

Complaint

IN THE MATTER OF

SOUTHWESTERN WAREHOUSE DISTRIBUTORS, INC.
ET AL.

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

Docket 7686. Complaint, Dec. 9, 1959—Decision, Sept. 14, 1960

Consent order requiring a corporate buying group and its 33 members, jobbers Kansas, Louisiana, New Mexico, Oklahoma, and Texas, to cease violating Sec. 2(f) of the Clayton Act by demanding and receiving from suppliers of automotive products and supplies in the States of Arkansas, Colorado, discriminatory prices on their individual purchases on the basis of their aggregate group purchasing power—in which connection they usually replaced suppliers not acceding to their demands by others who did.

COMPLAINT ¹

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 (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 Southwestern Warehouse Distributors, Inc., hereinafter sometimes referred to as respondent SWDI, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 9008 Sovereign Row, Dallas, Tex.

Respondent SWDI, although utilizing corporate form, is a membership organization, organized, maintained, managed, controlled, and operated by and for its members. The membership of respondent SWDI is composed of corporations, partnerships, and individuals whose business consists of the jobbing of automotive products and supplies.

Respondent SWDI, as constituted and operated, is known and referred to in the trade as a buying group.

PAR. 2. The following respondent corporations and individuals, sometimes hereinafter referred to as respondent jobbers, constitute respondent SWDI:

Respondent Aicklen Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the

¹ Complaint was dismissed against Beaumont Auto Parts, Inc., on May 26, 1960.

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laws of the State of Louisiana, with its office and principal place of business located at 748 Baronne Street, New Orleans, La.

Respondent Paul Dickinson is a sole proprietor doing business under the firm name and style of Auto Electric Sales & Service Company, with his office and principal place of business located at 521 West Main Street, Ardmore, Okla.

Respondents James N. Fomby, Sr., James N. Fomby, Jr., and Ray S. Fomby are copartners doing business under the firm name and style of Automotive Supply Company, a partnership with their office and principal place of business located at 219 Tenth Street, Alexandria, La.

Respondents D. L. Naylor and Mrs. A. D. Tennyson are copartners doing business under the firm name and style of Auto Spring & Supply Company, a partnership with their office and principal place of business located at 500 Ohio Avenue, Wichita Falls, Tex.

Respondent Beaumont Auto Parts, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 945 Park Street, Beaumont, Tex.

Respondent Kirby K. Kennedy is a sole proprietor doing business under the firm name and style of Capital Auto Supply Company, with his office and principal place of business located at 333 Hancock Street, Santa Fe, N. Mex.

Respondent Car Parts Depot, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 211 N. Cotton Street, El Paso, Tex.

Respondent Chester A. Latcham, Jr. is a sole proprietor doing business under the firm name and style of Colorado Jobbers Supply Company, with his office and principal place of business located at 875 Broadway Street, Denver, Colo.

Respondent Combs Automotive Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 104 Military Street, Dodge City, Kans.

Respondent Guinn C. Cross is a sole proprietor doing business under the firm name and style of Cross-Allen Company, with his office and principal place of business located at 310 E. 4th Street, Austin, Tex.

Respondent Five-Fifty-Five, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Arkansas, with its office and principal place of business located at 711 W. 8th Street, Little Rock, Ark.

Respondent Hanna-Gray Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Arkansas, with its office and principal place of business located at 55 South 9th Street, Fort Smith, Ark.

Respondents Mrs. Blanche Jarvis, Jack B. Jarvis, Robert H. Jarvis and Lawrence F. Jarvis are copartners doing business under the firm name and style of Jarvis Auto Supply, a partnership with their office and principal place of business located at 701 Main Street, Winfield, Kans.

Respondent Johnson Bros. Auto Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 117 S. St. Francis Street, Wichita, Kans.

Respondent Lake Auto Parts, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 1103 Ryan Street, Lake Charles, La.

Respondents J. C. Landers, Sr., J. C. Landers, Jr., and Jack M. Landers are copartners doing business under the firm name and style of Landers, a partnership with their office and principal place of business located at 63 N. Chadbourne Street, San Angelo, Tex.

Respondent Harry Lane Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 322 N. Ash Street, McPherson, Kans.

Respondent Joseph F. Meyer Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 802 Franklin Street, Houston, Tex.

Respondent Motor Equipment, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Mexico, with its office and principal place of business located at 100 Marquette Avenue NE., Albuquerque, N. Mex.

Respondent Mountjoy Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 512 Fifth Street, San Antonio, Tex.

Respondent The Jno. Muller Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 301 Taylor Street, Fort Worth, Tex.

Respondent Nash & Cotton, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the

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State of Texas, with its office and principal place of business located at 1818 Avenue C, Galveston, Tex.

Respondent Neumeyer Motor Parts, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1602 Milam Street, Houston, Tex.

Respondent Joe Owens is a sole proprietor doing business under the firm name and style of Owens Supply Company, with his office and principal place of business located at 701 N. Independence Street, Enid, Okla.

Respondent Arthur J. Reynolds is a sole proprietor doing business under the firm name and style of Reynolds Automotive Supply, with his office and principal place of business located at 516 W. 6th Street, Texarkana, Tex.

Respondent Rigney Auto Parts, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1402 Texas Avenue, Lubbock, Tex.

Respondent Robertson & King Motor Supply, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1845 Levee Street, Dallas, Tex.

Respondent 688 Parts Service, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 1440 Government Street, Baton Rouge, La.

Respondent Smyth Auto Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 206 Taylor Street, Amarillo, Tex.

Respondent Carl Fred Winston is a sole proprietor doing business under the firm name and style of Standard Auto Parts, with his office and principal place of business located at 209 E. First Street, Alice, Tex.

Respondent Standard Motor Supply, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located at 1021 S. Cincinnati Street, Tulsa, Okla.

Respondents John R. Terry, Floyd H. Terry and John Kenneth Terry are copartners doing business under the firm name and style of Terry Automotive Supply, a partnership with their office and principal place of business located at 101 N. Marsalis Street, Dallas, Tex.

Respondent H. J. Van Hook, Sr. is a sole proprietor doing business under the firm name and style of Van's Auto Supply, with his office and principal place of business located at 212 S.W. 29th Street, Oklahoma City, Okla.

Respondents Mrs. Camille Webb Ward, Joe L. Ward, Jr., and Sam Webb Ward are copartners doing business under the firm name and style of Joe L. Ward Company, Ltd., a partnership with their office and principal place of business located at 313 Washington Street, Waco, Tex.

PAR. 3. The respondent jobbers set forth in Paragraph Two have purchased and now purchase in commerce from suppliers engaged in commerce numerous automotive products and supplies for use, consumption, or resale within the United States. Respondent jobbers and said suppliers cause the products and supplies so purchased to be shipped and transported among and between the several States of the United States from the respective State or States of location of said suppliers to the respective different State or States of location of the said respondent jobbers.

PAR. 4. In the purchase and the resale of said automotive products and supplies, respondent jobbers are in active competition with independent jobbers not affiliated with respondent SWDI; and the suppliers selling to respondent jobbers and to their independent jobber competitors are in active competition with other suppliers of similar automotive products and supplies.

PAR. 5. Respondent SWDI, since its formation in 1947, has been and is now maintained, managed, controlled, and operated by and for the respondent jobbers set forth in paragraph 2 and each said respondent has participated in, approved, furthered, and cooperated with the other respondents in the carrying out of the procedures and activities hereinafter described.

In practice and effect, respondent SWDI has been and is now serving as the medium or instrumentality by, through, or in conjunction with, which said respondent jobbers exert the influence of their combined bargaining power on the competitive suppliers hereinbefore described. As a part of their operating procedure, said respondent jobbers direct the attention of said suppliers to their aggregate purchasing power as a buying group and, by reason of such have knowingly demanded and received, upon their individual purchases, discriminatory prices, discounts, allowances, rebates, and terms and conditions of sale. Suppliers not acceding to such demands are usually replaced as sources of supply for the commodities concerned and such market is closed to them in favor of such suppliers as can

be and are induced to afford the discriminatory prices, discounts, allowances rebates, and terms and conditions of sale so demanded.

Respondent jobbers demand that those suppliers who sell their products pursuant to a quantity discount schedule shall consider their several purchases in the aggregate as if made by one purchaser and grant quantity discounts, allowances, or rebates on the resultant combined purchase volume in accordance with said suppliers' schedule. This procedure effects a discrimination in price on goods of like grade and quality between respondent jobbers and competing independent jobbers whose quantity discounts, allowances, or rebates from such suppliers are based upon only their individual purchase volumes. From other suppliers the respondent jobbers demand the payment or allowance of trade discounts, allowances, or rebates which such suppliers do not ordinarily pay or allow to jobber customers. This procedure effects a discrimination in price on goods of like grade and quality between respondent jobbers and competing discounts, allowances, or rebates.

When and if a demand is acceded to by a particular supplier, the subsequent purchase transactions between said supplier and the individual jobber respondents have been and are billed to, and paid for through, the aforesaid organizational device of respondent SWDI. Said corporate organization thus purports to be the purchaser when in truth and in fact it has been and is now serving only as agent for the several respondent jobbers and as a mere bookkeeping device for facilitating the inducement and receipt by the afore-described respondent jobbers of the price discriminations concerned.

PAR. 6. Respondents have induced or received from their suppliers, in the manner afore-described, favorable prices, discounts, allowances, rebates, terms and conditions of sale which they 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. 7. The effect of the knowing inducement or receipt by respondents of the discriminations in price as above alleged has been and may be substantially to lessen, injure, destroy, or prevent competition between suppliers of automotive products and supplies and between respondent jobbers and independent jobbers.

PAR. 8. The foregoing alleged acts and practices of respondents 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. Eldon P. Schrup, Mr. Lars E. Janson and Mr. John Perechinsky, supporting the complaint.

Howrey, Simon, Baker & Murchison by *Mr. David C. Murchison* of Washington, D. C., for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 9, 1959, charging that respondents knowingly induced or received discriminations in net prices of numerous automotive products and supplies purchased from various suppliers in violation of subsection (f) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

On June 21, 1960, there was submitted to the undersigned hearing examiner agreements between the above-named respondents, their counsel, and counsel supporting the complaint providing for the entry of a consent order.

Under the terms of the agreements, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the documents include a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreements further recite that they are for settlement purposes only and do not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreements meet all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner having considered the agreements and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreements are hereby accepted, and it is ordered that said agreements shall not become a part of the official record unless and until they become a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Southwestern Warehouse Distributors, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 9008 Sovereign Row, Dallas, Tex.

2. Respondent Aicklen Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the

laws of the State of Louisiana, with its office and principal place of business located at 748 Baronne Street, New Orleans, La.

3. Respondent Paul Dickinson is a sole proprietor doing business under the firm name and style of Auto Electric Sales & Service Company, with his office and principal place of business located at 521 West Main Street, Ardmore, Okla.

4. Respondents James N. Fomby, Sr., James N. Fomby, Jr., and Ray S. Fomby are copartners doing business under the firm name and style of Automotive Supply Company, a partnership with their office and principal place of business located at 219 Tenth Street, Alexandria, La.

5. Respondents D. L. Naylor and Mrs. A. D. Tennyson are copartners doing business under the firm name and style of Auto Spring & Supply Company, a partnership with their office and principal place of business located at 500 Ohio Avenue, Wichita Falls, Tex.

6. Respondent Kirby K. Kennedy is a sole proprietor doing business under the firm name and style of Capital Auto Supply Company, with his office and principal place of business located at 333 Hancock Street, Santa Fe, N. Mex.

7. Respondent Car Parts Depot, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 211 N. Cotton Street, El Paso, Tex.

8. Respondent Chester A. Latcham, Jr. is a sole proprietor doing business under the firm name and style of Colorado Jobbers Supply Company, with his office and principal place of business located at 875 Broadway Street, Denver, Colo.

9. Respondent Combs Automotive Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 104 Military Street, Dodge City, Kans.

10. Respondent Guinn C. Cross is a sole proprietor doing business under the firm name and style of Cross-Allen Company, with his office and principal place of business located at 310 E. 4th Street, Austin, Tex.

11. Respondent Five-Fifty-Five, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Arkansas, with its office and principal place of business located at 711 W. 8th Street, Little Rock, Ark.

12. Respondent Hanna-Gray Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Arkansas, with its office and principal place of business located at 55 South 9th Street, Fort Smith, Ark.

13. Respondents Mrs. Blanche Jarvis, Jack B. Jarvis, Robert H. Jarvis and Lawrence F. Jarvis are copartners doing business under the firm name and style of Jarvis Auto Supply, a partnership with their office and principal place of business located at 701 Main Street, Winfield, Kans.

14. Respondent Johnson Bros. Auto Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 117 S. St. Francis Street, Wichita, Kans.

15. Respondent Lake Auto Parts, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 1103 Ryan Street, Lake Charles, La.

16. Respondents J. C. Landers, Sr., J. C. Landers, Jr., and Jack M. Landers are copartners doing business under the firm name and style of Landers, a partnership with their office and principal place of business located at 63 N. Chadbourne Street, San Angelo, Tex.

17. Respondent Harry Lane Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 322 N. Ash Street, McPherson, Kans.

18. Respondent Joseph F. Meyer Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 802 Franklin Street, Houston, Tex.

19. Respondent Motor Equipment, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Mexico, with its office and principal place of business located at 100 Marquette Avenue N. E., Albuquerque, N. Mex.

20. Respondent Mountjoy Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 512 Fifth Street, San Antonio, Tex.

21. Respondent The Jno. Muller Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 301 Taylor Street, Fort Worth, Tex.

22. Respondent Nash & Cotton, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1818 Avenue C, Galveston, Tex.

23. Respondent Neumeyer Motor Parts, Inc., is a corporation organized, existing, and doing business under and by virtue of the

laws of the State of Texas, with its office and principal place of business located at 1602 Milam Street, Houston, Tex.

24. Respondent Joe Owens is a sole proprietor doing business under the firm name and style of Owens Supply Company, with his office and principal place of business located at 701 N. Independence Street, Enid, Okla.

25. Respondent Arthur J. Reynolds is a sole proprietor doing business under the firm name and style of Reynolds Automotive Supply, with his office and principal place of business located at 516 W. 6th Street, Texarkana, Tex.

26. Respondent Rigney Auto Parts, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1402 Texas Avenue, Lubbock, Tex.

27. Respondent Robertson & King Motor Supply, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1845 Levee Street, Dallas, Tex.

28. Respondent 688 Parts Service, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 1440 Government Street, Baton Rouge, La.

29. Respondent Smyth Auto Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 206 Taylor Street, Amarillo, Tex.

30. Respondent Carl Fred Winston is a sole proprietor doing business under the firm name and style of Standard Auto Parts, with his office and principal place of business located at 209 E. First Street, Alice, Tex.

31. Respondent Standard Motor Supply, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located at 1021 S. Cincinnati Street, Tulsa, Okla.

32. Respondents John R. Terry, Floyd H. Terry and John Kenneth Terry are copartners doing business under the firm name and style of Terry Automotive Supply, a partnership, with their office and principal place of business located at 101 N. Marsalis Street, Dallas, Tex.

33. Respondent H. J. Van Hook, Sr., is a sole proprietor doing business under the firm name and style of Van's Auto Supply, with

his office and principal place of business located at 212 S. W. 29th Street, Oklahoma City, Okla.

34. Respondents Mrs. Camille Webb Ward, Joe L. Ward, Jr. and Sam Webb Ward are copartners doing business under the firm name and style of Joe L. Ward Company, Ltd., a partnership with their office and principal place of business located at 313 Washington Street, Waco, Tex.

The complaint against respondent Beaumont Auto Parts, Inc., a corporation, was dismissed by the hearing examiner's order of May 26, 1960.

The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Southwestern Warehouse Distributors, Inc., a corporation; Aickley Supply Company, Inc., a corporation; Paul Dickinson, doing business under the firm name and style of Auto Electric Sales & Service Company, a sole proprietorship; James N. Fomby, Sr., James N. Fomby, Jr., and Ray S. Fomby, copartners doing business under the firm name and style of Automotive Supply Company; D. L. Naylor and Mrs. A. D. Tennyson, copartners doing business under the firm name and style of Auto Spring & Supply Company; Kirby K. Kennedy doing business under the firm name and style of Capital Auto Supply Company, a sole proprietorship; Car Parts Depot, Inc., a corporation; Chester A. Latcham, Jr., doing business under the firm name and style of Colorado Jobbers Supply Company, a sole proprietorship; Combs Automotive Co., Inc., a corporation; Guinn C. Cross, doing business under the firm name and style of Cross-Allen Company, a sole proprietorship; Five-Fifty-Five, Inc., a corporation; Hanna-Gray Company, Inc., a corporation; Mrs. Blanche Jarvis, Jack B. Jarvis, Robert H. Jarvis, and Lawrence F. Jarvis, copartners doing business under the firm name and style of Jarvis Auto Supply; Johnson Bros. Auto Supply Company, Inc., a corporation; Lake Auto Parts, Inc., a corporation; J. C. Landers, Sr., J. C. Landers, Jr., and Jack M. Landers, copartners doing business under the firm name and style of Landers; Harry Lane Supply Company, Inc., a corporation; Joseph F. Meyer Company, Inc., a corporation; Mountjoy Company, Inc., a corporation; The Jno. Muller Company, a corporation; Nash & Cotton, Inc., a corporation; Neumeyer Motor Parts, Inc., a corporation; Joe Owens, doing business under the firm name and style of

Owens Supply Company, a sole proprietorship; Arthur J. Reynolds, doing business under the firm name and style of Reynolds Automotive Supply, a sole proprietorship; Rigney Auto Parts, Inc., a corporation; Robertson & King Motor Supply, Inc., a corporation; 688 Parts Service, Inc., a corporation; Smyth Auto Supply Company, Inc., a corporation; Carl Fred Winston, doing business under the firm name and style of Standard Auto Parts, a sole proprietorship; Standard Motor Supply, Inc., a corporation; John R. Terry, Floyd H. Terry, and John Kenneth Terry, copartners doing business under the firm name and style of Terry Automotive Supply; H. J. Van Hook, Sr., doing business under the firm name and style of Van's Auto Supply, a sole proprietorship; and Mrs. Camille Webb Ward, Joe L. Ward, Jr., and Sam Webb Ward, copartners doing business under the firm name and style of Joe L. Ward Company, Ltd.; and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering to purchase or purchase of any automotive products or supplies in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Knowingly inducing or knowingly 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 known by respondents 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 the seller is competing with any other seller for respondents' business, or where respondents are competing with other customers of the seller.

For the purpose of determining "net price" under the terms of this order, there shall be taken into account discounts, rebates, allowances, deductions or other terms and conditions of sale by which net prices are affected.

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 14th day of September, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents ordered to cease and desist in the initial decision herein 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.

Complaint

IN THE MATTER OF

SUE RECORDS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 7894. Complaint, May 20, 1960—Decision, Sept. 14, 1960*

Consent order requiring a New York City manufacturer of phonograph records to cease giving concealed payola to disc jockeys and other personnel of radio and television musical programs to induce frequent playing of its records in order to increase sales.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Sue Records, Inc., a corporation, and Henry Murray, Jr., individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said 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 Sue Records, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 725 Riverside Drive, in the city of New York, State of New York.

Respondent Henry Murray, Jr. is an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture and distribution, offering for sale, and sale, of phonograph records to distributors.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said records, when sold, to be shipped from one state of the United States to purchasers thereof located in various other States to the United States, and maintain, and at all times mentioned herein have maintained, a course of trade in said phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and at all times mentioned herein, respondents have been in competition, in