

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JANUARY 1, 1962, TO JUNE 30, 1962

IN THE MATTER OF

WILLIAM BUEHL EIDSON ET AL. DOING BUSINESS AS
EIDSON PRODUCE COMPANY

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

Docket 8064. Complaint, Aug. 3, 1960—Decision, Jan. 3, 1962

Order requiring wholesale distributors of food products, including citrus fruits, vegetables, and produce, in Birmingham, Ala., to cease receiving from suppliers a commission on substantial purchases for their own account for resale, such as a discount, usually at the rate of 10¢ per 1½ bushel box of citrus fruit from a number of Florida packers.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly described, have been and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents William Buehl Eidson, Annie Katherine Eidson, Marie Ponder, William C. Howard, Jr., and Bennie E. Crowe are individuals and are copartners trading and doing business as the Eidson Produce Company, with their office and principal place of business located at 2525 Third Place West, Birmingham Food Terminal, Birmingham 4, Ala. Each of these respondents, individually and as copartners, are hereinafter referred to collectively as respondents.

PAR. 2. Respondents are now, and for the past several years have been, engaged in business primarily as a wholesale distributor, buying, selling and distributing citrus fruit, produce, and other food products, all of which are hereinafter sometimes referred to as

food products. Respondents purchase their food products from a large number of suppliers located in many sections of the United States. The annual volume of business done by respondents in the purchase and sale of food products is substantial.

PAR. 3. In the course and conduct of their business for the past several years, respondents have purchased and distributed, and are now purchasing and distributing, food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, from suppliers or sellers located in several states of the United States other than the State of Alabama, in which respondents are located. Respondents transport or cause such food products, when purchased, to be transported from the places of business or packing plants of their suppliers located in various other states of the United States to respondents who are located in the State of Alabama, or to respondents' customers located in said state, or elsewhere. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the purchase of said food products across state lines between respondents and their respective suppliers of such food products.

PAR. 4. In the course and conduct of their business for the past several years, but more particularly since January 1, 1959, respondents have been and are now making substantial purchases of food products for their own account for resale from some, but not all, of their suppliers, and on a large number of these purchases respondents have received and accepted, and are now receiving and accepting, from said suppliers a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith. For example, respondents make substantial purchases of citrus fruit from a number of packers or suppliers located in the State of Florida, and receive on said purchases, a brokerage or commission, or a discount in lieu thereof, usually at the rate of 10 cents per 1½ bushel box, or equivalent. In many instances respondents receive a lower price from the supplier which reflects said commission or brokerage.

PAR. 5. The acts and practices of respondents in receiving and accepting a brokerage or a commission, or an allowance or discount in lieu thereof, on its own purchases, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13).

1

Initial Decision

Mr. Cecil G. Miles and *Mr. Basil J. Mezines* for the Commission.

Mr. W. S. Pritchard, Jr., *Mr. Winston D. McCall*, and *Mr. R. Bruce Robertson, III*, of *Pritchard, McCall & Jones*, Birmingham, Ala., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

PRELIMINARY STATEMENT

This complaint issued on August 3, 1960. It charges respondents with violating subsection 2(c)¹ of the Clayton Act, as amended (15 U.S.C. Sec. 13), by "receiving and accepting, from said suppliers a commission, a brokerage, or other compensation or an allowance or discount in lieu thereof," on their purchases of citrus products and other merchandise purchased by respondents, which moved in "commerce," as commerce is defined in said Act. Respondents answered the complaint and hearings were conducted at Birmingham, Alabama, on January 30, 1961, and in Tampa, Florida, on June 22 and 23, 1961. Respondents petitioned the Federal Trade Commission to enjoin the Florida hearings, but respondents' motion was denied. No one appeared on behalf of respondents at the Florida hearings even though ample notice of said hearings had been given. At the Tampa hearings counsel supporting the complaint introduced evidence into the record and completed the introduction of evidence in support of his case-in-chief. By order dated June 27, 1961, respondents were given until July 31, 1961, to designate the dates and places at which they desired hearings to offer evidence in their behalf. Thereafter respondents moved and were allowed an extension of time until August 7, 1961, in which to designate hearing dates and places. Respondents failed to file any request for hearing dates and places to introduce any evidence in their behalf, and an order was entered on August 17, 1961, fixing September 22, 1961, as the date for filing proposed findings, conclusions and order pursuant to the Commission's Rules of Practice for Adjudicative Proceedings. Such proposed findings, conclusions and order were filed by both parties.

Based upon the entire record in this proceeding, including the exhibits which have been received in evidence, the examiner makes the

¹ "That it shall be unlawful for any person engaged in commerce * * * to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation was so granted or paid."

findings and conclusions hereinafter set forth. Any findings proposed by the parties which are not hereinafter made in the form in which proposed, or in substantially that form, hereby are rejected. The fact that no finding in this opinion summarizes the evidence in the manner in which the parties have requested it to be summarized does not mean that the hearing examiner has not considered such evidence. It means merely that the examiner deems the evidence which is summarized in his findings to be sufficiently probative, substantial and material to dispose of the issues. All motions made by the parties which have not previously been ruled upon or which are not herein specifically ruled upon hereby are overruled and denied.

Based upon the entire record and the evidence, the examiner makes the following:

FINDINGS OF FACT

1. The complaint states a good cause of action against the respondents. The Federal Trade Commission has jurisdiction over the respondents and the subject matter of this proceeding; and this proceeding is in the public interest.

2. William Buehl Eidson, Annie Katherine Eidson, Marie Ponder, William C. Howard, Jr., and Bennie E. Crowe are copartners doing business as Eidson Produce Company with their principal office and place of business located at 2525 Third Place West, Birmingham Food Terminal, Birmingham 4, Ala. Respondents are now and for several years last past, including the year 1959, have been engaged primarily as wholesale distributors of food products, including citrus fruits, vegetables, and produce. Respondents were and are buying, selling and distributing the aforesaid citrus fruit and food products, which move to them across state lines. Respondents purchase their citrus fruit and other food products from a large number of suppliers located in many sections of the United States and in different states thereof.

3. Respondents are engaged in "commerce" as that term is defined in the Clayton Act, as amended.

4. The annual business transacted by respondents for the year 1959 to the present time was substantial. They were one of four business concerns conducting a similar business in the Birmingham area who had substantially the same sales volume. William Buehl Eidson is the senior and managing partner of respondents' business. John W. Ponder, husband of respondent Marie Ponder, is respondents' general office manager. William Buehl Eidson, during the period covered by the complaint, purchased most of the citrus fruit on behalf of respondents. Most of such purchases were consummated by long dis-

1

Initial Decision

tance telephone conversations with suppliers located in the State of Florida. Written office memoranda of the conversations which indicated the price at which purchases were made were kept by respondents in the usual and regular course of their business. Specimen copies of such memoranda are in evidence.

5. For a period of time respondents purchased citrus fruit through William Manis, a broker. However, when respondents ascertained that they could make their purchases direct and obtain the allowance in lieu of brokerage they abandoned the practice of purchasing through brokers and purchased their fruit directly. Mr. Eidson testified that he might receive as many as 10 calls in one day from sellers and that he wanted to be sure that his company was competitive; "we buy at the lowest price we can buy; and I am sure that if William Manis is making it a dime higher, he's not getting any business."

6. The allowances made in lieu of brokerage to respondents were sometimes paid by separate remittance, and sometimes paid by deduction from the market price stated on the invoices. Sometimes prices were quoted to respondents and negotiated on a net basis, i.e., the price quoted to respondents was the price which respondents would pay net, after the allowance in lieu of brokerage had first been deducted.

7. During the year 1959 one of respondents' suppliers, Newbern Groves, Inc., of Tampa, Florida, paid to respondents in lieu of brokerage the sum of \$409.78 (CX 86-J and 86-K). Although respondents deny that these payments or allowances constituted, or were in lieu of brokerage, the payments have been characterized in said exhibits as brokerage by the sellers, and the hearing examiner hereby finds that they were in lieu of brokerage.

8. During the relevant period the practice of the Florida citrus fruit producers of making an allowance in lieu of brokerage to their customers, including these respondents, was an accepted custom in that industry. The practice was generally known and followed. If the allowance were not made, the purchaser would take his business to a supplier who would make the allowance (Tr. 194).

9. In the course and conduct of their business for the past several years, but more particularly since January 1, 1959, respondents have been and are now making substantial purchases of food products including citrus fruit on their own account for resale. Respondents have received and accepted from their suppliers a commission, brokerage, or other compensation or an allowance or discount in lieu thereof, in connection therewith. Respondents either knew, or because of their many years of experience in, and knowledge of, the practices in the

produce industry should have known that they were receiving such brokerage or commission or a discount in lieu of brokerage.

10. During the relevant period the price of citrus fruit was quoted on the basis of a bruce box containing $1\frac{3}{4}$ bushels. The price fluctuated and was usually quoted in increments of 25 cents, i.e., \$2.50, \$2.75, or \$3 a bruce box. In the industry a carton would be half of a bruce box in content, and its price would be half the price of a bruce box. Occasionally the bruce box prices fluctuated 50 cents up or down.

11. Respondents in the course and conduct of their business during the year 1959 and thereafter received a commission, brokerage, or other compensation, or a discount in lieu thereof on their purchases of citrus fruit from the citrus fruit vendors in the State of Florida in contravention of Section 2(c) of the Clayton Act as amended.

12. The Federal Trade Commission as a part of its case-in-chief is not required to prove that these respondents had knowledge that they were being paid a commission, brokerage, or allowance in lieu thereof. However, the hearing examiner finds that these respondents knew that they were receiving a commission, brokerage, or an allowance in lieu thereof on the citrus fruit purchased by them from the Florida citrus fruit producers during the years covered by the complaint.

The acts and practices of respondents in accepting a commission, brokerage, other compensation, or allowance in lieu thereof did and does constitute a violation of Section 2(c) of the Clayton Act as amended (15 U.S.C. Sec. 13) and should be proscribed.

DISCUSSION

That section of the Clayton Act which has been invoked in this proceeding, Section 2(c), proscribes a practice which is entirely separate and distinct from the practices which are proscribed by Sections 2(a) and 2(d). It is the *receipt* or *acceptance* of the commission or allowance in lieu of brokerage which is declared to be unlawful by 2(c). Price discrimination, competitive injury, and *scienter* on the part of the person receiving the payment need not be proven.

Section 2(c) is totally independent of 2(a) of the Clayton Act. Section 2(c) creates a separate offense. The decisions in *Biddle Purchasing Co. v. FTC*, 96 F. 2d 687, and *Great Atlantic & Pacific Tea Co. v. FTC*, 106 F. 2d 667, have negated the legal duty of the Commission to make the same proof in a 2(c) proceeding as is required in a 2(a) proceeding. This examiner reads *Biddle* and *A & P* as holding that the payment or receipt of the brokerage is in itself the prohibited act; that Congress has made such prohibited act illegal per se; and the Federal Trade Commission need not prove either

1

Initial Decision

price discrimination or competitive injury as part of its case in a 2(c) proceeding. In enacting 2(c) Congress determined that the receipt of the brokerage or commission in lieu thereof was the proscribed act.

As to the respondents' contention that no cease and desist order should be entered against them because they *did not know* they were being given a brokerage allowance, the recent Supreme Court decision of *FTC v. Broch & Co.*, 363 U.S. 166 (1960), specifically states (p. 174) :

The fact that the buyer *was not aware* that its favored price was based in part on a discriminatory reduction in respondent's brokerage commission is immaterial. (Emphasis supplied.)

In *Thomasville Chair Company*, Docket No. 7273, opinion of the Commission dated March 13, 1961, the Commission stated :

* * * Section 2(c) does not require a showing of knowledge or intent on the part of the person charged with violation thereof, * * *.

It is not necessary to labor the point that the *scienter* of the buyer is not an essential element of proof in the Commission's case under 2(c). See also *Fitch v. Kentucky-Tennessee Light & Power Co.*, 136 F. 2d 12 (1943), a treble damage action.

The only other defense to this proceeding which respondents might have asserted is that the payments or deductions from the quoted prices were, in fact, not in lieu of brokerage. However, the only evidence vaguely suggesting this defense are the inferences in the testimony of Messrs. Eidson and Ponder that they were under compulsion to buy as favorably as the market would permit, and, therefore, were not greatly concerned about the characterization of the allowances which were made to them by their sellers so long as they were able to buy at the lowest available price. As this examiner understands Section 2(c) Congress did not intend that businessmen in the position of these respondents should buy at the lowest available price, and close their eyes to, or ignore, the practices by which, and the manner in which, such low price was and is obtained.

CONCLUSIONS OF LAW

1. The complaint filed herein states a good cause of action against the respondents; the Federal Trade Commission has jurisdiction over the respondents and over the subject matter of this proceeding. This proceeding is in the public interest. Respondents are engaged in commerce as "commerce" is defined in the Clayton Act, as amended.

2. During the time covered by this complaint respondents received

and accepted from persons who sold to them citrus fruit a commission, brokerage, or other compensation or an allowance or discount in lieu thereof in connection with said purchases. Said acts by said respondents were and are in violation of, and are proscribed by, Section 2(c) of the Clayton Act, as amended (15 U.S.C. Sec. 13). Therefore,

It is ordered, That respondents William Buehl Eidson, Annie Katherine Eidson, Marie Ponder, William C. Howard, Jr., and Bennie E. Crowe, individually and as copartners, doing business as Eidson Produce Company, and respondents' agents, representatives and employees, directly or through any corporate, partnership, sole proprietorship, or other device, in connection with the purchase of citrus fruit or any other food products, in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of citrus fruit or any other food products for respondents' own account, or where respondents are the agents, representatives, or other intermediaries acting for or in behalf, or are subject to the direct or indirect control, of any buyer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come before the Commission upon its review of the hearing examiner's initial decision filed October 10, 1961; and

The Commission having considered the entire record and being of the opinion that the hearing examiner's findings of fact in the initial decision are incomplete and that his discussion of the law applicable to this proceeding is inaccurate in certain respects; and

The Commission having determined, therefore, that the initial decision should be modified:

It is ordered, That the initial decision be modified by striking therefrom paragraphs numbered 5 through 12 of the Findings of Fact and substituting therefor the following:

5. For a period of time respondents purchased citrus fruit through William Manis, a broker. However, when respondents ascertained that they could make their purchases directly from the seller and obtain a discount or allowance equal to the amount they had formerly paid as brokerage, they abandoned the practice of purchasing through brokers and purchased their fruit directly. One of the individual respondents, Mr. Eidson, testified that he was aware that he could

obtain a better price by buying directly from the shipper than he could by buying through a broker.

6. The Florida packers from whom respondents purchased citrus fruit regularly sold their products through brokers to wholesale produce houses and chain stores and directly to such purchasers without the services of brokers. On sales made through brokers, the standard brokerage fee was 10¢ per box of 1½ bushels or 5¢ per carton of ¼ bushel. On sales made directly to the purchaser by the packer, it was the customary practice among packers to deduct from the prevailing market price an amount equal to the brokerage fee. There is uncontradicted testimony that this practice was a matter of common knowledge among packers and those customers who purchased directly from the packers.

7. On purchases of citrus fruit made by respondents directly from such packers, respondents received a discount or allowance equal to the brokerage fee. In most instances, the packer deducted this amount from the prevailing market price and billed respondents at the market price less an amount equal to the brokerage fee. In some instances, the packer billed respondents at the market price and respondents corrected the invoice by deducting from this price an amount equal to the brokerage fee and remitted the invoice price less this amount.

8. The discount or allowance received by respondents on purchases of citrus fruit directly from the packer was a discount or an allowance in lieu of brokerage. Because of their many years of experience in buying from Florida citrus fruit packers and since they were obviously aware that the discount or allowance received on direct purchases from these packers was equal to the brokerage fee, respondents either knew or should have known that they were receiving a discount or allowance in lieu of brokerage.

It is further ordered, That the initial decision be modified by striking therefrom that portion designated "Discussion," beginning on page 6 with the words "That section of the Clayton Act," and ending on page 7 with the words "such low price was and is obtained."

It is further ordered, That the hearing examiner's initial decision as modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents, William Buehl Eidson, Annie Katherine Eidson, Marie Ponder, William C. Howard, Jr., and Bennie E. Crowe, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in the initial decision.

Complaint

60 F.T.C.

IN THE MATTER OF

A. J. HOLLANDER & CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8197. Complaint, Nov. 30, 1960—Decision, Jan. 3, 1962*

Consent order requiring an importer and two distributors of Japanese baseball gloves, all of New York City, to cease representing falsely, by imprinting thereon in block letters the names of well-known players, such as "Tony Kubek Model", "Elston Howard Model", etc., that prominent baseball players used or endorsed their gloves.

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 the A. J. Hollander & Co., Inc., a corporation, and Martin Blumenthal, Sidney Weingarten, Myron M. Schwarzschild and Frank J. Offenbacher, individually and as officers of the said corporation; Olympic Sporting Goods Company, Inc., a corporation, and Herman N. Ullman and Allen D. Ullman, individually and as officers of said corporation, and Cambridge Sporting Goods Corp., a corporation, and Joseph Greenberg, individually and as an officer of the said corporation, hereinafter referred to as respondents, have violated the provisions of the 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 A. J. Hollander & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 154 Nassau Street, New York, N.Y.

Individual respondents, Martin Blumenthal, Sidney Weingarten, Myron M. Schwarzschild and Frank J. Offenbacher are officers of the corporate respondent, A. J. Hollander & Co., Inc. They formulate, direct and control the acts and practices of the said corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as the corporate respondent.

Respondent Olympic Sporting Goods Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 598 Broadway, New York, N.Y.

Individual respondents Herman N. Ullman and Allen D. Ullman are officers of the corporate respondent, Olympic Sporting Goods Company, Inc. They formulate, direct and control the acts and practices of the said corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as the corporate respondent.

Respondent Cambridge Sporting Goods Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 625 Broadway, New York, N.Y.

Individual respondent, Joseph Greenberg, is an officer of the corporate respondent, Cambridge Sporting Goods Corp. He formulates, directs and controls the acts and practices of the said corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondent A. J. Hollander & Co., Inc., is now, and for some time last past has been, engaged, among other things, in the importation of baseball gloves from Japan and in the offering for sale, sale and distribution thereof to wholesalers for eventual resale to the public.

Respondent Olympic Sporting Goods Company, Inc., is now, and for some time last past has been, engaged in the offering for sale, sale and distribution of sporting goods to retailers for resale to the public.

Respondent Cambridge Sporting Goods Corp. is now, and for some time last past has been, engaged in the offering for sale, sale and distribution of sporting goods to retailers for resale to the public.

Included among the products offered for sale, sold and distributed by respondents Olympic Sporting Goods Company, Inc., and Cambridge Sporting Goods Corp. are the aforesaid baseball gloves purchased by them from respondent A. J. Hollander & Co., Inc.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their places of business in the State of New York to purchasers thereof located in various other states of the United States and in the District of Columbia and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent A. J. Hollander & Co., Inc., at the direction of respondents Olympic Sporting Goods Company, Inc., and Cambridge Sporting Goods Corp., has engaged in the practice of causing the manufacturer to imprint in block letters on the aforesaid imported baseball gloves the names of prominent or well-known baseball players

Complaint

60 F.T.C.

and other statements, all of said respondents, thereby representing, directly or by implication, that the said prominent or well-known baseball players used respondents' gloves or approve or endorse the types of said gloves. Typical but not all inclusive of such names and statements are:

Tony Kubek Model
Elston Howard Model
Rocky Calavito Model
Al Kaline Model
Whitey Ford Model
Early Wynn Model
Duke Snider Model
Bill Skowron Model
Jim Bunning Model
User Approved

In truth and in fact, the aforesaid prominent or well-known baseball players have neither used respondents' gloves nor approved nor endorsed the types of said gloves.

PAR. 5. By the aforesaid practice, respondents place in the hands of retailers means and instrumentalities by and through which they mislead the public, especially boys of teen or sub-teen age, into the belief that their imported baseball gloves are used by the aforesaid prominent or well-known baseball players or are the type or model used or approved or endorsed by said prominent or well-known baseball players.

PAR. 6. In the course and conduct of their business at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals in the sale of baseball gloves of the same general kind and nature as that sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practice has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, un-

fair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondents in the proceeding with violation of the Federal Trade Commission Act, and agreements by and between respondents and counsel supporting the complaint, which agreements contain an order to cease and desist, an admission by respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreements is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint, and waivers and provisions as required by the Commission's rules, and further provide for the dismissal of the complaint as to respondents Sidney Weingarten, Myron M. Schwarzschild and Frank J. Offenbacher in their individual capacities; and

The Commission having considered the agreements and order contained therein and being of the opinion that the agreements provide an adequate basis for appropriate disposition of the proceeding, the agreements are hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent A. J. Hollander & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 154 Nassau Street, New York City, N.Y.

Individual respondents Martin Blumenthal, Sidney Weingarten, Myron M. Schwarzschild and Frank J. Offenbacher are officers of corporate respondent A. J. Hollander & Co., Inc., and their address is the same as that of said corporate respondent.

2. Respondent Olympic Sporting Goods Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 598 Broadway, New York City, N.Y.

Individual respondents Herman N. Ullman and Allen D. Ullman are officers of corporate respondent Olympic Sporting Goods Company, Inc., and their address is the same as that of said corporate respondent.

3. Respondent Cambridge Sporting Goods Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 625 Broadway, New York, N.Y.

Individual respondent, Joseph Greenberg, is an officer of corporate respondent Cambridge Sporting Goods Corp., and his address is the same as that of said corporate respondent.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That A. J. Hollander & Co., Inc., a corporation, its officers, and Martin Blumenthal, individually and as an officer of said corporation, and Sidney Weingarten, Myron M. Schwarzschild and Frank J. Offenbacher, as officers of said corporation, Olympic Sporting Goods Company, Inc., a corporation, its officers, and Herman N. Ullman and Allen D. Ullman, individually and as officers of said corporation, and Cambridge Sporting Goods Corp., a corporation, its officers, and Joseph Greenberg, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of baseball gloves or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing baseball gloves upon which the names of prominent or well-known baseball players are printed, either accompanied or unaccompanied by the words "Model" or "User Approved," or any other words of the same import, when in fact, such baseball gloves have not been used, approved or endorsed by such persons.

2. Representing, in any manner, directly or by implication, that a person has used, approved, or endorsed a product, when such is not the fact.

3. Placing in the hands of others any means or instrumentality by or through which they may mislead the public as to any of the matters and things set out in paragraphs 1 and 2 above.

It is further ordered, That the complaint insofar as it relates to the respondents, Sidney Weingarten, Myron M. Schwarzschild and Frank J. Offenbacher, in their individual capacities, be, and the same hereby is, dismissed.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Complaint

IN THE MATTER OF

PRESSING SUPPLY COMPANY ET AL.

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

Docket 8337. Complaint, Mar. 16, 1961—Decision, Jan. 3, 1962

Consent order requiring the New York City sales representative of two affiliated Philadelphia concerns—who themselves agreed to a similar order on July 25, 1961 (59 F.T.C. 146), to cease imprinting on the containers of their ironing board covers fictitiously high prices represented thereby as the usual retail prices.

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 Pressing Supply Company, a corporation, and Ironfast Products Company, a corporation, and Jerome Silk and Sidney Cozen, individually and as officers of said corporations, and Sanford A. Specht and Annette Specht, doing business as S. A. Specht Associates, 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 Pressing Supply Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its main office and principal place of business located at 1807 E. Huntington Street in Philadelphia, Pa.

Respondent Ironfast Products Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its main office and principal place of business located at 1807 E. Huntington Avenue, Philadelphia, Pa.

Individual respondents Jerome Silk and Sidney Cozen are officers of said corporations. They formulate, direct and control, the acts and practices of the said corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents.

PAR. 2. S. A. Specht Associates is a copartnership consisting of Sanford A. Specht and Annette Specht. S. A. Specht Associates is the sales representative of the corporate respondents. Its address is 1140 Broadway, New York, N.Y.

Complaint

60 F.T.C.

PAR. 3. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of ironing board covers and other merchandise to distributors, jobbers and retailers for resale to the purchasing public.

PAR. 4. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Respondents, before shipping said ironing board covers, imprint on the containers thereof various prices.

By means of the prices appearing on said containers, respondents represent that such are the usual and regular retail prices for said ironing board covers. Such representations are false, misleading and deceptive. In truth and in fact such amounts are fictitious and greatly in excess of the prices at which the ironing board covers are usually and regularly sold at retail.

PAR. 6. By the practice aforesaid respondents place in the hands of retailers a means and instrumentality whereby such retailers may mislead and deceive members of the purchasing public as to the usual and regular retail prices of their ironing board covers.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of ironing board covers of the same kind and general nature of those sold by respondents.

PAR. 8. The aforesaid acts and practices of respondents had, and now have, the tendency and capacity to mislead and deceive members of the purchasing public as to the usual and regular retail selling price of said ironing board covers and into the purchase of substantial quantities thereof because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been, and is being, unfairly diverted to the respondents from their competitors and substantial injury has been and is being done to competition in commerce.

PAR. 9. The acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and of their competitors and constitute unfair methods of competition and unfair acts

and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Frederick McManus for the Commission.

Mr. Murray S. Selby, of New York, N.Y., for respondents Sanford A. Specht and Annette Specht.

INITIAL DECISION AS TO RESPONDENTS SANFORD A. SPECHT AND
ANNETTE SPECHT BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on March 16, 1961, charging respondents with violation of the Federal Trade Commission Act by imprinting on the containers of their ironing board covers false, misleading and deceptive representations of the regular retail prices for said ironing board covers.

Thereafter, on September 6, 1961, respondents Sanford A. Specht and Annette Specht, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Acting Chief, Division of General Advertising, and the Acting Director of the Commission's Bureau of Deceptive Practices, and thereafter, on September 7, 1961, submitted to the Hearing Examiner for consideration. As to all other respondents herein, this proceeding has been previously disposed of by an initial decision issued June 7, 1961.

The agreement identifies respondents Sanford A. Specht and Annette Specht as individuals and copartners doing business under the name of S. A. Specht Associates, with their principal place of business located at 1140 Broadway, New York, N.Y.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondents waive any further procedure before the Hearing Examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does

not constitute an admission by respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint, and the provisions of the agreement and the proposed order, the Hearing Examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease And Desist; finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That respondents Sanford A. Specht and Annette Specht, individually and as copartners doing business under the name of S. A. Specht Associates, or under any other name or names, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of ironing board covers or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, in any manner, that any amount is the usual and regular retail price of merchandise when such amount is in excess of the price at which such merchandise is usually and regularly sold at retail in the trade area or areas where the representation is made;
2. Putting any plant into operation whereby retailers or others may misrepresent the regular and usual retail prices of merchandise.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 3d day of January 1962, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Sanford A. Specht and Annette Specht, doing business under the name of S. A. Specht Associates, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Syllabus

IN THE MATTER OF

ERIE SAND AND GRAVEL COMPANY

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF THE
CLAYTON ACT

Docket 6670. Complaint, Oct. 30, 1956—Order, Jan. 4, 1962

Order dismissing—following the Third Circuit's vacating of the Commission's order of divestiture (56 F.T.C. 437) and remand of the case for further consideration (291 F. 2d 279)—complaint charging illegal acquisition of competitor.

ORDER DISMISSING COMPLAINT

The Commission having placed this matter on its own docket for reconsideration in the light of the opinion of the United States Court of Appeals for the Third Circuit vacating the order of divestiture entered by the Commission October 26, 1959, and remanding the cause to the Commission for such purpose; and

It appearing in the light of additional information obtained by the Commission that respondent no longer retains any substantial part of the assets of the company it acquired which formed the basis for this proceeding; and

The Commission having determined that the case is now in essence moot and that, in the circumstances, it would not be in the public interest to take any further action in the matter:

It is ordered, That the complaint in this proceeding be, and it hereby is, dismissed.

IN THE MATTER OF

AUTOMOTIVE JOBBERS, INC., ET AL.

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

Docket 7590. Complaint, Sept. 21, 1959—Decision, Jan. 4, 1962

Order requiring a Texas association of jobbers of automotive products and supplies—which was simply a bookkeeping device and served as agent through which members were billed and made settlement for purchases—and its 19 members, to cease violating Sec. 2(f) of the Clayton Act by inducing and receiving from suppliers what they knew were “discriminatory and illegal prices, discounts, allowances and rebates” resulting from their combined bargaining power and not available to their competitors.

Complaint

60 F.T.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondents named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating the provisions of sub-section (f) of 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 Automotive Jobbers, Inc., hereinafter sometimes referred to as respondent AJI, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 2050 Irving Boulevard, Dallas, Tex.

Respondent AJI, although utilizing corporate form, is a membership organization, organized, maintained, managed, controlled, and operated by and for its members. The membership of respondent AJI is composed of corporations, partnerships, and individuals whose business consists of the jobbing of automotive products and supplies.

Respondent AJI, as constituted and operated, is known and referred to in the trade as a buying group.

PAR. 2. The following respondent corporations and individuals, sometimes hereinafter referred to as respondent jobbers, constitute respondent AJI:

Respondent Mrs. Neva Baker is a sole proprietor doing business under the firm name and style of Baker Auto Supply, with her office and principal place of business located at Hillsboro, Tex.

Respondent E. L. Bauer is a sole proprietor doing business under the firm name and style of Bauer Auto Supply, with his office and principal place of business located at 3000 West Lancaster Street, Fort Worth, Tex.

Respondent Blue Ribbon Auto Supply, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oklahoma, with its principal office and place of business located at 1457 N.E. 23rd Street, Oklahoma City, Okla.

Respondent H. B. Braden, Jr., is a sole proprietor doing business under the firm name and style of Braden's Automotive, with his office and principal place of business located at 209 East Main Street, Waxahachie, Tex.

Respondents J. W. Mitchell and W. L. Brown are copartners doing business under the firm name and style of Brown Auto Supply, a

partnership with their office and principal place of business located at 114 Avenue D, N.W., Childress, Tex.

Respondent John M. Carter is a sole proprietor doing business under the firm name and style of Carter Auto Supply, with his office and principal place of business located at 2050 Irving Boulevard, Dallas, Tex.

Respondent James Lacey is a sole proprietor doing business under the firm name and style of Central Grinding and Auto Supply with his office and principal place of business located at 3710 Commerce Street, Dallas, Tex.

Respondent Thomas Clark is a sole proprietor doing business under the firm name and style of Clark Auto Parts Supply with his principal place of business located at Coleman, Tex.

Respondent Ralph Clark is a sole proprietor doing business under the firm name and style of Ralph Clark Company with his principal place of business located at 218 East Main Street, Grand Prairie, Tex.

Respondents C. E. Holder and M. W. Edgmon are copartners doing business under the firm name and style of Edgmon-Holder Motor Supply, a partnership with their office and principal place of business located at 1012 Scott Street, Wichita Falls, Tex.

Respondent Eugene Straach is a sole proprietor doing business under the firm name and style of Grove Auto Supply with his office and principal place of business located at 7930 Lake June Road, Dallas, Tex.

Respondent Rex Grove Auto Supply Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 4527 East Belknap Street, Fort Worth, Tex.

Respondents M. R. Walker, B. C. McKinley and J. O. Thompson are copartners doing business under the firm name and style of Jobbers Warehouse Service, a partnership, with their office and principal place of business located at 217 North Walnut Street, Sherman, Tex.

Respondent Sam Murphy is a sole proprietor doing business under the firm name and style of Murphy Automotive Supply with his office and principal place of business located at 626 West Garland Avenue, Garland, Tex.

Respondent L. E. Shafer is a sole proprietor doing business under the firm name and style of Senior Auto Parts with his office and principal place of business located at 208 East Second Street, Odessa, Tex.

Respondents Phil Crawford, O. J. Chase and R. R. Crawford are copartners doing business under the firm name and style of Texas

Automotive Supply, a partnership, with their office and principal place of business located at 3004 West Davis Street, Dallas, Tex.

Respondent Vernon Pennington is a sole proprietor doing business under the firm name and style of Vernon Parts Company with his office and principal place of business located at 1701 Marshall Street, Vernon, Tex.

Respondent James E. Walker is a sole proprietor doing business under the firm name and style of Walker Auto Parts with his office and principal place of business located at 409 East Third Street, Big Spring, Tex.

Respondents Ethel Waugh and Guy V. Cope are copartners doing business under the firm name and style of A. G. Waugh Company, a partnership, with their office and principal place of business located at 1392 Lubbock Highway, Lamesa, Tex.

Respondent Madie E. Wood is a sole proprietor doing business under the firm name and style of Wood Tire & Supply Company with his office and principal place of business located at Huntsville, Tex.

PAR. 3. The respondent jobbers set forth in paragraph 2 have purchased and now purchase in commerce from suppliers engaged in commerce numerous automotive products and supplies for use, consumption, or resale within the United States. Respondent jobbers and said suppliers cause the products and supplies so purchased to be shipped and transported among and between the several states of the United States from the respective state or states of location of said suppliers to the respective different state or states of location of the said respondent jobbers.

PAR. 4. In the purchase and the resale of said automotive products and supplies, respondent jobbers are in active competition with independent jobbers not affiliated with respondent AJI; and the suppliers selling to respondent jobbers and to their independent jobber competitors are in active competition with other suppliers of similar automotive products and supplies.

PAR. 5. Respondent AJI, since its formation in 1954, has been and is now maintained, managed, controlled, and operated by and for the respondent jobbers set forth in Paragraph Two and each said respondent, has participated in, approved, furthered, and cooperated with the other respondents in the carrying out of the procedures and activities hereinafter described.

In practice and effect, respondent AJI has been and is now serving as the medium or instrumentality by, through, or in conjunction with, which said respondent jobbers exert the influence of their combined bargaining power on the competitive suppliers hereinbefore described.

As a part of their operating procedure, said respondent jobbers direct the attention of said suppliers to their aggregate purchasing power as a buying group and, by reason of such, have knowingly demanded and received, upon their individual purchases discriminatory prices, discounts, allowances, rebates, and terms and conditions of sale. Suppliers not acceding to such demands are usually replaced as sources of supply for the commodities concerned and such market is closed to them in favor of such suppliers as can be and are induced to afford the discriminatory prices, discounts, allowances, rebates, and terms and conditions of sale so demanded.

Respondents jobbers demand that those suppliers who sell their products pursuant to a quantity discount schedule shall consider their several purchases in the aggregate as if made by one purchaser and grant quantity discounts, allowances, or rebates on the resultant combined purchase volume in accordance with said suppliers' schedule. This procedure effects a discrimination in price on goods of like grade and quality between respondent jobbers and competing independent jobbers whose quantity discounts, allowances, or rebates from such suppliers are based upon only their individual purchase volumes. From other suppliers the respondent jobbers demand the payment or allowance of trade discounts, allowances, or rebates which such suppliers do not ordinarily pay or allow to jobber customers. This procedure effects a discrimination in price on goods of like grade and quality between respondent jobbers and competing independent jobbers who are not afforded such trade discounts, allowances, or rebates.

When and if a demand is acceded to by a particular supplier, the subsequent purchase transactions between said supplier and the individual jobber respondents have been and are billed to, and paid for through, the aforesaid organizational device of respondent AJI. Said corporate organization thus purports to be the purchaser when in truth and in fact it has been and is now serving only as agent for the several respondent jobbers and as a mere bookkeeping device for facilitating the inducement and receipt by the afore-described respondent jobbers of the price discriminations concerned.

PAR. 6. Respondents have induced or received from their suppliers, in the manner afore-described, favorable prices, discounts, allowances, rebates, terms and conditions of sale which they knew or should have known constituted discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

PAR. 7. The effect of the knowing inducement or receipt by respondents of the discriminations in price as above alleged has been and

may be substantially to lessen, injure, destroy, or prevent competition between suppliers of automotive products and supplies and between respondent jobbers and independent jobbers.

PAR. 8. The foregoing alleged acts and practices of respondents in knowingly inducing or receiving discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, are in violation of subsection (f) of Section 2 of said Act.

Mr. Eldon P. Schrup and *Mr. John Perry* supporting the complaint.

Clark, Reed & Clark, of Dallas, Tex., by *Mr. Ramsey Clark* and *Mr. William L. Keller* for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the respondents herein, charging them with knowingly inducing or receiving discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, in violation of subsection (f) of Section 2 of said Act.

This proceeding is before the hearing examiner for final consideration upon the complaint, answer, testimony and other evidence, and proposed findings of fact and conclusions filed by counsel supporting the complaint. Consideration has been given to the proposed findings of fact and conclusions submitted by counsel supporting the complaint, and all proposed findings of fact and conclusions not hereinafter specifically found or concluded are rejected, and the hearing examiner, having considered the entire record herein, makes the following findings as to the facts, conclusions drawn therefrom and order:

FINDINGS AS TO THE FACTS

1. Respondent Automotive Jobbers, Inc. (hereinafter sometimes referred to as respondent AJI), is a Texas corporation with its principal office and place of business located at 2050 Irving Boulevard, Dallas, Tex.

2. Respondent AJI, although using corporate form, is a membership organization, organized, maintained, managed, controlled, and operated by and for its members. The membership of respondent AJI is composed of corporations, partnerships, firms and individuals whose business consists of the jobbing of automotive products and supplies. As constituted, respondent AJI is known and referred to in the trade as a buying group.

3. At the time of issuance of the complaint in this proceeding, or for a substantial period of time since its organization, the members of respondent AJI were as follows:

Respondent Mrs. Neva Baker, a sole proprietor doing business under the firm name and style of Baker Auto Supply, with her office and principal place of business located at Hillsboro, Tex.

Respondent E. L. Bauer, a sole proprietor doing business under the firm name and style of Bauer Auto Supply, with his office and principal place of business located at 3000 West Lancaster Street, Forth Worth, Tex.

Respondent Blue Ribbon Auto Supply, Inc., an Oklahoma corporation with its principal office and place of business located at 1457 N.E. 23rd Street, Oklahoma City, Okla.

Respondent H. B. Braden, Jr., a sole proprietor doing business under the firm name and style of Braden's Automotive, with his office and principal place of business located at 209 East Main Street, Waxahachie, Tex.

Respondents J. W. Mitchell and W. L. Brown, copartners doing business under the firm name and style of Brown Auto Supply, a partnership, with their office and principal place of business located at 114 Avenue D, N.W., Childress, Tex.

Respondent John M. Carter, a sole proprietor doing business under the firm name and style of Carter Auto Supply, with his office and principal place of business located at 2050 Irving Boulevard, Dallas, Tex.

Respondent Thomas Clark, a sole proprietor doing business under the firm name and style of Clark Auto Parts Supply with his office and principal place of business located at Coleman, Tex.

Respondent Ralph Clark, a sole proprietor doing business under the firm name and style of Ralph Clark Company with his office and principal place of business located at 218 East Main Street, Grand Prairie, Tex.

Respondents C. E. Holder and M. W. Edgmon, copartners doing business under the firm name and style of Edgmon-Holder Motor Supply, a partnership, with their office and principal place of business located at 1012 Scott Street, Wichita Falls, Tex.

Respondent Eugene Straach, a sole proprietor doing business under the firm name and style of Grove Auto Supply with his office and principal place of business located at 7930 Lake June Road, Dallas, Tex.

Respondent Rex Grove Auto Supply Company, Inc., a Texas corporation with its principal office and place of business located at 4527 East Belknap Street, Fort Worth, Tex.

Respondents M. R. Walker, B. C. McKinley and J. O. Thompson, copartners doing business under the firm name and style of Jobbers Warehouse Service, a partnership, with their office and principal place of business located at 217 North Walnut Street, Sherman, Tex.

Respondent Sam Murphy, a sole proprietor doing business under the firm name and style of Murphy Automotive Supply with his office and principal place of business located at 626 West Garland Avenue, Garland, Tex.

Respondent L. E. Shafer, a sole proprietor doing business under the firm name and style of Senior Auto Parts with his office and principal place of business located at 208 East Second Street, Odessa, Tex.

Respondents Phil Crawford, O. J. Chase and R. R. Crawford, copartners doing business under the firm name and style of Texas Automotive Supply, a partnership, with their office and principal place of business located at 3004 West Davis Street, Dallas, Tex.

Respondent Vernon Pennington, a sole proprietor doing business under the firm name and style of Vernon Parts Company with his office and principal place of business located at 1701 Marshall Street, Vernon, Tex.

Respondent James E. Walker, a sole proprietor doing business under the firm name and style of Walker Auto Parts with his office and principal place of business located at 409 East Third Street, Big Spring, Tex.

Respondents Ethel Waugh and Guy V. Cope, copartners doing business under the firm name and style of A. G. Waugh Company, a partnership, with office and principal place of business located at 1392 Lubbock Highway, Lamesa, Tex.

Respondent Madie E. Wood, a sole proprietor doing business under the firm name and style of Wood Tire & Supply Company with his office and principal place of business located at Huntsville, Tex.

The respondent, James Lacey, was the sole proprietor doing business under the firm name and style of Central Grinding and Auto Supply with his office and principal place of business located at 3710 Commerce Street, Dallas, Tex. Shortly prior to the issuance of the complaint herein, this respondent was deceased, and the order which follows dismisses the complaint as to this respondent.

4. Respondent AJI, since its formation in 1954, has been and is now maintained, managed, controlled and operated by and for the respondent jobber members above-named, and each said respondent actively

participated in, approved, furthered and cooperated with the other respondents in carrying out the acts and practices hereinafter found which were knowingly designed and intended to induce the granting of discriminatory and illegal prices, discounts, allowances, rebates, terms and conditions of sale to the respondent jobber members. Such participation included serving as officers and directors of respondent AJI, and as members of various committees of said group organization.

The By-Laws of respondent AJI state:

The purpose of this association shall be to purchase from manufacturers goods, wares and merchandise for such of its members who desire the same, in order to receive quantity discounts or prices.

The corporate charter of respondent AJI states that it was formed "for the purpose of purchasing from manufacturers, automotive goods, wares, and merchandise for such of its members who desire the same in order to receive quantity discounts, or prices."

5. The respondent jobber members of respondent AJI have purchased and now purchase in interstate commerce from suppliers engaged in interstate commerce numerous automotive products and supplies for use, consumption or resale within their trade areas. Respondent jobbers and said suppliers cause the automotive products and supplies so purchased to be shipped and transported among and between the several states of the United States from the respective state or states of location of said suppliers to the respective different states of location of the respondent jobbers.

The respondent jobber members of respondent AJI, in the purchase and resale of said automotive products and supplies, are and have been in active and substantial competition with other corporations, partnerships, firms and individuals who are also engaged in the purchase and resale of such automotive products and supplies of like grade and quality, in interstate commerce, which automotive products and supplies have been purchased from the same and competitive sellers. The suppliers selling to respondent jobbers and their competitors are also in active and substantial competition with other suppliers of like or similar automotive products and supplies in interstate commerce.

6. Respondent jobbers organized, and have maintained, controlled and operated, respondent AJI for the purpose of inducing the granting or allowance of lower and more favorable prices by manufacturers and sellers of automotive products and supplies. It is a membership corporation serving only jobber members. Participation of respondent jobber members in the net income of respondent AJI is based on a percentage of their individual purchases through the group organi-

