

Commission a report in writing setting forth in detail the manner and form of their compliance with this order.

IN THE MATTER OF

SWAN ELECTRONICS CORPORATION, ET AL.

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

Docket C-1894. Complaint, Apr. 6, 1971—Decision, Apr. 6, 1971

Consent order requiring Oceanside, Calif., manufacturers and distributors of amateur radio equipment through franchised dealers throughout the United States to cease discriminating in the price of their products by selling to certain purchasers at net prices higher than they sell to other competing purchasers, and furnishing certain services and facilities to some customers and not to competing customers on proportionally equal terms.

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 the parties named in the caption hereof, and hereinafter more fully described, have violated and are now violating the provisions of Section 2(a) and 2(d) of the Clayton Act, as amended (U.S.C., Title 15, Section 13), and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges as follows:

COUNT I

Charging a violation of Section 2(a) of the Clayton Act, as amended, the Commission alleges:

PARAGRAPH 1. Respondent Swan Electronics Corporation 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 305 Airport Road, Oceanside, California.

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Respondents Herbert G. Johnson and David R. Howard are officers of the corporate respondent. As such these respondents formulate, direct and control the acts and practices of said respondent, including the acts and practices hereinafter set forth.

The corporate respondent and the individual respondents are hereinafter referred to as respondents.

PAR. 2. Respondents are now and have been for many years engaged in the manufacture, distribution and sale of amateur radio equipment including but not limited to transceivers, VFO's, power supplies, linear amplifiers, antennas and accessories by means of a network of franchised dealers located throughout the United States. These dealers offer such merchandise for resale to the public.

PAR. 3. In the course and conduct of their business, respondents are now and have been at all times referred to herein engaged in commerce as "commerce" is defined in the Clayton Act, as amended. Respondents ship their products, or cause such products to be shipped from their factory in Oceanside, California, wherein they do business, to purchasers located in other states. The dollar volume of net sales of products of like grade and quality sold by respondents is substantial and in calendar year 1969 was approximately \$2,139,000. There is and has been at all times mentioned herein a continuously and increasingly substantial current of trade in commerce in such products between and among the several States of the United States.

PAR. 4. In the course and conduct of their business in commerce, respondents sell their products of like grade and quality, including, but not limited to transceivers, VFO's, power supplies, linear amplifiers, antennas and accessories to purchasers who are in substantial competition with each other in the resale and distribution of respondents' like products.

PAR. 5. In the course and conduct of their said business in commerce the respondents have discriminated in price in the sale of their products by selling such products of like grade and quality at different prices to different and competing purchasers.

The respondents have established a system of granting rebates on the total six months volume of sales of its products, ranging from 2 percent to 8 percent of such volume.

As an example, the following is a schedule of rebates used by the respondents since 1968 in the sale of their products. This particular example covers the time period January 1, 1969, to June 30, 1969.

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SWAN REBATE SCHEDULE

Total Purchases, January 1st-June 30th, 1969 :	Percent of rebate
\$10,000 to \$15,000-----	2
\$15,000 to \$20,000-----	3
\$20,000 to \$25,000-----	4
\$25,000 to \$35,000-----	5
\$35,000 to \$50,000-----	6
\$50,000 to \$70,000-----	7
Over \$70,000-----	8

Rebates will not be allowed, unless the account is current at the end of the rebate period. Since invoices dated June 30th, 1969, are not due until July 31st, 1969, all rebates will be calculated on August 1st, 1969. Credit will be given only for those invoices which have been paid within the 30 day term.

PAR. 6. The effect of the discrimination in price, as alleged in Paragraph Five herein, may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which the purchasers receiving the preferential prices are engaged, or to prevent, injure or destroy competition between and among the purchasers of such products from respondents.

PAR. 7. The discriminations in price as hereinbefore alleged, are in violation of the provisions of Section 2(a) of the Clayton Act, as amended.

COUNT II

Charging a violation of Section 2(d) of the aforesaid Clayton Act, as amended, the Commission alleges:

PAR. 8. Paragraphs One through Four inclusive of Count I of this complaint are hereby set forth by reference and made a part of this count as fully and with the same effect as if quoted here verbatim.

PAR. 9. In the course and conduct of their business in commerce as aforesaid, respondents have paid or authorized payment of money, goods or other things of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished or agreed to be furnished by or through such customers in connection with the handling, sale or offering for sale of respondents' products and respondents have not made or offered to make such payments, allowances or consideration available on proportionately equal terms to all of their other customers competing with the customers so favored in the sale and distribution of their products.

PAR. 10. Illustrative of the conduct alleged in Paragraph Nine, above, are the following acts and practices of the respondents:

(1) Respondents are now paying and for several years last past have paid advertising allowances to certain of their franchised dealers in accordance with the terms of a cooperative advertising plan they had devised. This plan has been made known to the franchised dealers by means of a form letter. The plan offers to pay 50 percent of the cost of each approved magazine or other approved ad, based on a total amount not to exceed 2 percent of annual purchases. One franchised dealer has received an advertising allowance for the above type of advertising not based on the above plan. The amount received by this dealer was greater than the amount the dealer would have received under the plan.

(2) In addition to the advertising plan mentioned in subparagraph (1), above, respondents have also offered to pay and have paid an advertising allowance for sales catalogues printed and distributed by a franchised dealer. The total amount allowed was to be based on total purchases by the dealer. The actual amount paid was subject to negotiations with the franchised dealer so favored.

PAR. 11. Respondents' acts and practices as alleged in paragraphs Nine and Ten, above, are in violation of Section 2(d) of the aforesaid Clayton Act as amended.

DECISION AND ORDER

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 Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of subsections (a) and (d) of Section 2 of the Clayton Act, as amended.

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 aforesaid 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 Act, 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. Proposed respondent Swan Electronics Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 305 Airport Road, Oceanside, California.

Proposed respondents Herbert G. Johnson and David R. Howard are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation and their 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.

ORDER

It is ordered, That respondents Swan Electronics Corporation, a corporation, and Herbert G. Johnson and David R. Howard, individually and as officers of said corporation, and the subsidiaries, officers, directors, successors, assigns, agents, representatives and/or employees of said corporation, individually or in concert, directly or indirectly through any corporate or other device, in connection with the manufacture, sale, or distribution of amateur radio equipment including but not limited to transceivers, VFO's, power supplies, linear amplifiers, antennas and accessories, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

A. Discriminating, directly or indirectly, in the price of such products of like grade and quality, by selling to any purchaser at net prices higher than the net prices charged any other purchaser in the resale and distribution of such products.

B. Making or contracting to make to or for the benefit of any customer, any payment of anything of value as compensation or in consideration for any advertising or any other services or facilities furnished by or through such customers, in connection with the handling, offering for resale, or resale of respondents' products, unless such payment is in fact made available on proportionally equal terms to all other customers competing in the distribution of such products.

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It is further ordered, That respondents shall forthwith distribute a copy of this order to all directors and officers of Swan Electronics Corporation and to any operating divisions if and when they are established.

It is further ordered, That respondents shall, within 60 days after service upon them of this order mail a copy of this order by registered mail, return receipt requested, to all franchised dealers of the products of the Swan Electronics Corporation.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent 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 the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondents herein shall, within 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

GALAXY ELECTRONICS, INC.

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