

hereof shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF
AUTOMOTIVE SUPPLY COMPANY DOING BUSINESS AS
CENTRAL WAREHOUSE COMPANY, ETC.

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

Docket 7142. Complaint, May 7, 1958—Decision, Aug. 29, 1959

Consent order requiring a wholesaler with main office in Altoona, Pa., and some 16 branches in Pennsylvania, West Virginia, and Arizona—an important outlet of tires and tubes, automotive products, household appliances, and home and garden and recreation supplies, with annual sales approximating \$16,000,000—to cease violating Sec. 2(f) of the Clayton Act by exerting the influence of its strong buying power on suppliers and demanding and receiving from them, special and substantial rebates, allowances, commissions, and other forms of substantial price reductions—ostensibly as warehousing and distribution services—not offered or granted to its competitors, and replacing suppliers not acceding to such demands by others who could be induced to grant the price concessions demanded.

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 (f) 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. Respondent Automotive Supply Company, hereinafter sometimes referred to as Automotive, is a corporation organized, existing and doing business since June 1946 under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 1917 Margaret Avenue, Altoona, Pennsylvania.

Respondent, since June 1946, has also engaged in business under the trade name and style of Central Warehouse Company, hereinafter sometimes referred to as Central Warehouse, which is registered under the Fictitious Names Law of the State of Pennsylvania, and is located at the same mailing address as respondent, 1917 Margaret Avenue, Altoona, Pennsylvania. Central Warehouse's physical premises are a part of, and are indistinguishable from, respondent's. No separate records of assets, liabilities, income, expenses, or other financial or operating data, are separately maintained for Central Warehouse, and all such records and data are integrated with those of respondent, with the exception of certain inventory and stock records, which are maintained by an employee of respondent. At all times herein mentioned, Central Warehouse has been maintained, managed, and controlled by and for respondent.

Respondent, since about December 1946, has also engaged in business under the trade name and style of Complete Auto and Home Supply Company, Division of Automotive Supply Company, hereinafter sometimes referred to as Complete, with its principal office and place of business located at 530 North Stone Avenue, Tucson, Arizona. Since its inception in or about December 1946, Complete's operations have been integrated with Automotive's, and Complete now is, and at all times herein mentioned has been, maintained, managed, controlled and operated by and for respondent.

PAR. 2. Respondent is now, and for many years past has been, engaged in the purchase, resale and distribution, at the wholesale level, of tires and tubes and related items, hereinafter referred to as "tires and tubes"; a line of products which includes, among other products, household appliances, home and garden supplies, recreation supplies and automotive supplies, hereinafter referred to as "Home and Auto Supplies"; and numerous other automotive parts, equipment and accessories and other products, hereinafter referred to as "automotive and other products."

Complaint

56 F.T.C.

The purchase, resale and distribution of the aforesaid products and supplies is effected through (1) the principal offices and places of business of Automotive, either directly or through Central Warehouse, and Complete; (2) the sixteen branches of Automotive, located as follows: Barnesboro, Bedford, Chambersburg, Ebensburg, Johnstown, Philipsburg, Shippensburg, State College, Tyrone, Somerset, Harrisburg, Lock Haven, Selinsgrove, Williamsport, all in the State of Pennsylvania, and Kingwood and Morgantown, in the State of West Virginia; and (3) the seven branches of Complete, located as follows: Casa Grande, Chandler, Coolidge, Douglas, Mesa, Nogales, and Phoenix, all in the State of Arizona.

During all the times herein mentioned Central Warehouse has served little purposes other than as a conduit or bookkeeping device through which respondent purchases certain of its products and supplies for sale and distribution at the wholesale level through respondent's principal place of business and branches in the States of Pennsylvania and West Virginia, as heretofore described.

Respondent's total sales of all products amount to approximately \$10,000,000. annually.

PAR. 3. Respondent purchases the various products which it distributes and resells from numerous manufacturers or other suppliers thereof located throughout the United States, some, but not all, of whom are the following: The Firestone Tire and Rubber Company, Akron, Ohio; Willard Storage Battery Division of Electric Storage Battery Company, Cleveland, Ohio; Dayton Rubber Company, Dayton, Ohio; Purolator Products, Inc., Rahway, New Jersey; Simoniz Company, Chicago, Illinois, and Wilkening Manufacturing Company, Philadelphia, Pennsylvania, hereinafter respectively referred to as Firestone, Willard, Dayton, Purolator, Simoniz, and Wilkening.

There is and has been at all times mentioned herein a continuous course of trade and commerce in tires and tubes, Home and Auto Supplies, and automotive and other products, across State lines, between the factories, warehouses, or other points of origin of the respective suppliers thereof and respondent's principal offices and places of business, or the branches thereof. Said products are purchased by respondent and others for use, consumption, or resale within the United States and the District of Columbia.

PAR. 4. Respondent is now and for many years past has been one of the largest, if not the largest, of the purchasers of tires and tubes, and a substantial purchaser of Home and Auto Supplies, from Firestone. For example, in 1955 respondent's purchases of tires and tubes from Firestone amounted to approximately \$2,400,-

000., and its purchases of Home and Auto Supplies from Firestone amounted to approximately \$420,000. During the times herein mentioned, respondent has been one of the largest, if not the largest, of the purchasers, sellers and distributors of tires and tubes, Home and Auto Supplies, and automotive and other products at the wholesale level within the various trading areas in the States of Pennsylvania, West Virginia and Arizona wherein it is engaged in business, with total active accounts in excess of 6,000. As such, respondent is an important outlet to suppliers of such products and supplies.

In the course and conduct of its business, as aforesaid, respondent is now, and during the times herein mentioned has been, in substantial competition with other corporations, partnerships, individuals and firms, in the purchase, resale and distribution of said products and supplies at the wholesale level to automobile dealers, service stations, garages, retail stores, fleet operators, and others. Many of respondent's competitors also purchase products and supplies of like grade and quality from Firestone and other of respondent's suppliers.

Respondent's suppliers are now and during the times herein mentioned have been in active competition with other suppliers of similar products and supplies within the various States of the United States and in the District of Columbia.

PAR. 5. Respondent, in the course and conduct of its business, as above described, is now and has been for many years past, knowingly exerting the influence of its strong bargaining power on the suppliers hereinbefore described and others and has knowingly demanded and received from them, or some of them, special and substantial rebates, allowances, commissions, discounts, terms and conditions of sale, and other forms of substantial price reductions, direct and indirect, which are not offered or granted by said suppliers on goods of like grade and quality to other of their purchasers, many of whom are competitively engaged with respondent in the sale and distribution of such products within the various trading areas wherein respondent is engaged in business. Suppliers not acceding to such demands are usually replaced, or threatened with replacement, as sources of supply for the commodities concerned and such business is, or may be, closed to them in favor of such suppliers as can be and are induced to grant the aforesaid substantial and special price concessions so demanded.

PAR. 6. The discriminations in price knowingly induced or received by respondent, referred to in paragraph 5 hereof, now are and have been for many years past effected by numerous ways and

means, some, but not all, of which are more particularly described as follows:

1. Respondent, by knowingly representing that Automotive, or Central Warehouse, or Complete, is rendering bona fide warehousing and distribution services for suppliers in the distribution of their products to other purchasers from said suppliers, has entered into agreements, contracts, or understandings, either written or oral, with said suppliers, whereby respondent is now and has been knowingly receiving from them commissions, discounts, allowances, or other forms of compensation, ostensibly for such services rendered said suppliers, when in fact substantially all products and supplies so purchased by, or consigned to, Automotive, or Central Warehouse, or Complete, are now and have been for many years past purchased by respondent for resale by it, in many instances in competition with the aforesaid other purchasers from said suppliers, through respondent's various outlets in the States of Pennsylvania, West Virginia and Arizona.

Typical of the warehouse or distribution commissions, discounts, allowances, or other forms of similar compensation knowingly induced or received by respondent on purchases by it in the manner aforesaid are the following:

(a) From Firestone on tires and tubes, and from Willard, Puro-lator, Simoniz, and Dayton on automotive and other products, respondent, through Central Warehouse, is now and has been knowingly inducing or receiving such warehouse or distribution compensation in the amounts of 5% 8%, 9.1% 10% and 15%, respectively;

(b) From Firestone on Home and Auto Supplies, and from Wilkening on automotive and other products, respondent, both directly and through Complete, is now and has been knowingly inducing or receiving such warehouse or distribution compensation in the amounts of 5% and up to 28%, respectively;

(c) From Firestone on tires and tubes, respondent, through Complete, is now and has been knowingly inducing or receiving such warehouse or distribution compensation in the amount of 5%.

In 1955 the total amount of the 5% warehouse or distribution commission or allowance knowingly induced or received by respondent from Firestone, in the manner above described, amounted to approximately \$120,000 on tires and tubes, and approximately \$21,000 on Home and Auto Supplies.

2. By means of the inducements and representations heretofore described, respondent has knowingly induced Firestone to arbitrarily classify it as a "warehouse dealer," whereby respondent, directly

or indirectly, is now and has been knowingly receiving special rebates, allowances, commissions, discounts, terms and conditions of sale, and other forms of price reductions, direct and indirect, on tires and tubes purchased from Firestone over and above those offered or granted by Firestone to other of its purchasers on goods of like grade and quality. Some, but not all, of such special price concessions are as follows:

(a) The 5% warehouse or distribution commission or allowance as heretofore described.

(b) Special terms of sale on consigned stocks of merchandise, whereby respondent not only is consigned stocks without charge but, in addition thereto, receives the 5% warehouse or distribution commission or allowance as heretofore described, whereas stocks consigned to other purchasers by Firestone are subject to a "service charge" at the rate of 5% per annum.

(c) A 3% discount, designated "truck or carload discount" but received on all purchases by respondent regardless of size of individual quantity shipments, whereas a similar discount is only granted by Firestone to other purchasers on a single quantity shipment basis and in accordance with other stated conditions and terms of sale.

(d) Special terms of sale on certain tube types whereby respondent receives the maximum single lot quantity discounts available on all purchases thereof regardless of size of individual quantity shipments, whereas such discounts, which range from 5% to 20 plus 7½% on some tube types, and from 3% to 12½% on other tube types, are only granted by Firestone to other purchasers on the basis of single lot quantity shipments and in accordance with other stated conditions and terms of sale.

(e) The prepayment or allowance of freight costs on all shipments of goods, regardless of size, from Firestone's factories or warehouses to respondent's various outlets, including direct shipments to respondent's branches, whereas other purchasers are only granted freight allowances or prepayments by Firestone on shipments by it from its factories or warehouses to one destination only, and only on a minimum single order shipment basis and in accordance with other stated conditions and terms of sale.

3. Respondent, by knowingly representing that Automotive, or Central Warehouse, or Complete, is rendering bona fide warehousing and distribution services in the manner heretofore described, is now and has been knowingly inducing its suppliers, or some of them, to offer and sell their products and supplies at lower list or base prices to it, either directly or indirectly, than said

suppliers would offer or sell their products and supplies to respondent without such representations and inducements.

The warehouse or distribution commissions, discounts, allowances, or other forms of similar compensation, and the special rebates, allowances, commissions, discounts, terms and conditions of sale, and other forms of price reductions, knowingly induced or received by respondent on purchases by it, directly or indirectly, of tires and tubes, Home and Auto Supplies, and automotive and other products, result, either directly or indirectly in reducing prices charged respondent to substantially lower amounts, on goods of like grade and quality, than respondent's suppliers charge other of their purchasers, many of whom compete with respondent in the sale and distribution of such products and supplies within the various trading areas wherein respondent is engaged in business.

PAR. 7. Respondent has induced or received from its suppliers, in the manner aforesaid, favorable prices, rebates, allowances, commissions, discounts, terms and conditions of sale, and other forms of substantial price reductions, which it knew or should have known constituted discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

PAR. 8. The effect of the knowing inducement or receipt by respondent of the discriminations in price as above alleged has been and may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and respondent's suppliers are respectively engaged; or to injure, destroy or prevent competition with respondent, or with respondent's suppliers.

PAR. 9. The aforesaid alleged acts and practices of respondent, in knowingly inducing or receiving discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, are in violation of subsection (f) of Section 2 of said Act.

Mr. James S. Kelaher for the Commission.

Mr. Philip B. Perlman and *Mr. Ellis Lyons* of *Perlman, Lyons & Browning*, of Washington, D.C.; and *Mr. Emanuel S. Leopold* of *Schceline & Leopold*, of Altoona, Pa., for respondent.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On May 7, 1958, the Federal Trade Commission issued its complaint against the above-named respondent charging it with violating the provisions of subsection (f) of Section 2 of the Clayton Act,

as amended, in connection with the purchase, resale and distribution, at the wholesale level, of tires and tubes and related items. On June 15, 1959, the respondent and its attorney and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with Section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondent admits the jurisdictional facts alleged in the complaint and agrees, among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint. The hearing examiner finds that the content of the said agreement meets all the requirements of Section 3.25(b) of the Rules of Practice.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Section 3.21 of the Rules of Practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent, Automotive Supply Company, is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1917 Margaret Avenue, in the City of Altoona, State of Pennsylvania.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Clayton Act, as amended.

ORDER

It is ordered, That respondent, Automotive Supply Company, a corporation, and its officers, representatives, agents and employees, directly or through Central Warehouse Company or Complete Auto

and Home Supply Company, Division of Automotive Supply Company, or through any corporate or other device, in or in connection with the offering to purchase or purchase of tires and tubes and related items, and other automotive products and supplies in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

Knowingly inducing, receiving or accepting any discrimination in the price of such products and supplies by directly or indirectly inducing, receiving or accepting from any seller a net price which respondent knew or should have known to be below the net price at which said products and supplies of like grade and quality are being sold by such seller to other customers, where respondent is competing with other customers of the seller.

For the purpose of determining "net price" as used in this order, there shall be taken into account rebates, allowances, commissions, discounts, terms and conditions of sale, or other forms of direct or indirect price reductions, by which net prices are effected.

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 29th day of August, 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

I. N. AGRONS TRADING AS I. N. AGRONS FURS

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