

ive prices, and the usual and customary retail prices of merchandise, and as to savings afforded to purchasers, and similar representations of the type dealt with in Paragraphs 6, 7, and 8 of this order, are based, and from which the validity of any such claim can be established.

IN THE MATTER OF

WHITE DRUG CO. OF JAMESTOWN, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND SECTION 2(F) OF THE CLAYTON ACT

Docket C-1788. Complaint, Sept. 1, 1970—Decision, Sept. 1, 1970

Consent order requiring a chain of retail drug stores with headquarters in Jamestown, N.D., to cease violation of Section 2(f) of the Clayton Act by knowingly inducing and receiving discriminatory prices from pharmaceutical suppliers.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent 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 by the Robinson-Patman Act (U.S.C. Title 15, Section 13) and Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Section 45), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent corporations collectively doing business as White Drug Co. or White Drug Enterprises, but individually organized, existing and doing business under and by virtue of the laws of the States of their incorporation as below designated and hereinafter referred to as White Drug, are as follows:

White Drug Co. of Jamestown, Inc.,	White University Drug, Inc.,
a North Dakota corporation	a North Dakota corporation
Capital Drug Company,	White Drug of Minot, Inc.,
a North Dakota corporation	a North Dakota corporation
White's, Inc.,	White Drug Co. of Fergus Falls,
a North Dakota corporation	Inc., a Minnesota corporation
White Drug Co. of Grand Forks,	White Plaza Drug, Inc.,
a North Dakota corporation	a North Dakota corporation

White Drug of Aberdeen, Inc.,
a South Dakota corporation
White Drug of Dickinson, Inc.,
a North Dakota corporation
White Drug of Huron, Inc.,
a South Dakota corporation

White Drug Co. of Willmer, Inc.,
a Minnesota corporation
White Drug of Detroit Lakes,
Inc., a North Dakota corporation

With their principal place of business located at 201-205 First Avenue South, Jamestown, North Dakota.

Respondent Max A. Retzlaff, 201-205 First Avenue South, Jamestown, North Dakota, is the chief executive officer of all corporations comprising White Drug and has been and is responsible, in part, for the direction, policy and control of White Drug. He is named as a respondent herein in his individual capacity and as the chief executive officer of White Drug.

Respondent The Lutheran Charity Association doing business as Jamestown Hospital, hereinafter referred to as Jamestown Hospital, is a non-profit corporation organized, existing and doing business under and by virtue of the laws of the State of North Dakota with its principal office and place of business located at 419 5th Street, NE., Jamestown, North Dakota.

PAR. 2. White Drug has purchased and now purchases in commerce from suppliers engaged in commerce numerous prescription drugs and other related pharmaceutical supplies and equipment for use, consumption, or resale within the State of North Dakota. White Drug causes some of the prescription drugs and other related pharmaceutical supplies and equipment to be shipped and transported for resale in such other States as South Dakota and Minnesota. White Drug and said suppliers are, therefore, engaged in commerce as "commerce" is defined in the Clayton Act.

PAR. 3. Although the major part of White Drug prescription drug and other related pharmaceutical supplies and equipment purchases are made directly for the account of White Drug, substantial quantities of such drugs are purchased via the account of Jamestown Hospital, a sizable portion of which are used for the commercial purpose of White Drug.

PAR. 4. In the purchase, use and resale of said prescription drugs and other related pharmaceutical supplies and equipment, White Drug is in active competition with independent persons, partnerships and corporations not affiliated with it nor Jamestown Hospital, and the suppliers selling to White Drug, Jamestown Hospital and their independent competitors are in active competition with other suppliers of similar products and supplies.

PAR. 5. The arrangement, agreement, or concerted action between

White Drug and Jamestown Hospital was initiated approximately nine years ago. Since its inception, it has evolved, in part, into a means of obtaining a discriminatory price for White Drug.

In practice and effect, respondent Jamestown Hospital has been and is now serving as the medium or instrumentality by, through or in conjunction with which respondent White Drug has exerted influence on the competitive suppliers hereinabove described and thereby has knowingly demanded and received on its 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 whole or in substantial part, 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.

This procedure effects a discrimination in price on goods of like grade and quality between White Drug and competing independent persons, partnerships and corporations.

PAR. 6. The effect of 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 prescription drugs and other related pharmaceutical supplies and equipment granting such discrimination, and other suppliers of such products who do not grant or allow such discriminations; and also between White Drug and competing independent customers not receiving or securing such discriminations.

PAR. 7. The foregoing 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 and Section 5 of the Federal Trade Commission Act.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraining Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with a violation of either the Federal Trade Commission Act or the Clayton Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by

the respondents of all the jurisdictional facts set forth in the afore-said draft of complaint, 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 alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement 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, makes the following jurisdictional findings, and enters the following order:

1. Respondent, White Drug, is comprised of affiliated corporations organized, existing and doing business under and by virtue of the laws of the State of their respective incorporation, as indicated below, with the principal office and place of business located at 201-205 First Avenue South, Jamestown, North Dakota.

2. Respondent, Jamestown Hospital, incorporated under the name of the Lutheran Charity Association, is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Dakota with its principal office and place of business located at 419 5th Street, NE., Jamestown, North Dakota.

3. Respondent, Max A. Retzlaff is president of all corporations comprising White Drug and is a member of the Board of Trustees of Jamestown Hospital. He has been responsible, in part, for the direction and control of the corporations comprising White Drug. His address is 205 First Avenue South, Jamestown, North Dakota.

4. 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

It is ordered, That respondents White Drug, including each of the following:

White Drug Co. of Jamestown, Inc., a North Dakota corporation.	White's, Inc., a North Dakota corporation.
Capital Drug Company, a North Dakota corporation.	White Drug Co. of Grand Forks, a North Dakota corporation.

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White University Drug, Inc.,
a North Dakota corporation.

White Drug of Minot, Inc.,
a North Dakota corporation.

White Drug Co. of Fergus Falls, Inc.,
a Minnesota corporation.

White Plaza Drug, Inc.,
a North Dakota corporation.

White Drug of Aberdeen, Inc.,
a South Dakota corporation.

White Drug of Dickinson, Inc.,
a North Dakota corporation.

White Drug of Huron, Inc.,
a South Dakota corporation.

White Drug Co. of Willmar, Inc.,
a Minnesota corporation.

White Drug of Detroit Lakes, Inc.,
a North Dakota corporation.

Max A. Retzlaff, individually and as an officer of all said corporations and the Lutheran Charity Association doing business as Jamestown Hospital, a North Dakota corporation, their respective successors and assignees, officers, agents, representatives, employees and members, directly or through any corporate or other device in connection with the offering to purchase or purchase of any prescription drugs and other related pharmaceutical supplies and equipment in "commerce," as commerce is defined in the Clayton Act, as amended, and the Federal Trade Commission Act, to forthwith cease and desist from:

1. Directly or indirectly inducing and receiving, receiving or accepting any discrimination in the price of such products by accepting from any seller a net price respondents know or should know is below the net price at which said products of like grade and quality are being sold by such seller to other purchasers where respondents are competing with the purchaser paying the higher price or with a customer of the purchaser paying the higher price.

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

2. Maintaining any arrangement, agreement or concerted action between a nonprofit institution and a commercial enterprise operated for profit which would result in a diversion of prescription drugs from any such nonprofit institution or passing on or making available to the commercial enterprise a preferential price offered by pharmaceutical manufacturers only to nonprofit institutions.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in their corporate structures such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in their corporations which may affect compliance obligations arising out of the order.

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 of their compliance with this order.

IN THE MATTER OF
COMMODORE IMPORT CORP.