
IN THE MATTER OF
NORTHEAST CAPITAL CORPORATION ET AL.

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

Docket 7727. Complaint, Jan. 6, 1960—Decision, Aug. 12, 1960

Consent order requiring two associated corporations in Cincinnati, Ohio, to cease discriminating among their competing customers in the prices they charged for automotive safety parts and supplies by such practices as granting volume discounts to members of group buying associations on the basis of the total volume purchases of all, and selling the same quality

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merchandise under a different trade name to members of the National Automotive Parts Association at lower prices than to competitors of NAPA; and requiring one of them to cease conspiring with many of its distributors to fix resale prices.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondents named in the caption hereof and hereinafter more particularly designated and described, have violated, and are now violating, the provisions of subsection (a), Section 2, of the Clayton Act, as amended (U.S.C., Title 15, Section 13), and Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent Northeast Capital Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 375 Park Avenue, New York, N.Y.

Respondent K-D Lamp Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 19 Elm Street, Cincinnati, Ohio.

Respondent Vehicle Products Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 19 Elm Street, Cincinnati, Ohio.

Respondent K-D Lamp Company is a wholly owned subsidiary corporation of respondent Northeast Capital Corporation. Respondent Vehicle Products Company is a wholly owned subsidiary corporation of respondent K-D Lamp Company. Respondent Northeast Capital Corporation formulates, directs and controls the policies, acts and practices of both Vehicle Products Company and K-D Lamp Company, including the acts and practices hereinafter alleged.

PAR. 2. Respondent Northeast Capital Corporation is now, and for some years last past has been, engaged in the manufacture, sale and distribution of automotive safety parts and supplies to different purchasers of the same located in various States of the United States and in the District of Columbia. Said products and supplies are sold by the respondent Northeast Capital Corporation through its two subsidiary corporations, respondents K-D Lamp Company and

Vehicle Products Company. Said products and supplies are sold by respondents for use, consumption or resale within the United States and the District of Columbia, and respondents cause said products and supplies, so sold, to be shipped and transported from the State or States wherein they are manufactured to the purchasers thereof located in States other than the State or States wherein said products are manufactured. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce of said products and supplies among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondents, in the course and conduct of their business, as aforesaid, are now, and for some time past have been, engaged in active and substantial competition with other corporations, firms and individuals manufacturing, selling and distributing comparable automotive products and supplies in commerce. Many of the purchasers of respondents' products are competitively engaged with each other.

PAR. 4. Respondents, in the course and conduct of their business, as aforesaid, are now and for the past several years, have been, directly or indirectly, discriminating in price between many of the aforesaid purchasers of their automotive products and supplies of like grade and quality. Respondents' methods of discriminating in price on goods of like grade and quality have taken place through various means.

Respondent K-D Lamp Company has discriminated in price on goods of like grade and quality manufactured by its parent, Northeast Capital Corporation, in that it grants volume discounts to members of group-buying associations. Said discounts are granted on the basis of the total volume purchases of the members of each of these various associations. A great number of the individual members of the associations could not, by their individual purchases, be entitled to the various discounts so granted. Respondents do not grant like discounts to competitors of various of the members of the group-buying associations, even though the volume of purchases of these individual purchasers, competing with group-buying members, in many instances is equal to or greater than the volume of the group-buying members.

Respondent Vehicle Products Company sells under the trade name "Visall" the exact quality merchandise as is sold by the K-D Lamp Company under the trade name "K-D". These products, as are the products carrying the trade name K-D, are sold at the warehouse distributive level. "Visall" products are sold to members of the National Automotive Parts Association. The prices at which these products carrying the name "Visall" are sold are substantially lower

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than the prices at which products carrying the name "K-D" (and sold by the K-D Lamp Company) are sold to competitors of the National Automotive Parts Association. Respondents, thus, have discriminated in price in the sale of goods of like grade and quality to competing purchasers.

PAR. 5. The effect of respondents' aforesaid discriminations in price between different purchasers of their automotive products and supplies of like grade and quality, sold in the manner and method aforesaid, may be to substantially lessen competition or tend to create a monopoly in the lines of commerce in which respondents and the aforesaid purchasers are engaged, or to injure, destroy or prevent competition with said respondents and their competitors, between said favored purchasers of respondents who receive discounts and unfavored purchasers who do not, or with customers of either of them.

PAR. 6. The aforesaid acts and practices of respondents constitute violations of 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).

COUNT II

PAR. 7. The allegations of paragraphs 1 through 3 of Count I of this complaint are hereby adopted and incorporated in this Count by reference and made a part hereof the same as if they were repeated here verbatim, insofar as they relate to respondents Northeast Capital Corporation and K-D Lamp Company.

PAR. 8. In the course and conduct of its business, respondent Northeast Capital Corporation has, through its subsidiary corporation, K-D Lamp Company, conspired with many of the distributors of K-D Lamp Company, individually, to fix resale prices of products sold by respondent Northeast Capital Corporation through respondent K-D Lamp Company to these distributors, through various agreements between K-D Lamp Company and these same distributors wherein the price at which these distributors are to resell products is established and fixed. These agreements hinder and restrain price competition, as K-D Lamp Company itself is engaged in the sale of its products at the same level as, and in competition with, its distributors. Thus, respondents Northeast Capital Corporation and K-D Lamp Company have fixed resale prices to be charged by the distributors of K-D Lamp Company by prior agreement.

PAR. 9. The above-described course of action, as outlined in paragraph 8, between respondents Northeast Capital Corporation, K-D Lamp Company and their various distributors, are all to the preju-

dice and injury of the public and constitute unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Mr. Cecil G. Miles supporting the complaint.

Mr. Milton R. Wessel, of *Kaye, Scholer, Fierman, Hays & Handler*, of New York, N.Y., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

The Federal Trade Commission issued its complaint in this proceeding on January 6, 1960, in which it alleged that respondents had violated Section 2(a) of the Clayton Act as Amended by the Robinson-Patman Act (U.S.C. Title 15, Sec. 13) by discriminating in price on automotive safety equipment of like grade and quality, manufactured and sold by respondents in interstate commerce. A true and correct copy of the complaint was duly served upon respondents as required by law. Thereafter respondents appeared by counsel and, after several prehearing conferences, entered into an agreement which is represented to be dispositive of all the issues involved in this proceeding. The agreement was received by the hearing examiner on June 10, 1960. It is accompanied by two affidavits of Raymond P. Vogele, President of K-D Lamp Company, and Vehicle Products Company. One affidavit is dated May 27, 1960, and one is dated March 22, 1960.

In and by said agreement the parties 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 the allegations in the complaint. In the agreement respondents K-D Lamp Company and Vehicle Products Company waive (a) any further procedural steps before the hearing examiner and the Commission; (b) the making of findings of fact or conclusions of law; and (c) all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The agreement dated April 6, 1960, containing consent order to cease and desist has been executed on behalf of respondents K-D Lamp Company and Vehicle Products Company by Raymond P. Vogele, president. It has been signed by Milton R. Wessel, counsel for respondents, by Cecil G. Miles, counsel supporting the complaint, and has been approved by the Director and the Associate Director of the Bureau of Litigation of the Federal Trade Commission.

The parties agree: That (1) the record on which the initial decision and the decision of the Commission shall be based shall consist

solely of the complaint, the agreement, and the affidavit of Raymond P. Voegelé which accompanies it; (2) the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; (3) the agreement and cease and desist order issued pursuant thereto shall not be construed to prohibit respondent K-D Lamp Company from availing itself of its rights, if any, under the Act of Congress of August 17, 1937, commonly known as the Miller-Tydings Act, or the Act of Congress of July 14, 1952, commonly known as the McGuire Act; the order to cease and desist provided for in the agreement may be entered without further notice to respondents and, when so entered, it shall have the same force and effect as though it were entered after a full hearing. Said cease and desist order may be altered, modified, or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

The agreement containing consent order to cease and desist, upon which this initial decision is predicated specifically provides that it shall not preclude a further investigation and issuance of a complaint if such should be indicated, based upon respondents' sales of replacement parts to original equipment manufacturers.

This proceeding having now come on for final consideration upon the complaint and the aforementioned agreement containing consent order to cease and desist, and it appearing that the order provided for in said agreement provides for appropriate disposition of the gravamen of the complaint, and is dispositive of this proceeding as to all pertinent parties, the undersigned hearing examiner hereby accepts the aforementioned agreement containing consent order to cease and desist, and orders said agreement filed at the time this decision becomes the decision of the Federal Trade Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The hearing examiner makes the following

FINDINGS

1. The complaint filed herein states a good cause of action and this proceeding is in the public interest.
2. The Federal Trade Commission has jurisdiction over the subject matter and over the parties to this proceeding.
3. The acceptance of the agreement containing consent order to cease and desist is in the public interest.
4. Northeast Capital Corporation, respondent, went out of existence as a separate corporate entity on October 1, 1959. Northeast Capital Corporation had not manufactured automotive safety parts and supplies, nor engaged in any other activity referred to in the

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Agreement Containing Consent Order to Cease and Desist since June 30, 1959.

5. The DUPLAN Corporation has been certified by Raymond P. Vogele in an affidavit dated May 27, 1960, to be the owner of all of the outstanding capital stock of K-D Lamp Company and Vehicle Products Company. Raymond P. Vogele, president of both of the said companies and a director of The DUPLAN Corporation has further certified that the DuPlan Corporation is not engaged in the automotive accessory business other than through its ownership of the outstanding capital stock of K-D Lamp Company and Vehicle Products Company, and has no intention of going into the automotive accessory business.

6. Respondent Vehicle Products Company sells automotive safety parts to warehouse distributor members of the National Automotive Parts Association under the private brand of the National Automotive Parts Association, at a price that has ranged from 1% to 2% lower than the price at which respondent K-D Lamp Company has sold K-D branded products to K-D Lamp Company's own independent warehouse distributors. The parties in their agreement state that at least a large part of these price differentials can be cost justified, as set forth in the affidavit of Raymond P. Vogele, dated March 22, 1960, accompanying the agreement. An additional non-cost-justified price difference of 1% or less between privately branded automotive safety products sold to members of the National Automotive Parts Association and K-D branded products sold to independent warehouse distributors, as applied only to automotive safety products, appears not to constitute an unlawful price discrimination under Section 2(a) of the Clayton Act as amended, nor violative of the cease and desist order hereinafter entered.

7. Respondent K-D Lamp Company is a corporation existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1910 Elm Street, in the City of Cincinnati, State of Ohio. (This was incorrectly shown in the complaint as being located at 19 Elm Street, Cincinnati, Ohio.)

8. Respondent Vehicle Products Company is a corporation existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1910 Elm Street, Cincinnati, Ohio. (This address was also incorrectly shown in the complaint as 19 Elm Street.)

Now therefore,

It is ordered, That respondents K-D Lamp Company, a corporation, and its officers, Vehicle Products Company, a corporation, and its officers, and their representatives, agents and employees, directly

or through any corporate or other device, in connection with the sale to the jobber trade for replacement purposes of automotive safety 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 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 or distribution of respondents' products.

It is further ordered, That the term "purchaser" as used in this order shall include any purchaser buying directly or indirectly from respondents by means of group buying or any related device, but shall not be construed in this proceeding to include original equipment manufacturers purchasing automotive parts from respondents for replacement use or sale.

It is further ordered, That respondent K-D Lamp Company, a corporation, and its officers, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale and distribution of automotive safety parts and supplies in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Entering into, continuing, cooperating in, or carrying out any planned common course of action, agreement, understanding, combination, or conspiracy with distributors of said respondent or others engaged in the resale of respondent's products, or with any other third person, whereby the resale price of respondent's products is established, fixed, or agreed upon.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Northeast Capital Corporation as a respondent herein.

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 12th day of August 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents K-D Lamp Company, and Vehicle Products Company, 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.

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IN THE MATTER OF
S. POLLACK, INC., ET AL.

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

Docket 7779. Complaint, Feb. 9, 1960—Decision, Aug. 17, 1960

Consent order requiring furriers in Pottsville, Pa., to cease violating the Fur Products Labeling Act by using fictitious prices in advertising and labeling fur products; failing to set forth the term "Persian Lamb" on labels and invoices and the term "Dyed Mouton-processed Lamb" on invoices as required; representing falsely in advertising, by the word "Factory" and picturizations, that they owned a factory where they manufactured and remodeled fur products; and failing in other respects to comply with provisions of the Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that S. Pollack, Inc., a corporation, and Harold S. Pollack and Bernard S. Pollack, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent S. Pollack, Inc. is a corporation organized, 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 22 North Center Street, Pottsville, Pa.

Individual respondents Harold S. Pollack and Bernard S. Pollack are president and secretary-treasurer respectively of the said corporate respondent and control, formulate and direct the acts, practices and policies of the said corporate respondent. Their office and principal place of business is the same as that of the corporate respondent.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce of fur products and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been