

directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any fur product is not misbranded, falsely invoiced or falsely advertised when the respondent has reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce.

It is further ordered, That respondent herein shall, within sixty (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
WESTINGHOUSE ELECTRIC CORPORATION

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

*Docket 8053. Complaint, July 20, 1960—Decision, Sept. 12, 1963**

Consent order requiring a manufacturer of electrical devices, equipment and supplies, to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act by such practices as (1) granting to automotive replacement parts wholesalers who purchased in excess of \$25,000 worth of its miniature and sealed-beam lamps in a contract year, an additional discount over that allowed to purchasers of smaller amounts; and (2) granting to General Motors Corporation, on purchases resold to car and truck dealers, in competition with replacement parts wholesalers, an additional discount to that allowed such wholesalers.

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 by the Robinson Patman Act, approved June 19, 1936, (U.S.C. Title 15, Sec. 13) hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Westinghouse Electric Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office located at 3 Gateway Center, Pittsburgh, Pennsylvania. Respondent's numerous divisions and corporate subsidiaries are variously located, and engaged in the manufacture, sale and distribution

*Order modifying Final Order, dated Nov. 6, 1963, p. 631 herein.

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of electrical devices, equipment and supplies. In 1956 the total value of products and services sold by respondent amounted to \$1,525,375,771.

One of the divisions of respondent is the Lamp Division. The Lamp Division is engaged in the manufacture, sale and distribution of electric lamps of various kinds, including automotive miniature and sealed-beam lamps, which respondent sells to various classes of customers.

Respondent in the course and conduct of its business as aforesaid, competes with other manufacturers and sellers of similar automotive miniature and sealed-beam lamps.

PAR. 2. Respondent in the course and conduct of its business as aforesaid, has caused and now causes, the said miniature and sealed-beam lamps to be shipped and transported from the States of location of its various places of business to the purchasers thereof located in States other than the States wherein said shipments originated. Said miniature and sealed-beam lamps have been, and are, sold to different purchasers for use or resale within the United States and the District of Columbia. In the sale of said miniature and sealed-beam lamps, respondent has been, at all times relevant herein, engaged in commerce, as "commerce" is defined in the Clayton Act.

PAR. 3. Respondent, in the course and conduct of its business as aforesaid, has been, and now its, discriminating in price between different purchasers of its miniature and sealed-beam lamps of like grade and quality by selling said products 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, among respondent's customers are automotive replacement parts wholesalers who purchase automotive miniature and sealed-beam lamps pursuant to the terms and conditions set forth in respondent's "Distributor Franchise For Miniature and Sealed Beam Lamps", which is also identified as respondent's "Form DA" franchise. According to the terms and conditions of the aforesaid distributor franchise miniature and sealed-beam lamps are sold to form DA distributors at prices appearing in the current "Westinghouse Schedule of Net Prices to Wholesalers—Automotive, Marine and Aircraft Lamps." Such prices are not discounted on orders of less than \$250. On orders of \$250 or more for shipment in entirety at one time to one place a discount of 18% is granted from the prices appearing in the aforesaid price schedule. An additional discount is available, according to the terms and conditions of the distributor franchise, as follows:

If the Distributors net purchases of Westinghouse Miniature and Sealed Beam Lamps during any contract year reach \$25,000 net value, an additional discount

of 5% of the net value of each invoice (after all other applicable discounts except cash discount have been deducted) will be allowed and a retroactive credit adjustment will be made on all net purchases during the contract year. In such cases the additional discount will be allowed during the subsequent contract year.

The granting of such an additional discount results in the charging of higher and less favorable prices to purchasers whose total annual dollar volume of purchases is less than \$25,000. As of January 1, 1957, respondent had executed DA franchises with 752 distributors of which 719 purchased less than \$25,000 worth of miniature and sealed-beam lamps annually and 33 of which purchased \$25,000, or more, worth of miniature and sealed-beam lamps annually.

As another example, the General Motors Corporation, through its AC Spark Plug Division, purchases for replacement resale automotive miniature and sealed-beam lamps pursuant to the terms and conditions of a negotiated contract. According to the terms and conditions of the aforesaid contract, automotive miniature and sealed-beam lamps are sold to the General Motors Corporation at prices appearing in the current "Westinghouse Schedule of Net Prices to Wholesalers—Automotive, Marine and Aircraft Lamps" less discounts of 29.2%. Such automotive miniature and sealed-beam lamps are then sold by the General Motors Corporation, to General Motors car and truck dealers, in competition with automotive replacement parts wholesalers.

The granting of such an additional discount, by respondent, to the General Motors Corporation results in the charging of lower and more favorable prices to the General Motors Corporation than the higher and less favorable prices charged to other wholesaler purchasers competitive with the General Motors Corporation and who purchase from respondent pursuant to the terms and conditions set forth in respondent's "Distributor Franchise For Miniature and Sealed Beam Lamps."

PAR. 4. The effect of respondent's 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 to substantially lessen competition in the lines of commerce in which the aforesaid favored purchasers are engaged, or to injure, destroy, or prevent competition with said favored purchasers, or with the customers of said favored purchasers.

PAR. 5. The aforesaid acts and practices of respondent constitute violations of subsection (a) of Section 2 of the Clayton Act, as

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amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Sec. 13).

Mr. Richard B. Mathias for the Commission.

Cravath, Swaine & Moore, by *Mr. John D. Calhoun*, New York, N. Y., for respondent.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER.

JULY 24, 1962

The complaint filed herein on July 20, 1960, charges respondent with violating subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, by discriminating in price between different purchasers of its automotive miniature and sealed-beam lamps of like grade and quality by selling said products 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. On August 10, 1961, the parties to this proceeding filed with the Secretary of the Federal Trade Commission a notice of their intention to dispose of this proceeding by entering into an agreement containing a consent order to cease and desist, as then required by the Rules of Practice for Adjudicative Proceedings. On July 16, 1962, the parties submitted to the undersigned an agreement dated December 28, 1961, which purports to dispose of all the issues raised by the complaint herein as to all parties involved. Said agreement has been signed by the vice president of respondent corporation and by counsel for both parties, and has been approved by the Director of the Bureau of Restraint of Trade of this Commission. The said agreement was submitted to the above-named hearing examiner for his consideration, in accordance with § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings published May 6, 1955.

Respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. The parties have, *inter alia*, by such agreement covenanted:

1. The order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing;

2. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement;

3. The complaint may be used in construing the terms of said order;

4. The agreement is entered into subject to the condition that the initial decision based thereon shall be stayed by the Commission unless and until the Commission disposes of Docket No. 8514 [p. 632 herein] by an order to cease and desist in substantially the same form as set forth herein, or by other appropriate order to cease and desist or of dismissal;

5. The agreement shall not become a part of the official record of this proceeding unless and until it becomes a part of the decision of the Commission;

6. The complaint and the order to cease and desist to be entered in accordance with the agreement deal only with sales (i) by respondent of automotive miniature and sealed-beam lamps to customers engaged in the resale or distribution of such lamps to the replacement trade and (ii) for replacement purposes only;

7. The agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint;

8. The following order to cease and desist may be entered in this proceeding by the Commission. It may be altered, modified, or set aside in the manner provided for other orders. The term "purchaser" as used in the agreed upon order to cease and desist herein shall include any purchaser buying directly or indirectly from respondent, or a division, subsidiary or affiliate of respondent by means of group-buying or any related device.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of December 28, 1961, containing consent order, and it appearing that the order provided for in said agreement covers the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, the agreement is hereby accepted, pursuant to §§ 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings published May 6, 1955; and

The undersigned hearing examiner having considered the complaint herein and the agreement and proposed order, and being of the opinion that the disposition of this proceeding by means of said agreement will be in the public interest, makes the following jurisdictional findings, and issues the following order.

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JURISDICTIONAL FINDINGS

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;

2. Respondent Westinghouse Electric Corporation is a corporation existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania. The principal office of respondent is located at 3 Gateway Center, Pittsburgh, Pennsylvania;

3. Respondent is engaged in commerce, as "commerce" is defined in the Clayton Act;

4. The complaint states a cause of action against said respondent under the Act hereinabove named, and this proceeding is in the public interest. Now, therefore,

It is ordered, That Westinghouse Electric Corporation, a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in or in connection with the sale for replacement purposes, of automotive miniature and sealed-beam lamps in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of such automotive miniature and sealed-beam lamps of like grade and quality, by selling to any purchaser at net prices higher than the net prices charged any other purchaser who, in fact, competes in the resale and distribution of said products with the purchaser paying the higher price.

FINAL ORDER

SEPTEMBER 12, 1963

By its order of August 13, 1962, the Commission extended until further order the date on which the initial decision of the hearing examiner herein would become the decision of the Commission; and

The Commission having determined that the conditions set forth in Paragraph 7 of the agreement upon which the initial decision is based have been fulfilled and having concluded that said initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner filed July 24, 1962, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondent Westinghouse Electric Corporation, 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.

ORDER MODIFYING FINAL ORDER

NOVEMBER 6, 1963

Respondent having moved the Commission to modify its Final Order, issued September 12, 1963, for the purpose of including within the initial decision a paragraph inadvertently omitted therefrom, said paragraph being an integral part of the agreement upon which the initial decision is based; and

The Commission, after noting that counsel in support of the complaint does not oppose respondent's motion and, after duly considering said motion, having determined that respondent's request has merit and that good cause has been shown in support thereof:

It is ordered, That this proceeding be, and it hereby is, reopened.

It is further ordered, That the Commission's Final Order, issued September 12, 1963, be, and it hereby is, modified by striking the last two paragraphs of said Final Order and, in lieu thereof, substituting the following paragraphs:

It is ordered, That the initial decision of July 24, 1962, be, and it hereby is, adopted as the decision of the Commission, except that said initial decision is modified by inserting the following paragraph as a subparagraph to paragraph 6 of the covenants of the parties:

For purposes of this agreement and the order to cease and desist to be entered in accordance herewith, customers engaged in the resale or distribution of automotive miniature and sealed-beam lamps to the replacement trade are defined as such types of customers as were or are (i) purchasing automotive miniature and sealed-beam lamps from respondent under distributor franchise agreements with respondent and (ii) automotive manufacturers purchasing for replacement, rather than original installation, purposes;

ORDER

It is ordered, That Westinghouse Electric Corporation, a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in or in connection with the sale for replacement purposes, of automotive miniature and sealed-beam lamps in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of such automotive miniature and sealed-beam lamps of like grade and quality, by selling to any purchaser at net prices higher

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than the net prices charged any other purchaser who, in fact, competes in the resale and distribution of said products with