area and compete each with the other in the resale of said automotive replacement parts.

PAR. 4. In the course and conduct of its business in commerce the proposed respondent has been and is now, in each of several trading areas, discriminating in price in the sale of its products of like grade and quality by selling them to some independent wholesalers at higher prices than it sells them to other independent wholesalers and group wholesaler who are competitively engaged each with the other in the resale of said products.

Respondent has effected said discriminations between independent wholesalers by charging such purchasers disparate net prices based upon total annual purchase volume in accordance with the following schedule:

<i>Annual Purchase Volume</i>	<i>Net Price</i>
\$ 1,200 to \$ 2,400.....	3% below distributors list price.
\$ 2,400 to \$ 3,600.....	5% below distributors list price.
\$ 3,600 to \$ 5,000.....	8% below distributors list price.
\$ 5,000 to \$ 6,500.....	10% below distributors list price.
\$ 6,500 to \$ 8,000.....	14% below distributors list price.
\$ 8,000 to \$10,000.....	17% below distributors list price.
\$10,000 and over.....	20% below distributors list price.

Through the operation of respondent's sales program as above described independent wholesalers buying in lesser volume are charged higher and less favorable net prices than are charged other competing independent wholesalers buying in greater volume.

Respondent has effected said discriminations between group wholesalers and some independent wholesalers by charging said group wholesalers off scale net prices which are 20% to 30% below distributors list prices. Said off scale lower prices are granted without regard to the annual purchase volume of said group wholesalers and constitute a discrimination against all independent wholesalers who, in accordance with the above schedule, are required to pay higher net prices.

PAR. 5. The effect of respondent's discriminations in price, as above alleged, may be substantially to lessen, injure, destroy or

433

Decision

prevent competition between respondent and competing sellers of automotive ignition replacement parts and between and among respondent's independent and group distributors in the resale of products purchased from respondent.

PAR. 6. The acts and practices of respondent as above alleged constitute violations of the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C., Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

Mr. Francis C. Mayer and *Mr. William W. Rogal* for the Commission.

Doyle & Midey of Seneca Falls, N.Y., for respondent.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson Patman Act, approved June 19, 1936 (U.S.C., Title 15, Sec. 13), the Federal Trade Commission on December 13, 1957, issued and subsequently served its complaint in this proceeding against respondent Guaranteed Parts Co., Inc., a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located in Seneca Falls, N.Y.

On July 16, 1958, there was submitted to the undersigned hearing examiner an agreement between respondent and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondent waives any further procedural steps before the hearing examiner and the Commission; waives the making of findings of fact and conclusions of law; and waives all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that

Decision

55 F.T.C.

the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint; and that the following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondent, and, when so entered, it shall have the same force and effect as if entered after a full hearing, and may be altered, modified, or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued.

1. Respondent Guaranteed Parts Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located in Seneca Falls, N.Y.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent Guaranteed Parts Co., Inc., 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 automotive products and supplies in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of such products and supplies of like grade and quality:

1. By selling to any one purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the higher price in the resale and distribution of respondent's products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 24th

day of September 1958, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein 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 the order to cease and desist.

IN THE MATTER OF
FLUIDLESS CONTACT LENSES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7026. Complaint, Jan. 10, 1958—Decision, Sept. 24, 1958

Consent order requiring manufacturers in New York City to cease making a variety of misrepresentations in newspaper advertising and promotional materials concerning their "Airflo" contact lenses, including claims that the lenses could be fitted and worn all day without discomfort and irritation, were better than eyeglasses and other contact lenses, were unbreakable, were worn by prominent named actresses and athletes and over 100,000 persons, etc.

Mr. Frederick McManus for the Commission.

Paskus, Gordon & Hyman, by *Mr. Lenard H. Mandel*, of New York, N.Y., for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 10, 1958, issued and subsequently served its complaint in this proceeding against respondents Fluidless Contact Lenses, Inc., a corporation existing and doing business under and by virtue of the laws of the State of New York, and Donald L. Golden and Norma Golden, individually and as officers of the corporate respondent.

On July 24, 1958, there was submitted to the undersigned hearing examiner an agreement between respondents Fluidless Non-Tact Lenses, Inc., formerly known as Fluidless Contact Lenses, Inc., and Donald L. Golden, and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondents waive any further procedural steps before the hearing examiner and the Commission; waive the making of findings of fact and conclusions of law; and waive all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further provides that it disposes of all of this proceeding