

AAMCO AUTOMATIC TRANSMISSIONS, INC.

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

Docket C-2305. Complaint, Oct. 18, 1972—Decision, Oct. 18, 1972.

Consent order requiring a Bridgeport, Pennsylvania, franchisor of automobile automatic transmissions and related parts and services, among other things to cease requiring its franchisees to purchase the parts, equipment, merchandise or services used by such franchisees in the establishment and operation of their businesses solely from respondent. The order further requires respondent to compile an approved vendor list and to allow franchisees to purchase from any vendor on it, provided said vendors comply with the quality control program set forth in the order.

COMPLAINT

The Federal Trade Commission, having reason to believe that AAMCO Automatic Transmissions, Inc., hereinafter referred to as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. Section 45), as amended, and it

appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent AAMCO Automatic Transmissions, Inc., hereinafter sometimes referred to as respondent, is a corporation organized and doing business under the laws of the State of Pennsylvania with its general offices and place of business located at 408 E. Fourth Street, Bridgeport, Pennsylvania.

PAR. 2. Respondent is now, and for some time has been, engaged in the granting of licenses or franchises to corporations, partnerships and individuals located in various states and in the District of Columbia, to use their trademark and business methods in the operation of businesses specializing in the servicing, repair and sale of automatic transmissions used in automobiles and in the sale of parts, supplies and equipment for use in connection therewith. Respondent also engaged directly in the service, repair and sale of automobile transmissions through businesses owned or controlled by them. In 1970, respondent had total revenues of \$8,600,000.

PAR. 3. Respondent causes the transmission parts, new and rebuilt, and equipment it sells to be shipped to purchasers located in states other than Pennsylvania, the state in which its place of business is located. In the course and conduct of its business, as above described, respondent is now, and has been at all times referred to herein, engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Except to the extent competition has been hindered, prevented, frustrated, lessened or eliminated as set forth in this complaint, respondent has been and is now in substantial competition with other corporations, individuals and partnerships engaged in the distribution of parts and equipment for the repair of automobile transmissions.

PAR. 5. Respondent's franchise agreements contain provisions which require its franchisees to purchase the initial mechanical equipment for the operation of the franchisees' business from the respondent. Examples of such equipment include hydraulic lifts and transmission jacks whose total costs averages \$8,500. In 1968, its equipment sales to its franchisees were \$749,000 and in 1970 its sales were \$100,000.

The identical equipment can be purchased from other parties than respondent at lower prices.

In a few instances where franchisees purchased or leased premises which contained hydraulic lifts, these franchisees were required to pay respondent the profit respondent would have made had the lifts been purchased from it.

PAR. 6. Respondent's franchise agreements contain provisions which require its franchisees to purchase from them "AAMCO Assembly Sets," repair kits composed primarily of "soft" parts such as paper and rubber gaskets and a few small "hard" parts such as steel clutches. In addition, the franchise agreements provide that the franchisees are required to purchase all "hard" parts such as torque converters from AAMCO. As a result of the above-mentioned franchise agreements, respondent's franchisees are compelled to purchase their entire requirement of repair parts from their franchisor. In 1968, respondent had parts sales of \$6,600,000 to its franchisees and in 1970 its parts sales to its franchisees were \$3,600,000.

None of the parts sold by respondent is manufactured by it. Respondent purchases its parts from the same sources as its competitors. Respondent's kits are not unique and, in fact, the kit was originally assembled by one of the suppliers with which AAMCO currently competes.

Respondent has advertised in its house publication that it has tested the parts of its competitors and that the results of the tests indicated respondent's parts were superior to those of its competitors. In one instance, the published test results were falsified. Respondent claimed that a testing laboratory had tested all of the parts of their competitors, when, in fact, only gaskets had been tested.

PAR. 7. Respondent has threatened to terminate franchisees who did not purchase AAMCO Assembly Sets.

PAR. 8. The acts and practices of respondent as alleged herein have had, and do now have, the tendency or effect of unduly hindering, lessening, restraining or eliminating competition in the importation and sale of new and rebuilt transmission repair parts and transmission equipment, have deprived AAMCO franchisees and consumers of the benefits of full and free competition, have hampered their free choice in the selection of suppliers from which to buy transmission parts and equipment, are prejudicial and injurious to the public, and constitute unfair methods of competition and unfair acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent 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 respondent with a violation of the Federal Trade Commission Act; 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 aforesaid draft of complaint, 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 thereafter considered the matter and having determined that it had reason to believe that the respondent has 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 Section 2.34(b) of its rules, the Commission hereby issues the following order:

1. Respondent AAMCO Automatic Transmissions, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its executive offices at 408 E. Fourth Street, Bridgeport, Pennsylvania.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest:

ORDER

I

It is ordered, That respondent, AAMCO Automatic Transmissions, Inc. (AAMCO), a corporation, its successors, assigns, officers, directors, agents, representatives, directly or through any corporate or other device, in connection with the franchising of automotive repair mission repair franchisees and the operation of an automotive repair franchisor business, such franchising and operation constituting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from requiring, in any manner or by any means, directly or indirectly, its franchisees to purchase the automotive parts, new or rebuilt, equipment, merchandise or services used by such franchisees in the establishment and operation of their automotive repair businesses from AAMCO or from any other source except as hereinafter provided.

II

It is further ordered, That respondent take all necessary action to effect the cancellation of each provision of every contract between it and its franchisees which is contrary to or inconsistent with any provision of this order.

III

It is provided, That nothing in the order shall prohibit AAMCO, a corporation, its successors, assigns, officers, directors, agents, representatives, and employees, from restricting the sources from which the franchisees of AAMCO are permitted to purchase the new or rebuilt automotive parts, equipment or merchandise used in their operations as franchisees of AAMCO in accordance with the following quality control program.

A

(1) Respondent shall compile a list of approved new automobile transmission parts vendors. All such vendors who desire to be placed on the approved vendor list, who certify in writing to AAMCO that their secondary level of parts inspection is equivalent to AAMCO's and who actually perform a secondary level of parts inspection equivalent to that performed by AAMCO, as described in AAMCO's Quality Control Manual, which shall be made available to prospective vendors, shall be placed on the approved vendor list. For the purposes of this order, a "secondary level of inspection" is defined as a quality control procedure whereby automobile transmission parts are tested and inspected by the vendor prior to their sale. Those vendors who manufacture any of the parts which they sell shall be considered to have the required secondary level of inspection if they have a quality control procedure whereby their parts prior to sale are subjected to an inspection equivalent to that performed by AAMCO.

(a) In order to allow AAMCO to ascertain the comparability of the secondary level of inspection of a vendor who desires to be placed on the approved vendor list, AAMCO shall be allowed to require that such vendor permit AAMCO to make a reasonable inspection of its quality control program.

(b) Any question as to the equivalency of a vendor's secondary level of inspection which is raised at any time by AAMCO shall be resolved by the determination of an inde-

pendent testing laboratory, selected by the Commission, with the costs being borne by the vendor. AAMCO shall raise such question only when there is a reasonable basis therefore and after AAMCO has inspected the vendor's quality control program. Whenever such a question is raised by AAMCO, respondent shall submit to the Commission a statement as to what basis exists upon which to question the equivalency of the vendor's secondary level of inspection. When such a question is raised by AAMCO the vendor shall not be placed on the approved list pending the resolution of the question of the comparability of the vendor's secondary level of inspection. A vendor who is found not to have the requisite inspection program shall be afforded an opportunity to cure any defects in his program and to request at that time that he be placed on the approved vendor list subject to the criteria enumerated heretofore.

(c) Respondent shall forward a copy of the initial approved vendor list to the franchisees of AAMCO and shall publish such list every six (6) months in a publication, such as the Twin Post, which is periodically sent to every franchisee of AAMCO.

(2) Respondent shall allow the franchisees of AAMCO to purchase from AAMCO or any person on the approved vendor list the new automobile transmission parts used in their businesses which comply with AAMCO's published specifications. In addition, AAMCO shall allow its franchisees to purchase new automobile transmission parts from all vendors who have qualified to be placed on the approved vendor list prior to the next publication of the list. Such specifications shall be made available to any vendor who is on, or desires to be placed on the approved vendor list.

(a) Any disputes as to whether an approved vendor's parts comply with AAMCO's published specifications, such disputes to be raised by AAMCO only where a reasonable basis for such dispute exists, shall be settled by a testing by an independent testing laboratory selected by the Commission at the vendor's expense. Respondent shall submit a statement as to the basis for such question to the Commission. Pending the results of such tests, AAMCO may prohibit its franchisees from purchasing or using the specific parts whose compliance with AAMCO's published specifications is questioned. Vendors shall be given an opportunity to cure.

noncompliance by resubmitting the parts in question to an independent testing laboratory selected by the Commission for testing at the vendor's expense.

(b) The purchase contracts and/or purchase orders between the AAMCO franchisees and the vendors from whom they purchase such parts, and the invoices of such vendors, shall specify that such parts comply with AAMCO's published specifications and that they have undergone the requisite secondary level of inspections.

(3) None of the above provisions shall prohibit respondent from requiring that the franchisees of AAMCO purchase in kit form new automobile transmission parts. Respondent shall provide every vendor who desires to be placed on the approved vendor list with information as to the composition of kits then sold by respondent. Respondent shall also inform all vendors on the approved vendor list of all changes in the composition of kits sold by respondent.

(4) In order to be placed on the approved vendor list and to sell new automobile transmission parts to AAMCO franchisees, a vendor shall not be required by respondent: to perform a quality control program different than that which AAMCO performs on the parts which AAMCO sells to its franchisees; to sell in kit form those parts which AAMCO sells to its franchisees in other than kit form; to sell kits whose composition is different than the kits AAMCO sells; or to comply with AAMCO's published specifications for specific parts where AAMCO does not itself comply with its own published specifications for these parts which it sells to its franchisees.

B

(1) Respondent shall formulate, establish and publish reasonable standards and specifications for equipment, merchandise, and rebuilt automotive transmission parts, *i.e.*, those parts, such as torque converters, which are customarily rebuilt and which are customarily purchased by AAMCO franchisees for use in transmission repairs, indicating the quality which they desire for such parts, equipment and merchandise in order to protect and maintain the quality of rebuilt parts, equipment and merchandise used by franchisees of AAMCO. Respondent shall forthwith forward any such standards and specifications to the persons named in Attachment A, as well as make such standards and specifications available to any manufacturer or wholesaler of rebuilt automotive parts, equipment or merchandise requesting same.

(2) Respondent shall formulate, establish and publish a list of approved manufacturers whose rebuilt parts, equipment or merchandise comply with respondent's published standards and specifications and indicate which of such manufacturers' rebuilt parts, equipment or merchandise are in compliance. Such list shall be forthwith forwarded to the persons named in Attachment A. Such list shall be published every six (6) months in the Twin Post, or any publication which is periodically sent to every franchisee of AAMCO, and, in addition, be made available to any manufacturer or wholesaler of rebuilt automotive parts, equipment or merchandise requesting same.

(a) The manufacturers of rebuilt automotive parts, equipment or merchandise whose parts, equipment or merchandise AAMCO, as of the date this order becomes effective, buys, or whose rebuilt parts, equipment or merchandise are distributed by AAMCO, as of the date this order becomes effective, shall be placed on the approved manufacturers list for such parts, equipment or merchandise as are purchased or distributed by AAMCO.

(b) Respondent shall place on the approved manufacturer list all manufacturers of rebuilt automotive parts, equipment or merchandise, in addition to those described above in (a), who comply with the following:

(i) Such manufacturers desiring to be placed on the approved manufacturers list shall represent to AAMCO that the rebuilt parts, equipment or merchandise for which they desire to be approved meet AAMCO's published standards and specifications.

(ii) Any disputes as to whether a manufacturer's equipment, merchandise, or rebuilt parts substantially comply with AAMCO's published specifications, such disputes to be raised by AAMCO only where a reason for such dispute exists, shall be settled by an independent testing laboratory chosen by the Federal Trade Commission at the manufacturer's expense. Respondent shall submit a statement as to the basis for such question to the Commission.

(iii) All such manufacturers shall be placed on AAMCO's approved manufacturer list for the rebuilt parts, equipment or merchandise involved if such parts, equipment or merchandise of the manufacturer are found to comply with AAMCO's published standards and specifications.

(3) If at any time the respondent has a reasonable basis upon which to question whether the equipment, merchandise or rebuilt parts of an approved manufacturer comply with AAMCO's published specifications, said manufacturer shall be removed from the approved manufacturer list for the specific equipment, merchandise or rebuilt parts involved. Respondents shall submit a statement as to the basis for such question to the Commission.

(a) Any dispute as to whether an approved manufacturer's equipment, merchandise or rebuilt parts comply with AAMCO's published specifications shall be settled by testing at the manufacturer's expense by an independent testing laboratory, selected by the Commission. Such manufacturer shall be afforded the opportunity for cure established heretofore in IIIA(2)(a) of this order.

(4) In order to be placed on the approved manufacturer list and to sell specific equipment, merchandise or rebuilt parts to AAMCO franchisees, a manufacturer shall not be required by respondent to comply with AAMCO's published specifications for specific equipment, merchandise or rebuilt parts where AAMCO does not itself comply with its own published specifications for these items which it sells to its franchisees.

(5) Respondent shall allow franchisees of AAMCO to purchase the rebuilt parts, equipment or merchandise of a manufacturer who is on the approved manufacturers list for such parts, equipment or merchandise. In addition, AAMCO shall allow its franchisees to purchase rebuilt parts, equipment or merchandise from all manufacturers who have qualified to be placed on the approved manufacturer list prior to the next publication of the list. The purchase contracts and/or purchase orders between AAMCO franchisees and the sources from which they purchase approved rebuilt automotive parts, equipment or merchandise shall specify that the rebuilt parts, equipment or merchandise being purchased are manufactured by a company on the approved manufacturers list for such parts, equipment or merchandise. The invoices of the sources from which AAMCO franchisees purchase approved parts, equipment or merchandise shall specify that such parts, equipment or merchandise are manufactured by a company on the approved manufacturer list for such parts, equipment or merchandise.

IV

Respondent shall be allowed to require that the franchisees of AAMCO submit to AAMCO sufficient information to enable AAMCO

to determine if the individual franchisees are using equipment, merchandise and new and rebuilt transmission parts which comply with the procedures set forth in this order. Respondent shall also be allowed to require compliance with this provision in a reasonable manner.

V

It is further ordered, That respondent shall forthwith forward a copy of this order and of attached letter "A" to each present and future franchisee of AAMCO and to the persons named in Attachment A.

VI

It is further ordered, That respondent 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.

VII

It is further ordered, That respondent notify the Commission at least thirty (30) days after 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.

ATTACHMENT A

Ajac Trans.,
50 Lawrence Ave.,
Brooklyn, New York

All-O-Matic,
2009 Jericho Turnpike,
New Hyde Park, New York

Alloy,
3205 S. Shields Ave.,
Chicago, Illinois

Anchor Industries, Inc.,
1725 London Road,
Cleveland, Ohio. 44112

Approved Machinery Corporation,
P.O. Box 1231.
Natchez, Mississippi. 39120

Ashco Automotive, Inc.,
528 E. Second St.,
Muscle Shoals, Alabama. 35660

Autolite Ford Parts Division,
Private Brand Sales,
P.O. Box 3000,
Livonia, Michigan

Barney & White Auto Parts, Co.,
1009 McKinley Avenue,
Columbus, Ohio

Borg Warner Service Parts Co.,
11045 Gage Avenue,
Franklin Park, Illinois. 60131

C. E. Conover (Parker Products),
2800 Bristol Pike,
Cornwell Heights, Pennsylvania. 19020

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81 F.T.C.

Chicago Rawhide,
900 N. State St.,
Elgin, Illinois. 60121

Clevite Graphite Bronze,
Division of Replacement Sales,
17000 St. Claire Avenue,
Cleveland, Ohio

Duro Engineering & Mfg. Division,
Republic Corporation,
14108 Towne Avenue,
Los Angeles, California. 90061

Excell & Trio Auto Parts,
3984 Mayfield,
Cleveland, Ohio

Excell & West Side Auto,
622 W. Main,
Springfield, Ohio

F. D. Farnum Co.,
P.O. Box 327
Necedah, Wisconsin. 54646

Federal Mogul Division,
P.O. Box 1966,
Detroit, Michigan. 48235

Fleet Transmission,
4960 Rising Sun Ave.,
Philadelphia, Pennsylvania

General Transmission Co.,
1622 Grand River,
Detroit, Michigan.

Hayden Trans. Cooler Co.,
P.O. Box 4278,
Riverside, California

Holley Carburetor,
11955 E. 9 Mile Road,
Warren, Michigan

Johnson Bronze,
New Castle, Pennsylvania

Kelsey Hayes,
3848 Huron River Road,
Romulus, Michigan

Lempco Industries Inc.,
5490 Dunham Rd.,
Cleveland, Ohio

Lovell Mfg. Co.,
1301 French St.,
Erie, Pennsylvania

National Seal,
P.O. Box 1966,
Detroit, Michigan

One Stop Auto Parts,
12 Colvin Avenue,
Albany, New York

Portland Transmission Warehouse,
1016 S.E. Hawthorne Boulevard,
Portland, Oregon

Raybestos Division,
Bridgeport, Connecticut

Republic Gear,
20200 E. 9 Mile Run,
St. Clair Shores, Michigan. 48083

Robert S. Greenfield Corp.,
218-26 Hempstead Avenue,
Queens Village, New York

Sealed Power Corp.,
2001 Sanford St.,
Muskegon, Michigan

United Motors Service,
1735 Jersey Avenue,
North Brunswick, New Jersey

Van Buren Automotive Prod., Inc.,
Rt. 112, Port Jefferson Station,
Long Island, New York

Vasco Sales Co.,
P.O. Box 38,
Vassar, Michigan

Wausau Motor Parts,
Schofield, Wisconsin

X-Cell Industries,
505 W. Nine Mile Road,
Hazel Park, Michigan

LETTER "A"

(Official AAMCO Stationery)

GENTLEMEN: The Federal Trade Commission has entered an order against AAMCO Automatic Transmissions, Inc. (AAMCO) which prohibits it from requiring its transmission franchisees to purchase only from AAMCO the mechanical equipment and transmission parts our franchisees use in their automative transmission business. A copy of this order is attached.

The order permits AAMCO to require its franchisees to limit their purchases of parts and equipment to those parties who qualify under the following AAMCO Quality Control Program or to purchase such parts and equipment from AAMCO. We shall formulate and publish standards for a quality control program whereby the transmission parts are tested and inspected by vendors prior to sale. In addition we will publish specifications for new and rebuilt transmission parts and equipment. A description of the quality control program and the specifications shall be made available to manufacturers and suppliers which request them. Companies which follow the quality control procedures and specifications shall be placed on an approved manufacturer's list for such parts or equipment. This list will be published in an AAMCO publication every six months.

The AAMCO franchisees are required to submit to AAMCO sufficient information to enable AAMCO to determine if such franchisees are using equipment, merchandise, and new and rebuilt transmission parts which comply with the procedures set forth in this order.

AAMCO's franchisees are free to purchase parts and equipment only from those vendors on the approved manufacturers list and from AAMCO.

Sincerely yours,

ROBERT MORGAN.

IN THE MATTER OF

UNITED STATES STEEL CORPORATION*

Docket 8655. Order and Opinion, October 19, 1972.

Order modifying the initial decision following remand by U.S.C.A. 6th Circuit, to conform with the views set forth in the Commission's opinion, adopting the modified initial decision following remand, and directing the filing of the findings and conclusions with the court. The Commission ruled that a

*See joint Initial Decision *In the Matter of National Portland Cement Company*, Docket No. 8654, 71 F.T.C. 399.