

Decision

IN THE MATTER OF

P. SORENSEN MANUFACTURING CO., INC.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a) OF THE
CLAYTON ACT

Docket 6052. Complaint, Oct. 16, 1952—Decision, June 29, 1956

Order requiring a manufacturer of automotive products and supplies, with factory at Woodside, N. Y., and warehouses in ten principal cities of the United States, to cease discriminating in price between two classes of wholesale customers competing with each other in three Texas cities through use of

- (1) A "warehouse distributor's sales agreement" applying to some 50 customers accounting for 25% to 30% of respondent's domestic sales based upon minimum annual purchases of \$12,000 net, who were granted a 20% discount off the current distributor's prices on each factory purchase and 10% on each warehouse purchase; and
- (2) An "authorized distributor's agreement" made with some 450 to 500 other customers who purchased approximately 60% of respondent's products, providing that the customer purchase a minimum of \$1,200 of respondent's ignition parts line annually, in consideration of which he received a 10% discount from the current distributor price and a "performance rebate" of 3% on annual purchases of \$3,000 to \$5,999, and 5% on \$6,000 or more;

Though tabulations made of respondent's invoice data in the three cities showed no general controlling principle in respondent's aforesaid classification of customers whose individual purchases actually varied widely from the contract requirements.

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

Mr. James W. Cassidy, of Washington, D. C., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The respondent in this proceeding is charged with having violated subsection (a), Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, § 13) by discriminating in price between its customers competitively engaged in the resale of automotive products manufactured and sold by it. After the filing of an answer to the complaint, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of the complaint were received, duly recorded and later filed in the office of the Commission. Proposed findings of facts and conclusions have been submitted by counsel.

Based upon the entire record, the following findings of fact and conclusions are made and order issued.

FINDINGS OF FACT

1. Respondent, P. Sorensen Manufacturing Co., Inc. (hereinafter referred to as Sorensen), is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with principal office and place of business located at 32-31 Fifty Seventh Street, Woodside, New York.

2. Sorensen is now and for several years last past has been engaged in the manufacture, sale and distribution of automotive products and supplies which are offered by respondent in three classifications—(a) ignition service parts, (b) carburetor parts and kits, (c) cable, wire, and accessories—and are sold for use, consumption or resale within the United States and the District of Columbia. Sorensen 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. Sorensen maintains, and at all times mentioned herein has maintained, a substantial course of trade and commerce in said products and supplies among and between the various States of the United States and in the District of Columbia.

3. Sorensen, in the course and conduct of its business, as aforesaid, is now, and since June 19, 1936, has been, engaged in active competition with other concerns manufacturing, selling, and distributing comparable automotive products and supplies in commerce. Many of respondent's customers who purchase respondent's products for resale are competitively engaged with each other in the resale of said products. Within each classification or line, respondent's products are of like grade and quality.

4. Respondent maintains warehouse stocks of its products in the cities of Atlanta, Georgia, Boston, Massachusetts, Chicago, Illinois, Cleveland, Ohio, Dallas, Texas, Kansas City, Missouri, Los Angeles and San Francisco, California, Minneapolis, Minnesota, and Seattle, Washington. It employs fifteen salesmen and uses six factory representatives. During 1951, which has been taken as a sample or test year, its products were sold to more than 500 wholesaler customers to the extent of \$1,300,000, of which 75% represented sales of ignition service parts, the remaining 25% being about equally divided between the other two classifications.

5. During 1951, direct-buying wholesaler customers were permitted to procure merchandise either from respondents' factory located in Woodside, New York, or from one of respondent's warehouses. On all shipments from respondent's factory of purchases amounting to 100 pounds or more, respondent paid the freight charges. The evidence shows that an average shipment of 100 pounds' weight had a purchase value of approximately \$173. All customers were granted a cash discount of 2%, 10th prox. Otherwise respondent's customers were divided by contract arrangement into three groups.

There were about fifty customers, who purchased from 25% to 30% of respondent's domestically marketed products, who operated under a Warehouse Distributors' Sales agreement. This is a non-exclusive contract which provides that the purchaser will maintain an adequate stock of all Sorensen lines based upon minimum annual purchases of \$12,000 net, and will dispose of more than 50% of such purchases to Sorensen Approved Jobbers. Under this contract, the purchaser receives 20% discount off the current distributor price on each factory purchase, and 10% discount on each warehouse purchase.

Some 450 or 500 other customers, who purchased approximately 60% of respondent's products, operated under another non-exclusive contract, known as the Authorized Distributor Agreement, which provides that the purchaser will actively promote the sale of respondent's ignition-parts line and purchase \$1,200 or more of these parts annually. In consideration thereof he is extended a 10% discount from the current distributor price, and is granted a performance rebate of 3% if his accumulated annual purchases total \$3,000 to \$5,999, and 5% if such purchases amount to \$6,000 or more. The 10% discount applies on all purchases, whether from factory or warehouse; the performance rebates apply only on purchases shipped from the factory, although warehouse shipments are counted in computing total volume. Performance rebates are granted at the end of each year by the issuance of a merchandise-credit applicable to future purchases.

There are about fifty other customers who operate under a Special Distributor Sales Agreement, which provides for no minimum annual purchases, but requires that the distributor carry in stock and actively promote the sale of the entire line of respondent's ignition parts. He is allowed a performance rebate of 10% on all purchases if the total volume is \$1,200 or more. This also is covered by issuance of a merchandise-credit at the year's end, applicable on future purchases. Although the agreements show that customers in this group were granted discounts and performance rebates less favorable than were

granted to the other two groups, little note of this fact was taken in the record, and the evidence as to respondent's transactions with members of this group is negligible.

6. There was also, in 1951, another contract group known as authorized jobbers, who operated under an Authorized Jobber Agreement supplied by respondent to its warehouse distributors for their convenience in formalizing their understanding with the jobbers who were their customers. The agreement is between the authorized jobber and a warehouse distributor, but requires respondent's approval. It provides that the jobber will carry an adequate stock of respondent's items "to serve his trade or a minimum of \$300 net," will actively promote the sale of respondent's merchandise, and will permit the checking of his stock at any time by a Sorensen or distributor representative. He is permitted to buy merchandise from the distributor at respondent's current Distributor price, upon such terms of payment as conform to the warehouse distributor's established policy.

Counsel supporting the complaint contend that sales under this agreement are actually sales made by respondent rather than by the warehouse distributors, and that authorized jobbers are purchasers from respondent within the meaning of the Clayton Act. In support of this contention counsel cites the Commission's decision of April, 1955, in the matter of *Whitaker Cable Corporation*, Docket 5722, in which the Commission refers to decisions in the matters of *Champion Spark Plug Co.*, Docket 3977 (1953) and *Kraft Phenix Cheese Corp.*, 25 F. T. C. 537 (1937). In those three cases the facts were more fully developed in this respect than they are in the instant proceeding. The present record is sketchy and inconclusive on this issue. Moreover there are other shortcomings in the record—lack of substantial evidence of competition between the authorized jobbers and respondent's direct-buying customers, lack of substantial evidence of competitive injury, and other failures of proof of such an extent that no conclusion can be reached in this proceeding that any violation of Section 2 (a) of the Clayton Act arose out of the respondent-authorized jobber relationship.

7. There appears to have been one other group of customers who were not bound by any contract, but were permitted to make purchases from respondent. They are referred to in respondent's invoices, as shown by the tabulation hereinafter set out, as "Net" buyers. Some of them received no discount from respondent's current distributor prices, others received 10% discount, and one received a discount

which amounted to 2.70% of his total purchases. However, the record as to this group of purchasers is in all other respects inconclusive, and no finding can be made that respondent's transactions with this group of buyers constitutes a violation of Section 2 (a) of the Clayton Act.

8. The competitive injury charged in this proceeding is at the secondary level, arising out of differences in respondent's selling prices to its wholesaler customers, some of whom suffered competitively as a result of such price differences. Substantial evidence was presented as to price differentials and resulting injury only as it affected the members of two groups of respondent's contract purchasers, warehouse distributors and authorized distributors, who compete with each other in the trade areas in which they mutually operate. The trade areas in such instances include the cities in which such wholesaler customers are located and the surrounding communities within a radius of from 25 to 75 miles.

The differences in net purchasing prices at which members of these two groups may buy respondent's products are inherent in the contracts hereinabove described, and are shown by tabulations and computations which were made by the Commission's economic staff from data taken from respondent's invoice records of business transacted in 1951. To conserve time and expense, testimony and other evidence were taken in this proceeding only in New York, Washington, D. C., Dallas, San Antonio and Houston. For the same reason tabulations and computations were limited to data pertaining to selected cities, and only such portion of that data as relates to transactions in the trade areas of Dallas, San Antonio and Houston is shown herein.¹ A comparison of sales, discounts and rebates to respondent's customers in these three areas is shown as follows:

¹ Included in the complete tabulation are data of respondent's 1951 transactions with wholesaler customers in the following other cities: Berkeley, Burbank, North Hollywood, Long Beach, Los Angeles, Lynwood, Oakland, Richmond, Sacramento, San Fernando, San Francisco and San Leandro, California; Portland, Oregon; Salt Lake City, Utah; and Seattle and Spokane, Washington.

Findings

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Comparison of sales, discounts and rebates granted by Sorensen to wholesaler customers in specified localities during the year 1951

Customer and location (1)	Classification ¹ (2)	Sales at list price (3)	Discounts and rebates allowed on sales		Shipments	
			Amount (4)	Percent (5)	Factory amount (6)	Warehouse amount (7)
DALLAS						
Ashby-Garrett Auto Supply.....	Net	\$13.20				\$13.20
Automotive Appliance Co.....	Net	27.55				27.55
Carter Auto Supply.....	Net	53.19				53.19
Dave Crockett Supply Co.....	Net	199.49	\$5.39	2.70	\$25.42	171.07
Gates & Warner Auto Parts Co.....	AD	1,068.93	106.36	9.95		1,068.93
Greater Dallas Automotive.....		119.88	10.66	8.89		119.88
Henderson Auto Parts.....	AD	1,842.70	182.13	9.88	451.65	1,391.05
Leach Auto Supply.....	WD	9,695.34	1,611.17	16.62	6,530.19	3,165.15
Lenamond Auto Parts.....	AD	528.39	52.46	9.93		528.39
L. D. McCorkle Co.....	Net	19.45				19.45
McMillen Auto Parts.....	WD	1,595.91	206.14	12.92	470.54	1,125.37
Motor Supply Co.....	Net	16.88	1.69	10.01		16.88
National Auto Parts Exchange.....	AD	3,510.24	441.29	12.57	3,389.03	121.21
Terry Automotive Supply.....	Net	6.96				6.96
HOUSTON						
Airline Auto Supply.....	AD	2,493.01	438.65	12.56	3,309.63	183.38
Al's Auto Parts.....	AD	3,508.74	439.17	12.52	3,340.41	168.33
Althaus Motor Parts.....	AD	2,467.21	244.74	9.92	2,039.61	427.60
Anchor Automotive Supply Co.....	AD	725.66	72.30	9.96	263.43	462.23
Anderson Auto Supply.....	AD	332.65	33.27	10.00	332.65	
Camet Automotive Supply Co.....	AD	2,805.91	279.84	9.97	2,417.07	388.84
Lester Battery & Electric Co.....	Net	90.59			90.59	
Marlin Automotive Supply Co.....	AD	426.47	41.52	9.74	426.47	
Milam Supply Company.....	WD	16,036.10	\$3,587.40 \$377.85	19.89	18,032.50	3.60
E. J. Quade Auto Supply.....	AD & Net	177.54	14.38	8.10	33.88	143.66
Schuman Auto Supply, Inc.....	WD	404.00	80.80	20.00	404.00	
Texas Parts and Supply Co., Inc.....	WD	1,809.10	354.82	19.61	1,756.11	52.99
SAN ANTONIO						
A. A. Auto Supply Co.....	AD & WD	10,225.37	1,793.10	16.66	10,080.17	145.20
Alamo Auto Electric & Brake Co.....	WD	4,287.63	845.99	19.73	4,287.63	
Bowen Auto Parts & Machine Co.....	WD	8,083.88	1,605.59	19.86	8,083.88	
Chapman Auto Parts.....	AD	8,144.65	1,147.26	14.09	7,709.50	435.15
Colbatti Auto Supply Co.....	Net	71.30	7.13	10.00		71.30
Motor Machine & Parts Co.....	WD	3,103.80	614.27	19.79	3,074.80	29.00
H. H. Roper Auto Parts.....	AD	442.38	44.04	9.96	45.99	396.39
Stille Auto Supply.....	AD	2,568.47	255.74	9.96	2,528.66	39.81

¹ Key to Customer Classification:

AD—Authorized Distributor.

WD—Warehouse Distributor.

Net—Non-Contract Customers.

² \$377.85 rebate allowed on redistribution to AD accounts.

9. The tabulation shows that the bulk of purchases were factory-shipped. This is as would be expected. Respondent pays freight charges when any such shipment amounts to 100 pounds or more; warehouse distributors receive 20% discount on factory purchases, only 10% discount on warehouse shipments; authorized distributors purchasing \$3,000 or more of respondents' products annually receive performance quantity rebates on factory purchases, none on warehouse purchases.

The tabulation shows no general controlling principle in respondent's classification of customers. Although the Warehouse-Distributor

