

sion a report in writing setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF
PITTSBURGH PLATE GLASS COMPANY

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

Docket 8328. Complaint, Mar. 16, 1961—Decision, Oct. 11, 1961

Consent order requiring a Pittsburgh manufacturer of glass products, including automobile replacement glass, to cease violating Sec. 2(e) of the Clayton Act by paying for advertising for customers designated "A.I.D. dealers" ("autoglass installation dealer") on television, in trade publications and nationally published magazines, and also for placing names of such dealers in the "Yellow Pages" of the telephone directory, while according no comparable services to competitors of "A.I.D.'s".

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter

Complaint

59 F.T.C.

more particularly designated and described, has violated, and is now violating the provisions of subsection (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:

PARAGRAPH 1. Respondent Pittsburgh Plate Glass Company is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office and place of business located at One Gateway Center, Pittsburgh, Pennsylvania.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of glass products, including glass used for replacements in automobiles and trucks, paints, chemicals, and other products. Respondent sells and distributes its products throughout the United States to wholesalers, retailers and consumers. Respondent's sales of its products are substantial, exceeding \$500,000,000 annually.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the Commonwealth of Pennsylvania to purchasers 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, and particularly since 1958, respondent has discriminated in favor of certain of its purchasers buying its products by contracting to furnish, or furnishing, or by contributing to the furnishing of such favored purchasers, services or facilities connected with the handling, sale, or offering for sale of such products so purchased while not according such services or facilities to all other competing purchasers on proportionally equal terms.

PAR. 5. As illustrative of such practices, respondent has furnished certain of its purchasers "A.I.D." services and facilities, while not according such services and facilities to all other competing purchasers.

Respondent designates certain of its purchasers "A.I.D. dealers", which is an abbreviation of "autoglass installation dealer". In conjunction with its A.I.D. program, respondent advertises its automobile replacement glass on television, in trade publications, and in magazines of national publication. Respondent also places the names of all "A.I.D. dealers" in the classified section of the telephone directory known as the "Yellow Pages". All of these advertisements direct the attention of prospective customers to the "A.I.D. dealer" handling the products of respondent. Respondent pays for all "A.I.D." advertising.

Respondent has many other purchasers who are not designated "A.I.D." and who compete with purchasers who are so designated. Respondent's purchasers who are not designated "A.I.D." are thus not accorded the services and facilities which are accorded to purchasers who are designated "A.I.D."

PAR. 6. 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 Perry for the Commission.

Mr. Robert R. MacIver, Pittsburgh, Pa., for respondent.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

The complaint in this proceeding, issued March 16, 1961, charged that the respondent, Pittsburgh Plate Glass Company, a Pennsylvania corporation, located at One Gateway Center, Pittsburgh, Pennsylvania, was engaged in the manufacture, sale and distribution of glass products, including glass used for replacement in automobiles and trucks, paints, chemicals and other products and that in the course of its business in commerce it had furnished to certain purchasers of its products services or facilities not accorded to other competing purchasers on proportionally equal terms. It charged further that the respondent had violated subsection (e) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, by providing advertising services and facilities to some of its customers, among which were purchasers of automobile replacement glass, without providing similar services and facilities to other customers who compete in commerce with those receiving such services and facilities.

After issuance of the complaint, respondent (with the advice of its attorney) and counsel supporting the complaint entered into an agreement containing a consent order providing that respondent cease and desist from engaging in the alleged practices in connection with the sale or distribution of automobile replacement glass in commerce.

According to the complaint, the alleged practice is not confined only to automobile replacement glass. To justify limiting the consent order to that product, the agreement recites that "Counsel supporting the complaint does not have available evidence in support of the allegations of the complaint as to products other than automotive replacement glass nor does he have available evidence indicating that practices similar to those alleged to have been used . . . would be commercially practical for use in connection with the sale of respondent's other products" This statement is supported by seven

* The agreement and the complaint use the words "automotive" and "automobile" indiscriminately.

affidavits describing the nature of and the methods of sale and distribution of other of respondent's products. These affidavits are generally to the effect that the alleged practice, which is the subject of the complaint, is not one which is used or would be used in connection with the sale of products other than automobile replacement glass because that is the only product the sale of which is promoted by emphasis on the skill of the dealer and the conveniences afforded by him. While there is no affidavit expressly setting forth that the seven affidavits relate to *all* other products of the respondent, the agreement so implies by using in Paragraph 7 the words, "respondent's other products all of which are marketed . . ." and there is an eighth affidavit saying that "all purchasers of products from PPG's Merchandising Division are informed of PPG's current promotional services . . . [and] . . . all invoices printed in the future shall bear a notice informing each such purchaser how the purchaser can avail himself of such services." The Hearing Examiner is, therefore, of the opinion that the agreement disposes of all the issues in this proceeding.

It is expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

By the terms of said agreement, the respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By said agreement, the respondent expressly waives any further procedural steps before the Hearing Examiner and the Commission; the making of findings of fact or conclusions of law; and all rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance therewith.

Respondent agrees further that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It is further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The Hearing Examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provide for an appropriate disposition of this proceeding, the same is hereby accepted and, upon becoming part of the Commission's

decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, shall be filed; and, in consonance with the terms thereof, the Hearing Examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondent Pittsburgh Plate Glass Company, a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of automotive replacement glass 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 automotive replacement glass to any purchaser from respondent of such automotive replacement glass bought for resale, when such services or facilities are not accorded on proportionally equal terms to all purchasers from respondent who resell respondent's automotive replacement glass in competition with such purchasers who receive such services or facilities.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 11th day of October 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondent herein 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.

IN THE MATTER OF

FLORIDA CITRUS DISTRIBUTORS, INC.

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