

Decision

IN THE MATTER OF

ALHAMBRA MOTOR PARTS ET AL.

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

Docket 6889. Complaint, Sept. 17, 1957—Decision, Oct. 28, 1960

Order requiring a trade association in Los Angeles, Calif., and its 59 jobber members to cease knowingly inducing and receiving discriminatory prices from manufacturers and suppliers of automotive parts and accessories in violation of Sec. 2(f) of the Clayton Act, by using their association as a device to obtain volume discounts on the aggregate purchases of all members.

Mr. Eldon P. Schrup and *Mr. Herbert I. Rothbart* for the Commission.

Mr. H. J. Gross and *Mr. Harris K. Lyle*, of Van Nuys, Calif., for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

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

1. Respondent, Southern California Jobbers, Inc., is a membership corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 234 West 24th Street, Los Angeles, California. At the time of the issuance of the complaint in this proceeding, the members of said respondent, Southern California Jobbers, Inc., were as follows:

(1) Respondents C. E. Long, Glen L. Long and J. T. Prochaska, Jr., co-partners trading as Alhambra Motor Parts, located at 1118 West Main Street, Alhambra, California.

(2) Respondent Edward Gaughn, an individual trading as Allied Motor Parts, located at 1351 American Avenue, Long Beach, California.

(3) Respondents Laura Kleopfer, Gloria Kleopfer and Gwenlyn D. Ockey, co-partners trading as Automotive Parts Co., located at 1130 South Pacific Avenue, San Pedro, California.

(4) Respondents E. P. Feschrach, F. G. Orm and E. R. Eckert, co-partners trading as Automotive Supply, located at 2 West Main Street, Ventura, California.

(5) Respondent B.B.&H. Motor Parts, Inc., a California corporation, located at 124 West Chestnut Street, Anaheim, California. The following individual respondents were officers of said corporate respondent:

Randall W. Brownell, President,
Arthur D. Brownell, Vice President,
Wilma M. Brownell, Secretary and Treasurer.

(6) Respondent Percy T. Lyon an individual, trading as Barlow Motor Supply Co., located at 6421 Selma Avenue, Hollywood, California.

(7) Respondent Beacon Auto Parts, Inc., a California corporation, located at 476 North Newport Boulevard, New Port Beach, California. The following individual respondents were officers of said corporate respondent:

E. Floyd Hubbard, President.
Elwin A. Hubbard, Vice President,
Juanita Firth, Secretary and Treasurer.

(8) Respondent Beedee Auto Parts, Inc., a California corporation located at 130 West Union Street, Pasadena, California. The following individual respondents were officers of said corporate respondent:

A. C. Peschke, President,
J. Peschke, Vice President,
E. E. McCreary, Secretary and Treasurer.

(9) Respondent Jack Bidinger, an individual trading as Jack Bidinger Auto Parts, located at 1810 Sunview Drive, Glendale, California.

(10) Respondents Frank G. Boggs and Rollin McBurney, co-partners trading as Boggs & McBurney Auto Parts, located at 11650 Santa Monica Boulevard, Los Angeles, California.

(11) Respondent Burbank Auto Parts, Inc., a California corporation located at 108 East Palm Avenue, Burbank, California. The following individual respondents were officers of said corporate respondent:

Jack W. Morse, President,
Earl W. Morse, Vice President,
Jewell T. Morse, Secretary and Treasurer.

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(12) Respondent Art Cole, an individual trading as Art Cole Auto Parts, located at 2554 Randolph Street, Huntington Park, California.

(13) Respondent E. L. Covey, an individual trading as Covey Auto Parts, located at 1150 East Compton Avenue, Compton, California.

(14) Respondent Curtis & Christensen, Inc., a California corporation, located at 501 East Anaheim Street, Long Beach, California. The following individual respondents were officers of said corporate respondent:

F. J. Curtis, President,
Mable B. Curtis, Vice President,
H. C. Kelly, Secretary and Treasurer.

(15) Respondent Wolford Drye, an individual trading as Drye Automotive Parts, located at 140 South Eighth Street, El Centro, California.

(16) Respondents Donald M. Blackmore, Arrell S. McPartland, Otis Ludwick and Margaret A. Ludwick, co-partners trading as Dale's Auto Parts, located at 1312 18th Street, Bakersfield, California.

(17) Respondents Henry A. Mannington and Ethel C. Mannington, co-partners trading as Dyer Bros., located at 2033 North Broadway, Los Angeles, California.

(18) Respondent Eckdahl Auto Parts Co., a California corporation, located at 220 North Market Street, Inglewood, California. The following individual respondents were officers of said corporate respondent.

Burdette T. Eckdahl, President and Treasurer,
A. D. Shaw, Vice President,
F. A. Guffin, Secretary.

(19) Respondent El Monte Auto Parts, Inc., a California corporation, located at 313 South Tyler Avenue, Elmonte, California. The following individual respondents were officers of said corporate respondent:

Ruela B. Sutton, President,
Earl Crawford, Vice President,
James Whitelock, Secretary and Treasurer.

(20) Respondent C. E. Encell Auto Parts Service, Inc., a California corporation, located at 733 South Central Avenue, Los Angeles, California. The following individual respondents were officers of said corporate respondent:

Mary R. Encell, President,
Pearl C. Zittle, Vice President and Treasurer,
Theodore B. Whitmore, Secretary.

(21) Respondent Flammer Auto Parts, Inc., a California corporation, located at 8978 Washington Boulevard, Culver City, California. The following individual respondents were officers of said corporate respondent:

Edwin T. Flammer, President and Treasurer,
Edna M. Flammer, Vice President,
William R. Gallagher, Secretary.

(22) Respondent Fraiser Wright Co., a California corporation, located at 2331 South Hill Street, Los Angeles, California. The following individual respondents were officers of said corporate respondent:

Roy Wright, President,
Emma F. Wright, Vice President,
Cecil D. Penn, Secretary and Treasurer.

(23) Respondent Fullerton Motor Parts, Inc., a California corporation, located at 140 West Commonwealth Street, Fullerton, California. The following individual respondents were officers of said corporate respondent:

Joe W. Johnson, President,
Velda L. Johnson, Secretary and Treasurer.

(24) Respondents J. Leonard Gibson and Curtis C. Gibson, co-partners trading as Gibson Motor Parts, located at 401 South Market Street, Inglewood, California.

(25) Respondent Graves Automotive Supply, a California corporation located at 211 East B. Street, Ontario, California. The following individual respondents were officers of said corporate respondent:

Lemuel A. Graves, President,
William T. Dingle, Secretary and Treasurer.

(26) Respondent Carl D. Haase, an individual trading as Haase Auto Parts Company, located at 2765 Randolph Street, Huntington Park, California.

(27) Respondent John J. Hartman, an individual trading as Hartman Auto Parts, located at 5900 South Main Street, Los Angeles, California.

(28) Respondent K. A. McFarland, an individual trading as Hibbard & Rodgers, located at 145 West Union Street, Pasadena, California.

(29) Respondent Hillcrest Auto Supply Co., a California corporation, located at 1236 University Avenue, San Diego, California. The following individual respondents were officers of said corporate respondent:

William H. Sharpe, President,
Lorraine E. Sharpe, Vice President,

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Mable M. Brown, Secretary and Treasurer.

(30) Respondent Dora L. Huffaker, an individual trading as Huffaker's Auto Parts, located at 5406 Saukershim Boulevard, North Hollywood, California.

(31) Respondent Clarence R. Ryan, an individual trading as Long Beach Auto Parts Co., located at 1077 American Avenue, Long Beach, California.

(32) Respondent John F. Dixon, Inc., a California corporation, located at 1825 East First Street, Los Angeles, California. The following individual respondents were officers of said corporate respondent:

John F. Dixon, President,
Brian S. A. Heenan, Vice President,
Helen Dixon, Secretary,
Otha Luster, Treasurer.

(33) Respondents L. C. Haskins, R. B. Sharpe and Williard Wedeking, co-partners trading as Masters Automotive Supply, located at 208 South Hill Street, Oceanside, California.

(34) Respondents Bert C. Russey and James E. Bussey, co-partners trading as Bussey Auto Parts, located at 901 Santa Monica Boulevard, Santa Monica, California.

(35) Respondent Charles M. Darling, an individual trading as Mission Auto Supply, located at 2010 North Broadway, Santa Maria, California.

(36) Respondents D. T. Johnston and Charles G. Russell, co-partners trading as Motor Parts Depot, located at 4225 West Pico Street, Los Angeles, California.

(37) Respondents A. C. Brown and Mable S. Brown, co-partners trading as Motor Parts & Equipment Co., located at 3855 Eighth Street, Riverside, California.

(38) Respondents Henry C. Neufeld, Elmer M. Anderson and Dona Jane Senn, co-partners trading as Neufeld's Auto Parts, located at 100 Central Avenue, Shafter, California.

(39) Respondents John C. Weatherway and Lester L. Congdon, co-partners trading as North Long Beach Motor Supply Company, located at 5375 Atlantic Street, Long Beach, California.

(40) Respondent Loren K. Patty, an individual trading as Owl Auto Supply, located at 3583 Market Street, Riverside, California.

(41) Respondent P. & W. Parts Store, Inc., a California corporation, located at 515 West Main Street, Alhambra, California. The following individual respondents were officers of said corporate respondent:

William H. Woodcock, President,
Lee R. Anthony, Vice President and Treasurer,

John F. Arthur, Secretary.

(42) Respondents Loy G. Cabe and Roy L. Cabe, co-partners trading as Parts Service Company, located at 1058 American Avenue, Long Beach, California.

(43) Respondent Pomona Motor Parts, a California corporation, located at 363 West Third Street, Pomona, California. The following individual respondents were officers of said corporate respondent:

J. K. Wilkinson, President,

Helen Bates, Secretary.

(44) Respondents Stewart J. Bryant, Elizabeth H. Bryant and F. Ray Bryant, co-partners trading as Paso Robles Auto Parts, located at 944 Spring Street, Paso Robles, California.

(45) Respondents Howard L. Phoenix and Ross L. Mossman, co-partners trading as Phoenix Motor Parts, located at 110 West State Street, Redlands, California.

(46) Respondent Santa Ana Motor Parts & Machine Works, Inc., a California corporation, located at 413 West Fifth Street, Santa Ana, California. The following individual respondents were officers of said corporate respondent:

C. Ed Thomas, President,

Evelyn J. Thomas, Vice President,

Frank N. Sellers, Secretary and Treasurer.

(47) Respondent Edward L. Kenworthy, an individual trading as Santa Barbara Motor Parts, located at 211 West Carillo Street, Santa Barbara, California.

(48) Respondent San Bernardino Motor Parts, a California corporation, located at 196 F. Street, San Bernardino, California. The following individual respondents were officers of said corporate respondent:

Peter B. Long, President,

George E. Osborn, Vice President,

John H. Buchenau, Secretary and Treasurer.

(49) Respondents James W. H. Sparks, Floyd A. Sparks, Carlos A. Sparks and Willie D. Sparks, co-partners trading as Sparks Auto Parts Service, located at 7528 East Garvey Street, South San Gabriel, California.

(50) Respondent Sturtevant Auto Parts, Inc., a California corporation, located at 6162 Van Nuys Boulevard, Van Nuys, California. The following individual respondents were officers of said corporate respondent:

Sabin B. Sturtevant, President,

G. E. Lee, Vice President,

S. P. Sturtevant, Secretary.

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(51) Respondents Robert Dopyera, James R. Barber and Victor Lesovsky, co-partners trading as Tasco Auto Parts, located at 306 Center Street, Taft, California.

(52) Respondent Mac Johnson, an individual trading as Torrance Auto Parts, located at 1912 Carson Street, Torrance, California.

(53) Respondent Triangle Motor Parts, a California corporation, located at 2622 North Figueroa Street, Los Angeles, California. The following individual respondents were officers of said corporate respondent:

Robert Heffner, President,
Roy Baugh, Vice President,
Milton A. Souders, Secretary and Treasurer.

(54) Respondent Valley Auto Supply of San Bernardino, Inc., a California corporation, located at 441 Fifth Street, San Bernardino, California. The following individual respondents were officers of said corporate respondent:

John Wilson, President,
Paul Clammer, Vice President,
Arthur Lindholm, Secretary and Treasurer.

(55) Respondent Glenn Wellington, an individual trading as Glenn Wellington Auto Parts, located at 6422 Selma Street, Hollywood, California.

(56) Respondent Wilke Machine & Auto Parts, a California corporation, located at 699 E. Street, Bramley, California. The following individual respondents were officers of said corporate respondent:

H. P. Wilke, President,
N. Alta Wilke, Vice President,
Muriel Merritt, Secretary and Treasurer.

(57) Respondent Dunn Supply Co., Inc., a California corporation, located at 100 Market Street, San Diego, California. The following individual respondents were officers of said corporate respondent:

J. Elmo Dunn, President,
Nancy Jane Dunn, Vice President,
Dewey A. Dunn, Secretary and Treasurer.

(58) Respondents Jack A. Monteverde and Ruth B. Monteverde, co-partners trading as Monte's Auto Parts, located at 1230 San Fernando Road, San Fernando, California.

(59) Respondent Ben McConnell, an individual trading as McConnell Motor Parts, located at 203 South Pacific Avenue, San Pedro, California.

2. The individual respondents above named, both individually and as the officers of the several corporate respondent jobber members,

have actively participated in the acts and practices hereinafter found which were knowingly designed and intended to induce the granting of discriminatory and illegal prices, discounts, allowances, rebates, terms and conditions of sale to the respondent jobber members. Such participation included serving as officers and directors of respondent Southern California Jobbers, Inc., and as members of various committees of said group organization.

3. Respondent James L. Polhamus is an individual who has been General Manager and Executive Secretary of respondent Southern California Jobbers, Inc., since 1955. He was employed by the respondent jobber members to supervise the activities of respondent Southern California Jobbers, Inc., and to assist in the negotiation and in the carrying out of various agreements entered into with manufacturers and suppliers of automotive parts, accessories and supplies.

4. The respondent jobber members of respondent Southern California Jobbers, Inc., are independent jobbers engaged in the purchase and resale of automotive parts, accessories and supplies, in interstate commerce, and have been and are now engaged in active and substantial competition with other corporations, partnerships, firms and individuals also engaged in the purchase and resale of such automotive products of like grade and quality, in interstate commerce, which have been purchased from the same or competitive sellers.

5. Respondent jobbers organized, and have maintained, controlled and operated respondent Southern California Jobbers, Inc., for the purpose of inducing the granting or allowance of lower and more favorable prices by manufacturers and sellers of automotive parts, accessories and supplies. It is a membership corporation, serving only respondent jobber members, with stock ownership limited to one share for each jobbers member. Participation of respondent jobber members in the net income of respondent Southern California Jobbers, Inc., is based on a percentage of their individual purchases through the group organization. Each respondent jobber member was required by the By-Laws of Southern California Jobbers, Inc., to keep on deposit a sum of money in a Merchandise Guarantee Fund, which served as a revolving fund for use by respondent jobber members in purchasing automotive parts, accessories and supplies through the group organization. In 1956 this fund amounted to \$78,000.00, or a deposit of \$1,300.00 for each of the 60 members.

6. It was the regular procedure for the respondent jobbers, acting through respondent Southern California Jobbers, Inc., to either notify or allow competing manufacturers of various lines of auto-

motive products to submit prices and appear before the members of the group, or a committee named for that purpose, who would consider the offers and vote to accept one of the lines to the exclusion of the lines of the seller's competitors. This, however, was not a rigid requirement in that the individual members could continue to handle competitive lines which they were already selling or for which they had a preference. In actual practice, most of the members of the group organization sold and distributed the particular manufacturer's line accepted by the group.

7. When a seller's line was accepted, notice was sent to all jobber members giving full information as to the contract terms agreed upon. These notices were incorporated in a so-called "deal book" which was supplied to the jobber members at the first of the year, and additional pages were supplied as contracts were entered into with suppliers. These lines purchased from the suppliers were, for convenience, divided into the warehouse line and brokerage line. The term "brokerage" was used to distinguish from the warehouse line as there is nothing which remotely resembles brokerage in these transactions, nor is there any contention that brokerage, as such, was paid.

8. The warehouse line referred to those lines, stocks of which were carried in the warehouse of the Southern California Jobbers, Inc. When a jobber member wished to purchase products from the warehouse line, order was sent to respondent, Southern California Jobbers, Inc., who either procured the merchandise from the supplier or filled the order out of stock. When delivery had been made, respondent Southern California Jobbers, Inc., billed the jobber member receiving the merchandise. In the case of the so-called brokerage lines, the jobber member ordered direct from the supplier who delivered the merchandise to the jobber member but billed respondent Southern California Jobbers, Inc. Each jobber member settled monthly with respondent Southern California Jobbers, Inc., for his own individual purchases. The group office in turn made monthly settlements with the suppliers for the aggregate purchases of all jobber members, and annually or periodically distributed to respondent jobber members all discounts and rebates received, less operating expenses, in proportion to the amount of each jobber's individual purchases.

9. As of January 1, 1958, as evidenced by the "deal book" delivered to respondent jobber members (CX 7), there was a total of 69 suppliers, 40 of which were listed as warehouse lines, 28 as brokerage lines, and one part warehouse and part brokerage. A comparative study made of the purchases from suppliers who had contracts or agreements with Southern California Jobbers, Inc., is as follows:

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	1955	1956	1957	1958
Total purchases.....	1,892,320	2,270,864	2,761,795	3,129,446
Warehouse purchases.....	297,800	390,458	954,504	1,762,346
Brokerage purchases.....	1,594,520	1,880,405	1,807,291	1,367,099
Gross revenue.....	229,887	317,021	400,011	482,722
Net rebates.....	207,055	271,510	343,119	384,982

10. A more detailed description of the brokerage accounts for the years 1957 and 1958, based upon net purchases which do not include impounds or items rebatable to the jobber members, are as follows:

BROKERAGE

Product name	Discounts or rebates allowed	No. members buying	Gross purchases less rebate	
			1958	1957
Standard Motor Products.....	20%.....	50	256,015	230,841
Partex.....	15/20.....	46	204,172	190,658
Cali Blok.....	7% on material.....	28	162,923	118,653
Thermoid.....	17 1/2%.....	32	73,426	99,168
Auto Products.....	5/20.....	28	82,925	104,143
Carburetor Co. ¹	14.25 on material.....	52	57,319	53,708
Airtex (Rebuilt).....	18%.....	36	49,948	85,642
Hobbs Gould.....	20%.....	18	48,282	45,808
Hygrade.....	10%.....	45	43,745	24,451
Arrow Safety.....	15%.....	35	26,924	31,813
Total 1st 10 lines.....			1,005,679	984,885
Footie Axle.....	5%.....	36	26,256	27,826
Accurate.....	15%.....	8	24,347	25,431
Car Control.....	10/15/20.....	44	15,080	11,576
White Machine.....	10%.....	17	14,788	12,113
American Ball.....	20%.....	17	12,102	11,590
S. M. Arnold.....	10%.....	13	9,815	8,421
Perfect Equipment.....	7%.....	8	7,787	7,495
Cambria Spring.....	10%.....	15	7,143	6,081
Diamond U.....	20%.....	22	8,664	7,849
H. B. Egan.....	10%.....	13	8,496	6,511
Total 2d 10 lines.....			134,478	124,893
Dutch Brand.....	20%.....	15	8,057	9,232
CAC.....	20%.....	8	5,005	3,684
Miracle Power.....	20%.....	8	4,365	4,097
Jambor.....	10%.....	10	4,012	4,950
Ace Drill.....	10%.....	9	3,281	3,166
Bay State.....	20%.....	11	2,211	2,020
Fox.....	0.....	3	920	2,224
Martin Wells.....	20%.....	1	743	1,093
Total 3d 8 lines.....			28,594	30,466
Grand total all lines.....			1,168,751	1,140,244

11. The volume rebate granted by certain suppliers to respondent jobber members was a retroactive volume rebate based upon the aggregate purchases of all the jobber members. Typical of such practices is the agreement with Standard Motor Products, Inc., which generally maintains a sliding scale of volume rebates on net amount purchased per year as follows:

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<i>Under</i>	<i>Percent</i>
\$1,800 -----	3
2,800 -----	5
4,200 -----	10
7,200 -----	12
9,000 -----	13
12,000 -----	15
25,000 -----	16
50,000 -----	17
75,000 -----	18
100,000 -----	20

In the case of Southern California Jobbers, Inc., these rebates were not based on the total purchases of the individual respondent jobber member, but instead were based upon the total purchases of all the members of the group organization.

12. When respondent Southern California Jobbers, Inc., made payment to Standard Motor Products, Inc., for purchases made during the month by the respondent jobber members, it was permitted to deduct the maximum rebate of 20 percent on paying the invoices. While the aggregate purchases of the jobber members reached the maximum volume of \$100,000 required for the 20 percent discount, no individual jobber member purchased near this amount. In fact, in 1956 the purchases of only 4 jobber members reached the 15 percent bracket, and 21 earned no discount; and in 1957 the purchases of only 9 reached the 15 percent bracket and 21 earned no discount, and yet in both years all received the maximum 20 percent volume rebate. In the same trading area there were competitors of respondent jobbers purchasing merchandise of like grade and quality from Standard Motor Products, Inc., who received no discount, or a lower discount, based upon the actual amount of their purchases as provided by Standard's volume discount schedule.

13. The warehouse distributor's discount was a discount paid to jobbers on automotive products resold to other jobbers and who maintained at least a minimum stock of the suppliers' automotive products in their warehouses. The warehouse distributor usually purchased at jobber's list price and sold both dealers and other jobbers. Sales made to other jobbers were generally made at jobber's list price and the distributor relied upon the warehouse distributor discount for his compensation. In granting this discount to the respondent jobbers, the supplier treated the respondent Southern California Jobbers, Inc., as a purchaser and reseller to respondent jobber members, and granted the discount or rebate on all products purchased by the respondent jobber members through the Southern California Jobbers, Inc. This warehouse distributor's rebate on the aggregate purchases of the respondent jobbers was

paid over to respondent Southern California Jobbers, Inc., who, in turn, distributed the net after deduction of operating expenses to the jobber members in proportion to their individual purchases. In the same trading area there were competitors of respondent jobbers, purchasing products of like grade and quality from the same, or other, suppliers, and who received no discount as warehouse distributors.

14. The automotive parts industry is a highly competitive business, involving small margins of profit. The net margin of profit of a number of respondent jobber witnesses, who testified, was from 1 percent to 4 percent after taxes. The importance of the discriminatory prices allowed by the various suppliers is pointed up by the importance given by respondent jobbers to the 2 percent cash discount as increasing their margin of profit and reducing the cost of acquisition of their merchandise. Through the lower cost of merchandise resulting from such discriminatory prices, the respondent jobbers obtained a competitive advantage over their competitors, selling the same or comparable merchandise in the same trade area, who receive discounts or rebates based upon their individual purchases.

CONCLUSIONS

1. Respondent Southern California Jobbers, Inc., was organized, maintained and controlled by the respondent jobbers to function principally as a group-buying organization for the purpose of inducing the granting or allowance of lower or more favorable prices by manufacturers and sellers of automotive parts, accessories and supplies. The respondent jobber members are, in fact, the purchasers, and the group organization serves only as a medium or instrumentality in inducing and receiving discriminatory prices. The operation of a warehouse in the manner and form hereinbefore found did not change the situation other than to assist the respondent jobber members in obtaining warehouse distributor discounts and rebates to which they were not entitled and which were not received by non-members.

2. The various courts of appeals in seven cases have sustained the findings of the Federal Trade Commission that the granting of volume rebates by suppliers to group-buying organizations based upon aggregate purchases of all members under the circumstances as herein found, constitute a price discrimination in violation of Section 2(a) of the Clayton Act as follows:

Standard Motor Products v. Federal Trade Commission, 265 F. 2d 674 (2 Cir. 1959), cert. denied, 361 U.S. 826;

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P. Sorensen Mfg. Co. v. Federal Trade Commission, 246 F. 2d 687 (D.C. Cir. 1957);

P. & D. Mfg. Co. v. Federal Trade Commission, 245 F. 2d 281 (7 Cir. 1957), cert. denied, 355 U.S. 884;

C. E. Niehoff & Co. v. Federal Trade Commission, 241 F. 2d 37 (7 Cir. 1957), mod'f'd, 355 U.S. 411 (1958) rehearing denied, 355 U.S. 968;

E. Edelmann & Co. v. Federal Trade Commission, 239 F. 2d 152 (7 Cir. 1956), cert. denied, 355 U.S. 941;

Whitaker Cable Corp. v. Federal Trade Commission, 239 F. 2d 253 (7 Cir. 1956), cert. denied, 353 U.S. 938, rehearing denied, 356 U.S. 905;

Moog Industries v. Federal Trade Commission, 238 F. 2d 43 (8 Cir. 1956), aff'd, 355 U.S. 411 (1958), rehearing denied, 356 U.S. 905.

In addition, the circuit court of appeals sustained a finding by the Federal Trade Commission that a warehouse distributor's discount identical with that granted by the same supplier to respondent Southern California Jobbers, Inc., was in violation of Section 2(a) of the Clayton Act, *E. Edelmann & Co. v. F.T.C.*, *supra*.

3. The allowance of a warehouse distributor's discount to Southern California Jobbers, Inc., as herein found, cannot be defined as a functional discount, since Southern California Jobbers, Inc., is not an independent jobber or warehouse distributor but instead is owned by the jobber members, deals only with jobber members, and distributes all allowances and rebates received from suppliers, after deduction of all operating expenses, to the jobber members in proportion to their individual purchases. The respondent Southern California Jobbers, Inc., is nothing more than a device for obtaining, collecting and remitting to respondent jobber members, warehouse discounts received from manufacturers and suppliers on purchases made by respondent jobber members, and the functional classification as warehouse distributor is basically artificial.

4. The method of operation of the respondent Southern California Jobbers, Inc., including the adoption of the line of one seller to the exclusion of its competitors and the holding out to sellers the prospects of increasing their volume and obtaining new customers from among the members, served as an inducement to manufacturers and sellers of automotive products to grant to respondent jobbers a lower price than would have otherwise been obtained. This method of inducement, as well as the practice of the respondent jobber members of holding out or representing to manufacturers and suppliers that respondent Southern California Jobbers, Inc., is a warehouse distributor and by this means receiving a warehouse distributor's discount or allowance when respondents knew full well that there

was no resale by Southern California Jobbers, Inc., to them or by respondent jobbers to other jobbers, constituted a violation of Section 2(f) of the Clayton Act.

5. There is evidence in this record tending to show that differentials of small amounts were important in the trade and the existence of Southern California Jobbers, Inc., as a buying group bears this out. In 1958 there were 69 suppliers who had contracts with respondent Southern California Jobbers, Inc., granting to respondent jobber members a volume rebate based upon aggregate purchases or a warehouse distributor's discount or rebate. Consequently, the discriminatory price granted by one supplier, while substantial in itself, when considered in conjunction with rebates granted by the other 68 suppliers gives a more complete picture of the monetary advantage accruing to the respondent jobber members. The respondent jobber members were fully aware and appreciative of the monetary advantage accruing to them by the price discriminations obtained by purchasing thru the group organizations. In his report to the respondent jobber members at the annual stockholders meeting of Southern California Jobbers, Inc., held February 22, 1959, the president, after reviewing tabulation of earnings from discounts and rebates for the years 1937 to 1948 stated:

I am sure that these figures far exceed the wildest dreams of the founders of this Corporation, and close study should be made of them by each of us. A quick glance will show that for every one hundred dollars worth of merchandise purchased through S.C.J. nearly \$13.00 additional net profit was realized by the stockholders. This means, generally speaking, that our *net profit* is *doubled* on lines purchased through S.C.J. This should convince all of us that wherever possible *we should support our own lines*.

Roy tells me that some members who have been members of S.C.J. since its inception have realized from \$25,000.00 to \$55,000.00 additional profit. While most of us have contributed some time and effort, I do not know of any field where such effort could be so handsomely rewarded.

6. The respondent jobber members knew that the rebates allowed were based not on the quantities or other factors involved in a particular sale, and not upon quantities sold by them to other jobbers, but rather upon the combined dollar amount of all sales to the respondent jobber members through the group organization and bear relationship to factors other than the actual costs of production and delivery. The respondent jobbers were successful operators in a highly competitive market and knew the facts of life so far as the automotive parts market was concerned and knew that no cost justification could be maintained by the sellers since no difference in the cost of manufacture, sale or delivery was involved. Furthermore, the respondent jobber members were placed upon notice as to the illegality of price discriminations received through the medium

of group-buying organizations similar to Southern California Jobbers, Inc., by the initial decisions of the hearing examiners, and the decisions of the Federal Trade Commission and the circuit courts of appeals. (See cases cited in paragraph 2 above.)

7. In a recent decision of the Circuit Court of Appeals for the Second Circuit, dated May 5, 1960, in the matter of American Motor Specialties Co., Inc., the Court held that the use of a group-buying organization organized to obtain lower prices from manufacturers and suppliers in the form of volume discounts or rebates based upon the aggregate purchases of all of its members was a violation of Section 2(f) of the Clayton Act. This decision is fully dispositive of all the issues in the present proceeding:

* * * Thus, from the mere fact that an organization of buyers was able to persuade a manufacturer to treat the orders of the various individual member firms as coming from a single source, the amount of rebate for each member firm's dollar of order was increased, thereby placing each member firm at an advantage over its unorganized competitors. * * * The rebates were paid to the group, and a portion thereof was periodically distributed to each member. The amounts so distributed were apportioned according to the percent which each individual firm's purchases bore to the group's total purchases from the manufacturer. * * * The Commission concedes that member firms were not required to purchase from the manufacturers whose prices had been group-approved, but it clearly was in the interest of a member to do so, and just as clearly it was in the interest of members to exert moral pressure upon fellow-members to so purchase.

* * * * *

Petitioners of course knew that they, as individual firms, were receiving goods in the same quantities and were served by sellers in the same manner as their competitors, and hence organized themselves into a buying group in order to obtain lower prices than their unorganized competitors. Hence, by the very fact of having combined into a group and having obtained thereby a favorable price differential, they each, under *Automatic Canteen*, were charged with notice that this price differential they each enjoyed could not be justified. And this knowledge of each of the seventeen individual firms is imputable to the organization of which they were all members. Thus, irrespective of whether the buying groups' efforts to bargain with the various manufacturers constituted an improper *inducement* under Section 2(f), we hold that the Commission introduced sufficient evidence to fulfill the requirements of *Automatic Canteen* when it showed that petitioners knowingly received preferential price treatment of such a nature as to violate Section 2.

8. The acts and practices of the respondent jobbers in knowingly inducing and knowingly recovering discriminations in price through the use of the group-buying organization, Southern California Jobbers, Inc., prohibited by Section 2(a) of the Clayton Act, as herein found, are in violation of Section 2(f) of said Act.

Order

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ORDER

It is ordered, That respondents C. E. Long, Glenn L. Long and J. T. Prochaska, Jr., co-partners doing business as Alhambra Motor Parts, Edward Gaughn, an individual, doing business as Allied Motor Parts, Laura Kleopfer, Gloria Kleopfer and Gwenlyn D. Ockey, co-partners doing business as Automotive Parts Co., E. P. Feschrach, F. G. Orm and E. R. Eckert, co-partners doing business as Automotive Supply, B.B. & H. Motor Parts, Inc., a corporation, and its officers, Percy T. Lyon, an individual doing business as Barlow Motor Supply Co., Beacon Auto Parts, Inc., a corporation, and its officers, Beedee Auto Parts, Inc., a corporation, and its officers, Jack Bidinger, an individual doing business as Jack Bidinger Auto Parts, Frank G. Boggs and Rollin McBurney, co-partners doing business as Boggs & McBurney Auto Parts, Burbank Auto Parts, Inc., a corporation, and its officers, Art Cole, an individual, doing business as Art Cole Auto Parts, E. L. Covey, an individual doing business as Covey Auto Parts, Curtis & Christensen, Inc., a corporation, and its officers, Wolford Drye, an individual doing business as Drye Automotive Parts, Donald M. Blackmore, Arrell S. McPartland, Otis Ludwick and Margaret A. Ludwick, co-partners doing business as Dale's Auto Parts, Henry A. Mannington and Ethel C. Mannington, co-partners doing business as Dyer Bros., Eckdahl Auto Parts Co., a corporation, and its officers, El Monte Auto Parts, Inc., a corporation, and its officers, C. E. Encell Auto Parts Service, Inc., a corporation, and its officers, Flammer Auto Parts, Inc., a corporation, and its officers, Frazier Wright Co., a corporation, and its officers, Fullerton Motor Parts, Inc., a corporation, and its officers, Curtis C. Gibson and J. Leonard Gibson, co-partners doing business as Gibson Motor Parts, Graves Automotive Supply, a corporation, and its officers, Carl D. Haase, an individual, doing business as Haase Auto Parts Company, John J. Hartman, an individual, doing business as Hartman Auto Parts, K. A. McFarland, an individual, doing business as Hibbard & Rodgers, Hillcrest Auto Supply Co., a corporation, and its officers, Dora L. Huffaker, an individual, doing business as Huffaker's Auto Parts, Clarence R. Ryan, an individual, doing business as Long Beach Auto Parts Co., John F. Dixon, Inc., a corporation, and its officers, L. C. Haskins, R. B. Sharpe and Willard Wedeking, co-partners doing business as Masters Automotive Supply, Bert C. Bussey and James E. Bussey, co-partners doing business as Bussey Auto Parts, Charles M. Darling, an individual, doing business as Mission Auto Supply, D. T. Johnston and Charles G. Russell, co-partners doing business as Motor Parts Depot, A. C. Brown and

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Order

Mable S. Brown, co-partners doing business as Motor Parts & Equipment Co., Henry C. Neufeld, Elmer M. Anderson and Dona Jane Senn, co-partners doing business as Neufeld's Auto Parts, John C. Weatherway and Lester L. Congdon, co-partners doing business as North Long Beach Motor Supply Company, Loren K. Patty, an individual, doing business as Owl Auto Supply, P. & W. Parts Sotre, Inc., a corporation, and its officers, Loy G. Cabe and Roy L. Cabe, co-partners doing business as Parts Service Company, Pomona Motor Parts, a corporation, and its officers, Stewart J. Bryant, Elizabeth H. Bryant and F. Ray Bryant, co-partners doing business as Paso Robles Auto Parts, Howard L. Phoenix and Ross L. Mossman, co-partners doing business as Phoenix Motor Parts, Santa Ana Motor Parts & Machine Works, Inc., a corporation, and its officers, Edward L. Kenworthy, an individual, doing business as Santa Barbara Motor Parts, San Bernardino Motor Parts, a corporation, and its officers, James W. H. Sparks, Floyd A. Sparks, Carlos A. Sparks and Willie D. Sparks, co-partners doing business as Sparks Auto Parts Service, Sturtevant Auto Parts, Inc., a corporation, and its officers, Robert Dopyera, James R. Barber and Victor Lesovsky, co-partners doing business as Tasco Auto Parts, Mac Johnson, an individual, doing business as Torrance Auto Parts, Triangle Motor Parts, a corporation, and its officers, Valley Auto Supply of San Bernardino, Inc., a corporation, and its officers, Glenn Wellington, an individual, doing business as Glenn Wellington Auto Parts, Wilke Machine & Auto Parts, a corporation, and its officers, Dunn Supply Co., Inc., a corporation, and its officers, Jack A. Monteverde and Ruth B. Monteverde, co-partners doing business as Monte's Auto Parts, Ben McConnell, an individual, doing business as McConnell Motor Parts, and their respective agents, representatives and employees; and the individual respondents Randall W. Brownell, Arthur D. Brownell, Wilma M. Brownell, E. Floyd Hubbard, Elwin A. Hubbard, Juanita Firth, A. C. Peschke, J. Peschke, E. E. McCreary, Jack W. Morse, Earl W. Morse, Jewell T. Morse, F. J. Curtis, Mable B. Curtis, H. C. Kelly, Burdette T. Eckdahl, F. O. Guffin, A. D. Shaw, Ruela B. Sutton, Earl Crawford, James White-lock, Mary R. Encell, Pearl C. Zittle, Theodore B. Whitmore, Edwin T. Flammer, Edna M. Flammer, William R. Gallagher, Roy Wright, Emma F. Wright, Cecil D. Penn, Joe W. Johnson, Velda L. Johnson, Lemuel A. Graves, William T. Dingle, William H. Sharpe, Lorraine E. Sharpe, Mable M. Brown, John F. Dixon, Brian S. A. Heenan, Helen Dixon, Otha Luster, William H. Woodcock, Lee R. Anthony, John F. Arthur, J. K. Wilkinson, Helen Bates, C. Ed Thomas, Evelyn J. Thomas, Frank N. Sellers, Peter B. Long, George E. Osborn, John H. Buchenau, Sabin B. Sturtevant, G. E. Lee, S. P.

Sturtevant, Robert Heffner, Roy Baugh, Milton A. Souders, John Wilson, Paul Clammer, Arthur Lindholm, H. P. Wilke, N. Alta Wilke, Muriel Merritt, J. Elmo Dunn, Nancy Jane Dunn, and Dewey A. Dunn, and their respective agents, representatives and employees, in connection with the offering to purchase or purchase of any automotive parts, accessories or supplies or other similar products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

(1) Knowingly inducing, or knowingly receiving or accepting, any discrimination in the price of such products 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 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.

(2) Maintaining, managing, controlling or operating respondent Southern California Jobbers, Inc., or any other organization of like character, as a means or instrumentality to knowingly induce, or knowingly receive or accept, any discrimination in the price of automotive parts, accessories or 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.

It is further ordered, That respondent Southern California Jobbers, Inc., a corporation, and its respective members, officers, agents, representatives and employees; and the individual respondent James M. Polhamus, and his representatives, agents, and employees, in connection with the offering to purchase, or purchase, of any automotive parts, accessories or supplies or other similar products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

(1) Knowingly inducing, or knowingly receiving or accepting, any discrimination in price of such products 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.

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Decision

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having been heard by the Commission upon respondents' appeal from the hearing examiner's initial decision; and

The Commission having considered the entire record, including the briefs of counsel for respondents and counsel in support of the complaint, and having determined that the hearing examiner's findings and conclusions are fully substantiated on the record and that the order contained in the initial decision is appropriate in all respects to dispose of this matter:

It is ordered, That respondents' appeal be, and it hereby is, denied.

It is further ordered, That the hearing examiner's initial decision, filed June 22, 1960, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents 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.