

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 18th day of April 1961, become the decision of the Commission; and, accordingly:

It is ordered, That 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.

IN THE MATTER OF
BOND APPLIANCE CENTERS, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7315. Complaint, Nov. 25, 1958—Decision, Apr. 22, 1961

Order dismissing, without prejudice, complaint charging a Boston, Mass., sewing machine retailer no longer in business, with bait advertising, conducting deceptive radio quiz contests, fictitious pricing, and furnishing misleading five-year guarantees.

Mr. Garland S. Ferguson for the Commission.

Mr. George V. Flavan, of Quincy, Mass., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on November 25, 1958, charging Respondents with violation of the Federal Trade Commission Act by the dissemination of false and deceptive statements concerning their sewing machines and the prices thereof.

On February 2, 1959, counsel for the Respondents filed a motion requesting an extension of time within which to file an answer herein, stating that on December 29, 1958, a Receiver was appointed for the corporate Respondent, Bond Appliance Centers, Inc., in Suffolk County Equity Court, Massachusetts, in the matter of De Silva Vacuum Cleaner Co. vs. Bond Appliance Centers, Inc., Docket 74980. He further stated that under Massachusetts law, upon the appointment of a State Court Receiver, the corporation involved in such receivership and its officers, were stopped from conducting the business of the corporation, and from defending or prosecuting any suit or action on behalf of the corporation. No answer on behalf of Respondents has ever been filed.

On February 16, 1961, counsel supporting the complaint submitted a motion requesting that the complaint herein be dismissed without prejudice. He states that a recent investigation of the Respondents has been conducted by the Bureau of Investigation to determine their present status, and that the final report of this investigation, dated February 7, 1961, shows that the corporate Respondent has been in receivership, as stated by counsel for the Respondents, since December 29, 1958, and that the liabilities of the corporate Respondent far exceed its assets. The report further shows that the individual Respondents have not been engaged in the business of selling sewing machines, or in a similar business, since 1958, and that they have stated that they have no intention of resuming such business. Counsel supporting the complaint states that under the circumstances, he believes that the further prosecution of this case would not be in the public interest.

The Hearing Examiner, after having considered the entire record herein, concurs in the conclusion reached by counsel supporting the complaint. Accordingly,

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings against the Respondents herein, should future circumstances so warrant.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 22nd day of April 1961, become the decision of the Commission.

IN THE MATTER OF

BORG-WARNER CORPORATION ET AL.

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

Docket 7667. Complaint, Dec. 1, 1959—Decision, Apr. 27, 1961

Consent order requiring a Chicago manufacturer and its corporate sales subsidiary—maintaining warehouse stocks in many States and with overall sales in 1958 approximating \$533,000,000—to cease discriminating in price between different purchasers of their automotive replacement parts in violation of Sec. 2(a) of the Clayton Act, by giving jobbers belonging to buyer groups higher discounts on purchases than their non-member competitors.

Complaint

58 F.T.C.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described have violated and are now violating the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936, (U.S.C. Title 15, Section 13) hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Borg-Warner Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with principal office and place of business located at 200 South Michigan Avenue, Chicago, Illinois. Borg-Warner Corporation's numerous divisions and corporate subsidiaries are variously located and engaged in the manufacture, sale and distribution of many diversified products, including repair or replacement parts for installation and use in automotive vehicles. Borg-Warner Corporation's overall product sales for 1958 totalled approximately \$533,00,000.

Respondent, Borg-Warner Service Parts Company, a wholly-owned and controlled subsidiary of respondent Borg-Warner Corporation, is a corporation organized, existing and doing business under the laws of the State of Delaware, with principal office and place of business located at 6 North Michigan Avenue, Chicago, Illinois. Borg-Warner Service Parts Company is engaged in the sale and distribution of the automotive replacement parts manufactured by its parent Borg-Warner Corporation. Borg-Warner Service Parts Company maintains warehouse stocks for such purpose in the cities of Atlanta, Ga., Boston, Mass., Charlotte, N. C., Chicago, Ill., Cleveland, Ohio, Dallas, Texas, Detroit, Mich., Houston, Texas, Kansas City, Mo., Los Angeles, Calif., Minneapolis Minn., New York, N. Y., Oakland, Calif., Philadelphia, Pa., Pittsburgh Pa. Portland, Oregon, Richmond, Va., Seattle, Wash. and St. Louis, Mo.

Respondents, Borg-Warner Corporation and Borg-Warner Service Parts Company, in the course and conduct of their business as aforesaid have caused and now cause the said parts to be shipped and transported from the State or States of location of their various manufacturing plants, warehouses and places of business, to the purchasers thereof located in States other than the State or States wherein said shipment or transportation originated. Said parts have been and are so sold to different purchasers for use or resale within the United States and the District of Columbia, and respondents in the sale of said parts have at all times relevant herein been and

now are engaged in commerce, as "commerce" is defined in the Clayton Act.

PAR. 2. The aforescribed sales of said automotive replacement parts annually total in the substantial millions of dollars and respondents, in the course and conduct of their business as aforesaid, have been and now are discriminating in price between different purchasers of their automotive replacement parts of like grade and quality, by selling said parts at higher and less favorable prices to some purchasers than the same are sold to other purchasers, many of whom have been and now are in competition with the purchasers paying the higher prices.

For example, respondents classify said different purchasers of their automotive replacement parts and extend and set terms and conditions of sale for each such classification, according to the following agreements or arrangements:

(1) Jobber Franchise:

A purchaser classified as a "jobber" is normally engaged in reselling said replacement parts to automotive vehicle fleets, and to garages, gasoline service stations, and others in the automotive repair trade serving the general public. Jobbers purchase at a net price set out in respondents' "Jobber's Net Price List". Jobbers are given a 15% discount on purchases of 100 or more in quantity of cross and bearing assemblies made at one time, but receive no discounts on the purchases of respondents' other parts. Respondents sell to approximately 2,500 such "jobber" purchasers throughout the United States.

(2) Warehouse Distributor Franchise:

A purchaser classified as a "warehouse distributor" normally resells only to jobbers. A warehouse distributor purchases from respondents' "Jobber's Net Price List" less 15%, less 2% freight allowance, in the case of all parts other than universal joints and cross and bearing assemblies. On universal joints and cross and bearing assemblies the warehouse distributor receives a 20%, plus 10% discount, which equals a 28% discount from the jobber's net price. Respondents sell to 43 such "warehouse distributors".

(3) Redistributor Franchise:

A purchaser classified as a so-called "redistributor" is a jobber who resells both as a jobber and on occasion as a warehouse distributor. Each month such a purchaser certifies as to whether the sale was made as a "jobber" or "warehouse distributor" and accordingly is allowed thereon either the "jobber's net price", or a "jobber's net price" less the aforesaid applicable warehouse distributor discount. To obtain the warehouse distributor discounts the sales must be made by the "redistributor" to other and bona fide jobbers approved

Complaint

58 F.T.C.

in advance by respondents' authorized sales representatives. Respondents sell to 121 such "redistributors".

(4) Purchases made by individual jobbers engaged in so-called "group buying":

In 1957 respondents commenced selling universal joints and components thereof to the Southern California Jobbers, Inc. organization at the net prices set out in respondents' "Jobber's Net Price List", with a 15% discount on all purchases of said parts without regard to the quantity purchased. Southern California Jobbers, Inc., a California corporation with principal office and place of business in Los Angeles, California, has been and is now maintained, managed, controlled and operated by and for the particular individual jobber members associated together at any given time for the effectuation of the purchasing policies and practices described in PARAGRAPH THREE following of this complaint. On March 26, 1959, respondents classified said Southern California Jobbers, Inc., as a "warehouse distributor" and commenced giving it a 28% discount from jobber's net price on purchases of universal joints and the components thereof. Shortly thereafter, in April 1959, respondents attempted, and without success, to induce the Southern California Jobbers, Inc. organization to serve as such a "warehouse distributor" for their entire line of other products subject to only the 15% discount and 2% freight allowance. Respondents' sales to the Southern California Jobbers, Inc. organization are substantial, as is indicated by a gross billing therefor of \$19,742.65 for April 1959, and of \$10,755.19 for May 1959.

PAR. 3. In practice and effect, Southern California Jobbers, Inc., has been and is now serving as the medium or instrumentality by, through or in conjunction with which, its numerous jobber members exert the influence of their combined bargaining power on manufacturers and sellers of automotive replacement parts. When, and if, such recognition is granted by any particular seller, the subsequent purchase transactions between said seller and the individual jobber members have been and are billed to and paid for through the afore-said organizational device of Southern California Jobbers, Inc. Said corporation thus purports to be the commodity purchaser, when in truth and in fact, it has been and is now serving only as agent for the several individual purchasers aforescribed, and is a mere book-keeping device for facilitating the inducement and receipt by the said jobber purchasers from the said seller of discriminatory purchase prices.

Southern California Jobbers, Inc., has not and does not function as a purchaser for its own account for the use or resale of the commodities concerned. Respondents' recognition of this device of so-

called "group buying" and consequent classification of said group as a "warehouse distributor", results in the granting of higher and more favorable purchase price discounts to these group-buying jobbers as opposed to respondents' non-group-buying jobber customers who obtain only the purchase price discounts set forth and allowed in respondents' jobber's franchise schedule. Many of these group-buying jobbers are both competitively engaged with respondents' non-group-buying jobber customers and are also potential customers of respondents' warehouse distributor purchasers. Manufacturers and other sellers competitive with respondents, and not in such manner allowing actual or potential jobber purchasers the use of this book-keeping device of so-called group buying, have lost and may further lose substantial patronage in both customer number and dollar amount to respondents in the offering for sale and the sale of their competitive products, as a result of respondents' continued recognition of this preferential buying practice.

PAR. 4. The effect of respondents' aforesaid discriminations in price between the said different purchasers of its said products of like grade and quality sold in manner and method and for purposes as aforesaid, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondents and the aforesaid favored purchasers are engaged, or to injure, destroy or prevent competition with said respondents, said favored purchasers, or with customers of either of them.

PAR. 5. The aforesaid acts and practices of respondents constitute violations of the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C. Title 15, Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

Mr. Eldon P. Schrup for the Commission.

Mr. Charles W. Houchins, Mr. Robert W. Murphy and Mr. Russell J. Parsons, of Chicago, Ill., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated December 1, 1960, the respondents are charged with violating the provisions of subsection (a) of section 2 of the Clayton Act, as amended.

On February 1, 1961, the respondents and their attorneys entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, 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 document includes a waiver by the respondents 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, does not constitute an admission by the respondents that they have violated the law as alleged in the complaint, and that said complaint may be used in construing the terms of the order.

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

The complaint insofar as it concerns the allegation of "primary line injury", namely, to substantially lessen competition or tend to create a monopoly in the lines of commerce in which respondents are engaged, or to injure, destroy or prevent competition with said respondents, may be dismissed on the grounds that the evidence at hand in the light of subsequent developments is insufficient to substantiate such allegations.

The agreement does not preclude a further investigation and the issuance of a complaint against Borg-Warner Corporation's sales of replacement parts to original equipment manufacturers, if such be indicated.

The agreement also provides that the term "purchaser" as used in the order to cease and desist herein shall include any purchaser buying directly or indirectly from respondents, or a subsidiary, division, or affiliate of respondents by means of group buying or any related device but shall not be construed in the instant proceeding to include original equipment manufacturers, their divisions, subsidiaries, or affiliates purchasing automotive parts from respondents for replacement use or sale.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding 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 Borg-Warner Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with principal office and place of business located at 200 South Michigan Avenue, Chicago, Illinois. Respondent is engaged in the manufacture and sale of many diversified products, including the manufacture and sale to automotive vehicle manufac-

turers of parts for both original installation and replacement use in automotive vehicles.

Respondent Borg-Warner Service Parts Company, a wholly-owned and controlled subsidiary of respondent Borg-Warner Corporation, is a corporation organized, existing and doing business under the laws of the State of Delaware, with principal office and place of business located at 6 North Michigan Avenue, Chicago, Illinois. Borg-Warner Service Parts Company is engaged in the sale and distribution, principally to automotive parts wholesalers, of automotive replacement parts manufactured by various and numerous manufacturers, including Borg-Warner Corporation.

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

ORDER

It is ordered, That the respondents Borg-Warner Corporation, a corporation, and Borg-Warner Service Parts Company, a corporation, and said respondents' officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale to purchasers engaged in jobber distribution or redistribution to jobbers of automotive replacement parts and such related items as are shown on pricing sheets of Borg-Warner Service Parts Company, in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating in the price of such products of like grade and quality:

1. By selling to any one purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the higher price in the resale and distribution of respondents' said products.

It is further ordered, That the allegation in the complaint to substantially lessen competition or tend to create a monopoly in the lines of commerce in which respondents are engaged, or to injure, destroy or prevent competition with said respondents, be dismissed.

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 27th day of April 1961, become the decision of the Commission; and, accordingly:

It is 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.

Decision

58 F.T.C.

IN THE MATTER OF
RODNEY, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8046. Complaint, July 18, 1960—Decision, Apr. 27, 1961

Order dismissing complaint charging an insolvent Chicago sewing machine distributor with advertising purported "contests" to obtain leads to prospective customers, and awarding so-called "credit certificates" in connection therewith to apply on the purchase price of sewing machines.

Mr. William A. Somers for the Commission.

Mr. Seymour Tabin, of Chicago, Ill., for respondents Irwin Ratner and Joseph Wandel.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

Respondents in the above-entitled proceeding are charged in a complaint issued by the Federal Trade Commission on July 18, 1960, with violation of the Federal Trade Commission Act in connection with the promotion, sale, and distribution of sewing machines. Appearances were filed on behalf of the individual respondents, as well as answers in which the corporate respondent was alleged to be in bankruptcy.

Counsel supporting the complaint now moves that the complaint be dismissed without prejudice. He confirms that the corporate respondent had entered into involuntary bankruptcy six months prior to the issuance of the complaint, that said corporation is completely insolvent, and that another corporation has succeeded to certain of the assets of the corporate respondent but not to the right to do business as Rodney, Inc. Counsel supporting the complaint states further:

. . . the individual respondents, from the best information available to the movant, are insolvent, their present addresses are not ascertainable, and that one of said individual respondents is employed as a collector of accounts for some corporation and the other is selling water coolers on a commission basis for another company, and said respondents will not enter into the type of business conducted by them through the corporate respondent at any future date.

Under the circumstances, there would appear to be no public interest in a continuation of these proceedings either against the corporate respondent which has gone out of business, or against the individual respondents whose present addresses are not ascertainable and who appear to have no likelihood of re-entering this type of employment.