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in detail the manner and form in which it has complied with the order to cease and desist contained herein.

Commissioner Mills not participating for the reason he did not hear oral argument.

IN THE MATTER OF

GOJER, INC.

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

Docket 7851. Complaint, Mar. 30, 1960—Decision, Dec. 1, 1960

Consent order requiring the Akron, O., manufacturer of a hand cleaner known as "Go-Jo", other soap and cleaning products and dispensers therefor, to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act by such practices as allowing purchasers in its "Jobber" classification who bought 35 to 74 cases a 5% discount off jobber prices and those who bought 75 cases or more a 10% discount; and by allowing "Warehouse Group" buyers a 7½% functional discount off jobber prices on their individual purchases made through the "Group" and a 20% discount on each order of 5,000 lbs. or more made by the "Warehouse Group"; and to cease violating Sec. 2(e) of the Clayton Act by furnishing certain purchasers, but not their competitors, the services of "missionary" personnel to accompany the favored purchaser's salesmen in the field and give them on-the-job training in the sale of respondent's products.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsections (a) and (e) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent Gojer, Inc., 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 144 Cuyahoga Street, Akron, Ohio.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of a hand cleaner known as "Go-Jo," other soap and cleaning products, and dispensers for such products.

Respondent sells its products of like grade and quality to a large number of customers located throughout the United States for use,

consumption, or resale therein, including warehouse groups, jobbers and users. Respondent's sales of its products are substantial, exceeding \$1,000,000.00 annually.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the State of Ohio to customers located in other States of the United States. There has been at all times mentioned herein a continuous course of trade in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce, respondent is in substantial competition with other corporations, partnerships, individuals and firms engaged in the manufacture, sale and distribution of hand cleaners, other soap and cleaning products, and dispensers for such products.

Many of respondent's purchasers are likewise in competition with each other in the resale of respondent's products within the same trading areas.

PAR. 5. In the course and conduct of its business in commerce, since January 1, 1957, and continuing to the present, respondent has discriminated and is now discriminating in price between different purchasers of its products by selling said products to some purchasers at substantially higher prices than the prices charged competing purchasers for products of like grade and quality.

PAR. 6. Respondent classifies its customers according to the functions they perform and also according to the quantity of products they purchase. They are classified as "Users," "Class A Warehouses," "Class B Warehouses," "Jobbers," and "Warehouse Groups." It is by means of, and through the use of, these various classifications that respondent has discriminated and is now discriminating in price between different purchasers of its products of like grade and quality.

PAR. 7. For example, customers who sell to retailers and users are classified as "Jobbers." Respondent favors some "Jobbers" by allowing them higher and more favorable purchase price discounts than it allows other "Jobbers." On purchases of 1 to 34 cases of respondent's products, they pay jobber prices. On purchases of 35 to 74 cases, they receive a 5% discount off jobber prices. On purchases of 75 cases or more, they receive a 10% discount off jobber prices. Many of respondent's "Jobbers" receiving higher and more favorable purchase price discounts are in competition with "Jobbers" who are not so favored.

As a further example, a warehouse whose capital stock is owned by various jobbers is classified as a "Warehouse Group." The various jobbers are referred to as "owner-jobbers." On each order of

5,000 pounds or more of respondent's products, a "Warehouse Group" is given a 20% discount off jobber prices. Orders may be placed by individual "owner-jobbers" as well as the "Warehouse Group." Thus, drop shipments are made to the "owner-jobbers." Payment is always made by the "Warehouse Group." "Warehouse Groups" may order less than 5,000 pounds, provided they order \$100 or more of respondent's products, in which case the "Warehouse Group" or the "owner-jobber" (whichever places the order) receives the same discount as any ordinary "Jobber" would receive on a similar order. In addition, however, the "Warehouse Group" receives a 7½% "functional" discount. The 7½% "functional" discount is deducted by the "Warehouse Group" when payment is made to the respondent. The "owner-jobbers" are the ultimate recipients of the 7½% "functional" discount. Respondent's recognition of this so-called "group buying" and consequent classification of said group as a "Warehouse Group," results in the granting of higher and more favorable purchase price discounts to "owner-jobbers" as opposed to respondent's regular "Jobbers" who are not members of "Warehouse Groups" and who receive only the purchase price discounts allowed to "Jobbers." Many of these "owner-jobbers" are in competition with respondent's regular "Jobbers."

PAR. 8. The effect of respondent's discrimination in price may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its purchasers are respectively engaged, or to injure, destroy or prevent competition with said respondent, with respondent's favored customers, or with customers of either of them.

PAR. 9. The discriminations in price, as hereinbefore alleged, are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

COUNT II

PAR. 10. Paragraphs 1 through 4 of Count I hereof are hereby set forth by reference and made a part of this Count II as fully and with the same effect as if quoted here verbatim.

PAR. 11. In the course and conduct of its business in commerce, since January 1, 1957, and continuing to the present, respondent has discriminated in favor of certain of its purchasers buying its commodities by contracting to furnish, or furnishing, or by contributing to the furnishing to such favored customers, services or facilities connected with the handling, sale or offering for sale of such commodities so purchased while not according such services or

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facilities to other competing purchasers on proportionally equal terms.

PAR. 12. As illustrative of such practices, respondent has furnished certain of its purchasers the services and facilities of special personnel known as "missionary" personnel, while not according such services and facilities to all other competing purchasers on proportionally equal terms. Said "missionary" personnel are furnished by respondent and are fully compensated by respondent. They accompany the salesmen of favored purchasers in the field and give them practical, on-the-job training in the sale of respondent's products.

PAR. 13. The acts and practices of respondent, as alleged herein, are in violation of subsection (e) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. John Perechinsky supporting the complaint.

Riddle, Rosen & Mueller, by *Mr. Bernard I. Rosen*, of Akron, Ohio, for respondent.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on March 30, 1960, charging it with discrimination in price between different purchasers of its products, in violation of § 2(a) of the Clayton Act, as amended, and with the furnishing of services or facilities on disproportionate terms, in violation of § 2(e) of said Act.

On October 13, 1960, there was submitted to the undersigned hearing examiner an agreement between respondent, its counsel, and counsel supporting the complaint providing for the entry of a consent order.

Under the terms of the agreement, the respondent admits 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 document includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of 3.25(b) of the Rules of the Commission.

The hearing examiner, having considered the agreement and proposed order, and being of the opinion that they provide an appro-

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priate basis for settlement and disposition of this proceeding, hereby accepts the agreement and orders that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued:

1. Respondent Gojer, Inc. 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 144 Cuyahoga Street, Akron, Ohio.

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

ORDER

It is ordered, That respondent Gojer, Inc., a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of any of its products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality:

1. By selling such products to any purchaser at net prices higher than the net prices charged any other purchaser competing in the resale or distribution of such products;

2. By selling such products to any purchaser at net prices higher than the net prices charged any other purchaser, where respondent, in the sale or distribution of such products, is in competition with any other seller.

It is further ordered, That respondent Gojer, Inc., a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of any of its products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Furnishing, contracting to furnish, or contributing to the furnishing of services or facilities in connection with the handling, processing, sale or offering for sale of respondent's products to any purchaser from respondent of such products bought for resale, when such services or facilities are not accorded on proportionally equal terms to all other purchasers from respondent who resell such products in competition with such purchasers who receive such services or facilities.

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DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The hearing examiner, on October 19, 1960, having filed his initial decision in this proceeding accepting an agreement containing a consent order to cease and desist theretofore executed by respondent and by counsel supporting the complaint, and the respondent, on November 4, 1960, having filed a motion requesting that the effective date of the initial decision be stayed pending solving by the respondent of compliance problems presented by this proceeding; and

The Commission having determined that granting of the request to stay the effective date of the initial decision would not be in the public interest:

It is ordered, That the respondent's motion be, and it hereby is, denied.

It is further ordered, That the initial decision of the hearing examiner shall, on December 1, 1960, become the decision of the Commission.

It is further ordered, That respondent Gojer, Inc., a corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.