

Complaint

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IN THE MATTER OF
NEAPCO PRODUCTS, INC.

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

Docket 6891. Complaint, Sept. 17, 1957—Decision, Nov. 8, 1958

Consent order requiring a manufacturer of automotive products and supplies in Pottstown, Pa., to cease charging small independent wholesalers higher prices than it charged their heavier-buying independent competitors by means of its 2 percent to 10 percent rebate schedule based on total purchases, and by granting to group wholesalers rebates equal to 15 percent of net prices on aggregate purchases of the group while holding the independents to the 2 percent to 10 percent schedule.

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), 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. Respondent Neapco Products, Inc., is a corporation organized 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 Cross and South Streets, Pottstown, Pa.

PAR. 2. Respondent is now, and for several years has been, engaged in the business of the manufacture, sale and distribution of automotive products and supplies including universal joints and components, power takeoff universal joints and chassis parts. Respondent's total sales in 1956 exceeded \$2,200,000.00.

Said products and supplies are sold by the respondent for use, consumption or resale within the United States and the District of Columbia, and respondent causes said products and supplies to be shipped and transported from the State of location of its principal place of business to approximately 3000 purchasers thereof located in States other than the State wherein said shipment or transportation originated.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade and commerce in said products

and supplies among and between the States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business, has been and is now engaged in active and substantial competition with other sellers in manufacturing, selling, and distributing comparable automotive products and supplies in commerce. Many of the purchasers from the said sellers and many of the purchasers from the respondent are competitively engaged each with the other.

Among respondent's approximately 3000 customers are many who are members of organizations commonly known as buying groups and are sometimes known as group wholesalers. Other customers of respondent are known 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 products and supplies.

PAR. 4. Respondent, in the course and conduct of its business, has been and is now discriminating in price between different purchasers of its automotive products and supplies of like grade and quality by selling to some independent wholesalers at higher and less favorable prices than it sells to other independent wholesalers, or to wholesaler-members of buying groups, some of which are competitively engaged with the others in the resale of said products.

Prior to January 1955, respondent granted to all wholesalers a rebate on total purchases, equal to from 2% to 10% of net purchase price, relating only to the volume of merchandise purchased. Thus, some independent wholesalers purchasing less volume were charged higher and less favorable net prices than other independent wholesalers purchasing in great volume. Further, wholesaler-members of groups were permitted to aggregate purchases of the total group membership to obtain a higher percentage of rebate than was allowed individual independent wholesalers purchasing similar volumes.

From about January 1955 and continuing to the present time, respondent granted to group wholesalers rebates equal to 15% of net prices on all purchases. At the same time, respondent maintained the schedule of rebates to independent wholesalers equal to from 2% to 10% of net purchase price according to the volume of merchandise purchased.

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

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competition between and among respondent's independent wholesalers and between and among respondent's independent and group-member wholesalers, or with customers of either of them.

PAR. 6. The aforesaid acts and practices of respondent 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. Franklin A. Snyder for the Commission.

Halfpenny & Hahn, of Chicago, Ill., for respondent.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to 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, the Federal Trade Commission on September 17, 1957, issued and subsequently served its complaint in this proceeding against respondent Neapco Products, Inc., a corporation existing and doing business under and by virtue of the laws of the State of Delaware.

On September 22, 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 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

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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.

Respondent Neapco Products, Inc. is a corporation organized 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 Cross and South Streets, Pottstown, Pa.

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

ORDER

It is ordered, That respondent Neapco Products, 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 parts and supplies in commerce, as "commerce" is defined in the amended 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 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 8th day of November, 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
NORTHWEST AIR COLLEGE, INC., ET AL.

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

Docket 7091. Complaint, Mar. 20, 1958—Decision, Nov. 11, 1958

Order requiring two associated corporate sellers in Spokane and Seattle, Wash., of correspondence and residence courses in "Specialized Airlines Training" purporting to prepare enrollees for employment in commercial airline positions, to cease using deceptive employment offers and other misrepresentations concerning their schools, opportunities for students, etc., in advertising in newspapers and periodicals and through commissioned sales agents who followed up leads to interested prospects.

A similar order was consented to by two individual respondents, officers of the schools, on Sept. 25, 1958, *supra*, p. 463.

Mr. Ames W. Williams and Mr. John J. McNally for the Commission

No appearance for respondents.

INITIAL DECISION AS TO CORPORATE RESPONDENTS AND INDIVIDUAL
RESPONDENTS JAMES E. MURTHA AND EDWIN R. POSSENRIEDE
BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the respondents named herein with having violated the provisions of the Federal Trade Commission Act in certain particulars.

Respondents, other than John W. McBride and Anna M. Searle as to whom other appropriate disposition of this case has heretofore been made, were each and all duly served with a copy of the complaint and all other jurisdictional and other processes of the Commission but have failed and neglected to answer the complaint. Upon due notice of the time and place of the initial hearing set for 10:00 a.m. (local time), on August 27, 1958, in Room 262, Federal Trade Commission Building, Sixth and Pennsylvania Avenue, NW., Washington, D.C., by order dated August 6, 1958, and served upon each of said respondents in accordance with the rules of the Commission, the said respondents and each of them also failed to appear at said hearing, and, upon motion of counsel supporting the complaint, the default of answer and of appearance of each was taken and entered of record herein, and