

(60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF
D L PRODUCTS, INC.

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

Docket C-299. Complaint, Jan. 11, 1963—Decision, Jan. 11, 1963

Consent order requiring a Buffalo, N.Y., manufacturer of its "D L Handi Cleaner" and dispensers, to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act by such practices as (a) selling its product to some buyers classified as "Jobbers" and "Redistributing Jobbers" at jobber prices less discounts of 5% and 10% while allowing no discount to other "Jobbers" in competition with those favored; (b) paying arbitrary discounts bearing no relation to selling costs to its "Jobber" and "Redistributing Jobber" purchasers; and (c) wrongly classifying as "Warehouse Distributors" and giving a 20% discount to some purchasers who functioned as "Jobbers", while selling to other competing "Jobbers" with no discount or at jobber prices less a quantity discount of 5% or 10%.

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 subsection (a) 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 D L Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 47 East Market Street, Buffalo, N.Y.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of a hand cleaner known as "D L Handi Cleaner", and also dispensers for said hand cleaner. Respondent sells its products of like grade and quality to a large number of purchasers located throughout the United States for use, consumption or resale. Respondent's sales of its products are substantial, exceeding \$800,000 annually.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the State of New York to purchasers located in other States of the United States and the District of Columbia. 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 has been, and is now, discriminating in price between different purchasers of its products of like grade and quality by selling said products to some purchasers at higher and less favorable prices than the same products are sold to other purchasers who are in competition with the purchasers paying the higher prices.

PAR. 5. Respondent classifies its customers according to the functions they perform and also according to the quantity of products they purchase. Purchasers are classified as "Industrials", "Dealers", "Jobbers", "Redistributing Jobbers" and "Warehouse Distributors". Many of respondent's purchasers are in competition with each other in the resale of respondent's products.

Industrials and Dealers: Respondent classifies an "Industrial" purchaser as one who uses the products he purchases on his own premises, such as a factory. Respondent classifies a "Dealer" purchaser as a retailer, such as a gasoline service station or a retail hardware store. "Industrial" and "Dealer" accounts are normally serviced by one of respondent's "Jobbers", "Redistributing Jobbers" or "Warehouse Distributors". Respondent's direct sales to "Industrial" and "Dealer" purchasers account for only one (1%) percent of respondent's sales.

Jobber: Purchasers classified as "Jobbers" purchase respondent's hand cleaner at jobber prices. They normally sell to "Dealer" and "Industrial" accounts. On purchases of over 1,000 pounds and under 2,000 pounds of hand cleaner, a "Jobber" is allowed a 5% quantity

discount. On purchases of over 2,000 pounds of hand cleaner, a "Jobber" is allowed a 10% quantity discount. On purchases of under 1,000 pounds, he receives no discount.

Redistributing Jobber: Purchasers classified as "Redistributing Jobbers" purchase respondent's hand cleaner at jobber prices. They sell to "Dealers" and "Industrials" and also to other jobbers. When a "Redistributing Jobber" purchases in sufficient quantities to receive a 5% or 10% quantity discount, he is allowed a 5% "Functional Rebate" on that portion of his purchases of hand cleaner which he resells to other jobbers.

Warehouse Distributor: A purchaser classified as a "Warehouse Distributor" normally resells only to jobbers. A "Warehouse Distributor" is required by respondent to purchase an initial stock of 2,000 pounds of hand cleaner, and thereafter must purchase in quantities of no less than 1,000 pounds. A "Warehouse Distributor" purchases at jobber prices less 20% on all of his purchases.

PAR. 6. It is by means of, and through the use of, these various classifications that respondent has discriminated in price between different purchasers of its products of like grade and quality.

For example, respondent sells its hand cleaner to some "Jobbers" at jobber prices without allowing said "Jobbers" any discounts, while at the same time respondent sells its hand cleaner of like grade and quality to other "Jobbers" and "Redistributing Jobbers" at jobber prices less discounts of 5% and 10%. Many of respondent's "Jobber" purchasers who receive no discounts are in competition in the resale of respondent's hand cleaner with "Jobber" and "Redistributing Jobber" purchasers who receive 5% and 10% quantity discounts. Also, respondent's quantity discounts are arbitrary, and bear no relation to respondent's cost of selling to its "Jobber" and "Redistributing Jobber" purchasers in the varying quantities.

As a further example, respondent has classified some purchasers as "Warehouse Distributors" when said purchasers made no sales to jobbers, but rather functioned as a "Jobber" as so classified by respondent. Said purchasers who were wrongly classified as "Warehouse Distributors" are given a 20% discount on all purchases of respondent's hand cleaner. At the same time, respondent sold its hand cleaner of like grade and quality to "Jobbers" at jobber prices with no discounts, or in some instances at jobber prices less a quantity discount of 5% or 10%. Many of respondent's "Jobber" purchasers who receive no discounts, or a 5% or 10% quantity discount, are in competition in the resale of respondent's hand cleaner with the purchasers wrongly classified as "Warehouse Distributors".

PAR. 7. The effect of such discriminations in price made by respondent in the sale of its products, as hereinbefore set forth, may be substan-

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tially to lessen competition or tend to create a monopoly in the lines of commerce in which the favored purchasers from respondent are engaged, or to injure, destroy or prevent competition with said favored purchasers.

PAR. 8. The discriminations in price made by respondent in the sale of its products, as hereinbefore alleged, are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of subsection (a) of Section 2 of the Clayton Act, as amended, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, D L Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 47 East Market Street, in the city of Buffalo, State of New York.

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

ORDER

It is ordered, That respondent D L Products, 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 forth-

with cease and desist from discriminating in the price of such products of like grade and quality:

By selling such products to any purchaser at net prices higher than the net prices charged any other purchaser who competes in the resale or distribution of such products with the purchaser paying the higher price.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission