

Complaint

IN THE MATTER OF

THE WEATHERHEAD COMPANY

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

Docket C-1492. Complaint, Feb. 20, 1969—Decision, Feb. 20, 1969

Consent order requiring a Cleveland, Ohio, manufacturer of industrial fittings and regulators of fluid power products to cease discriminating in price between competing resellers and distributors of certain of its products.

COMPLAINT

The Federal Trade Commission, having reason to believe that The Weatherhead Company, a corporation sometimes herein-after referred to as respondent, has violated and is now violating Section 2(a) of the Clayton Act (U.S.C.A., Title 15, Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, The Weatherhead Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with office and principal place of business located at 300 East 131st Street, Cleveland, Ohio.

PAR. 2. Respondent corporation is now and for many years has been engaged in the business of producing, manufacturing, offering for sale, selling and distributing a complete line of industrial fittings, and related products such as valves, hose ends hose assemblies, and regulators used in the transmission and control of fluid power products.

The respondent is one of the largest producers and distributors of these products in the United States, and its current annual sales of these products are in excess of \$90,000,000.

PAR. 3. Respondent sells these products directly to large users known as Original Equipment Manufacturers (hereinafter "O.E.M's") in the automotive industry, the automotive replacement industry, the aviation industry, the gas and petroleum industry, the air conditioning industry, the mobile home industry, and other large industries. Said products are sold by respondent to these "O.E.M's" primarily for use as component

units in products manufactured by "O.E.M's" for resale to the general public.

Respondent also sells these products through its Industrial Division to approximately two hundred and thirty Industrial Distributors located in twenty-seven sales territories throughout the United States who purchase said products for resale to "O.E.M's," Government Agencies, and trade outlets for resale. Such of respondent's products as are resold by Industrial Distributors to "O.E.M's" are used by said "O.E.M's" primarily for repair and replacement purposes rather than as component units in products manufactured for resale to the general public.

PAR. 4. Respondent manufactures its products at factories located at various points within the States of Ohio, Indiana, and Georgia, from which points the products are shipped to respondent's field warehouses located in various cities and States of the United States. Said products are then either picked up by, or delivered direct to, respondent's Industrial Distributors located in the sales territories serviced by respondent's field warehouses. In some cases, respondent's products are drop shipped by respondent directly to customers of respondent's Industrial Distributors.

Respondent, therefore, is now and for many years has been selling and distributing its products to customers and purchasers thereof located in States other than the States wherein said products are manufactured, and there is now, and has been for many years, a constant current of trade in commerce, as "commerce" is defined in the Clayton Act, in the sale of said products between and among the various States of the United States and the District of Columbia. Said products are sold and distributed for use, consumption and resale within the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of its business in commerce as aforesaid, respondent is now and for many years last past has been discriminating in price between different purchasers of its products of like grade and quality by selling said products at higher prices to some purchasers than it sells said products to other purchasers, many of whom have been and now are competitively engaged one with the other and with the purchasers paying the higher prices in the resale and distribution of respondent's products within the United States.

PAR. 6. Included among, but not limited to, the aforesaid

discriminations in price as alleged in Paragraph Five above, are the following:

Respondent is now and for several years last past has been selling brass and steel fittings to Industrial Distributors at list prices published in its Industrial Warehouse Price Schedules. Respondent allows some Industrial Distributors volume quantity discounts from these list prices. These volume quantity discounts are unpublished, and they are available only on the single purchase of a specified number of items within a designated product line. Volume quantity discounts available on the purchase of brass fittings and steel fittings during the period of October 26, 1964, through April 30, 1967, were as follows:

Quantity	Brass fittings	Steel fittings
0-2,499 pieces in a single order.	No discount	No discount.
2,500-4,999 pieces in a single order.	5 percent volume discount.	10/10 or 19 percent volume discount.
5,000 pieces or more in a single order.	10 percent volume discount.	Same as above.
10,000 pieces or more in a single order.	Same as above	10/10/5 or 23 percent volume discount.

Volume quantity discounts effective May 1, 1967, are as follows:

Quantity	Brass fittings	Steel fittings
0-4,999 pieces in a single order.	No discount	No discount.
5,000-9,999 pieces in a single order.	5 percent volume discount.	10/10 or 19 percent volume discount.
10,000 pieces or more in a single order.	10 percent volume discount.	10/10/5 or 23 percent volume discount.

Many of respondent's Industrial Distributors competing in the resale and distribution of respondent's products with Industrial Distributors who receive the volume discounts set forth above do not receive such discounts either for the reason that they are unaware that such discounts are available or for the reason that they are unable to purchase sufficient quantities of respondent's fittings in a single order to earn such discounts.

PAR. 7. Also included among, but not limited to, the discriminations in price alleged in Paragraph Five above, were the following specific discriminations in price:

(1) For several years last past respondent has allowed some Industrial Distributors who receive the volume quantity discounts described in Paragraph Six above to add subsequent orders for fittings not themselves eligible for volume quantity discounts to an initial order for fittings so as to qualify the series of orders for volume quantity discounts. Other Industrial Distributors competing in the resale of respondent's fittings with the Industrial Distributors so favored have not been allowed to accumulate orders in the fashion described above.

(2) Respondent for several years last past has allowed some Industrial Distributors who receive the volume quantity discounts described in Paragraph Six above to purchase fittings at discounts without requiring them to purchase fittings in the quantities set forth in the volume quantity discount programs described in Paragraph Six above. Other Industrial Distributors competing in the resale and distribution of respondent's fittings with the Industrial Distributors so favored were required to purchase fittings in the quantities specified in order to receive volume quantity discounts.

(3) Respondent for several years last past has granted some Industrial Distributors discounts which were not provided for in the volume quantity discount programs described in Paragraph Six above. Other Industrial Distributors competing in the resale and distribution of respondent's fittings with the Industrial Distributors so favored have received no discounts or only those volume quantity discounts set forth in the programs described in Paragraph Six above.

(4) For several years last past respondent has allowed "special payment" terms to its Industrial Distributor in the Seattle, Washington area. These "special payment" terms call for payment to be made on the twenty-fifth of each month for shipments which were billed and invoiced two months previously. Other Industrial Distributors competing in the resale and distribution of respondent's fittings with the Industrial Distributor so favored were required to purchase in accordance with respondent's regularly published terms of sale which are "1%—10th prox./net 30 days."

(5) Commencing in 1966 respondent granted its Industrial Distributor in the Portland, Oregon area discounts which were normally available only to Original Equipment Manufacturers or "O.E.M's" purchasing respondent's fittings for use as component units in products manufactured by them for resale to the

general public. Other Industrial Distributors competing in the resale and distribution of respondent's fittings with the Industrial Distributor so favored either receive no discounts or only those discounts provided for in respondent's volume quantity discount programs described in Paragraph Six above.

PAR. 8. The effect of respondent's discriminations in price as generally alleged in Paragraphs Five and Six herein, and as more specifically alleged in Paragraph Seven herein, has been or may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which respondent's Industrial Distributors are engaged, or to injure, destroy or prevent competition with those Industrial Distributors who receive the benefit of such discriminations in their purchases from respondent.

PAR. 9. The foregoing alleged discriminations in price made by respondent, The Weatherhead Company, are in violation of Section 2(a) of the Clayton Act, as amended.

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 alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent The Weatherhead Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 300 East 131st Street, in the city of Cleveland, State of Ohio.

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

ORDER

It is ordered, That the respondent, The Weatherhead Company, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in or in connection with the sale and distribution of brass Inverted, Compression, S.A.E., Mini-Barb, Pipe, Self-Align, Knurl-On, Sermeto and Air Brake Fittings; Auto and Industrial valves; steel and stainless steel Ermeto, J.I.C. and Pipe fittings, Reusable Hose Ends, Swivel Adapters, Swage Ends, Bulk Hose and other industrial fittings or products having the same or similar application or use, in commerce, as "commerce" is defined in the amended Clayton Act do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality by selling to some purchasers at net prices higher than net prices charged any other purchaser who, in fact, competes in the resale and distribution of such products with the purchasers paying the higher net prices: *Provided, however*, That nothing herein shall be construed to prohibit the respondent from selling to industrial distributors on uniform terms and conditions of sale disclosed and made available to all such distributors, who in fact compete in the resale and distribution thereof, products not regularly maintained by such distributors in inventory if such products are custom made, custom fabricated or custom assembled from components to substantially conform to the specifications or requirements of the user-purchaser.

It is further ordered, That if respondent at any time after the effective date of this Order utilizes a discount program in connection with its sale of industrial fittings or products having the same or similar application or use it shall affirmatively notify all purchasers engaged in the resale and distribution of those products in writing of the details, including available discounts, of any such discount program.

It is further ordered, That the respondent corporation shall

forthwith distribute a copy of this Order to each of its operating divisions.

It is further ordered, That the 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 this order.