

Complaint

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IN THE MATTER OF
AIRTEX PRODUCTS, INC.

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

Docket 6816. Complaint, June 11, 1957—Decision, May 12, 1959

Consent order requiring a Fairfield, Ill., manufacturer of automotive replacement parts, including fuel and water pumps, to cease violating Sec. 2(a) of the Clayton Act by such practices as allowing group wholesalers off-scale discounts or rebates totaling 18% of current list prices on all of their purchases while giving independent wholesale customers a maximum discount of 8% on the first \$1,500 of purchases in each year; and Placing *in camera* pertinent cost study material attached to the agreement.

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. Airtex Products, Inc., respondent herein, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 407 West Main Street, Fairfield, Ill.

PAR. 2. Respondent is engaged in the business of manufacturing and selling automotive replacement parts, including fuel and water pumps, and rebuilding and selling used automotive fuel pumps. Respondent's total sales in 1955 exceeded \$7,500,000.

Respondent manufactures and rebuilds said automotive replacement parts in its factory in Fairfield, Ill., and sells and ships such parts to more than one thousand automotive replacement parts wholesalers located throughout the United States and in the District of Columbia. Respondent in the sale of said 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 more than one thousand wholesaler customers are many who have banded together into or-

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ganizations commonly referred to as jobber 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 wholesalers who are competitively engaged each with the other in the resale of said products.

Respondent has effected said discriminations between independent wholesalers by allowing such purchasers non-retroactive discounts or rebates from its jobber list prices based upon total annual purchases, as shown by the following schedule:

	<i>Percent</i>
\$0 to \$1,500.....	8
\$1,500 and up.....	18

Through the operation of the described sales program those independent wholesalers whose total annual purchases from respondent are below \$1,500 are charged higher and less favorable net prices than are other competing independent wholesalers whose purchases from respondent exceed \$1,500.

Respondent has effected said discriminations between group wholesalers and all independent wholesalers by allowing group wholesalers off-scale discounts or rebates totaling 18% of current list prices on all of their purchases. The granting of the described 18% off-scale rebate or discount to group wholesalers on their full purchase volume discriminates against all of respondent's independent wholesaler customers who, in accordance with the above schedule, receive a maximum discount of 8% on the first \$1,500 of purchases in each year.

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

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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. William W. Rogal for the Commission.

Arvey, Hodes and Mantynband, of Chicago, Ill., by *Mr. Henry J. Shames*, for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with price discriminations in the sale of automotive replacement parts, in violation of Section 2(a) of the Clayton Act, as amended. An agreement has now been entered into by respondent and counsel supporting the complaint which provides, among other things, that respondent admits all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondent specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and 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.

The complaint charges two general classes of price discriminations: (1) discriminations between group wholesalers and independent wholesalers, and (2) discriminations among independent wholesalers. Regarding the latter charge, the agreement contains the following:

Counsel in support of the complaint has concluded that the price differential between independent wholesalers which is alleged to be unlawful in the first three subparagraphs of paragraph 4 of the complaint makes only due allowance for differences in the cost of selling and delivering to such customers. This conclusion by counsel in support of the complaint is based upon cost studies conducted by respondent and submitted for consideration after the issuance of the complaint. Therefore, this agreement is not based in any

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manner on this allegation of the complaint and it should not be used in interpreting the provisions of the order to cease and desist contained in this agreement. This above statement, however, should not be interpreted as excluding from the order price discriminations between independent wholesaler customers.

The cost study material pertinent to this matter is attached to this agreement as appendices A through J. It is requested that this material be placed *in camera*.

The hearing examiner having considered the agreement, including the cost study material attached thereto, and the proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Airtex Products, Inc., is a corporation existing and doing business under the laws of the State of Illinois, with its office and principal place of business located at 407 West Main Street, Fairfield, Ill.

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

ORDER

It is ordered, That respondent Airtex 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 replacement parts 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 automotive replacement parts 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 PLACING MATERIAL
IN CAMERA AND 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 12th day of May 1959, become the decision of the Commission; and accordingly:

It is ordered, That the cost study material pertinent to this

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matter attached to the agreement and identified as appendices A through J be, and it hereby is, placed *in camera*.

It is further ordered, That the above-named respondent 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
THE FIRESTONE TIRE & RUBBER COMPANYORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(a) OF THE CLAYTON ACT*Docket 7141. Complaint, May 7, 1958—Decision, May 12, 1959*

Order requiring a manufacturer with nationwide distribution of its own tires and tubes and other related and non-related items, to cease granting to a favored few—actually less than 50 of its 12,000 to 14,000 direct franchise dealers, whom it classified as “warehouse dealers” and paid a commission for warehousing services based on the net prices of all tires and tubes warehoused and distributed—commissions on merchandise resold for their own account as well as preferential discounts, freight payments, and consignment shipments made without charge, in competition with other direct franchise dealers who were not accorded such benefits.

Mr. James S. Kelaher and Mr. Thomas P. Luscher supporting the complaint.

Gravelle, Whitlock & Markey, of Washington, D.C., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

Commission complaint was issued May 7, 1958, charging respondent with the violation of Section 2(a) of the Clayton Act as amended. After service of the complaint and the filing of answer thereto, counsel on February 20, 1959, agreed upon a stipulation in lieu of evidence. This stipulation includes certain exhibits that are referred to as Exhibits A, B, C and D.

The stipulation and the exhibits were by order of the hearing examiner, dated March 3, 1959, made a part of the record in this proceeding. Respondent's counsel, by motion dated February 26, 1959, requested that said Exhibits C and D be placed in a confidential file and not be made available for inspection by the public. The reason given for the request was that the information contained in said exhibits is of a confidential nature and considered a trade secret. Counsel supporting the complaint did not oppose this motion. Accordingly the order of March 3, 1959, directed that Exhibits C and D to the stipulation be kept confidential, safe from disclosure to persons other than the hearing examiner, members of the Commission and its staff.

On February 25, 1959 counsel supporting the complaint filed