

IN THE MATTER OF
AMERICAN GREETINGS CORPORATION

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SUBSECS. (d) AND (e) OF AN ACT OF CONGRESS APPROVED OCT. 14, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936; AND OF SEC. 5 OF AN ACT APPROVED SEPT. 26, 1914

Docket 5982. Complaint, May 8, 1952—Decision, Oct. 23, 1952

Where a corporation, which had had an accelerated growth in recent years and which was one of the three or four largest firms in the United States engaged in the interstate sale of greeting cards appropriate for use on many occasions (together with related products such as paper and ribbons for wrapping gifts); sold 10% of all greeting cards there used, and sold to over 40,000 retail customers located in practically all cities in the United States with a population over 5,000 or more; and included 50% of all drug store accounts, both chain and independent, and 50% of the syndicated 5 and 10¢ variety stores, to which it sold a substantial proportion of the total volume of such products purchased by them—

- (a) Paid or contracted to pay promotional allowances to some customers by way of discounts, allowances, or otherwise in consideration of display and advertising promotional services or facilities supplied by them in connection with the resale of its said products, without making such allowances available on proportionally equal terms to all of its competing customers in that it (1) paid or contracted to pay such allowances to some competing customers without making them available to all other competing customers; (2) made such allowances to such customers in amounts determined by different percentages of dollar volume of purchases without making them thus available in amounts equal to the largest of such percentages; and (3) made such allowances to such customers in amounts not determined by any percentage and not equal to the same percentage of dollar volume of purchases or any other measurable base without making available proportional allowances to all of such customers in amounts equal to and determined by the same percentage of dollar volume of purchases or of any other measurable base:

Held, That such acts and practices, under the circumstances set forth, violated subsec. (d) of Sec. 2 of the Clayton Act, as amended by the Robinson-Patman Act: and

Where said corporation, in furnishing and sometimes selling cabinet fixtures in different sizes, designed for the display of its greeting cards in retail stores and priced at from about \$50 to \$150 each—

- (b) Discriminated in favor of some and against other purchasers of its products in that it contracted to furnish or furnished said display cabinets to some purchasers at no charge, without offering to furnish or otherwise according such cabinets without charge to all other competing purchasers, to which it only offered or sold the same at prices above set forth;

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- (c) Contracted to furnish or furnished said display cabinets to purchasers at no charge in amounts (based upon its prices) not determined by any percentage, and not equal to the same percentage, of dollar volume of purchases or of any other measurable base without offering to furnish such cabinets on the same basis to all competing purchasers; and
- (d) Accorded to some purchasers a "return-for-credit" service consisting of accepting from them the return, for credit of the entire purchase price, of certain seasonable greeting cards which remained unsold after the season for which they were designed, which was of substantial value, without according such service to all other competing purchasers:

Held, That such acts and practices, under the circumstances set forth, violated subsec. (e) of Sec. 2 of the Clayton Act, as amended by the Robinson-Patman Act: and

Where said corporation, with the effect of interfering with the resale at retail of merchandise bearing the trade names or trade-marks of competitors—

- (a) Offered to buy, and bought and took over, stocks of greeting cards sold and distributed by competitors to retail sellers;
- (b) Agreed and arranged with retail sellers to junk and destroy stocks of competitors' cards distributed to them; and to remove competitors' stock from normal channels of distribution;
- (c) Agreed and arranged with retailers to take over and remount competitors' cards, so as to obscure, and make difficult the identification of, competitors' trade-marks and trade names, and to return to such sellers competitors' cards after identification had been thus obscured; and
- (d) Arranged, and acted to have its representatives make arrangements of, displays of greeting cards in retail stores in such way that competitors' cards were displayed as if they were its own products;

With a dangerous tendency unduly to restrain and eliminate competition between and among it and its competitors in the sale of such cards in commerce:

Held, That such acts, practices, and methods constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. T. Harold Scott and *Mr. Floyd O. Collins* for the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that the corporation named as the respondent in the caption hereof, and hereinafter more particularly designated and described, has violated the provisions of subsection (d) and subsection (e) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, sec. 15), and provisions of the Federal Trade Commission Act (15 U. S. C. A. sec. 45), hereby issues its complaint, stating its charges with respect thereto as follows:

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Count I

PARAGRAPH 1. Respondent, American Greetings Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1300 W. 78th Street, Cleveland, Ohio. From 1944, the year of its incorporation, until 1951 respondent's name was American Greeting Publishers, Inc., and from 1951 until February 19, 1952, respondent's name was American Greetings, Inc.

PAR. 2. From 1944 to the present time, which is the period covered by the allegations of this complaint, respondent has been engaged in the business of manufacturing and selling greeting cards appropriate for use on many occasions (Christmas, Easter, birthdays, anniversaries, weddings, funerals, etc.) together with related products such as paper and ribbons for wrapping gifts. It is one of the three or four largest firms engaged in that business in the United States.

Respondent manufactures its products, or most of them, at its plant located in Cleveland, Ohio, and sells such products to over 40,000 retailer customers or purchasers located in the United States and in other places subject to the jurisdiction of the United States for resale within such places to consumers.

Substantially all of such customers or purchasers are either independent single-unit drug stores, chain drug store organizations, or limited price variety stores. Two or more of such customers or purchasers are located in each of a large number of different towns, cities and other trading areas, and such customers or purchasers when so located are in competition with each other in offering for resale and reselling respondent's products.

Respondent now produces and sells approximately 10 percent of all greeting cards used and sold in the United States. It has customers throughout the United States and in practically all cities therein with a population of 5,000 or more. It has grown with acceleration in recent years. During the period of that growth it has acquired and secured such additional customers and accounts so that it now has 50 percent or more in number of all retail drugstore accounts in this country, both chain and independent, and 50 percent or more of the volume of greeting cards sold to such accounts. It also has as customers approximately 50 percent in number of the syndicated five-and-ten cent variety stores engaged in the purchase and sale of greeting cards. To that number of customers it sells a substantial part of the total volume of greeting cards purchased by them.

PAR. 3. In the course and conduct of its business, respondent engaged in commerce, as commerce is defined in the Clayton Act as amended, having shipped its products or caused them to be transported from Ohio to such customers or purchasers located in the same and in the other States of the United States and in other places subject to the jurisdiction of the United States.

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for resale or resale of products sold to them by respondent, and such payments were not available from respondent on proportionally equal terms to all other of its customers competing in the distribution of its products.

PAR. 5. Included among and illustrative of the payments alleged in Paragraph 4 were credits and sums of money, by way of discounts, allowances, rebates and otherwise, as compensation or in consideration for general promotional services or facilities in connection with offering for resale and reselling greeting cards, including displays and advertising in various forms. Such payments are hereinafter sometimes referred to as promotional allowances.

Promotional allowances were not available on proportionally equal terms to all of respondent's customers competing in the distribution of its greeting cards, as alleged in Paragraph 4, in that:

(1) Respondent paid or contracted to pay promotional allowances to some competing customers, and respondent did not offer to pay or otherwise make available promotional allowances to all other competing customers.

(2) Respondent paid or contracted to pay promotional allowances to competing customers in amounts equal to and determined by different percentages of dollar volume of purchasers, and respondent did not offer to pay or otherwise make available promotional allowances in amounts equal to the largest of such percentages to all of such competing customers.

(3) Respondent paid or contracted to pay promotional allowances to competing customers in amounts not determined by any percentage, and not equal to the same percentage, of dollar volume of purchases or of any other measurable base; and respondent did not offer to pay or otherwise make available promotional allowances to all of such competing customers in amounts equal to and determined by the same percentage of dollar volume of purchases or of any other measurable base.

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PAR. 6. The acts and practices of respondent as alleged above in Count I violates subsection (d) of section 2 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C. Title 15, sec. 13).

Count II

PARAGRAPH 1. The allegations of this paragraph are the same as the allegations made in Paragraphs 1, 2, and 3 of Count I.

PAR. 2. In the course and conduct of its business in commerce, respondent discriminated in favor of some purchasers against other purchasers of its products bought for resale by contracting to furnish, furnishing, or contributing to the furnishing of services or facilities connected with the handling, resale, or offer for resale of such products so purchased upon terms not accorded to all competing purchasers on proportionally equal terms.

PAR. 3. Included among and illustrative of the services or facilities alleged in Paragraph 2 were fixtures especially designed for use in retail stores to display and offer for resale greeting cards purchased from respondent, hereinafter sometimes referred to as display cabinets. Display cabinets are of several sizes and are priced and sometimes sold by respondent at from about \$50 to about \$150 each, depending upon size.

Display cabinets were not accorded on proportionally equal terms to all of respondent's purchasers competing in the distribution of its greeting cards, as alleged in Paragraph 2, in that:

(1) Respondent contracted to furnish or furnish display cabinets to some competing purchasers without charge, and respondent did not offer to furnish or otherwise accord display cabinets without charge to all other of such competing purchasers but only offered to sell or sold display cabinets to such other competing purchasers at prices ranging from about \$50 to about \$150 each.

(2) Respondent contracted to furnish or furnished display cabinets to competing purchasers without charge in amounts (based upon respondent's prices) not determined by any percentage, and not equal to the same percentage, of dollar volume of purchases or of any other measurable base; and respondent did not offer to furnish or otherwise accord display cabinets without charge to all of such competing purchasers in amounts (based upon respondent's prices) equal to and determined by the same percentage of volume of purchases or of any other measurable base.

PAR. 4. Also included among and illustrative of the services or facilities alleged in Paragraph 2 was a return-for-credit service. This service consists of accepting from purchasers the return for

credit of the entire purchase price of certain seasonal greeting cards (such as, for example, Christmas cards) which remain unsold after the season for which they are designed to be used. Such return-for-credit service is of substantial value to purchasers in that, among other things, it relieves them of the inconvenience and expense of storing such cards until they are again seasonal and releases their capital for other uses.

The return-for-credit service was not accorded on proportionally equal terms to all of respondent's purchasers competing in the distribution of certain of its seasonal greeting cards in that respondent contracted to furnish or furnished it to some of such competing purchasers and did not offer to furnish or otherwise accord it to all other such competing purchasers.

PAR. 5. The acts and practices of respondent as alleged above in Count II violate subsection (e) of section 2 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C. Title 15, sec. 13).

Count III

PARAGRAPH 1. The allegations of Paragraphs 1 and 2 of Count I of this complaint are hereby adopted and incorporated herein by references and made a part of this Count III the same as if they were repeated here verbatim.

PART 2. In the course and conduct of its business, respondent engaged in commerce, as commerce is defined in the Federal Trade Commission Act as amended, having shipped its products or caused them to be transported from Ohio to such customers or purchasers located in the same and in the other States of the United States and in other places subject to the jurisdiction of the United States.

PAR. 3. Except to the extent that competition has been hindered, frustrated and lessened as set forth in this complaint, respondent has been and is in substantial competition with other corporations and individuals, firms and partnerships, engaged in the sale and distribution of greeting cards in commerce as that term is defined in the Federal Trade Commission Act.

PAR. 4. For more than six years last past, and continuing to the present time, in the course and conduct of said business respondent in attempting to sell and in the sale and distribution of said products in interstate commerce has used, engaged in, done and performed, among others, the following acts, practices and methods with the effect of interfering with the resale at retail of merchandise bearing the trade names and trade marks of competitors:

(1) Offered to buy and bought and took over stocks of greeting cards sold and distributed by competitors to retail sellers;

(2) Agreed and arranged with retail sellers to junk and destroy stocks of greeting cards distributed to such retail sellers by competitors;

(3) Agreed and arranged with retail sellers to remove from normal channels of distribution stocks of greeting cards distributed to such retail sellers by competitors;

(4) Agreed and arranged with retail sellers of greeting cards distributed to such retail sellers by competitors to take over and remount, so as to obscure and to make difficult the identification of trade marks and trade names of competitors;

(5) Acted to return, through interstate commerce to retail sellers, greeting cards produced by competitors after identification had been obscured and otherwise made difficult through various ways and means, including those specified in the immediately preceding subparagraph;

(6) Arranged and acted to have its salesmen and its other representatives make arrangements of displays of greeting cards in stores of retail sellers in such way that greeting cards produced by its competitors were displayed as if they were products of said respondent.

PAR. 5. The above alleged acts, practices and methods of the respondent, all and singularly, have a dangerous tendency unduly to restrain, hinder, suppress and eliminate competition between and among respondent and its competitors in the sale and distribution of greeting cards in commerce within the meaning of the Federal Trade Commission Act, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated October 23, 1952, the initial decision in the instant matter of hearing examiner Abner E. Lipscomb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936, the Federal Trade Commission, on May 8, 1952,

issued and subsequently served its complaint in this proceeding upon American Greetings Corporation, a corporation, charging it with violation of subsections (d) and (e) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, and section 5 of the Federal Trade Commission Act. Said corporation failed to file an answer to the complaint herein. In accordance with due notice, a hearing was held on July 7, 1952, in Washington, D. C., before the above-named hearing examiner, theretofore duly designated by the Commission. At such hearing said corporation failed to appear or to show cause why the order contained in the notice accompanying the complaint should not be issued; and counsel supporting the complaint offered proof of due service thereof and rested his case. Accordingly, pursuant to the provisions of the notice accompanying the complaint, the hearing examiner finds the facts to be as alleged in the complaint, and issues the order contained in such notice.

FINDINGS AS TO THE FACTS

Count I

PARAGRAPH 1. Respondent, American Greetings Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1300 W. 78th Street, Cleveland, Ohio. From 1944, the year of its incorporation, until 1951, respondent's name was American Greeting Publishers, Inc., and from 1951 until February 19, 1952, respondent's name was American Greetings, Inc.

PAR. 2. From 1944 to the present time, which is the period covered by the allegations of the complaint herein, respondent has been engaged in the business of manufacturing and selling greeting cards appropriate for use on many occasions (Christmas, Easter, birthdays, anniversaries, weddings, funerals, etc.) together with related products such as paper and ribbons for wrapping gifts. It is one of the three or four largest firms engaged in that business in the United States.

Respondent manufactures its products, or most of them, at its plant located in Cleveland, Ohio, and sells such products to over 40,000 retailer customers or purchasers located in the United States and in other places subject to the jurisdiction of the United States for resale within such places to consumers.

Substantially all of such customers or purchasers are either independent single-unit drug stores, chain drug store organizations, or limited price variety stores. Two or more of such customers or purchasers are located in each of a large number of different towns,

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cities and other trading areas, and such customers or purchasers when so located are in competition with each other in offering for resale and reselling respondent's products.

Respondent now produces and sells approximately 10 percent of all greeting cards used and sold in the United States. It has customers throughout the United States and in practically all cities therein with a population of 5,000 or more. It has grown with acceleration in recent years. During the period of that growth it has acquired and secured such additional customers and accounts so that it now has 50 percent or more in number of all retail drugstore accounts in this country, both chain and independent, and 50 percent or more of the volume of greeting cards sold to such accounts. It also has as customers approximately 50 percent in number of the syndicated five-and-ten-cent variety stores engaged in the purchase and sale of greeting cards. To that number of customers it sells a substantial part of the total volume of greeting cards purchased by them.

PAR. 3. In the course and conduct of its business, respondent engaged in commerce, as "commerce" is defined in the Clayton Act as amended, having shipped its products or caused them to be transported from Ohio to such customers or purchasers located in the same and in other States of the United States and in other places subject to the jurisdiction of the United States.

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for resale or resale of products sold to them by respondent, and such payments were not available from respondent on proportionally equal terms to all other of its customers competing in the distribution of its products.

PAR. 5. Included among and illustrative of the payments found in Paragraph Four, *supra*, were credits and sums of money, by way of discounts, allowances, rebates and otherwise, as compensation or in consideration for general promotional services or facilities in connection with offering for resale and reselling greeting cards, including displays and advertising in various forms. Such payments are hereinafter sometimes referred to as promotional allowances.

Promotional allowances were not available on proportionally equal terms to all of respondent's customers competing in the distribution of its greeting cards, in that:

(1) Respondent paid or contracted to pay promotional allowances to some competing customers, and did not offer to pay or otherwise

make available promotional allowances to all other competing customers.

(2) Respondent paid or contracted to pay promotional allowances to competing customers in amounts equal to and determined by different percentages of dollar volume of purchasers, and did not offer to pay or otherwise make available promotional allowances in amounts equal to the largest of such percentages to all of such competing customers.

(3) Respondent paid or contracted to pay promotional allowances to competing customers in amounts not determined by any percentage, and not equal to the same percentage, of dollar volume of purchases or of any other measurable base; and respondent did not offer to pay or otherwise make available promotional allowances to all of such competing customers in amounts equal to and determined by the same percentage of dollar volume of purchases or of any other measurable base.

PAR. 6. The acts and practices of respondent, as found in Count I, *supra*, violate subsection (d) of section 2 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C. Title 15, sec. 13).

Count II

PARAGRAPH 1. The facts found in this paragraph are the same as those found in Paragraphs One, Two, and Three of Count, I, *supra*.

PAR. 2. In the course and conduct of its business in commerce, respondent discriminated in favor of some purchasers against other purchasers of its products bought for resale by contracting to furnish, furnishing, or contributing to the furnishing of services or facilities connected with the handling, resale, or offer for resale of such products so purchased upon terms not accorded to all competing purchasers on proportionally equal terms.

PAR. 3. Included among and illustrative of the services or facilities found in Paragraph Two, *supra*, were fixtures especially designed for use in retail stores to display and offer for resale greeting cards purchased from respondent, hereinafter sometimes referred to as display cabinets. Display cabinets are of several sizes and are priced and sometimes sold by respondent at from about \$50 to about \$150 each, depending upon size.

Display cabinets were not accorded on proportionally equal terms to all of respondent's purchasers competing in the distribution of its greeting cards, in that:

(1) Respondent contracted to furnish or furnished display cabinets to some competing purchasers without charge, and did not offer

to furnish or otherwise accord display cabinets without charge to all other of such competing purchasers, but only offered to sell or sold display cabinets to such other competing purchasers at prices ranging from about \$50 to about \$150 each.

(2) Respondent contracted to furnish or furnished display cabinets to competing purchasers without charge in amounts (based upon respondent's prices) not determined by any percentage, and not equal to the same percentage, of dollar volume of purchases or of any other measurable base; and respondent did not offer to furnish or otherwise accord display cabinets without charge to all of such competing purchasers in amounts (based upon respondent's prices) equal to and determined by the same percentage of volume of purchases or of any other measurable base.

PAR. 4. Also included among and illustrative of the services or facilities found in Paragraph Two, *supra*, was a return-for-credit service. This service consists of accepting from purchasers the return for credit of the entire purchase price of certain seasonal greeting cards (such as, for example, Christmas cards) which remain unsold after the season for which they are designed to be used. Such return-for-credit service is of substantial value to purchasers in that, among other things, it relieves them of the inconvenience and expense of storing such cards until they are again seasonal, and releases their capital for other uses.

The return-for-credit service was not accorded on proportionally equal terms to all of respondent's purchasers competing in the distribution of certain of its seasonal greeting cards in that respondent contracted to furnish or furnished it to some of such competing purchasers and did not offer to furnish or otherwise accord it to all other of such competing purchasers.

PAR. 5. The acts and practices of respondent, as found in Count II, *supra*, violates subsection (e) of section 2 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C. Title 15, sec. 13).

Count III

PARAGRAPH 1. The facts found in Paragraphs One and Two of Count I, *supra*, are hereby incorporated herein by reference and made a part of this Count III the same as if they were repeated here verbatim.

PAR. 2. In the course and conduct of its business, respondent engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act as amended, having shipped its products or caused them to be transported from the State of Ohio to such customers or

purchasers located in the same and in other States of the United States and in other places subject to the jurisdiction of the United States.

PAR. 3. Except to the extent that competition has been hindered, frustrated and lessened, as herein found, respondent has been and is in substantial competition with other corporations and individuals, firms and partnerships, engaged in the sale and distribution of greeting cards in commerce as that term is defined in the Federal Trade Commission Act.

PAR. 4. For more than six years last past, and continuing to the present time, in the course and conduct of said business, respondent, in attempting to sell and in the sale and distribution of said products in interstate commerce, has used, engaged in, done and performed, among others, the following acts, practices and methods with the effect of interfering with the resale at retail of merchandise bearing the trade names and trade marks of competitors:

(1) Offered to buy and bought and took over stocks of greeting cards sold and distributed by competitors to retail sellers;

(2) Agreed and arranged with retail sellers to junk and destroy stocks of greeting cards distributed to such retail sellers by competitors;

(3) Agreed and arranged with retail sellers to remove from normal channels of distribution stocks of greeting cards distributed to such retail sellers by competitors;

(4) Agreed and arranged with retail sellers of greeting cards distributed to such retail sellers by competitors to take over and remount, so as to obscure and to make difficult the identification of trade marks and trade names of competitors;

(5) Acted to return, through interstate commerce to retail sellers, greeting cards produced by competitors after identification had been obscured and otherwise made difficult through various ways and means, including those specified in the immediately preceding subparagraph;

(6) Arranged and acted to have its salesmen and its other representatives make arrangements of displays of greeting cards in stores of retail sellers in such way that greeting cards produced by its competitors were displayed as if they were products of respondent.

PAR. 5. The acts, practices and methods of the respondent, as herein found, all and singularly, have a dangerous tendency unduly to restrain, hinder, suppress and eliminate competition between and among respondent and its competitors in the sale and distribution of greeting cards in commerce within the meaning of the Federal Trade Commission Act, and constitute unfair methods of competition and

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unfair acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent, American Greetings Corporation, a corporation, its officers, employees, agents, and representatives, directly or through any corporate or other device, in or in connection with the sale of greeting cards, or of any other related products such as paper and ribbons for wrapping gifts, in commerce, as commerce is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from:

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A. Making or contracting to make any payment to or for the benefit of any customer unless a payment is offered to be made or otherwise made available to each of all other competing customers.

B. Making or contracting to make, to or for the benefit of competing customers, any payments in amounts which are not determined by a percentage of dollar volume of purchases or of some other measurable base.

C. Making or contracting to make, to or for the benefit of any customer, any payment in an amount equal to and determined by any percentage of dollar volume of purchases or of any other measurable base unless such a payment in an amount equal to and determined by the same percentage of dollar volume or of such other measurable base, as the case may be, is offered to be made or otherwise made available to each of all other competing customers.

D. Making or contracting to make, to or for the benefit of any customer, any payment unless such a payment is made available on proportionally equal terms to each of all other competing customers.

As used in Part I of this Order, "payment" means the payment of anything of value as compensation or in consideration for any services or facilities furnished by or through any customer of respondent in connection with his handling, offering for resale, or resale of products sold to him by respondent.

II

A. Discriminating between or among competing purchasers by furnishing any service or facility to any of them unless a service or facility is offered to be furnished or otherwise accorded to each of all of the others.

B. Discriminating between or among competing purchasers by furnishing any service or facility without charge to any of them unless

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a service or facility is offered to be furnished or otherwise accorded without charge to each of all of the others.

C. Discriminating between or among competing purchasers by furnishing them any service or facility in amounts which are not determined by a percentage of dollar volume of purchases or of some other measurable base.

D. Discriminating between or among competing purchasers by furnishing any service or facility to any of them in amounts equal to and determined by any percentage of dollar volume of purchases or of any other measurable base unless such service or facility in an amount equal to and determined by the same percentage of dollar volume of purchases or of such other measurable base, as the case may be, is offered to be furnished or otherwise made available to each of all of the others.

E. Discriminating between or among competing purchasers by furnishing any service or facility to them upon terms not accorded to all of them on proportionally equal terms.

As used in Part II of this Order:

1. "Service or facility" means any services or facilities connected with the handling, offering for resale, or resale of respondent's products by purchasers who bought them from respondent for resale.

2. "Furnishing" means furnishing, contracting to furnish, or contributing to furnishing.

III

Provided, That in any proceeding in which respondent is charged with having violated this order nothing herein contained shall prevent respondent from defending against such charges by showing:

A. That at or about the same time respondent offered to furnish to each of its customers who compete in the resale of its products a promotional service, facility, or payment;

B. That the service, facility, or payment which respondent offered to furnish to each customer was, under reasonable terms and conditions, usable by him and suitable to his facilities and business;

C. That respondent did not refuse to offer to furnish to any customer any kind of service, facility, or payment so usable by and suitable to such customer if respondent offered to furnish a service, facility, or payment of that kind to any other customer;

D. That the services, facilities, or payments which respondent offered to furnish were of a cost value equal to a uniform percentage of the sales (or purchases) of respondent's products by each customer during a specified and identical period of time;

