Syllabus

IN THE MATTER OF

NAMSCO, INC. (FORMERLY NATIONAL WHEELS AND PARTS MANUFACTURING CO., INC.)

COMPLAINT, DECISION, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECTION (a) OF SECTION 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 5771. Complaint, May 1, 1950—Decision, Mar. 17, 1953

Automotive parts jobbers operate on a very small profit margin, and such a jobber's profit is made up of an accumulation of small margins of profit on many items, and where particular products, though slow moving, are essential items in every jobber's stock, the profit thereon contributes to the aggregate which determines whether a jobber grows, remains the same size, goes backward, or fails.

Price competition is but one form of competition, and additional service to customers, additional salesmen to call on them, carrying a larger and more varied stock, branch houses, and proximity to customers all aid such jobbers to stay in business and to prosper; and the institution or expansion of such competitive aids depends directly on operating profit margin, a major factor in which is cost of merchandise purchased.

To prove the existence of competition between two sellers reselling the same or substantially the same functional products, it is unnecessary that a distributor must testify he attempted to sell the product of one of the sellers to a given potential customer at the same specified time and place that another distributor was attempting to sell the same product bought from the same source.

A contention that since certain products are slow in turnover and constitute but a small part of the invested capital of distributor buyers, small differences in the cost of acquisition do not affect competition, is not valid, since, like a grocer, an automotive parts distributor must carry a large and varied stock, many items of which are slow in turnover, small in unit cost or profits, but necessary to stock; and it was the intention of Congress to protect a merchant from competitive injury attributable to discriminatory prices on any or all goods sold in interstate commerce, whether the particular goods constituted a major or minor portion of his stock. *Federal Trade Commission v. Morton Salt Company*, 334 U.S. 37.

A further contention that, in a price discrimination proceeding in which the alleged discriminating seller suggested certain resale prices for his distributor customers, no injury to competition or substantial lessening thereof was shown where the discriminatory discount was not used to reduce the resale price of the product and that no inference of such injury arises from obvious injury to profit or from a showing that one of two reselling competitors bought from respondent for less, is likewise not valid, since, where purchasers who buy and compete in the resale of the same merchandise are charged different prices therefor, the conclusion is inescapable that injury

to the competitive efforts of the unfavored purchaser is present, and the taking of testimony to show "actual financial losses" on account of the discriminatory prices is unnecessary. *Federal Trade Commission v. Morton Salt Company*, 334 U.S. 37.

Where a corporation engaged in the manufacture and interstate sale and distribution of wheel discs, hub caps, exhaust extensions, gas tank and radiator caps, and in the purchase and resale of wheel parts such as nuts, bolts, and studs; in selling its said automotive products to automotive jobbers, distributors, dealers, and warehousemen located through the United States, and including purchasers in Birmingham, Mobile, Los Angeles, New Orleans, Jackson (Miss.), Kansas City, Newark, Philadelphia, Memphis, and Dallas.

(*a*) Discriminated in favor of eight "special accounts" during 1947–1949 in that it sold them hub caps in substantial quantities at prices which ranged from 10 percent to 17 percent below its "blue list," entitled "Distributors Net Prices" or "Jobbers Net Prices," on which were published prices at which it sold the great majority of the purchasers of its said products:

(*b*) Discriminated in favor of five cooperative buying organizations during said period, in that it sold them all of its products at prices which were 5 percent, 7½ percent, and 10 percent lower than the prices on its said "blue list," by way of rebate in said amounts; and

(*c*) Discriminated in favor of 104 purchasers through substantial sales to them of hub caps at its "white list" prices issued in 1949, listing prices which ranged up to 33⅓ percent below the "blue list;"

Effect of which discrimination in price between customers competing in the resale of its products was and might be to substantially lessen competition among its customers competitively engaged in the resale thereof, and to injure and prevent competition among them:

Held, That such acts and practices, under the circumstances set forth, violated the provisions of subsection (a) of section 2 of the Clayton Act as amended.

As respects respondent's contention that the evidence, consisting of testimony of purchasers from respondent in two of the areas involved, namely, Memphis and New Orleans, as to the competition concerned and affected, along with other evidence hereinbefore indicated, was insubstantial and insufficient to show the existence of competition between purchasers of respondent's products reselling the same in the same trading area: respondent offered no evidence, and there was nothing in the record, to indicate that the two areas were unique or different from other trading areas in which respondent sold its products to automotive parts jobbers at different prices, and it was therefore concluded that the competitive conditions shown to exist in the two areas with respect to the purchase and resale of said products were typical of the other areas in the United States herein concerned; that respondent's customers reselling its products in the same trading areas were in competition with each other in such reselling efforts; and that the challenged evidence was both substantial and sufficient.

With regard to respondent's further contention that there was no substantial or sufficient evidence to show that the effects of its different prices charged purchasers competitively engaged with each other in the resale of its products was "substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition:" testi-

mony from customers in the aforesaid trading areas was unanimous that each purchaser took regular advantage, as a matter of necessity, of the cash discount for prompt payment extended uniformly to all by respondent; that failure to do so would seriously impair, if not wipe out, profit margin; and, in the absence of evidence to show that the areas in which testimony was taken were unique or different economically from the rest of the United States, and in the light of the other facts hereinbefore indicated, it was concluded that the effects found had been and were present throughout respondent's entire sales territory; and that respondent's said discrimination in price among its customers thus competitively engaged in the resale of its products had and might have the effect of substantially lessening competition among them, and of injuring and preventing such competition.

As respects the charge in the complaint, denied by respondent's answer, that its price discriminations had and might substantially lessen competition, tend to create a monopoly, and injure, destroy and prevent competition in respondent's line of commerce; the evidence in the record on the whole was sparse, lacking in detail, contradictory, and neither substantial nor sufficient evidence of the effect charged.

With regard to respondent's defense under section 2 of the Clayton Act, asserted in its answer, namely, that the challenged price variations were made to meet competition: no other evidence thereof was in the record and none was offered by it, and said defense was accordingly held not be be substantial.

As respects the fact that respondent in 1950 discontinued its price discriminations to group buying purchasers, and its request that no order be issued as to the discontinued practices: there was no evidence that it likewise discontinued its "white list" or its special discriminatory discounts to special accounts, discontinuance has been repeatedly held to be no defense, and discretion should not be favorably exercised in the matter, since respondent is engaged in a competitive business with highly fluid and constantly changing conditions, and the record is barren of anything to indicate that the partial discontinuance, which occurred about the time the complaint was issued, was permanent.

Before *Mr. Abner E. Lipscomb* and *Mr. Frank Hier*, hearing examiners.

Mr. Eldon P. Schrup and *Mr. Francis C. Mayer* for the Commission.

Mr. Frank A. Ramsey, of Chicago, Ill., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (a), section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent National Wheels and Parts Mfg. Company, Inc., is a corporation organized and doing business under and

by virtue of the laws of the State of Illinois, with principal office and place of business located at 1810 South Michigan Avenue, Chicago, Illinois.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of the manufacture, sale and distribution of automotive products and supplies to different purchasers of the same located in the various States of the United States and in the District of Columbia. Said products and supplies are sold by the respondent for use, consumption or resale within the United States and the District of Columbia, and respondent causes said products and supplies so sold to be shipped and transported from the State or States of location of its places of business to the purchasers thereof located in States other than the State or States wherein said shipment or transportation originated. Respondent maintains, and at all times mentioned herein has maintained, a course of trade and commerce in said products and supplies among and between the States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business as aforesaid, is now, and since June 19, 1936, has been, engaged in active and substantial competition with other corporations, partnerships, firms, and individuals manufacturing, selling, and distributing comparable automotive products and supplies in commerce to purchasers of the same in manner and method and for purposes as aforestated. Many of said purchasers and many of the aforesaid purchasers from the respondent are competitively engaged each with the other.

PAR. 4. Respondent, in the course and conduct of its business as aforesaid, is now, and since June 19, 1936, has been, directly or indirectly discriminating in price between the aforesaid different purchasers of its said automotive products and supplies of like grade and quality sold and distributed in manner and method and for purposes as aforestated, by selling said products and supplies at higher and less favorable prices to numerous small businessmen purchasers than said products and supplies are sold to various larger purchasers, some of which are competitively engaged with some of said less favored purchasers and with some of said purchasers from respondent's competitors.

PAR. 5. The effect of respondent's aforesaid discriminations in price between the said different purchasers of its said automotive products and supplies of like grade and quality sold in manner and method and for purposes as aforestated, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and the aforesaid favored purchasers are engaged, or to injure, destroy or prevent competition with said respondent, said favored purchasers, or with customers of either of them.

PAR. 6. The aforesaid acts and practices of respondent constitute violations of the provisions of subsection (a) of section 2 of the Clayton Act (U. S. C., Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

DECISION OF THE COMMISSION

Pursuant to Decision and Order of the Commission dated March 17, 1953, the initial decision of hearing examiner Frank Hier became on that date the order of the Commission.[1]

INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Clayton Act as amended by the Robinson-Patman Act (15 U. S. C., Sec. 13), the Federal Trade Commission on May 1, 1950, issued and subsequently served its complaint in this proceeding upon National Wheels and Parts Manufacturing Company, Inc., a corporation, charging it with violation of subsection (a) of section 2 of said Act as amended. After the filing of answer to the complaint, hearings were held at which testimony and other evidence in support of the allegations of the complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Respondent filed a motion to strike evidence from the record and a motion to dismiss the complaint, which motions were denied by the trial examiner. Respondent thereupon elected to offer no testimony or other evidence in opposition to the evidence received in support of the allegations of the complaint, and the record was thereupon closed. Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the complaint, answer thereto, testimony and other evidence, proposed findings as to the facts, conclusions, and proposed order submitted by counsel and said trial examiner, having duly considered the record herein, makes the following findings as to the facts, conclusions drawn therefrom, and order:

[1] Said "Decision," etc., dated March 17, 1953, reads as follows, omitting the formal Order of Compliance, set forth infra at page 1172.

Service of the initial decision of the hearing examiner in this proceeding having been completed on the 10th day of September, 1951, and the Commission having, on the 10th day of October, 1951, extended until further order of the Commission the date on which the said initial decision would otherwise become the decision of the Commission; and

The Commission having duly considered the record herein and being of the opinion that said initial decision is adequate and appropriate to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner, a copy of which is attached, shall, on the 17th day of March, 1953, become the decision of the Commission.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent National Wheels and Parts Manufacturing Company, Inc., was a corporation organized and doing business under and by virtue of the laws of the State of Illinois, with its principal offices and place of business located at 1810 South Michigan Avenue, Chicago, Illinois. On January 12, 1951, respondent's corporate name was changed in accordance with the laws of the State of Illinois to Namsco, Inc., under which respondent has, since that date, operated. There was no change in the management and operation of respondent's business.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of the manufacture, sale and distribution of wheel discs, hub caps, exhaust extensions, gas tank and radiator caps and in the purchase and resale of wheel parts, such as nuts, bolts and studs, to different purchasers of the same located in the various States of the United States and in the District of Columbia. Said products and supplies are sold by the respondent for resale within the United States and the District of Columbia, and respondent causes said products and supplies, so sold, to be shipped and transported from Chicago, Illinois, to purchasers thereof located in States other than the State wherein said shipments or transportation originated. Respondent maintains, and at all times mentioned herein has maintained, a course of trade and commerce in said products and supplies among and between the States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business as aforesaid, is now, and since June 19, 1936, has been, engaged in active and substantial competition with other corporations, partnerships, firms and individuals manufacturing, selling, and distributing comparable automotive products and supplies in commerce to purchasers of the same.

PAR. 4. Respondent has sold and now sells its automotive products to the great majority of the purchasers thereof at prices published by respondent on its "blue list" which is entitled "Distributors Net Prices" or "Jobbers Net Prices." For a number of years and specifically during 1947, 1948 and 1949, it has sold its hub caps to eight "special accounts" in substantial quantities at prices ranging from 10 percent to 17 percent below its "blue list." Respondent has also during 1947, 1948 and 1949 sold all of its products to five cooperative buying organizations at prices 5 percent, 7½ percent and 10 percent lower than the prices on its "blue list," by way of rebate in those amounts. These discounts were withdrawn by respondent in 1950 and since then these five cooperative buying groups have paid "blue list" prices. In addition to these price-preferred customers, respondent in May 1949 issued

a so-called "white list" of prices on hub caps, listing prices ranging up to 33⅓ percent below the "blue list," and substantial sales at these "white list" prices were made to 104 purchasers thereafter. Respondent has thus sold all or various of its products to 117 of its customers at prices substantially lower than the prices at which it sold the same products to the great majority of its customers.

PAR. 5. Automotive jobbers, distributors, dealers and warehousemen located throughout the United States purchase products from respondent. There is in the record in this proceeding, tabulations of sales to all customers of respondent for 1947, 1948 and 1949, located in Birmingham, Mobile, Los Angeles, New Orleans, Jackson (Mississippi), Kansas City, Newark (New Jersey), Philadelphia, Memphis and Dallas, in each of which areas was located one or more purchasers from respondent, purchasing at one of the preferential prices set out above in Paragraph Four, while all other purchasers located in the same city were purchasing at the "blue list" prices. Respondent makes no sales for original equipment, all purchases from it being for resale.

PAR. 6. Testimony was taken of purchasers from respondent in two of these areas, Memphis and New Orleans. In Memphis, respondent sold during 1947, 1948 or 1949 to eight purchasers, six at "blue list" prices, two at price preferences of 5 and 10 percent, and 7½ percent. The president of one of the latter, a buying cooperative, testified his competition on products purchased from respondent, in Memphis and within an area of 50–200 miles thereof, is from all automotive parts wholesalers and car dealers and that there was no doubt that every automotive parts wholesaler in the Memphis area who bought from respondent was a competitor of his Memphis member. Two purchasers from respondent at "blue list" prices testified that they competed in the Memphis area on the resale of automotive parts, including respondent's, with everyone in that area who handled automotive parts.

PAR. 7. In the New Orleans area, respondent during 1947, 1948 or 1949 sold its products to eleven purchasers, two at "white list" prices, two at discounts of 5 and 10 percent, and seven at "blue list" prices. One of the latter and two of the former testified they had competition in the New Orleans area in the resale of automotive products, including respondent's, from car manufacturers, jobbers, oil and tire companies and others reselling automotive parts.

PAR. 8. The evidence set out supra in Paragraphs Five, Six and Seven is challanged by respondent as unsubstantial and insufficient to show the existence of competition between purchasers of respondent's products, reselling the same in the same trading area. From the record it is concluded to be both substantial and sufficient. Respondent offered no evidence, and there is nothing in the record to

indicate, that these two trading areas, Memphis and New Orleans, are unique or different from other trading areas where respondent sells its products to automotive parts jobbers at different prices. It is therefore further concluded that the competitive conditions shown to exist in these two areas with respect to the purchase and resale of respondent's products are typical and representative of the other areas in the United States set out in Paragraph Five above and that respondent's customers, reselling its products in the same trading area, are in competition with each other on such reselling efforts.

PAR. 9. Respondent likewise contends that there is no substantial or sufficient evidence to show that the effect of its different prices charged purchasers, competitively engaged with each other in the resale of its products was "substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition." The testimonial evidence on this point is that elicited from customers of respondent in Memphis and New Orleans. This testimony was unanimous that each purchaser from respondent took regular advantage as a matter of necessity of the cash discount for prompt payment extended uniformly to all by respondent, that failure to do so would seriously impair, if not wipe out, profit margin. It is apparent that automotive parts jobbers operate on a very small profit margin and most of them extend the same cash discount they receive to their purchasers; however, the latter is based on a mark-up of acquisition cost so that if the cash discount is 2 percent of invoice, upon resale that same discount may amount to nearly 3 percent of the cost of acquisition. One jobber, in business since 1916 in Northern Mississippi with six branches purchasing $767,000 a year, testified that a 2 percent cash discount frequently amounted to 58 percent of his profit since his cost of doing business was 23.78 percent of sales and his gross margin was 27.52 percent of sales, leaving a net of 3.74 percent of sales. This witness' company was a member of a cooperative and received rebates of 5 percent and 10 percent from the "blue list" prices paid by others. He further testified that if he were to grant a 2 percent discount to his customers for prompt payment and fail to take advantage of a manufacturer's discount, which is usually 2 percent, his loss on that item would be 3.9 percent of sales and he would not be in business long. Respondent gives only a 1 percent cash discount to all purchasers. Another jobber doing $400,000 yearly likewise testified that he had to take advantage of any cash discount, as it was an important item in his profit; another that it was extremely important to any jobber.

PAR. 10. The testimony is also to the effect that a jobber's profit is made up of an accumulation of small margins of profit on many items. Some of the witnesses handled 30–75 lines of products, consisting in

the aggregrate of thousands of items. Respondent's products are slow-moving but essential items in every jobber's stock. Every jobber must stock them. Although the turn-over is slow, the profit thereon contributes to the aggregrate which determines whether a jobber grows, remains the same size, goes backward or fails. With net margins of profit as narrow as they are among respondent's customers, where 2 percent of cost of acquisition may account for more than half of that margin, it follows inescapably that the price preferences found in Paragraph Four above, even though only one out of a number of lines handled, contribute directly and powerfully to that jobber's business health and his ability to compete. There is in the record also testimony from jobbers that a price difference of 21¢ on a $1.05 hub cap would enable the favored buyer to get business which the unpreferred buyer could not get and that a price preference of 10¢ on an 85¢ hub cap would have "quite a bit" of commercial significance. The evidence is that respondent "suggests" resale prices which are generally followed by its customers, although without compulsion, hence it is concluded that none of the price preferences granted by respondent as found in Paragraph Four supra are used to obtain business by price-cutting.

PAR. 11. Price competition is but one form of competition. Additional service to customers, additional salesmen to call on them, carrying a larger and more varied stock, branch houses, proximity to customers—all aid respondent's customers to stay in business and to prosper. The institution or expansion of these competitive aids depends directly on operating profit margin, a major factor in which, on this record, is cost of merchandise purchased. From the above it is concluded, therefore, that respondent's discrimination in price between customers competing in the resale of its products has had and may have the effect of substantially lessening competition among its customers so competitively engaged and of injuring and preventing competition among them. Since respondent offered no evidence to show, and the record otherwise contains nothing to show, that the areas in which testimony was taken were unique or different economically from the rest of the United States, it is concluded that the effects herein found have been and are present throughout respondent's entire sales territory.

PAR. 12. The complaint in this proceeding charges and respondent's answer denies that respondent's price discriminations, as hereinabove found, have been and may be to substantially lessen competition, tend to create a monopoly and injure, destroy and prevent competition in respondent's line of commerce. Respondent's president testified that any price variations from its "blue list" were made solely to meet competition. This is corroborated by a few statements in letters

from manufacturer's representatives soliciting orders for respondent's products in some instances, and contradicted by similar statements in the letters of others. The latter reveal the use of preferential discounts to obtain business from respondent's competitors but at most these merely show an intention or hope to do so. There is no substantial evidence of any such business obtained. On the whole, the evidence in the record is sparse, lacking in detail, contradictory and is neither substantial nor sufficient evidence of the effect charged. Although defense under section 2 (b) of the Clayton Act was asserted in respondent's answer, no other evidence in support of same is in the record, and none was offered by respondent. The defense is accordingly held not to be sustained.

CONCLUSIONS

1. To prove the existence of competition between two sellers reselling the same or substantially the same functional products, it is unnecessary, as respondent seems to contend in this proceeding, that a distributor must testify he attempted to sell respondent's product to a given potential customer at the same specified time and place that another distributor was attempting to sell the same product bought from the same source.

2. Respondent's contention that, since its products are slow in turnover and constitute but a small part of the invested capital of the distributor, small differences in the cost of acquisition do not affect competition, has been disposed of by the Supreme Court in *Federal Trade Commission* vs. *Morton Salt Company*, 334 U. S. 37. It was there held "There are many articles in a grocery store that, considered separately, are comparatively small parts of a merchant's stock. Congress intended to protect a merchant from competitive injury attributable to discriminatory prices on any or all goods sold in interstate commerce, whether the particular goods constituted a major or minor portion of his stock. Since a grocery store consists of many comparatively small articles, there is no possible way effectively to protect a grocer from discriminatory prices except by applying the prohibitions of the Act to each individual article in the store." Like a grocer, an automotive parts distributor must carry a large and varied stock, many items of which are slow in turnover, small in unit cost or profit but necessary to stock. As salt is to a grocer, so nuts and bolts and hub caps are to the jobbers in this proceeding.

3. Respondent's contention that no injury to competition or substantial lessening hereof has been shown in this proceeding because the discriminatory discount was not used to reduce the resale price of the product and that no inference of such injury arises from obvious

injury to profit or from a showing that one of two reselling competitors bought from respondent for less, is the holding of the Seventh Circuit Court of Appeals in *Morton Salt Company* vs. *Federal Trade Commission*, 162 F. (2d) 949 at pages 956 and 957. This ruling however, was expressly reversed by the Supreme Court, 334 U. S. 37, holding that where purchasers, buying and competing in the resale of the same merchandise, are charged different prices therefor, the conclusion is inescapable that injury to the competitive efforts of the unfavored purchasers is present. That court held unnecessary the taking of testimony to show "actual financial losses on account of respondent's discriminatory prices" saying "It would greatly handicap effective enforcement of the Act to require testimony to show that which we believe to be self-evident, namely, that there is a 'reasonable possibility' that competition may be adversely affected by a practice under which manufacturers and producers sell their goods to some customers substantially cheaper than they sell like goods to the competitors of those customers. This showing in itself is sufficient to justify our conclusion that the Commission's findings of injury to competition were adequately supported by evidence." In the instant proceeding, the evidence more than meets this test.

4. Respondent in 1950 discontinued its price discriminations to group buying purchasers. There is no evidence that it likewise discontinued its "white list" prices or its special discriminatory discounts to special accounts. It asks that no order be issued as to the practices discontinued. Discontinuance has been repeatedly held to be no defense. *Corn Products Refining Company* vs. *Federal Trade Commission*, 144 F.(2d) 212; *Hershey Chocolate Company* vs. *Federal Trade Commission*, 121 F.(2d) 968; *Federal Trade Commission* vs. *Goodyear Tire & Rubber Co.*, 304 U. S. 257. Nor should discretion be so exercised. Respondent is engaged in a competitive business with highly fluid and constantly changing conditions. The record is barren of anything to indicate that the partial discontinuance, which occurred about the time the complaint issued, was permanent.

5. Respondent's acts and practices, as hereinabove found, violate the provisions of subsection (a) of section 2 of the Clayton Act as amended (U. S. C. Title 15, Sec. 13).

ORDER

It is ordered, That respondent Namsco, Inc., a corporation, formerly National Wheels and Parts Manufacturing Company, Inc., its officers, representatives, agents and employees, directly or through any corporate or other device, in the sale of wheels, discs, hub caps, exhaust extensions, gas tank caps, radiator caps and wheel parts, such

as nuts, bolts and studs, or other automotive parts or supplies of like grade and quality in commerce, as "commerce" is defined in the aforesaid Clayton Act, to forthwith cease and desist, directly or indirectly, from discriminating in price between different purchasers of said products by selling such products of like grade and quality to any purchaser at prices lower than those granted other purchases who, in fact, compete, or whose customers compete, with the favored purchaser or purchasers in the resale and distribution of such products.

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That the respondent herein shall, 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 the order to cease and desist [as required by said decision and order of March 17, 1953].

Syllabus

IN THE MATTER OF

DIRECTORY PUBLISHING CORPORATION ET AL.

COMPLAINT, DECISION, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5920. Complaint, Sept. 6, 1951—Decision, Mar. 17, 1953

Where a corporation and its two officers, engaged in the publication and in the interstate sale and distribution of their "Greater New York City Business Classified Directory", in competition with other publishers of directories selling advertisements and listings therein;

In soliciting business through clipping advertisements or listings from local telephone directories, trade journals, magazines, or business directories, and pasting such clippings, under appropriate business classifications, on their order forms—mailed to those solicited with a preaddressed reply envelope—upon which there were displayed, among other things, in 14-point extrabold letters the words "New York City Classified Business Directory", followed in capital letters, but in 10-point type, by "DIRECTORY PUBLISHING CORPORATION—PUBLISHERS", with the statement elsewhere in boldfaced, 10 point type "Listing Will Not Be Published Unless Payment Is Made" and in 8-point type the advice that they proposed to publish the "attached listing, taken from another publication" in "A New Annual Publication not connected with any other Directories, Redbooks or Telephone Company", and that a check would be "accepted and considered as approval"—

Falsely represented to a substantial segment of the public, through such use of clippings from other directories, that the advertisement or listing which was ordered would be placed in the directory from which the advertisement was clipped;

With effect of misleading many persons into the erroneous belief that they were buying and paying for advertising space in the publication from which said advertisements were clipped, and with tendency and capacity so to do; whereby trade was unfairly diverted to said corporation and individuals from their competitors, to the substantial injury of competition in commerce:

Held, That such acts, practices, and methods, under the circumstances set forth, were all to the prejudice and injury of the public and of their competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

While the above proposal forms, if carefully read by the prospects, would preclude any misunderstanding on their part as to the identity of the publisher or publication actually involved, the practice concerned did actually deceive many into believing they were simply being asked to renew their advertisements in the original publications; the large type printing, the appropriated advertisement or listing, and the format so attracted the attention of the pros-

pect that more than a cursory examination of the form appeared to him to be useless and time-wasting; some accepted respondent's proposal and mailed their checks in the preaddressed return envelopes without realizing until later that the advertisements or listings were not to appear in the publication from which the clippings were taken; and, in other instances, disregarding the envelope and the folder, mailed their checks for the amounts indicated to the company which had published the directory from which it had been taken; and respondent's practices, regardless of the cautions, disclosures and explanations printed on the folders and in the accompanying listings, were potentially deceptive.

As respects a Post Office proceeding, involving the corporate respondent: respondent's testimony indicated that under the terms of an affidavit of discontinuance submitted by respondent corporation to the Post Office Department they had not, since the date concerned, caused any advertisements to be clipped from classified telephone directories for use with proposals mailed by them.

Before *Mr. J. Earl Cox*, hearing examiner.
Mr. Jesse D. Kash for the Commission.
Walsh & Levine, of New York City, for respondents.

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 Directory Publishing Corporation, a corporation, Business Directory Corporation, a corporation, and Stanley Oleck and Harvey Oleck, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, 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, Director Publishing Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent, Business Directory Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania. Respondents, Stanley Oleck is President and Treasurer and Harvey Oleck is Vice-President and Secretary of said corporations, and as such officers formulate, direct, and control the policies and practices of said corporations. All these respondents have their office and principal place of business located at 303 Washington Street, Brooklyn, New York. Business Directory Corporation also has an office at 1001 Chestnut Street, Philadelphia, Pennsylvania.

PAR. 2. The aforesaid respondents are now and for more than one year last past have been engaged in publishing or having published