

Complaint

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equipment to cease fixing the prices and discounts at which its products may be resold, requiring any dealer to split commissions with any other distributor, prohibiting resale of its products to any customer, refusing to sell its products to non-delinquent distributors, and soliciting reports from any person as to the terms of sale of its products by its regular dealers; respondent is also prohibited from making any contract which excludes the customer from dealing with other contractors.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (Title 15, U.S.C., Section 41 *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that the parties listed in the caption hereof and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, as amended, and Section 3 of the Clayton Act, as amended, 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:

PARAGRAPH 1. Respondent Van-Air, Inc., is a corporation organized on or about May 10, 1944, under the name Van Products Company, and is existing and doing business under and by virtue of the laws of the State of Pennsylvania. Van Products Company, which formally changed its name to Van-Air, Inc., during 1968, maintains its home office and principal place of business at 5700 Swanville Road, Erie, Pennsylvania.

Respondent Erie Foundry Company, the parent corporation of Van-Air, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania. Respondent Erie Foundry Company maintains its home office and principal place of business at 1253 West Twelfth Street, Erie, Pennsylvania.

Respondent Van-Air, Inc., was acquired by respondent Erie Foundry Company in 1965. At that time, Mr. James Currie, president of Erie Foundry, became a vice president of Van-Air, and Mr. Chester K. Reichert, Jr., is secretary-treasurer of both corporate respondents. Both corporations have the same five members acting as their board of directors.

PAR. 2. Respondents are engaged in the manufacture and distribution of compressed air dryers, oil scrubbers, filters and related air and gas treating equipment, as well as other products, which are marketed to distributors and dealers located throughout the United States.

The chief function of the air dryer is to dry, clean and purify compressed air so as to safeguard pneumatic equipment against increased

costs of maintenance and replacement due to corrosion, oxidation, abrasion and contamination. It is estimated that one billion dollars in losses can be attributed yearly to unsuspected corrosion, rusting, gumming, varnishing, icing and poor lubrication of air-operated equipment, which is employed in virtually all industries today.

The most commonly used drying methods are the refrigeration, regenerative and deliquescent types. Of the three, the latter two employ drying towers containing a bed of adsorbent desiccant. Van-Air, Inc., primarily manufactures and distributes deliquescent-type air dryers, but has recently entered the regenerative dryer market.

Deliquescent air dryers are of single vessel, self-contained design which operate continuously and automatically. Wet, dirty air flows into the bottom of the vessel through a centrally located inlet. A diffuser cap distributes air evenly throughout the pre-drying area. As the air expands and changes direction, the larger moisture droplets and solid particles drop into the condensate drain. In the lower area the air is also exposed to a deliquescent mist fed by the desiccant bed above. Here the chemical mist adsorbs part of the vaporous particles which also drop into the condensate, and the alkaline mist neutralizes the normal acidity of the untreated air. As air moves upward it flows through a bed of desiccant in a slow, scrubbing action. The desiccant is kept moist by deliquescence with moisture from wet air and dissolves slowly. The mist, which forms continuously, absorbs the remaining moisture from the air and drops downward to replenish the chemical barrier in the pre-drying area where it washes foreign substances downward. The processed air exits from the dryer outlet clean, sterile and nontoxic, flowing at its original velocity.

Van-Air, Inc., manufactures a desiccant called Dry-O-Lite. Dry-O-Lite, which will not impart or create a toxic condition in any normal ordinary compressed air passed through it, is manufactured by a secret method. It can be used in all deliquescent air dryers.

Van-Air, Inc., is the world's largest manufacturer of air dryers, and is the inventor of the deliquescent type. Its share of total United States sales of deliquescent air dryers is estimated at 30 percent; its estimated share of the desiccant market is 70 percent. Van-Air's gross sales are approximately \$3,000,000 per annum. Gross sales of Erie Foundry Company are approximately \$10,000,000 per annum.

PAR. 3. In the course and conduct of their business of manufacturing and distributing compressed air treating equipment, respondents ship such products from Pennsylvania, their state of manufacture, to distributors located in various other States throughout the United States, who engage in resale to dealers or directly to users. There is now and

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has been for several years last past a constant, substantial and increasing flow of such products in "commerce" as that term is defined in the Federal Trade Commission Act, and in the Clayton Act, as amended.

PAR. 4. Except to the extent that actual and potential competition has been lessened, hampered, restricted and restrained by reason of the practices hereinafter alleged, respondents' distributors or dealers, in the course and conduct of their business of distributing, offering for sale, and selling compressed air treating products are in substantial competition in commerce with one another, and corporate respondents are in substantial competition in commerce with other firms engaged in the manufacture or distribution of compressed air treating equipment.

PAR. 5. Respondents have entered into contracts, agreements, combinations or understandings with their distributors whereby said distributors agree to maintain the resale prices on respondents' compressed air treating products as established and set forth by respondents, and said distributors in turn require their own dealers to do so.

PAR. 6. Respondents have entered into contracts, agreements, combinations or understandings with their distributors whereby said distributors agree to extend a fifteen (15) percent discount on resale prices to all original equipment manufacturers, as well as to extend specified quantity discounts to all customers.

PAR. 7. Respondents have entered into contracts, agreements, combinations or understandings with their distributors whereby said distributors agree not to distribute, solicit or sell respondents' compressed air treating products outside of a specifically designated territory, nor to allow their own dealers to do so. Respondents rely upon their distributors to police the territorial allocation program by forwarding the serial number of foreign dryers back to Van-Air, Inc., which keeps records for ready identification.

PAR. 8. Respondents have entered into contracts, agreements, combinations or understandings with their distributors whereby said distributors agree to split their profit with any other distributor into whose territory respondents' compressed air treating products are shipped, and at the rate specified by respondents.

PAR. 9. Respondents have entered into contracts, agreements, combinations or understandings with their distributors whereby said distributors and their dealers are precluded from selling respondents' compressed air treating products to customers of their own choosing. More specifically, all distributors except one agree to refrain from selling such products to railroad customers and the one distributor who

is permitted to sell to railroads agrees to refrain from selling to all other commercial and industrial accounts. Other distributors or dealers are permitted to sell only to specified customers.

PAR. 10. Respondents have entered into contracts, agreements, combinations or understandings with their distributors whereby said distributors are precluded from selling competitive lines of deliquescent air dryers, and desiccants.

PAR. 11. Respondents have entered into contracts, agreements, combinations or understandings with their distributors whereby said distributors and their dealers are precluded from selling Dry-O-Lite desiccant for use in competing air dryers. Only upon receipt of a completed inspection analysis report and physical inspection of the competing unit by respondents' personnel may respondents then permit their desiccant to be sold by their distributors for use in competitive dryers, and then only if it will benefit respondents from a sales viewpoint for future orders.

COUNT I

Alleging violation of Section 3 of the Clayton Act, as amended (15 U.S.C. 14).

PAR. 12. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreements or common understandings entered into or reached between and among the respondents or others not parties hereto, in contracting for the sale of air dryers and desiccants on the condition, agreement or understanding that distributors shall not deal in air dryers and desiccants of competitors, may have the effect of substantially lessening competition or tending to create a monopoly in both the air dryer and desiccant lines of commerce.

Said acts, practices, and methods of competition, and the adverse competitive effects that result therefrom, constitute violations of Section 3 of the Clayton Act, as amended.

COUNT II

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45).

PAR. 13. The acts, practices, and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreements or common understandings entered into or reached between and among the respondents or others not parties hereto, to control their distributors' prices and sales territories, and to restrict and control their distributors' sales of Dry-O-Lite desic-

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cant, as hereinabove alleged, are unfair methods of competition and to the prejudice of the public because they constitute an attempt by respondents to monopolize the deliquescent-type air dryer market.

Said acts, practices and methods of competition, and the adverse competitive effects resulting therefrom, constitute an unreasonable restraint of trade and an unfair method of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

COUNT III

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45).

PAR. 14. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreements or common understanding entered into or reached between and among the respondents or others not parties hereto are unfair methods of competition and to the prejudice of the public because of their dangerous tendency to, and the actual practice of fixing, maintaining, stabilizing or otherwise controlling the prices and discounts at which their compressed air treating products are or may be sold.

Said acts, practices and methods of competition, and the adverse competitive effects resulting therefrom, constitute an unreasonable restraint of trade and an unfair method of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

COUNT IV

Alleging further violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45).

PAR. 15. The acts, practices, and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreement or common understanding entered into or reached between and among the respondents or others not parties hereto are unfair methods of competition and to the prejudice of the public because of their dangerous tendency to, and the actual practice of, restricting the customers as to whom their distributors and dealers may resell their products.

Said acts, practices and methods of competition, and the adverse competitive effects resulting therefrom, constitute, an unreasonable restraint of trade and an unfair method of competition in commerce

within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

COUNT V

Alleging further violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45).

PAR. 16. The acts, practices, and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreements or common understanding entered into or reached between and among the respondents or others not parties hereto are unfair methods of competition and to the prejudice of the public because of the division or allocation of territories into which the various distributors and dealers solicit and sell their products.

Said acts, practices and methods of competition, and the adverse competitive effects resulting therefrom, constitute an unreasonable restraint of trade and an unfair method of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's proposed complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act and Section 3 of the Clayton Act, and an agreement by and between respondents and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the proposed complaint, and waivers and 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 as providing an adequate basis for appropriate disposition of the proceeding and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Erie Foundry Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1253 West Twelfth Street, in the city of Erie, State of Pennsylvania.

Respondent Van-Air, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 5700 Swanville Road, in the city of Erie, State of Pennsylvania.

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

It is ordered, That respondents Erie Foundry Company and Van-Air, Inc., corporations, their officers, agents, representatives, divisions, employees, successors and assigns, directly or indirectly, or through any corporate or other device, in connection with the offering for sale, sale or distribution of compressed air dryers, oil scrubbers, filters, desiccant and related air and gas treating equipment in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall not:

1. Fix, maintain or otherwise control or establish the prices, discounts, commissions or other terms or conditions of sale at which such products may be resold.

2. Require any distributor or dealer to sell such products to original equipment manufacturers or to any other customer at any specified price or discount.

3. Apportion or split commissions between distributors or dealers for sales outside the selling distributor's or dealer's assigned territory.

4. Request of any distributor or dealer that such distributor or dealer pay any sum of money, or split commissions or profit on the sale of any such product, with any other distributor or dealer.

5. Require any distributor or dealer to refrain from reselling, soliciting or shipping any or all of such products in any area or territory where such distributors or dealers may independently choose to sell or ship.

6. Prohibit any distributor or dealer from reselling any or all of such products to persons, firms or businesses of their own choosing, or requiring any distributor or dealer to obtain prior ap-

proval of respondents before selling such products to any person, firm or business.

7. Establish, publish or enforce any term, condition or limitation of any kind concerning the persons or companies to which, or the territories within which, any distributor or dealer shall sell air dryers or desiccant to any purchaser or potential purchaser of such products, or require or suggest that any distributor or dealer refuse to sell desiccant directly to any purchaser or potential purchasers of such products.

8. Refuse to sell air dryers or desiccant directly to any distributor of Van-Air products: *Provided, however,* That respondents are not precluded from refusing to sell air dryers or desiccant to distributors whose accounts are delinquent.

9. Solicit reports or information from any distributor or dealer or other person concerning the price at which any distributor or dealer shall sell or shall have sold such products.

10. Solicit reports or information from any distributor or dealer or other person concerning the identity of any customer or location to which any distributor or dealer shall sell or shall have sold such products for the purpose of fixing, maintaining or controlling the prices, discounts, commissions or terms or conditions of sale at which such products may be resold; apportioning or splitting commissions between distributors or dealers; requiring any distributor or dealer to refrain from reselling, soliciting, or shipping such products in any area or territory; prohibiting any distributor or dealer from reselling such products to persons, firms or businesses of their own choosing, or to obtain the prior approval of respondents before selling such products; or prohibiting or preventing any distributor or dealer from using, dealing in, selling or distributing products supplied by any other seller.

II

It is further ordered, That respondents Erie Foundry Company and Van-Air, Inc., corporations, their officers, agents, representatives, divisions, employees, successors and assigns, directly or indirectly, through any corporate or other device, in connection with the offering for sale, sale or distribution of compressed air dryers, oil scrubbers, filters, desiccant and related air and gas treating equipment in commerce as "commerce" is defined in the Clayton Act, as amended, shall not:

1. Sell or make any contract or agreement for the sale of any such product on the condition, agreement or understanding that

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the purchaser thereof shall not use, deal in, sell or distribute products supplied by any other seller.

2. Enforce, or continue in operation or effect, any requirement, condition, agreement or understanding with any purchaser which is to the effect that such purchaser shall not use, deal in, sell or distribute products supplied by any other seller.

3. Require any distributor or dealer to seek the prior approval of respondents before they may use, deal in, sell or distribute products supplied by any other seller.

III

It is further ordered, That respondent Van-Air, Inc., within sixty (60) days from the effective date of this order shall:

1. Mail or deliver a conformed copy of this order to all present.

2. Offer to reinstate any former distributor or dealer who may have been terminated or superseded for the violation of any rule, regulation or policy which contravenes any of the provisions of this order, and reinstate any such distributor or dealer who accepts such offer of reinstatement.

3. Notify all of its distributors and dealers and all competing manufacturers of deliquescent air dryers that its desiccant products will henceforth be available through its normal distribution channels to all persons wishing to purchase same, without any precondition or restriction.

4. File with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order: *Provided, however*, That the Commission may institute proceedings to enforce compliance with this order and to exact penalties for noncompliance herewith, without prior rejection of such reports, or the prior notice of any kind to respondents.

IV

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

IN THE MATTER OF
MOTHER'S AUTO SALES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS

Docket C-2004. Complaint, Aug. 10, 1971—Decision, Aug. 10, 1971

Consent order requiring a Miami, Fla., retailer and distributor of used automobiles to cease violating the Truth in Lending Act by failing to make all material disclosures required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Mother's Auto Sales, Inc., a corporation, and Thomas F. McCarson, individually and as an officer of said corporation, and David Talles, individually and as manager of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, 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 Mother's Auto Sales, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 9750 Northwest 27 Avenue, Miami, Florida.

Respondent Thomas F. McCarson is an officer of the corporate respondent. Respondent David Talles is manager of the corporate respondent. They formulate, direct and control the policies, acts and practices of the corporation, including the acts and practices hereinafter set forth. Their 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 advertising, offering for sale and retail sale and distribution of used cars to the public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.