

## Decision

IN THE MATTER OF  
MOOG INDUSTRIES, INC.ORDER, OPINIONS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (A)  
OF THE CLAYTON ACT AS AMENDED

*Docket 5723. Complaint, Dec. 20, 1949—Decision, Apr. 29, 1955*

Order requiring a manufacturer of automotive replacement parts in St. Louis, Mo., to cease discriminating in price between different customers by selling its products of like grade and quality at higher and less favorable prices to numerous small businessmen than to their larger competitors, in violation of sec. 2 (a) of the Clayton Act as amended.

Before *Mr. Earl J. Kolb*, hearing examiner.

*Mr. Eldon P. Schrup*, *Mr. James E. Corkey* and *Mr. Francis C. Mayer* for the Commission.

*Mr. Edwin S. D. Butterfield*, of Chicago, Ill., *Halfpenny, Hahn & Cassedy*, of Washington, D. C., and *Rosenblum, Mellitz & Frank*, of St. Louis, Mo., for respondent.

## INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is before the undersigned Hearing Examiner for final consideration on the complaint, answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel.

1. The complaint in this proceeding charges that the respondent Moog Industries, Inc., has discriminated in price between different purchasers of its products in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U. S. C. title 15, section 13).

2. The price differentials which are charged to be in violation of the Clayton Act arise from respondent's pricing practices, involving the granting of an annual retroactive volume rebate to its customers and also in the granting of such retroactive volume rebate to group purchasers on the basis of their aggregate purchases instead of upon the individual purchases of the members.

3. The general system of pricing used by the respondent, as developed by the record, and the variations therefrom in the case of group buyers, is not disputed by the respondent but was instead defended on the basis that the merchandise sold by the respondent to its various customers was not of like grade and quality; that the pricing practices of respondent has not resulted in any injury to

competition; and that respondent's prices, discounts and allowances were made to meet competition. No attempt was made by respondent to justify its price differentials on the basis of differences in cost of manufacture, sale or delivery. Evidence as to primary line injury to competition between respondent and its competitors is not sufficient to warrant any finding, and consideration of this matter must be limited to secondary line injury to competing customers of the respondent.

4. Respondent Moog Industries, Inc., is a Missouri corporation with its principal office and place of business located at 6650 Easton Avenue, St. Louis, Missouri, with selling and distributing subsidiaries known as the St. Louis Spring Suspension Service Company of Texas, Moog Industries, Inc., of Tennessee, Moog Industries, Inc., of Colorado, and St. Louis Spring Suspension Service Company of Nebraska.

5. Since June 1936, the respondent has been engaged in the manufacture and in the sale and distribution in interstate commerce of automotive replacement parts, consisting of coil action parts, leaf springs, coil springs, chassis parts, piston rings and other related items in competition with other concerns who were also engaged in the sale and distribution of similar products in interstate commerce.

6. The market in automotive replacement parts is highly competitive. The amount of business transacted by the respondent in the replacement parts field is substantial. In an advertising circular distributed by respondent to its customers in 1949, it was stated "The company with a small beginning back in 1919, has become one of the country's large industries and recently consolidated its manufacturing divisions: St. Louis Spring Co., Moog Coil Action Parts Co., and Moog Piston Ring Company, into Moog Industries, Inc." The respondent sells its products in every state of the United States and in 1950 maintained 25 branches and warehouses in the principal cities.

7. The respondent, during the times mentioned herein, has sold its replacement parts to jobbers, who were designated by the respondent as distributors, who resold such products to garages, service stations, fleet owners and to other jobbers. The respondent separated its products into three classifications (a) leaf spring line, which consists of leaf springs, coil springs, tie rod ends, shackles and kingbolts; (b) coil action line, which consists of front wheel spring assembly parts exclusive of coil springs; and (c) piston ring line. A portion of the replacement parts in each of these lines was sold in the form of kits or packages containing complete unit installations for various makes of cars. From time to time respondent issued its distributor's price list on each of these lines which listed the basic prices used by the

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respondent in the sale and distribution of its various replacement parts. Any discounts, allowances or rebates were off said distributor's price list. Respondent also from time to time issued suggested resale price lists for use by distributors and dealers in the resale of respondent's products. During the year 1949, respondent sold approximately 1,200 coil action accounts, 800 leaf spring and chassis parts accounts, and 400 piston ring accounts. In relation to total sales, the leaf spring line and coil action line have always predominated with the piston ring line accounting for a small proportion of the total overall sales.

8. The net purchase price paid by distributors for respondent's products is the purchase price paid subject to and following all applicable rebates, discounts and allowances. The automotive replacement parts sold and distributed by respondent were all of one grade and quality. Respondent sold such products of like grade and quality to its distributors at varying net prices. Such distributors of respondent were competitively engaged in the resale of respondent's replacement parts in the various territories and places where such distributors carried on their businesses.

9. The annual volume rebates, provided for in respondent's pricing plan, were incorporated in, and made a part of, its distributor franchise agreement. The volume rebate on the coil action line and the piston ring line has been a retroactive volume rebate in substantially the same amount since 1947. Prior to July 1, 1949, respondent allowed a non-retroactive rebate on its leaf spring line, but subsequent thereto had granted a retroactive volume rebate. The retroactive volume rebates as set out in respondent's franchise agreements with its distributors are as follows:

## COIL ACTION PARTS

Net purchases during each fiscal year	Retroactive rebate	Net purchases during each fiscal year	Retroactive rebate
	<i>Percent</i>		<i>Percent</i>
Under \$1,000 .....	None	\$15,000-\$17,499 .....	14
\$1,000-\$4,999 .....	5	\$17,500-\$19,999 .....	15
\$5,000-\$7,499 .....	7½	\$20,000-\$22,499 .....	16
\$7,500-\$9,999 .....	9	\$22,500-\$24,999 .....	17
\$10,000-\$12,499 .....	10	\$25,000-\$27,499 .....	18
\$12,500-\$14,999 .....	12	\$27,500 and over .....	19

## PISTON RING LINE

	<i>Percent</i>		<i>Percent</i>
Under \$2,000 .....	None	\$9,000-\$9,999 .....	13
\$2,000-\$2,999 .....	2	\$10,000-\$11,999 .....	14
\$3,000-\$3,999 .....	5	\$12,000-\$14,999 .....	15
\$4,000-\$4,999 .....	7	\$15,000-\$17,999 .....	16
\$5,000-\$5,999 .....	9	\$18,000-\$20,999 .....	17
\$6,000-\$6,999 .....	10	\$21,000-\$24,999 .....	18
\$7,000-\$7,999 .....	11	\$25,000-\$29,999 .....	19
\$8,000-\$8,999 .....	12	\$30,000 and over .....	20

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## LEAF SPRING LINE, INCLUDING COIL SPRINGS AND CHASSIS PARTS

	Percent		Percent
Under \$1,000.....	None	\$11,000-\$14,999.....	11
\$1,000-\$2,999.....	5	\$15,000-\$19,999.....	12
\$3,000-\$4,999.....	7	\$20,000-\$27,499.....	13
\$5,000-\$7,999.....	9	\$27,500-\$34,999.....	14
\$8,000-\$10,999.....	10	\$35,000 and over.....	15

In addition to the above volume rebate, the respondent allowed a 10 percent warehousing and redistributing commission to distributors who resold respondent's products to other jobbers who had been approved by the respondent, provided the combined earnings of the warehousing and redistributing commission and the volume rebate on any line cannot exceed the earnings figured at the maximum rebate for that line. The retroactive volume rebate was paid by respondent on all purchases of the distributor including merchandise resold by the distributor to other jobbers.

10. Under the retroactive rebate plan, purchasers were granted and received rebates on all their individual purchases according to the rebate bracket applicable to their total annual purchases. Any individual purchase price was retroactively determined by the total of all purchases during the year according to the terms of the retroactive rebate plan.

11. The amounts involved in the granting by respondent of the volume rebates were substantial and reflect the importance which was attached to said rebates by the various purchasers. Rebates were granted by respondent and received by some, but not all, the purchasers of the coil action line for the following years in the following amounts:

1947.....	\$163,392.66
1948.....	203,478.53
1949.....	106,255.91

Rebates were also granted by respondent and received by some, but not all, the purchasers of the piston ring line for the following years in the following amounts:

1947.....	\$57,561.89
1948.....	21,011.19
1949.....	22,380.88

Rebates were likewise granted by respondent and received by some, but not all, purchasers on purchases of the leaf spring line in the year 1950 in the amount of \$81,300.

12. During the year 1949, respondent sold its products to jobber members of various group buying organizations, entering into the Moog distributor's franchise agreement. Sales were made during 1949 to members of the following group buying organizations:

<i>Name</i>	<i>Address</i>
Ark-La-Tex Warehouse Distributors, Inc.....	Marshall, Texas
Associated Parts Company.....	Somerville, Mass.
Automotive Jobbers, Inc.....	Cleveland, Ohio
Automotive Parts Distributors, Inc.....	Athens, Ga.
Automotive Southwest, Inc.....	Dallas, Texas
Cotton States, Inc.....	Greenwood, Miss.
Metropolitan Automotive Wholesalers.....	New York, N. Y.
Mid-South Distributors, Inc.....	Memphis, Tenn.
Mid-West Warehouse Distributors.....	Kansas City, Mo.
Ozburn-Crow & Yantis Co.....	Memphis, Tenn.
Six-States Associates.....	Boston, Mass.
Southern California Jobbers, Inc.....	Los Angeles, Calif.
Southwest Automotive Distributors.....	Los Angeles, Calif.
Southwestern Warehouse Distributors.....	Dallas, Texas
Warehouse Distributors, Inc.....	Chattanooga, Tenn.

13. The purchase procedure in a group buying operation provided for the forwarding of purchase orders by the individual jobber member to the seller directly or through the group office. Merchandise so ordered was shipped by the respondent direct to the individual jobber member with billing for same being directed to the group office. Monthly settlements were made between respondent and the group office for the aggregate purchase orders of all the jobber members so received and each jobber member also settles monthly with the group office for his own individual purchases so made. The annual volume rebate allowed by the respondent was based upon the aggregate purchases of the group members and was paid to the group office, which in turn distributed such volume rebate to the jobber members in proportion to the amount of such jobber's individual purchases. The rebates and discounts, as shown by the tabulations in evidence, were granted and allowed by respondent to each individual member of the said buying groups on the basis of the total purchases of all the members irrespective of whether or not the amount of such individual member's purchases met with the requirements of any particular bracket of respondent's volume rebate schedules set forth in the respondent's distributors' franchise agreement. The group buying organization was in reality a bookkeeping device for the collection of rebates, discounts and allowances received from sellers on purchases made by its jobber members. Such jobber members, in fact, purchase their requirements of respondent's products direct from the respondent and at the same

time receive a more favorable price or higher rebate based upon the combined purchases of all of the members.

14. Illustrative of the monetary benefits derived by the individual jobber member of such group buying organizations, as opposed to those individual purchasers buying without the benefits of such group consolidation of purchases is the following tabulation taken from Commission's Exhibits 21-V and 21-W, dealing with the transactions between respondent and the Mid-South Distributors, Inc.:

*Automotive jobber "group-buying" method of purchasing*

Manufacturer's published discount schedule to trade		1	2	3	4	5	6
Net purchases	Retro-active rebate	Actual net purchases each member jobber	Manufacturer's schedule discount rate applicable	Manufacturer's schedule discount amount due	Manufacturer's "group" discount rate	Manufacturer's "group" discount amount paid	Actual price difference
			<i>Percent</i>		<i>Percent</i>		
	<i>Percent</i>	1. \$1,369.08	5	\$68.45	19	\$260.13	\$191.68
	<i>None</i>	2. 2,408.24	5	120.41	19	457.57	337.16
Under \$1,000.....		3. 1,530.00	5	76.50	19	290.70	214.20
\$1,000-\$4,999.....	5	4. 585.96	<i>None</i>	-----	19	111.33	111.33
\$5,000-\$7,499.....	7½	5. 2,594.97	5	129.75	19	493.05	363.30
\$7,500-\$9,999.....	9	6. 1,483.65	5	74.18	19	281.89	207.71
\$10,000-\$12,499.....	10	7. 3,728.45	5	186.42	19	708.41	521.99
\$12,500-\$14,999.....	12	8. 6,656.06	7½	609.20	19	1,264.65	655.45
\$15,000-\$17,499.....	14	9. 2,759.69	5	137.98	19	524.34	386.36
\$17,500-\$19,999.....	15	10. 3,440.61	5	172.03	19	653.72	481.69
\$20,000-\$22,499.....	16	11. 1,492.70	5	74.64	19	283.61	208.97
\$22,500-\$24,999.....	17	12. 750.92	<i>None</i>	-----	19	142.67	142.67
\$25,000-\$27,499.....	18	13. 3,610.53	5	180.53	19	686.00	505.47
\$27,500 and over.....	19	14. 1,072.02	5	53.60	19	203.68	150.08
Total.....		33,482.83		1,883.69		6,361.75	4,478.06

15. In following the pricing practices hereinabove described, respondent has discriminated in price by means of rebates allowed by it in the sale of its various automotive products and related items as between respondent's competing distributors and also between respondent's distributors and competing group buying jobbers, and the effect of such discriminations may be to substantially lessen, injure, destroy or prevent competition between customers receiving the benefit of said discriminations and the customers who do not receive the benefit of such discriminations.

16. The respondent did not grant exclusive territory to any of its customers and has had more than one distributor in various trade areas who were, in fact, in competition with each other and also in competition with group buying jobbers, who sold respondent's replacement parts to dealers and other purchasers in their respective trade areas. The price discriminations received by some distributors as compared with others, competing with them in the same trade area, as a result of respondent's pricing plan, is shown by a number of tabula-

