

IN THE MATTER OF

NOR-CAL DISTRIBUTORS, INC., ET AL.

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

Docket C-1062. Complaint, April 29, 1966—Decision, April 29, 1966

Consent order requiring 46 jobbers of automotive products and supplies, and their buying organization, Nor-Cal Distributors, Inc., of San Francisco, Calif., to cease knowingly inducing and receiving discriminatory prices from their suppliers in violation of Sec. 2(f) of the Clayton Act.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondents named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (f) 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 Nor-Cal Distributors, Inc., hereinafter sometimes referred to as respondent Nor-Cal, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 500 Florida Street, San Francisco, California.

Respondent Nor-Cal, although using corporate form, is a mem-

bership organization, organized, maintained, managed, controlled, and operated by and for its members. The membership of respondent Nor-Cal is composed of corporations, partnerships and individuals whose business consists of the jobbing of automotive products and supplies.

Respondent Nor-Cal, as constituted and operated, is known and referred to in the trade as a buying group.

PAR. 2. The following respondent corporations and individuals, sometimes hereinafter referred to as respondent jobbers, constitute respondent Nor-Cal:

Respondent Allied Automotive, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its principal office and place of business located at 490 North Virginia Street, Reno, Nevada.

Respondent Auto Parts Sales Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 636 Ward Street, Martinez, California.

Respondent The Automotive Supply Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 230 South Bridge Street, Visalia, California.

Respondent Belmont Auto Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 1161 Old County Road, Belmont, California.

Respondent Benson & Zimmerman Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at Eleventh and "H" Streets, Modesto, California.

Respondent Berkeley Automotive Center is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 2619 Shattuck Avenue, Berkeley, California.

Respondent C. & H. Auto Parts is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 610 Main Street, Placerville, California.

Respondent Cresta Bros. Auto Parts is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 5050 Mission Street, San Francisco, California.

Respondent Federal Parts & Products Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 231 California Drive, Burlingame, California.

Respondent Henderson Bros. Stores, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Cali-

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fornia, with its principal office and place of business located at 1800—23rd Street, Sacramento, California.

Respondent Hust Bros., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at Fourth and "E" Streets, Marysville, California.

Respondent E. C. Kraft & Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 53 Santa Rosa Avenue, Santa Rosa, California.

Respondent Lacey Automotive Parts Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 108 Monterey Street, Salinas, California.

Respondent Lakeside Automotive, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at South Shore, Lake Tahoe, P.O. Box 70, Stateline, California.

Respondent Lemoore Auto Supply is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 41 "E" Street, P.O. Box 630, Lemoore, California.

Respondent Littrell Parts is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 310 South Main Street, Yreka, California.

Respondent Maxwell Motor Supply Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 228 North El Dorado Street, Stockton, California.

Respondent Mill Valley Auto Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 360 Miller Avenue, Mill Valley, California.

Respondent Motor Parts Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 2344 Harrison Street, Oakland, California.

Respondent Chico Automotive Supply is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, and doing business under the firm name and style of Motor Supply Co., with its principal office and place of business located at 360 East Sixth Street, Chico, California.

Respondent Moses & Moses Motor Parts is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, and doing business under the firm name and style of M & M Motor Parts, with its principal office and place of business located at 1219 Solano Street, Corning, California.

Respondent National Auto Parts Co., Inc., is a corporation organized, ex-

isting and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 1110 Colusa Street, Vallejo, California.

Respondent Tri-City Auto Supply is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 551—23rd Street, Richmond, California.

Respondent Sequoia Auto Parts is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 908 Main Street, Redwood City, California.

Respondent Westside Auto Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 1232 Monterey Street, San Luis Obispo, California.

Respondents Herman Krebs and Earl Lounsbury are copartners doing business under the firm name and style of Automotive Parts Co., with their principal office and place of business located at 961 West 16th Street, P.O. Box 1230, Merced, California.

Respondent Floyd E. Benson is a sole proprietor doing business under the firm name and style of Benson & Ridenhour, with his principal office and place of business located at 215 El Circulo, Patterson, California.

Respondent William T. Wood is a sole proprietor doing business under the firm name and style of Automotive Parts & Machine Shop Co., with his office and principal place of business located at 722 Broadway, Fresno, California.

Respondents A. Frank Lewis and Albert H. Davis are copartners doing business under the firm name and style of Contra Costa Auto Parts, with their principal office and place of business located at 2329 Boulevard Circle, Walnut Creek, California.

Respondents Julius G. Rossi and Leonard L. Rundle are copartners doing business under the firm name and style of Farnsworth & Callahan, with their principal office and place of business located at 186 South Montgomery Street, San Jose, California.

Respondent Jack W. Parker is a sole proprietor doing business under the firm name and style of Globe Auto Supply, with its principal office and place of business located at 700 Parina Avenue, North Sacramento, California.

Respondents Robert B. Huston, George E. Huston and Kenneth A. Greer are copartners doing business under the firm name and style of Hollister Auto Parts, with their principal office and place of business located at 139 Fourth Street, Hollister, California.

Respondent Raymond Allen is a sole proprietor doing business under the firm name and style of Irving Auto Supply, with his principal office and place of business located at 1900 Lawton Street, San Francisco, California.

Respondents Herbert J. Kramer and Guldbrand J. Kramer are copartners doing business under the firm name and style of Kramer Auto Supply Co., with their principal office and place of business located at 215 Fourth Street, Eureka, California.

Respondent William J. Cresta, Jr., is a sole proprietor doing business under the firm name and style of McCulloch Auto Supply, with his principal

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office and place of business located at 999 Valencia Street, San Francisco, California.

Respondents Barrett T. Hicks and Eleanor B. Hicks are copartners doing business under the firm name and style of Merced Motor Parts, with their principal office and place of business located at 811 West Seventeenth Street, Merced, California.

Respondents Carl Pate and William Lehnhoff are copartners doing business under the firm name and style of Montgomery Auto Parts, with their principal office and place of business located at 198 North Monterey Street, Gilroy, California.

Respondents Eugene F. Asher and Harry W. Scott are copartners doing business under the firm name and style of Motor Supply Company, with their principal office and place of business located at 1757 California Street, Redding, California.

Respondents L. R. Horler, J. A. Bennett, L. C. Avedano and V. Borba are copartners doing business under the firm name and style of National Parts Company, with their principal office and place of business located at 809 Lincoln Avenue, San Rafael, California.

Respondents Louis P. Lazzaretto and Elmer L. Anderson are copartners doing business under the firm name and style of United Auto-Sweet Service Co., with their principal office and place of business located at 435 Washington Street, Monterey, California.

Respondents F. M. Chandler, Earl Neilsen, Robert P. Chandler and Burton E. Hazelton are copartners doing business under the firm name and style of Sweet Service Co. of Santa Cruz, with their principal office and place of business located at 504 Front Street, Santa Cruz, California.

Respondents Jack A. Fisher and James V. Fisher are copartners doing business under the firm name and style of Tracy Auto Parts, with their principal office and place of business located at 65—10th Street, Tracy, California.

Respondent James M. White is a sole proprietor doing business under the firm name and style of Whities Auto Parts, with his principal office and place of business located at 508 San Mateo Avenue, San Bruno, California.

Respondent Douglas Davis is a sole proprietor doing business under the firm name and style of Davis' Auto Parts, with his principal office and place of business located at 119 Van Ness, Watsonville, California.

Respondent John Nunes is a sole proprietor doing business under the firm name and style of Novato Auto Parts, with his principal office and place of business located at 1052 First Street, Novato, California.

Respondent C. W. Lerer is a sole proprietor doing business under the firm name and style of M. Lerer & Sons, with his principal office and place of business located at 19 East Washington Street, Petaluma, California.

PAR. 3. The respondent jobbers set forth in Paragraph Two have purchased and now purchase in commerce from suppliers engaged in commerce numerous automotive products and supplies for use, consumption, or resale within the United States. Respondent jobbers and said suppliers cause the products and supplies so purchased to be shipped and transported among and between the

several States of the United States from the respective State or States of location of said suppliers to the respective different State or States of location of the said respondent jobbers.

PAR. 4. In the purchase and the resale of said automotive products and supplies, respondent jobbers are in active competition with independent jobbers not affiliated with respondent Nor-Cal; and the suppliers selling to respondent jobbers and to their independent jobber competitors are in active competition with other suppliers of similar automotive products and supplies.

PAR. 5. Respondent Nor-Cal, since its formation in 1953, has been and is now maintained, managed, controlled and operated by and for its members the respondent jobbers set forth in Paragraph Two and each said respondent has participated in, approved, furthered, and cooperated with the other respondents in the carrying out of the procedures and activities hereinafter described.

In practice and effect, respondent Nor-Cal has been and is now serving as the medium or instrumentality by, through, or in conjunction with, which said members and/or respondent jobbers exert the influence of their combined bargaining power on the competitive suppliers hereinbefore described. As a part of their operating procedure, said respondent jobbers direct the attention of said suppliers to their aggregate purchasing power as a buying group and, by reason of such, have knowingly demanded and received, upon their individual purchases discriminatory prices, discounts, allowances, rebates, and terms and conditions of sale. Suppliers not acceding to such demands are usually replaced as sources of supply for the commodities concerned and such market is closed to them in favor of such suppliers as can be and are induced to afford the discriminatory prices, discounts, allowances, rebates, and terms and conditions of sale so demanded.

Respondent jobbers demand that those suppliers who sell their products pursuant to a quantity discount schedule shall consider their several purchases in the aggregate as if made by one purchaser and grant quantity discounts, allowances, or rebates on the resultant combined purchase volume in accordance with said suppliers' schedule. This procedure effects a discrimination in price on goods of like grade and quality between respondent jobbers and competing independent jobbers whose quantity discounts, allowances, or rebates from such suppliers are based upon only their individual purchase volumes. From other suppliers the respondent jobbers demand the payment or allowance of trade dis-

counts, allowances, or rebates which such suppliers do not ordinarily pay or allow to jobber customers. This procedure effects a discrimination in price on goods of like grade and quality between respondent jobbers and competing independent jobbers who are not afforded such trade discounts, allowances, or rebates.

When and if a demand is acceded to by a particular supplier, the subsequent purchase transactions between said supplier and the individual jobber respondents have been and are billed to, and paid for through, the aforesaid organizational device of respondent Nor-Cal. Said corporate organization thus purports to be the purchaser when in truth and in fact it has been and is now serving as an agent for the several respondent jobbers and as a means of facilitating the inducement and receipt of the afore-described respondent jobbers of the price discriminations concerned.

PAR. 6. Respondents have induced or received from their suppliers, in the manner afore-described, favorable prices, discounts, allowances, rebates, terms and conditions of sale which they knew or should have known constituted discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

PAR. 7. The effect of the knowing inducement or receipt by respondents of the discriminations in price as above alleged has been and may be substantially to lessen, injure, destroy or prevent competition between suppliers of automotive products and supplies and between respondent jobbers and independent jobbers.

PAR. 8. The foregoing alleged acts and practices of respondents in knowingly inducing or receiving discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, are in violation of subsection (f) of Section 2 of said Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of subsection (f) of Section (2) of the Clayton Act, as amended, and the respondents 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 respondents having thereafter signed an "Agreement Containing Consent Order to Cease and Desist" which agreement contemplates that, if it is accepted by the Commission, the Commis-

sion may, without further notice to respondents, issue (1) its complaint consistent in form and substance with the copy attached to said agreement, and (2) its decision containing the order to cease and desist as attached to said complaint; and further, which agreement contains, *inter alia*, an admission by the respondents 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 respondents 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 Nor-Cal Distributors, Inc., hereinafter sometimes referred to as respondent Nor-Cal, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 500 Florida Street, San Francisco, California.

Respondent Nor-Cal, although using corporate form, is a membership organization, organized, maintained, managed, controlled, and operated by and for its members. The membership of respondent Nor-Cal is composed of corporations, partnerships and individuals whose business consists of the jobbing of automotive products and supplies.

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Respondent Federal Parts & Products Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 231 California Drive, Burlingame, California.

Respondent Henderson Bros. Stores, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 1800 23rd Street, Sacramento, California.

Respondent Hust Bros., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at Fourth and "E" Streets, Marysville, California.

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Respondent Tri-City Auto Supply is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 551—23rd Street, Richmond, California.

Respondent Sequoia Auto Parts is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 908 Main Street, Redwood City, California.

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Respondents Herman Krebs and Earl Lounsbury and copartners doing business under the firm name and style of Automotive Parts Co., with their principal office and place of business located at 961 West 16th Street, P. O. Box 1230, Merced, California.

Respondent Floyd E. Benson is a sole proprietor doing business under the firm name and style of Benson & Ridenhour, with his principal office and place of business located at 215 El Circulo, Patterson, California.

Respondent William T. Wood is a sole proprietor doing business under the firm name and style of Automotive Parts & Machine Shop Co., with his office and principal place of business located at 722 Broadway, Fresno, California.

Respondents A. Frank Lewis and Albert H. Davis are copartners doing business under the firm name and style of Contra Costa Auto Parts, with

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their principal office and place of business located at 2329 Boulevard Circle, Walnut Creek, California.

Respondents Julius G. Rossi and Leonard L. Rundle are copartners doing business under the firm name and style of Farnsworth & Callahan, with their principal office and place of business located at 186 South Montgomery Street, San Jose, California.

Respondent Jack W. Parker is a sole proprietor doing business under the firm name and style name of Globe Auto Supply, with his principal office and place of business located at 700 Parina Avenue, North Sacramento, California.

Respondents Robert B. Huston, George E. Huston and Kenneth A. Greer are copartners doing business under the firm name and style of Hollister Auto Parts, with their principal office and place of business located at 139 Fourth Street, Hollister, California.

Respondent Raymond Allen is a sole proprietor doing business under the firm name and style of Irving Auto Supply, with his principal office and place of business located at 1900 Lawton Street, San Francisco, California.

Respondents Herbert J. Kramer and Guldbrand J. Kramer are copartners doing business under the firm name and style of Kramer Auto Supply Co., with their principal office and place of business located at 215 Fourth Street, Eureka, California.

Respondent William J. Cresta, Jr., is a sole proprietor doing business under the firm name and style of McCulloch Auto Supply, with his principal office and place of business located at 999 Valencia Street, San Francisco, California.

Respondents Barrett T. Hicks and Eleanor B. Hicks are copartners doing business under the firm name and style of Merced Motor Parts, with their principal office and place of business located at 811 West Seventeenth Street, Merced, California.

Respondents Carl Pate and William Lehnhoff are copartners doing business under the firm name and style of Montgomery Auto Parts, with their principal office and place of business located at 198 North Monterey Street, Gilroy, California.

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Respondents Louis P. Lazzaretto and Elmer L. Anderson are copartners doing business under the firm name and style of United Auto-Sweet Service Co., with their principal office and place of business located at 435 Washington Street, Monterey, California.

Respondents F. M. Chandler, Earl Neilsen, Robert P. Chandler and Burton E. Hazelton are copartners doing business under the firm name and style of Sweet Service Co. of Santa Cruz, with their principal office and place of business located at 504 Front Street, Santa Cruz, California.

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Respondents Jack A. Fisher and James V. Fisher are copartners doing business under the firm name and style of Tracy Auto Parts, with their principal office and place of business located at 65—10th Street, Tracy, California.

Respondent James M. White is a sole proprietor doing business under the firm name and style of Whities Auto Parts, with his principal office and place of business located at 508 San Mateo Avenue, San Bruno, California.

Respondent Douglas Davis is a sole proprietor doing business under the firm name and style of Davis' Auto Parts, with his principal office and place of business located at 119 Van Ness, Watsonville, California.

Respondent John Nunes is a sole proprietor doing business under the firm name and style of Novato Auto Parts, with his principal office and place of business located at 1052 First Street, Novato, California.

Respondent C. W. Lerer is a sole proprietor doing business under the firm name and style of M. Lerer & Sons, with his principal office and place of business located at 19 East Washington Street, Petaluma, California.

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

ORDER

It is ordered, That respondents Nor-Cal Distributors, Inc., a corporation; Allied Automotive, Inc., a corporation; Auto Parts Sales Co., a corporation; The Automotive Supply Co., Inc., a corporation; Belmont Auto Parts, Inc., a corporation; Benson & Zimmerman Co., a corporation; Berkeley Automotive Center, a corporation; C. & H. Auto Parts, a corporation; Cresta Bros. Auto Parts, a corporation; Federal Parts & Products Co., Inc., a corporation; Henderson Bros. Stores, Inc., a corporation; Hust Bros., Inc., a corporation; E. C. Kraft & Co., a corporation; Lacey Automotive Parts Co., a corporation; Lakeside Automotive, Inc., a corporation; Lemoore Auto Supply, a corporation; Littrell Parts, a corporation; Maxwell Motor Supply Co., Inc., a corporation; Mill Valley Auto Parts, Inc., a corporation; Motor Parts Company, a corporation; Chico Automotive Supply, a corporation doing business under the firm name and style of Motor Supply Co.; Moses & Moses Motor Parts, a corporation doing business under the firm name and style of M & M Motor Parts; National Auto Parts Co., Inc., a corporation; Tri-City Auto Supply, a corporation; Sequoia Auto Parts, a corporation; Herman Krebs and Earl Lounsbury, copartners doing business under the firm name and style of Automotive Parts Co.; Westside Auto Parts, Inc., a corporation; Floyd E. Benson, doing business under the firm name and style of Benson & Ridenhour, a sole proprietorship; William T. Wood, doing business under the firm name and style of Automotive Parts & Machine Shop Co., a sole proprietorship; A. Frank Lewis and Al-

bert H. Davis, copartners doing business under the firm name and style of Contra Costa Auto Parts; Julius G. Rossi and Leonard L. Rundle, copartners doing business under the firm name and style of Farnsworth & Callahan; Jack W. Parker, doing business under the firm name and style of Globe Auto Supply, a sole proprietorship; Robert B. Huston, George E. Huston and Kenneth A. Greer, copartners doing business under the firm name and style of Hollister Auto Parts; Raymond Allen, doing business under the firm name and style of Irving Auto Supply, a sole proprietorship; Herbert J. Kramer and Guldbrand J. Kramer, copartners doing business under the firm name and style of Kramer Auto Supply Co.; William J. Cresta, Jr., doing business under the firm name and style of McCulloch Auto Supply, a sole proprietorship; Barrett T. Hicks and Eleanor B. Hicks, copartners doing business under the firm name and style of Merced Motor Parts; Carl Pate and William Lehnhoff, copartners doing business under the firm name and style of Montgomery Auto Parts; Eugene F. Asher and Harry W. Scott, copartners doing business under the firm name and style of Motor Supply Company; L. R. Horler, J. A. Bennett, L. C. Avedano and V. Borba, copartners doing business under the firm name and style of National Parts Company; Louis P. Lazzaretto and Elmer L. Anderson, copartners doing business under the firm name and style of United Auto-Sweet Service Co.; F. M. Chandler, Earl Neilsen, Robert P. Chandler and Burton E. Hazelton, copartners doing business under the firm name and style of Sweet Service Co. of Santa Cruz; Jack A. Fisher and James V. Fisher, copartners doing business under the firm name and style of Tracy Auto Parts; James M. White, doing business under the firm name and style of Whities Auto Parts, a sole proprietorship; Douglas Davis, doing business under the firm name and style of Davis' Auto Parts, a sole proprietorship; John Nunes, doing business under the firm name and style of Novato Auto Parts, a sole proprietorship; and C. W. Lerer, doing business under the firm name and style of M. Lerer & Sons, a sole proprietorship; and respondents' agents, representatives, employees, officers and members, directly or through any corporate or other device, in connection with the offering to purchase or purchase of any automotive products or supplies in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Knowingly inducing or knowingly receiving or accepting any discrimination in the price of such products and supplies, by directly or indirectly inducing, receiving, or accepting from any

seller a net price known by respondents to be below the net price at which said products and supplies of like grade and quality are being sold by such seller to other customers, where the seller is competing with any other seller for respondents' business, or where respondents are competing with other customers of the seller.

For the purpose of determining "net price" under the terms of this order, there shall be taken into account discounts, rebates, allowances, deductions or other terms and conditions of sale by which net prices are effected.

It is further 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 this order.

IN THE MATTER OF

TRI-STATE PRESS SERVICE, INC., ET AL.

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

Docket C-1063. Complaint, April 29, 1966—Decision, April 29, 1966

Consent order requiring an Evansville, Ind., publisher to cease using misrepresentations and threatening tactics to sell advertising space in its weekly newspaper "Tri-State Labor News" or any other publication.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Tri-State Press Service, Inc., a corporation, and Joe L. Regan, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Tri-State Press Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana with its office and prin-

principal place of business located at 1413½ Division Street, Evansville, Indiana.

Respondent Joe L. Regan is an officer of said corporation and he formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the publication of a weekly newspaper known as Tri-State Labor News. Said weekly newspaper is caused by respondents to be circulated from its point of publication in the State of Indiana to subscribers and purchasers located in various other States of the United States.

Further, respondents in the course and conduct of their business engage in extensive transactions involving the transmission of letters, advertising proofs, checks and other business instrumentalities and extensive transactions by long distance telephone, all between and among various States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said publication in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. A large part of respondents' income is derived from the sale of advertising space in the Tri-State Labor News to business concerns. Respondents and their duly authorized agents and representatives contact said business concerns by telephone and other means and seek to induce them to purchase advertising space in said publication. In the course of said solicitations respondents and their agents and representatives represent, and have represented, directly or by implication, to prospective advertisers that said publication is extensively and officially endorsed or sponsored by, affiliated with or is the official publication of the AFL-CIO or its affiliates or other labor unions.

PAR. 4. In truth and in fact, Tri-State Labor News is not extensively and officially endorsed or sponsored by, affiliated with, or the official publication of the AFL-CIO or its affiliates or any other national or international labor union; but is independently organized and operated by respondents for a profit with endorsements by only a few local unions.

Therefore the statements and representations referred to in Paragraph Three hereof are false, misleading and deceptive.

PAR. 5. In addition, in order to induce the purchase of advertising space in Tri-State Labor News, respondents, or their repre-

sentatives, threaten and have threatened, directly or by implication, that if business concerns did not purchase such space, their business would receive unfavorable treatment by labor union members. This practice now has, and has had, the tendency and capacity to intimidate and coerce, and does intimidate and coerce, business concerns unfairly to purchase advertising space in the aforesaid publication.

PAR. 6. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals likewise engaged in the publication of weekly newspapers and other periodicals and the selling of advertising to be inserted therein and particularly with the publishers of newspapers and other periodicals published or endorsed by labor unions.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead prospective advertisers into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of advertising space by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of the respondents, as herein alleged, were and are all to the prejudice and injury of the public and of the respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents 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 respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents 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 respondents that the law has been violated as set

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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 Tri-State Press Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 1413 1/2 Division Street, in the city of Evansville, State of Indiana.

Respondent Joe L. Regan is an officer of said corporation and his address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I. *It is ordered*, That respondents Tri-State Press Service, Inc., a corporation, and its officers, and Joe L. Regan, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the soliciting, offering for sale or sale in commerce of advertising space in the weekly newspaper now designated as Tri-State Labor News, or any other publication, whether published under that name or any other name, and in connection with the offering for sale, sale or distribution of said newspaper, or any other publication, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that said publication is endorsed or sponsored by, affiliated with, or is an official publication of or connected in any manner with a labor union: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that any claimed or alleged sponsorship, endorsement, affiliation or status as an official publication has been in fact received and officially authorized.

B. Inducing or seeking to induce a business concern to purchase advertising space in or contribute to respondents' publication by means of expressed or implied threats that such business concern will or may be subjected to unfavora-

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ble treatment at the hands of labor union members should it refuse to make such purchase or contribution.

II. *It is further ordered*, That respondents set forth in a clear and conspicuous manner, immediately after the name of each such publication appearing at the top of the masthead of such publication, the following statement:

“Not affiliated with any labor union or other labor organization.”

III. *It is further ordered*, That respondents shall deliver a copy of this order to every salesman or representative now, or at any time hereafter, selling or soliciting the sale of advertisements in any such publication.

It is further 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 this