

Decision

IN THE MATTER OF
THE EIS AUTOMOTIVE CORPORATIONORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(a) OF THE CLAYTON ACT

Docket 6764. Complaint, Apr. 4, 1957—Decision, Mar. 21, 1959

Order requiring a Middletown, Conn., manufacturer of automotive parts, including hydraulic brake parts and cables for automobiles, trucks, and trailers, to cease discriminating in price to the disadvantage of independent jobbers, by paying a so-called redistributorial discount or rebate to members of group buying organizations which were in reality devices for the collection of rebates, allowances, etc., from sellers on all purchases made by the jobber members.

Mr. William W. Rogal for the Commission.

Mr. Edward S. St. John, of New York, N.Y., for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is based upon a complaint charging the respondent The Eis Automotive Corporation, a corporation, with having discriminated in price in connection with its sale of automotive parts to competing purchasers in violation of Section 2(a) of the Clayton Act as amended by the Robinson-Patman Act (15 U.S.C.A., Sec. 13). After the closing of the taking of testimony in support of the allegations of the complaint, the respondent closed its case without offering an affirmative defense.

This proceeding is now before the undersigned hearing examiner for final consideration on the complaint, answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel. The hearing examiner has given consideration to the proposed findings and conclusions submitted by both parties, and all findings of fact and conclusions of law not hereinafter specifically found or concluded are herewith rejected, and the hearing examiner having considered the record herein, and being now duly advised in the premises, makes the following findings as to the facts, conclusions drawn therefrom, and order:

1. Respondent the Eis Automotive Corporation is a Connecticut corporation with its principal office and place of business located at North Main Street, Middletown, Conn. For several years last past respondent has been engaged in the manufacture

Decision

55 F.T.C.

and in the sale and distribution in interstate commerce of automotive parts, including hydraulic brake parts and cables for use on automobiles, trucks and trailers. Respondent sells its automotive parts to approximately 3,000 distributors located throughout the United States, who are sometimes known and referred to in the trade as automotive parts jobbers. These jobbers resell respondent's automotive parts to service or repair trade which is comprised of repair garages, automobile dealers, gas service stations and specialty brake shops and in some instances they resell to other jobbers. Respondent's total sales amount to approximately 6 million dollars annually.

2. During the times mentioned herein, the respondent has sold its automotive parts to jobber members of various group buying organizations. During the year 1956 the respondent made sales to members of the following group buying organizations:

- Ark-la-Tex Warehouse Distributors, Texarkana, Tex.
- Associate Jobber Warehouses, Attalla, Ala.
- Automotive Co-operative Association, Melrose, Mass.
- Automotive Jobbers, Inc., Dallas, Tex.
- Automotive Northern Warehouse, Minneapolis, Minn.
- Automotive Southwest, Inc., Dallas, Tex.
- Cornbelt Automotive Warehouses, Omaha, Neb.
- Middle Atlantic Warehouse, Buffalo, N.Y.
- Mid-South Distributors, Memphis, Tenn.
- Mid-West Warehouse Distributors, Kansas City, Mo.
- National Parts Warehouse, Atlanta, Ga.
- Northeast Automotive Associates, Allston, Mass.
- Northern Distributors, Cleveland, Ohio.
- Six-States Associates, Boston, Mass.
- Southern California Jobbers, Los Angeles, Calif.
- Southwest Automotive Distributors, Los Angeles, Calif.
- Southwestern Warehouse Distributors, Dallas, Tex.
- Warehouse Distributors, Inc., Atlanta, Ga.
- Wholesalers Auto Parts Warehouse, Charlotte, N.C.

3. The group buying organization was in reality a bookkeeping device for the collection of rebates, discounts and allowances received from sellers on purchases made by its jobber members. The jobber-customer of respondent who was a member of a group buying organization performed no service for the respondent other than that performed by respondent's regular jobber customers who are not members of group buying organizations. These jobber-members of group buying organizations like respondent's

regular jobber-customers resold respondent's automotive products to the service and repair trade with some sales to other jobbers. The jobber customers of respondent who are not members of group buying organizations will hereinafter be referred to as independent jobbers or purchasers.

4. The issues in this proceeding are limited to price discriminations between purchasers who are members of group buying organizations and independent purchasers, generally, who are in competition with such members of group buying organizations. These price discriminations arise out of the practice of respondent of allowing and paying a so-called redistribution discount or rebate to those jobber customers who resell subjobbers subject to approval of respondent, in addition to sales made to the service and repair trade.

5. The practice of paying rebates differed as between jobbers who were members of group buying organizations and independent jobbers. From 1948 to 1954 no rebate was paid to independent jobbers, except for a small number who were engaged in the resale of automotive parts to jobbers. During the period 1954 to 1956 the independent jobbers were paid a redistribution rebate on approved accounts of 5 percent off recommended jobber resale price list on sales to subjobbers but not to exceed 50 percent of all purchases of each independent jobber, provided said independent jobber purchases a minimum of \$1,200 per annum. In January 1956 the redistribution schedule was modified to provide for a rebate to independent jobbers of 7 percent off recommended jobber resale price list on sales to approved subjobbers not to exceed 50 percent of all purchases with a minimum of \$2,000 per annum.

6. The practice of the respondent as applied to jobbers who were members of group buying organizations was to allow such jobbers a discount or rebate without reference to redistribution on all purchases without any qualification. From 1948 to 1954 this rebate was 5 percent on brake cylinders and brake fluid, and 10 percent off distributors price list on all other items. In 1954 this rebate was changed to 5.5 percent off distributors price list on all products, and in January 1956 was increased to 7.8 percent off distributors price list on all products.

7. The rebate was granted to all members of the buying groups upon all purchases made by them. The group members who received this rebate were not required to sell to any other distributor, jobber or wholesaler, but were granted this rebate on

Decision

55 F.T.C.

their entire purchases, including parts resold to the service and repair trade in competition with the independent jobbers. The amount of discrimination in price is substantial as indicated by the following tabulation which lists the rebates granted to five typical groups, during 1954 and 1955.

Group	1954 Rebate	1955 Rebate
Six-States Associates	\$2,328.81	\$3,001.19
Warehouse Distributors, Inc.	4,170.16	6,196.03
Midwest Warehouse Distributors	1,425.38	1,401.07
Southern California Jobbers	1,713.69	2,905.05
Southwest Automotive Distributors	3,453.23	4,881.97

8. Illustrative of the monetary benefits derived by the group jobbers as opposed to the independent jobbers is the following tabulation compiled from figures found on Commission Exhibits 31, 32, 34, 35, and 37:

Comparison of sales and rebates to customers in specified metropolitan trading areas during year 1956.

Location	Customer type		Total sales	Rebate
	Member of buying groups	Independent distributors		
Massachusetts: Boston	Standard Auto Gear ¹		\$14,751	\$1,151
		Hunt-Marquardt ¹	1,213	95
		Brighton Automotive Corp.	1,278	
		Modern Auto Parts	2,717	
		Watertown Auto Parts	715	
		J. S. Auto Supply	472	
Fall River	William T. Manning ¹		5,219	407
		Shasets Auto Supply	4,710	43
Washington, D.C.	Phelps-Roberts Corp. ²		26,927	2,100
		Milnite Wheel & Brake Service ..	6,847	
		National Auto Service	10,055	
		Wright's Auto Parts	3,520	
		Auto Parts Machine	4,862	

¹ Member of Six-States Associates.

² Member of Warehouse Distributors, Inc.

9. The substantiality of the discriminations in price are clearly established by the record. All nonfavored jobbers who testified on the point disclosed total annual net profit percentages which were well under the percentage amount of the price discriminations enjoyed by their group jobber competitors. All of the nonfavored jobbers testified that the 2 percent cash discount allowed by their suppliers for prompt payment was of prime importance in the conduct of a successful business.

CONCLUSIONS

1. Respondent's so-called redistributinal rebates were not functional rebates as such. These rebates were allowed to independent jobbers only on 50 percent or less of their total purchases and then only if they purchased a minimum of from \$1,200 to \$2,000 yearly. These rebates were allowed purchasers who were members of group buying organizations regardless of whether the purchaser resold to other jobbers.

2. Respondent did not classify its customers by following real functional differences. Both independent jobbers and jobbers who were members of group buying organizations resold respondent's products to the service and repair trade, and in some instances to other jobbers. Independent jobbers were in competition with each other and with jobbers who were members of group buying organizations in the trade areas where they sold.

3. In following the pricing practices hereinabove described, respondent has discriminated in price by means of rebates allowed by it in the sale of its various automotive products and related items as between respondent's jobbers and competing group buying jobbers, and the effect of such discrimination may be to substantially lessen, injure or prevent competition between respondent's customers receiving the benefit of such discrimination and the customers who did not receive such discriminations, in violation of the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

4. The respondent in its proposed findings of facts has raised no issue of fact or law or made any defense of the price discriminations herein found, but instead has raised as an issue the scope of the order that might be issued in this proceeding. It is contended by the respondent that since the issues in this proceeding were limited to price discriminations arising from special rebates allowed purchasers who were members of group buying organizations any order issued should be so limited.

5. The right of the Commission to issue a broad order under the circumstances in this case has been fully adjudicated by the Supreme Court in *F.T.C. v. Ruberoid Co.* (343 U.S. 470). On the question of the issues of a broad order, the Court stated as follows:

* * * Orders of the Federal Trade Commission are not intended to impose criminal punishment or exact compensatory damages for past acts, but to prevent illegal practices in the future. In carrying out this function the Commission is not limited to prohibiting the illegal practice in the precise form

Decision

55 F.T.C.

in which it is found to have existed in the past. If the Commission is to attain the objectives Congress envisioned, it cannot be required to confine its road block to the narrow lane the transgressor has traveled; it must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity. * * *

6. The similarity of facts in the Ruberoid case (*supra*) with the facts in the present proceeding is readily apparent from the following excerpt from the opinion of the Court:

The roofing material customers of Ruberoid may be classified as wholesalers, retailers, and roofing contractors or applicators. The discriminations found by the Commission were in sales to retailers and applicators. The Commission held that there was insufficient evidence in the record to establish discrimination among wholesalers, as such. Ruberoid contends that the order should have been similarly limited to sales to retailers and applicators. But there was ample evidence that Ruberoid's classification of its customers did not follow real functional differences. Thus some purchasers which Ruberoid designated as "wholesalers" and to which Ruberoid allowed extra discounts in fact competed with other purchasers as applicators. And the Commission found that some purchasers operated as both wholesalers and applicators. So finding, the Commission disregarded these ambiguous labels, which might be used to cloak discriminatory discounts to favored customers, and stated its order in terms of "purchasers who in fact compete." Thus stated, we think the order is understandable, reasonably related to the facts shown by the evidence, and within the broad discretion which the Commission possesses in determining remedies.

ORDER

It is ordered, That respondent The Eis Automotive Corporation, 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 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

1473

Decision

21st day of March 1959, 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
HARTLEY LORD AND BRADFORD JEALOUS
TRADING AS LORD & JEALOUS

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS

Docket 7320. Complaint, Dec. 2, 1958—Decision, Mar. 21, 1959

Consent order requiring manufacturers in Norfolk, Mass., to cease violating the Wool Products Labeling Act by tagging and invoicing as 100% wool, woolen stocks which contained substantial quantities of reprocessed wool, and by failing to comply in other respects with labeling requirements of the Act.

Mr. Charles W. O'Connell for the Commission.

Respondents, *pro se*.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission on December 2, 1958, issued and subsequently served its complaint in this proceeding against the above-named respondents.

On January 28, 1959, there was submitted to the undersigned hearing examiner an agreement between respondents 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 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