

Complaint

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IN THE MATTER OF
THERMOID COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(a) OF THE CLAYTON ACT

Docket 7032. Complaint, Jan. 14, 1958—Decision, Oct. 4, 1958

Consent order requiring a manufacturer doing a nation-wide business, with sales in 1956 exceeding \$40,000,000, to cease discriminating in price in violation of Section 2(a) of the Clayton Act in the sale of its automotive replacement parts through charging independent jobbers higher prices than their competitors who bought through group organizations, and through favoring its private brand customers—including rubber and oil companies and mail order houses—over both group buying and independent jobbers, and in addition giving certain oil companies free merchandise.

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, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Thermoid Company, respondent herein, 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 at 500 Whitehead Road, Trenton 6, N.J.

PAR. 2. Respondent is principally engaged in the manufacture and sale of automobile parts, including radiator hose, fan belts, brake lining, brake parts, brake fluid, and clutch facing. Thermoid's total sales in 1956 exceeded \$40,000,000.

Respondent manufactures said automobile parts in several plants located in several states and sells and ships such parts to customers located in each of the States of the United States and in the District of Columbia. Respondent, in the sale of said parts, has at all times relevant herein been and is now engaged in commerce, as "commerce" is defined in the amended Clayton Act.

PAR. 3. A principal market for respondent's products is composed of customers who are engaged in the sale and distribution of automobile replacement parts. A substantial portion of that market is made up of automobile replacement parts wholesalers who are commonly known, and referred to in the trade, as jobbers. Such jobbers normally and principally resell to retailers, such as repair garages, car dealers and gasoline filling stations. The respondent sells its products to more than 750 such jobbers and said jobbers, in 1956, purchased in excess of \$6,000,000 worth of respondent's products. Among respondent's jobber customers are many who are banded together into organizations commonly referred to as jobber buying groups. Such customers are hereinafter referred to as group jobbers and those not affiliated with a jobber buying group are referred to as independent jobbers.

Another principal segment of the automobile replacement parts market is made up of the major marketing oil companies, the rubber companies, and the mail order companies. Respondent's sales to concerns of this nature in 1956 exceeded \$2,000,000. Such customers require that respondent label the products purchased by them with their respective private labels and are sometimes hereinafter referred to collectively as private brand customers.

PAR. 4. In the sale and distribution of its products, respondent is in substantial and continuous competition with other sellers of similar products.

In several trade areas respondent's group jobber customers are in substantial competition with respondent's independent jobber customers.

Each and every one of respondent's jobber customers are in substantial and continuous competition with one or more of respondent's private brand customers.

PAR. 5. In the course and conduct of its business in commerce, the respondent has been and is now, in each of several trade areas, discriminating in price in the sale of its products of like grade and quality by selling them to independent jobber customers at higher prices than it sells them to group jobber customers who are competitively engaged, each with the other, in the resale of said products.

Respondent has effected said discriminations between its independent jobber customers and group jobber customers in the manner and by the methods hereinafter described.

The respondent sells its products to all of its jobber customers

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at prices published on its "Warehousing Wholesaler" (blue) price list. When a jobber customer resells to another jobber, respondent, upon receiving proof from the jobber customer that such resales were made, refunds or rebates to the jobber customer a part of the purchase price paid for the goods so resold. Respondent does not, however, pay such refunds or rebates to jobber customers upon their total purchases but only upon a fixed maximum percentage of total purchases regardless of the manner of resale. The percentage rates of rebate and the maximum percentages of a jobber customer's total purchases eligible for such rebates during the years 1951 through 1956 are set out below:

<i>Year</i>	<i>Refund rate (Percent)</i>	<i>Percentage of total purchases eligible</i>
1951.....	12	70
1952.....	12	70
1953.....	12	70
1954.....	12	70
1955.....	12	70
1956.....	15	80

Respondent discriminates between its group jobber customers and its independent jobber customers by granting the rebates set out in the above table to group jobber customers on goods which they resell to retailers; while independent jobber customers are granted rebates only on goods which they resell to other jobbers and are denied rebates on goods which they resell to retailers.

Respondent further discriminates in favor of at least three of its group jobber customers by disregarding the fixed maximum percentage of total purchases eligible for rebate and grants rebates to the said three group jobber customers on all goods purchased from respondent.

The acts and practices of respondent, as above described, effect discriminations in price in that independent jobber customers are required to pay higher and less favorable prices than group jobber customers for goods purchased from respondent for resale to retailers.

PAR. 6. In the course and conduct of its business in commerce, the respondent has been and is now, discriminating in price in the sale of its products of like grade and quality by selling them to jobber customers at higher prices than it sells them to private brand customers who are competitively engaged, each with the other, in the resale of said products.

Respondent has effected discriminations in price between its jobber customers and its private brand customers in the manner and by the methods hereinafter described:

As aforescribed, jobber customers are billed and required to pay prices which respondent publishes on its so-called "Warehousing Wholesaler" price list. Said jobber prices are considerably higher than the prices which the private brand customers are charged for goods of like grade and quality. The private brand customers for the most part purchase only fan belts and flexible radiator hose.

Respondent has divided the private brand customers into three groups, rubber companies, mail order companies, and oil companies. The rubber company private brand customers are:

- Goodyear Tire & Rubber Company
- The B. F. Goodrich Company
- United States Rubber Company

These three private brand customers purchase flexible radiator hose from respondent at net prices approximately 34.5 percent below the "Warehousing Wholesaler" list prices.

The mail order company private brand customers are:

- Montgomery Ward & Company
- Sears Roebuck and Company

These two private brand customers purchase fan belts from respondent at net prices which are approximately 42 percent below the "Warehousing Wholesaler" list prices and purchase flexible radiator hose at net prices which are approximately 25 percent below the "Warehousing Wholesaler" list prices.

The oil company private brand customers are:

- Cities Service Oil Company
- Esso Standard Oil Company
- Gulf Oil Company
- Standard Oil Company of California
- Standard Oil Company (Indiana)
- Standard Oil Company (Kentucky)
- Standard Oil Company of Texas
- Sun Oil Company
- Utah Oil Refining Company

These private brand customers purchase fan belts from respondent at net prices which are approximately 36 percent below the "Warehousing Wholesaler" list prices and purchase flexible radiator hose at net prices which are approximately 21 percent below the "Warehousing Wholesaler" list prices.

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An additional discrimination in price is afforded the following oil company private brand customers:

Esso Standard Oil Company
 Standard Oil Company of California
 Standard Oil Company (Indiana)
 Standard Oil Company (Kentucky)
 Standard Oil Company of Texas
 Utah Oil Refining Company

These companies, since 1953, for varying periods in each year, have been given one free belt or one free piece of flexible radiator hose with each ten belts or ten pieces of hose purchased. During 1956 the named private brand customers received free fan belts and free flexible radiator hose in the following amounts:

<i>Customer</i>	<i>Free Belts received</i>	<i>Free hose received</i>	<i>Total value of free items</i>
Esso Standard Oil Co.....	16,910	7,197	\$15,187.41
Standard Oil Co. of Cal.....	9,730	0	6,129.90
Standard Oil Co. (Ind.).....	14,788	9,411	15,245.37
Standard Oil Co. (Ky.).....	10,176	2,232	7,817.04
Standard Oil Co. of Texas.....	2,235	241	1,559.88
Utah Oil Refining Co.....	661	371	650.16

PAR. 7. The effect of respondent's discriminations in price, as above alleged, may be substantially to lessen, injure, destroy, or prevent competition between respondent and competing sellers of similar automobile replacement parts; between and among respondent's independent jobber customers and group jobber customers; and between and among respondent's private brand customers and all jobber customers.

PAR. 8. 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.

Breed, Abbott & Morgan, of New York, N.Y., by *Mr. Charles H. Tuttle*, for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued January 14, 1958, charges the respondent Thermoid Company, a corporation, located at 500 Whitehead Road, Trenton, N.J., with violation of the provisions of subsection (a) of Section 2 of the Clayton Act,

as amended by the Robinson-Patman Act, in the sale of automotive replacement parts.

After the issuance of the complaint, respondent entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the director and assistant director of the Bureau of Litigation.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

By the terms of said agreement, the respondent admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By said agreement the respondent expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

Respondent further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and, in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent named herein, and issues the following order.

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ORDER

It is ordered, That Thermoid 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 of automotive replacement parts, in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating in price by selling such parts of like grade and quality 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 4th day of October 1958, become the decision of the Commission; and, accordingly:

It is ordered, That 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.

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IN THE MATTER OF
MASSACHUSETTS BONDING AND INSURANCE COMPANYORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6447. Complaint, Nov. 18, 1955—Order, Oct. 6, 1958

Order dismissing, for lack of jurisdiction, following the ruling of the Supreme Court of the United States in *Federal Trade Commission v. National Casualty Company* and *Federal Trade Commission v. The American Hospital and Life Insurance Company*, 357 U.S. 560, complaint charging an insurance company in Boston, Mass., with false advertising of its health and accident policies.

Mr. John W. Brookfield, Jr. for the Commission.

Gaston, Snow, Motley & Holt, by *Mr. Joseph P. Rooney* and *Mr. John B. Pierce, Jr.*, of Boston, Mass., and *Mr. Robert Watson*, of Washington, D.C., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding is one brought under the Federal Trade Commission Act as affected and amended by the McCarran-Ferguson Act, 15 U.S.C., §§1011–1015 inclusive, the complaint charging the respondent corporation, in substance, with having transmitted in interstate commerce certain alleged false, misleading and deceptive advertising concerning its individual health-and-accident insurance policies. Group health-and-accident insurance is not involved. The complaint is dismissed herein for lack of jurisdiction by the Commission over the subject-matter thereof, pursuant to the recent decision of the Supreme Court of the United States, relating to that subject.

The Supreme Court, in one *per curiam* opinion issued on June 30, 1958, decided two cases, entitled *Federal Trade Commission v. National Casualty Company* (No. 435) and *Federal Trade Commission v. The American Hospital and Life Insurance Company* (No. 436), 357 U.S. 560 (1958). The Supreme Court accepted jurisdiction of these cases on writs of certiorari from the Courts of Appeals for the Sixth and Fifth Circuits, respectively, to review their "interpretation of an important federal statute." It affirmed the judgment of each of such Circuits in setting aside the Commission's cease-and-desist orders against the said respondent insurers. In the course of its opinion, the Supreme Court