

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS, APRIL 1, 1964, TO JUNE 30, 1964

IN THE MATTER OF FELDMAN WHOLESALE FURS INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket C-732. Complaint, April 2, 1964—Decision, April 2, 1964

Consent order requiring wholesale furriers in Chicago to cease violating the Fur Products Labeling Act by labeling artificially colored fur as natural, failing to comply with labeling requirements, substituting non-conforming labels for those originally attached to fur products, and failing to keep required records.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Feldman Wholesale Furs Inc., a corporation and Harry Witt, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling 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 Feldman Wholesale Furs Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Harry Witt is an officer of the corporate respondent and formulates, directs and controls the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are wholesalers of fur products with their office and principal place of business located at 318 West Adams Street, city of Chicago, State of Illinois.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now en-

gaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce; as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled to show that fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tipped, or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 5. Respondents in introducing, selling, advertising, and offering for sale, in commerce, and in processing for commerce, fur products; and in selling, advertising, offering for sale and processing fur products which have been shipped and received in commerce, have misbranded such fur products by substituting thereon, labels which did not conform to the requirements of Section 4 of the Fur Products Labeling Act, for the labels affixed to said fur products by the manufacturer or distributor pursuant to Section 4 of said Act, in violation of Section 3(e) of said Act.

PAR. 6. Respondents in substituting labels as provided for in Section 3(e) of the Fur Products Labeling Act, have failed to keep and preserve the records required, in violation of said Section 3(e) and Rule 41 of the Rules and Regulations promulgated under the said Act.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with

1 Decision and Order

violation of the Fur Products Labeling Act and the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated the Fur Products Labeling Act and the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent Feldman Wholesale Furs 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 318 West Adams Street, city of Chicago, State of Illinois.

Respondent Harry Witt is an officer of the corporate respondent and his address is the same as that of the corporate respondent.

2. 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 respondents Feldman Wholesale Furs Inc., a corporation, and its officers and Harry Witt, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce; as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Failing to affix labels to fur products showing in words and in figures plainly legible all of the information required to be disclosed by each of the Subsections of Section 4(2) of the Fur Products Labeling Act.

2. Representing directly or by implication on labels that the fur contained in any fur product is natural when the fur contained therein is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

It is further ordered. That Feldman Wholesale Furs Inc., a corporation and its officers, and Harry Witt, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, sale, advertising or offering for sale, in commerce, or the processing for commerce, of fur products; or in connection with the selling, advertising, offering for sale, or processing of fur products which have been shipped and received in commerce, do forthwith cease and desist from:

1. Misbranding fur products by substituting for the labels affixed to such fur products pursuant to Section 4 of the Fur Products Labeling Act labels which do not conform to the requirements of the aforesaid Act and the Rules and Regulations promulgated thereunder.

2. Failing to keep and preserve the records required by the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in substituting labels as permitted by Section 3(e) of the said Act.

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.

IN THE MATTER OF

JAMES PARIS FURS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket C-733. Complaint, April 2, 1964—Decision, April 2, 1964

Consent order requiring manufacturing furriers in New York City to cease violating the Fur Products Labeling Act by failing, on invoices, to show the true animal name of fur and the country of origin of imported furs, to disclose when fur was artificially colored, to use the terms "Persian Lamb" and "natural" where required, and to comply in other respects with invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that James Paris Furs, Inc., a corporation, and James Paris individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act and the Rules and Regulations promulgated under the Fur Products Labeling 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 James Paris Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent James Paris is an officer of said corporation and formulates the policies, acts and practices of said corporate respondent.

Respondents are manufacturers of fur products with their office and principal place of business located at 259 West 30th Street, city of New York, State of New York.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed:

1. To show the true animal name of the fur used in the fur product.
2. To disclose that the fur contained in the fur product was bleached, dyed, or otherwise artificially colored, when such was the fact.
3. To show the country of origin of imported furs used in fur products.

PAR. 4. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) The term "Persian Lamb" was not set forth on invoices in the manner required by law, in violation of Rule 8 of said Rules and Regulations.

(b) The term "natural" was not used on invoices to describe fur products which were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Rule 19(g) of said Rules and Regulations.

(c) Required item numbers were not set forth on invoices, in violation of Rule 40 of said Rules and Regulations.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent James Paris Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its office and principal place of business is located at 259 West 30th Street, city of New York, State of New York.

Respondent James Paris is an officer of said corporation, and his address is the same as that of said corporation.

2. 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 respondents, James Paris Furs, Inc., a corporation, and its officers, and James Paris, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, manufacture for introduction, or the sale, advertising or offering for sale, in commerce, or the transportation or distribution, in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act do forthwith cease and desist from falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers of fur products showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b) (1) of the Fur Products Labeling Act.

2. Failing to set forth the term "Persian Lamb" in the manner required where an election is made to use that term instead of the word "Lamb."

3. Failing to set forth the term "Natural" as part of the information required to be disclosed on invoices under the Fur Products Labeling Act and Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

4. Failing to set forth on invoices the item number or mark assigned to fur products.

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

65 F.T.C.

IN THE MATTER OF

PUROLATOR PRODUCTS, INC.

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

Docket 7850. Complaint, Mar. 29, 1960—Decision, Apr. 3, 1964

Order requiring a manufacturer of air, oil and fuel filters for trucks and automobiles, with nationwide distribution and net sales in 1957 in excess of \$37,000,000, to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act by such practices as giving favored warehouse distributors "redistribution" discounts not granted to competing warehouse distributors and jobbers, on sales of its automotive replacement filters.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof has violated and is now violating the provisions of subsection (a) 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 Purolator Products, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 970 New Brunswick Avenue, Rahway, New Jersey.

PAR. 2. Respondent is now, and for many years past has been, engaged in the manufacture, sale and distribution of a great variety of filters for use in the filtration of fuel, air, water and other liquids and gases. Applications for respondent's filters range from the air and fuel filters found on motor vehicles, through filters for hydraulic and cooling fluids, to industrial filters for use in the production and refinement of petroleum, chemicals and nuclear materials.

Respondent's total net sales for the year 1957 were in excess of \$37,000,000.

PAR. 3. Respondent manufactures filters in Rahway, New Jersey, and in other cities in the United States and ships them to its various customers located throughout the United States.

Respondent's customers have been divided, by it, into two classifications. The first, designated as the Equipment Sales Division, is composed of customers who incorporate respondent's filters in their own products or equipment and include such customers as automobile, truck and aircraft manufacturers, and chemical and petroleum producers.

The second, designated as the After Market Division, is composed primarily of customers who resell respondent's automotive filters (hereinafter referred to as "automotive replacement filters") as replacements for worn components on automobiles, trucks and other motor vehicles and include such customers as automotive parts distributors, truck fleets and oil companies marketing replacement parts under their own trade name.

In the sale and distribution of automotive replacement filters bearing the Purolator trade name to the replacement market, respondent ships said filters to a number of its selected, large volume, direct franchise distributors, classified by respondent as "warehouse distributors", located throughout the United States. Respondent also has a large number of associate distributors (hereinafter called "jobbers") who purchase said products from the direct franchise distributors. Respondent exercises such a degree of control over sales by direct franchised warehouse distributors to jobbers as to render such sales in all essential respects sales by respondent to such jobbers.

There is and has been at all times mentioned herein a continuous current of trade and commerce in respondent's automotive replacement filters across State lines, between their respective points of origin and respondent's customers. Said products are sold and distributed for use, consumption and resale within the various States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of its business, respondent is now, and during the times mentioned herein has been, in substantial competition with other corporations, partnerships, individuals and firms engaged in the manufacture, sale and distribution of various types of filters.

Respondent's warehouse distributors are competitively engaged with each other in the sale of respondent's automotive replacement filters to jobbers and some users, and with each other and with jobbers in the sale of said filters to retailers (hereinafter called "dealers") such as service stations, garages and automobile dealers and to some users such as truck fleets, in their respective trade areas.

PAR. 5. Respondent, in the course and conduct of its business as above described, has been for many years last past, and presently is, discriminating in price between different purchasers of automotive replacement filters, by selling said products of like grade and quality to some of its purchasers at substantially higher prices than to other of its purchasers.

PAR. 6. Respondent has been, and now is, discriminating in price in the sale of automotive replacement filters of like grade and quality

by granting special rebates, allowances, discounts and other forms of price reductions, direct or indirect, to some warehouse distributors over and above those made available by respondent to other warehouse distributors who compete with the favored warehouse distributors in the resale of respondent's products. The special price concessions to the favored warehouse distributors are effected by various ways and means, some, but not all, of which are more particularly described as follows:

(a) Respondent grants and has granted "redistribution allowances", varying from 4% to 15.8% to some warehouse distributors on their sales of respondent's products to dealers and users, which allowances are withheld from other warehouse distributors.

PAR. 7. Respondent has been, and now is, discriminating in price in the sale of automotive replacement filters of like grade and quality by granting warehouse distributors special rebates, allowances, discounts and other forms of price reductions, direct or indirect, over and above those made available by respondent to its jobbers who compete with the warehouse distributors in the resale of respondent's automotive replacement filters. The special price concessions to warehouse distributors are effected by various ways and means, some, but not all, of which are more particularly described as follows:

(a) Respondent grants a "warehouse distributor" discount, varying during different periods from 5% to 9%, to warehouse distributors on purchases by them of automotive replacement filters for resale to dealers and users, which discount is withheld by respondent from its jobbers.

(b) Respondent grants "redistribution allowances", varying in total amounts during different periods from 4% to 15.8%, to warehouse distributors on their sales of respondent's products to dealers and users, which allowance is withheld by respondent from its jobbers.

PAR. 8. The special rebates, allowances, discounts and other forms of price reductions granted by respondent, as alleged herein, result, either directly or indirectly, in reducing prices charged such favored purchasers to substantially lower amounts than respondent charges other of its purchasers, many of whom compete with said favored purchasers in the sale of said products of like grade and quality within the trading areas in which they are engaged in business.

PAR. 9. The effect of such discriminations in price, as alleged herein, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its customers are respectively engaged; or to injure, destroy or prevent competition with respondent or with purchasers therefrom who receive the benefits of such discriminations.

PAR. 10. The aforesaid acts and practices of respondent constitute violations of the provisions of subsection (a) 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).

Mr. Thomas A. Sterner for the Commission.

Willkie, Farr, Gallagher, Walton & Fitz Gibbon, of New York 5, N.Y., for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

NOVEMBER 27, 1962

This proceeding is based upon a complaint charging the respondent with violation of Section 2(a) of the Clayton Act and is now before the undersigned hearing examiner for final consideration on the complaint, answer thereto, testimony and other evidence and proposed findings of fact and conclusions of law, together with briefs in support thereof, filed by counsel. The hearing examiner has given consideration to the proposed findings of fact and conclusions of law submitted by both parties and briefs in support thereof, and all findings of fact and conclusions of law proposed by the parties respectively, not hereinafter specifically found or concluded, are herewith rejected, and the hearing examiner having considered the record herein and now being duly advised in the premises makes the following findings of fact, conclusions drawn therefrom, and issues the following order.

1. Respondent, Purolator Products, Inc., is a Delaware corporation with its executive office located at 970 New Brunswick Avenue, Rahway, New Jersey. For many years respondent has been engaged in the manufacture and in the sale and distribution in interstate commerce of many sizes, and types of filters for use in the filtration of fuel, air, oil, water and other liquids and gases. Among the filters so sold and distributed in interstate commerce, were automotive replacement filters, which were sold as replacements for worn components on automobiles, trucks and other motor vehicles. Respondent's net sales of all products for the year 1957, exclusive of the sales of its Canadian subsidiaries, were approximately \$35,880,000. The sales of automotive replacement filters in 1957 were in excess of \$5,000,000.

2. Respondent sells its replacement filters to warehouse distributors located throughout the United States. Such warehouse distributors resell respondent's automotive replacement filters either from a central warehouse location or through branch locations to owners or operators of automotive and truck fleets and to distributors or jobbers, who in turn resell such automotive replacement filters to retailers or dealers

such as service stations, garages and automobile dealers. Many of such warehouse distributors have also resold a substantial portion of their automotive replacement filters purchased from respondent, direct to dealers from their central warehouse locations or through their branch locations.

3. In the sale and distribution of its replacement filters in interstate commerce, respondent has been in substantial competition with other corporations and concerns engaged in the manufacture and in the sale and distribution in interstate commerce of various types of filters for use in automobiles. In general, each warehouse distributor purchasing automotive replacement filters from respondent is in substantial competition with one or more warehouse distributors selling respondent's filters of like grade and quality in the same area. In addition, such warehouse distributor by selling respondent's filters of like grade and quality to dealers and fleets, is in competition with its own jobber customers and with other jobbers purchasing replacement filters of like grade and quality from distributors of respondent.

4. As of March 1, 1960, respondent had 6,956 warehouse distributor-jobber agreements on file. As of August 5, 1960, there were approximately 367 branch locations maintained by such warehouse distributors. The estimated number of dealers purchasing Purolator trademarked automotive replacement filters in the United States was 150,000. In the case of some warehouse distributors with branch locations, sales to independent jobbers were executed by and shipped from the branch locations, as well as from the central warehouse location. Those branch locations may receive respondent's filters from the central warehouse location or by shipment directly from respondent.

5. Warehouse distributors may vary greatly in size. For example, a warehouse distributor may be composed of over ten individual branches located in an equal number of different towns or cities with a central warehouse adjacent to one of the branch locations, or it may have a small central warehouse with one branch, while another warehouse distributor may be a single unit operator with warehouse facilities all at one location, who sells to both jobbers and dealers. Both warehouse distributors and jobbers sell to dealers, typically small retailers who carry little or no stock of automotive replacement parts, and who buy frequently and in small amounts.

6. During the period of January 1, 1957 through February 1, 1959, respondent issued its so-called gray price list showing its net prices to warehouse distributors. In addition, the respondent supplied its warehouse distributors with its blue price list which contained suggested resale prices to jobbers. The respondent also published a second sug-

gested price list (green) for use by distributors and jobbers in selling to dealers. The warehouse distributors prices (gray list) were lower than the suggested net prices to jobbers (blue list), and the suggested net prices to jobbers were less than the suggested net prices to dealers.

7. Effective February 2, 1959, and continuing until the present time, respondent abolished its suggested jobber blue price list. The prices in the gray warehouse distributor price list were increased to levels comparable to those theretofore appearing on the suggested jobber blue price list; and the gray price list thereupon became and has since been a list of respondent's suggested resale prices to jobbers. The prices at which respondent has since sold automotive replacement filters to warehouse distributors, have been uniformly computed by deducting 5% from the suggested gray resale prices to jobbers, either on shipments to the warehouse distributor's central warehouse location or direct shipments to its branch locations.

8. The practices of the respondent involved in this proceeding, consisted of price discriminations arising out of two discounts known as "External Redistribution Discounts" and the "Internal Redistribution Discounts." The entire case-in-chief in support of the complaint was stipulated by the parties and the issues were reduced to three:

- (a) Price Discrimination under Indirect Purchaser Concept.
- (b) Injury to Competition under the Internal Redistribution Discount.
- (c) Meeting a lower price of a Competitor.

I.

External Redistribution Discounts

9. During the period involved in this proceeding, the respondent granted to its warehouse distributors an external redistribution discount either off the face of respondent's invoices or by credit memoranda. Such external redistribution discounts were and are at the following percentages.

February 1, 1957 to January 31, 1958.....	11%
February 1, 1958 to present.....	15%

On some occasions during this period, the respondent granted the external redistribution discount as a percentage of gray prices, rather than the blue prices which showed a difference in the percentages, but in the last analysis, the ultimate net cost of the filters to the warehouse distributor was the same.

10. It has been the announced policy of respondent to pay or allow the above described external redistribution discount only on that

portion of each warehouse distributor's purchases of automotive replacement filters resold by such warehouse distributor from a central warehouse location or through branch locations to jobbers, and since August 3, 1959, to fleets. In order to ascertain the discount due, the warehouse distributor either made a monthly report of all sales to jobbers and fleets upon which discount was paid monthly or the warehouse distributor informed the respondent in writing the percentage of sales which would be made to jobbers and fleets and respondent would then deduct the external redistribution discount from the face of the invoice, or issue a credit memorandum. The reporting warehouse distributor in making his monthly report used forms furnished by respondent which require the sales to be reported on the basis of respondent's suggested resale prices to jobbers.

11. During the period January 1, 1957 through January 31, 1958, respondent did not in all cases adhere to its announced policies concerning the granting of the external redistribution discount described above. For example, in one instance respondent allowed a warehouse distributor the full external redistribution discount off the face of its invoices on automotive replacement filters purchased by it from respondent, and resold directly to dealers (of which respondent had notice). This resulted in said favored warehouse distributor receiving lower net prices, by the amount of the external redistribution discount, than other warehouse distributors, who did not receive said discount, but who purchased automotive replacement filters of like grade and quality from respondent and resold them in the same trade area to dealers in competition with the favored warehouse distributor.

12. The price differentials between warehouse distributors resulting from the granting of the external redistribution discount by respondent to the favored warehouse distributor on automotive replacement filters purchased from respondent and resold to dealers, while not granting such external redistribution discount to competing warehouse distributors on their purchases from respondent of automotive replacement filters of like grade and quality for resale by them to dealers in the same trade area, had a reasonable probability of substantially lessening competition or tending to create a monopoly in the lines of commerce in which such warehouse distributors were engaged, and to injure, destroy or prevent competition with the favored warehouse distributor.

13. The foregoing facts with reference to the external redistribution discounts including injury to competition were incorporated in a stipulation entered into between counsel supporting the complaint and counsel for respondent, and was made a part of the record in this proceeding.

II.

Indirect Purchaser Concept

14. It is the opinion of the hearing examiner and so found that the charges of the complaint based upon the indirect purchaser concept have been sustained. During the years 1949 to 1956, the warehouse distributor contract provided that the distributor distribute Purolator products to jobbers with whom he has executed an agreement approved by the respondent. The agreement with jobbers referred to, provides that the jobber maintain a minimum stock of \$500 of respondent's products, that the distributor will supply jobber at prices shown on blue list (suggested jobber price list); that jobber will purchase his requirements from the distributor and that the agreement between distributor and jobber shall become effective when signed by the parties and recorded by respondent. The so-called recording was simply a signed acceptance of the contract entered into between the distributor and the jobber.

15. From July 1, 1955 to February 1, 1957, respondent executed a letter agreement granting a discount or rebate of 14% upon sales to jobbers with whom the distributor has executed a contract. All such sales to be reported by distributor monthly are based upon the net price shown on blue price sheet. In June 1956, respondent modified its warehouse distributor contract and removed therefrom the provision that distributor's contract with jobbers be approved by respondent. Beginning July 1, 1959, the warehouse distributor's contract with respondent was modified to provide that current price lists were merely suggestive and not intended to be binding in any way.

16. The above actions taken in 1956 and 1959, appear to be an attempt on the part of respondent to divorce itself from the selection of jobbers by warehouse distributors and fixing of resale prices, which the jobber should charge. In actual practice, however, this was not the result. In the memorandum of agreement attached to warehouse distributor's contract allowing an external redistribution discount on sales by warehouse distributors to jobbers, it was expressly stated that such discount would be paid on sales to jobbers who have an executed contract with distributor, known as GS-74, with external redistribution discount based upon suggested jobber price list. This appeared in memorandum agreement in effect during the following periods: February 1957 to February 1958—CX 8; February 1958 to July 1959, CX 9; from July 1, 1959 and subsequent thereto, CX 10(a-b). In jobber agreement forms used from March 1953 through 1956 and later, known as form GS-74, the jobber agreed to purchase his entire

Purolator requirements from the warehouse distributor with which it has entered into this agreement. As set out in the stipulation and as hereinbefore found, respondent issued suggested price lists for sales by the distributor to jobbers and suggested price lists for resale by jobber to dealers. These price lists were generally followed by both the distributor and jobber and, in fact, the external redistribution discount was based upon the suggested jobber price list.

17. As previously found, all the elements necessary to establish that the jobber customer of the warehouse distributor is an indirect purchaser from respondent are present in this record. The respondent has been able to fix and control resale prices by issuance of the suggested jobber price list which were uniformly followed. The respondent has maintained franchise controls and suggests resale prices at all levels down to dealers.

III.

Internal Redistribution Discounts

18. Beginning February 1, 1958, the respondent allowed an additional discount of 4% of the suggested jobber price to its warehouse distributor on all replacement filters reshipped from their central warehouse to their branch locations. This discount was known as the "Internal Redistribution Discount". The single warehouse distributor who makes up the vast majority of the warehouse distributors or customers, does not receive this discount or its equivalent even though it competes with the favored distributor in sales to jobbers, dealers and fleets.

19. Respondent's internal redistribution discount is paid on quantities of its products which the favored warehouse distributor reships from its central warehouse to its branches. Obviously it is available only to those warehouse distributors having branches and who are engaged in supplying their branches from a central warehouse. In 1959 respondent recognized approximately 335 warehouse distributors located throughout the United States. Some of these were owned units of multi-warehouse organizations. Of the total warehouse distributors, approximately 80 had branch locations and were thus physically able to qualify for respondent's internal redistribution discount. Of that number, approximately 70 or 87% were supplying branches from a central warehouse and claimed, and received, the internal redistribution discount. In 1958 respondent paid this discount to 61 of its warehouse distributors.

20. Warehouse distributors may vary greatly in size. For example, Colyear Motor Sales in 1959 had 15 warehouse locations with 24 branch locations, while several competing warehouse distributors are single unit operators with no branches. Both warehouse distributors and job-

bers sell to dealers, typically small retailers who carry little or no stock of automotive replacement parts, and who buy frequently and in small amounts. As a result, warehouse distributors carry large inventories of such parts, very often numbering from 20,000 to 45,000 different items, and jobbers carry somewhat smaller inventories.

21. Automotive parts wholesaling, whether at the warehouse distributor or jobber level, is a keenly competitive business. It is also a business of relatively high costs at all levels just mentioned. As a direct result of such high operating costs, net profit margins typical of the business, range between 3% and 4% (after taxes which are generally considered a cost of doing business). With such net profit margins, both the warehouse distributor's and jobber's profitability are extremely sensitive to the cost of product acquisition. Consequently, the 2% cash discount which is offered by respondent and most other suppliers of automotive replacement parts, is uniformly taken whenever possible, and is considered by warehouse distributors and jobbers alike, to be important, and sometimes essential to a profitable business.

22. Automotive parts and their distribution have been the subject of a long series of recent Commission actions (see for example, *Moog Industries Inc., v. Federal Trade Commission*, 238 F. 2d 43 (1956); *Whitaker Cable Corp. v. Federal Trade Commission*, 239 F. 2d 253 (1956)). In all those cases the capacity of discounts to injure competition has been exhaustively examined. The holdings appear to be unanimous in their evaluation of the relevant economic realities such as the keenness of competition, the very small margins of profits, and the importance of discounts as small as 2% to profitability. For example, *Beard & Stone Electric Co., in Dallas*, which reshipped about 50% of its \$71,237 worth of purchases from respondent in 1959 and was paid \$1,390, had an obvious and substantial competitive advantage which could be used to subsidize its branch operations. The same competitive advantage accrued to *Clinton Square Auto Parts*, which reshipped about 30% of its Purolator purchases and earned \$1,202 in 1959.

23. Although the individual dollar amounts paid favored purchasers by respondent are in themselves substantial in their probable competitive effect, the cumulative result of similar payments by 200-300 other suppliers would have obvious and dramatic anti-competitive effects in this market. These impersonal economic facts hold valid even though unfavored purchasers testify that they have not been injured. *Moog Industries, v. Federal Trade Commission, supra*; *E. Edelman & Co., v. Federal Trade Commission, supra*, 239 F. 2d 152 (1956).

24. Since the filters when delivered become the property of the warehouse distributor, any expense or saving of expense on the part of the customer cannot be used by the seller as a cost justification. This is recognized by the respondent who has maintained upon the record

that the cost studies based upon the internal redistribution discount, were offered solely to show no injury to competition on the theory that redistribution expenses of double handling by the purchaser are equivalent to, or surpass, the allowance given.

25. In support of this contention, respondent presented to the examiner a study made of a group of warehouse distributors by an independent accounting firm, which study purported to show the cost of each of the central warehouse locations in redistributing automotive replacement parts to branch locations, principally by use of the sampling technique. As hereinabove stated, this study was presented not as a cost justification, but for the purpose of supporting respondent's contention that no injury to competition is involved.

26. This cost study was rejected by the hearing examiner as not being relevant and material to the issues in this proceeding. In addition to being based upon customer's costs, the cost study was based upon a sampling technique which was unscientific and valueless. The study purported to be of all automotive parts instead of being limited to automotive replacement filters involved in this proceeding. The record does not show that the samples used were chosen on any other criteria than the arbitrary one of cooperation, with no consideration given to geographical distribution.

27. Respondent's evidence of its customer's costs of doing business cannot be considered competent, relevant or material to the question of competitive injury. The question of competitive advantage or disadvantage is not resolved by determining what a customer does with the price advantage received. Respondent as seller cannot evaluate the relative competitive strength of its customers and vary its prices according to its own determination. Respondent cannot ascertain which of its purchasers is operating at a competitive disadvantage, and, by varying its price, wipe out that "disadvantage." Such pricing could result in the systematic preference of the inefficient customer to the competitive disadvantage of the efficient customer.

28. Respondent's favored warehouse distributors did not initiate the practice of supplying their branches out of a central warehouse location in response to respondent's internal redistribution discount. That method of supplying branches had been in effect for years before the internal redistribution discount came into existence in 1958. The warehouse distributor determined by his own independent business judgment that this method of distribution was the best possible for his operation. As a result of this decision to supply his branches from his central warehouse, the distributor can maintain a smaller inventory at the branch freeing capital for other investment; he can keep his physical facilities small in size at the branch, reducing capital investment and have more control of inventory. The important fact is

that the warehouse distributor had organized and operated his business in a chosen fashion, accepting the competitive advantages and disadvantages inherent in it. The respondent's intervention to pay all or part of the cost of supplying branches has relieved the favored warehouse distributor of an operational cost which has been traditional in his organization.

29. Therefore, it is found that respondent's internal redistribution discount of 4% is paid to the vast majority of its warehouse distributors with branches; that such discounts are substantial in the competitive context of this market; that such discounts are not available to or paid to competing single unit warehouse distributors; and that the discriminations in price resulting from such discounts bestow a substantial competitive advantage on the favored purchasers. Further, it is found that this same discount results in a discrimination in price between the favored warehouse distributor and the jobber with whom he competes for sales to dealers and that such discrimination has the same competitive effect. Likewise, it is found that the discrimination in price of 5% between the favored warehouse distributors and the unfavored jobbers has a similar and added competitive effect.

IV.

Meeting Competitor's Price

30. In an attempted justification of its internal redistribution discount, respondent offered evidence to prove that the lower prices resulting from its adoption of the challenged discount were only a good faith meeting of a lower price of a competitor. That evidence was only the price and discount schedules of two of its competitors. It does not constitute evidence sufficient to support a 2(b) defense for two important reasons. First, the record indicates that prior to February 1, 1958 respondent's price schedule to warehouse distributors was list price less 60%, less 9%, less 11% for sales to independent jobbers. At that time its competitor's prices were 60% less 10% less 10% and 60% less 9% less 10%. Then on February 1, 1958, respondent unilaterally changed its discount schedule to 60% less 5% less 15%. When respondent's competitors did not follow in this change, respondent adopted the internal redistribution discount. From these facts it is obvious that respondent was not meeting a competitor's lower price. Neither of its competitors had lowered its price. Respondent was attempting to repair a defect in the discount schedule it had unilaterally adopted. Section 2(b) is not available on such a set of facts.¹ Second, it is apparent that respondent's internal redistribution discount is designed to accommo-

¹ *Federal Trade Commission v. Staley Mfg. Co.*, 324 U.S. 746 (1945).

date a class of respondent's customers and is applicable to all without regard to any other factors. As such, respondent's discount is simply a system of pricing which results in routine and continuing discrimination in favor of a particular group of its customers. Section 2(b) does not allow a seller to use a sales system which constantly results in his getting more money for like goods from some customers than he does from others.² That defense is reserved for prices which are lowered in response to an individual competitive demand and not as part of a seller's pricing system.³

CONCLUSIONS

1. The price differentials between warehouse distributors resulting from respondent's granting of the external redistribution discount to one warehouse distributor on its purchases from respondent, of automotive replacement filters, which said warehouse distributor resold to dealers while not granting such external redistribution discount to competing warehouse distributors on their purchases from respondent of automotive replacement filters of like grade and quality, for resale by them in the same trade area to dealers, has a reasonable probability of substantially lessening competition or tending to create a monopoly in the lines of commerce in which such warehouse distributors are engaged, or to injure, destroy or prevent competition with the favored warehouse distributors.⁴

2. As heretofore found, the control maintained by the respondent over jobber-customers of its warehouse distributors was such that sales by the warehouse distributors to jobbers should be considered in all essential respects sales by respondent to such jobbers within the meaning of Section 2(a) of the Act, and the granting of an external redistribution discount by the respondent to the warehouse distributor on sales by it to dealers while not allowing such discount or its equivalent to the jobber-customers selling dealers in competition with said distributor has a reasonable probability of substantially lessening competition or tending to create a monopoly in the lines of commerce in which such independent jobbers were engaged, or to injure, destroy or prevent competition by such independent jobbers with said warehouse distributor.⁵

3. The granting of the internal redistribution discount to warehouse distributor-customers having branch locations, while not granting said discount to competing single unit warehouse distributors, had

² *Federal Trade Commission v. Cement Institute*, 333 U.S. 683, 725 (1948).

³ *Standard Motor Products, Inc., v. Federal Trade Commission*, 265 F. 2d 674 (1959), cert. denied, 361 U.S. 826.

⁴ This practice and its effect upon competition was stipulated by the parties and such stipulation was incorporated into the record of this proceeding (Tr. 31-34).

⁵ Effect on and injury to competition was stipulated by the parties (Tr. 34).

a reasonable probability of substantially lessening competition or tending to create a monopoly in the lines of commerce in which such warehouse distributors were engaged, or to injure, destroy or prevent competition with said unfavored warehouse distributors.

4. The acts and practices of the respondent as herein found are in violation of the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

ORDER

It is ordered, That respondent Purolator Products, Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in or in connection with the sale, for replacement purposes, of automotive replacement filters, in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of such products of like grade and quality:

By selling to any direct or indirect purchaser at net prices higher than the net prices charged to any other purchaser, direct or indirect, who in fact competes with the purchaser paying the higher price in the resale and distribution of respondent's replacement filters.

OPINION OF THE COMMISSION

APRIL 3, 1964

By Dixon, *Commissioner*:

The Commission issued its complaint against respondent, a manufacturer of air, oil, and fuel filters for trucks and automobiles, on March 29, 1960, charging violations of Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act.¹ The case is presently before us on respondent's exceptions to the hearing examiner's initial decision, dated November 27, 1962, in which the examiner found instances of price discrimination on the part of respondent and issued an order to cease and desist therefrom.

Purolator Products, Inc., hereinafter referred to as respondent, sells its automotive filters in commerce as original equipment for new vehicles and for replacement of worn equipment. This case is concerned with respondent's pricing system in the replacement market or "after-market." According to respondent's executive vice-president, the company enjoys thirty to thirty-two percent of that market, while

¹ 49 Stat. 1526 (1936) ; 15 U.S.C. 13(a) (1958).

AC Spark Plug Division of General Motors Corporation and Fram Corporation hold roughly equivalent shares. It was stipulated that respondent's sales in the replacement market exceeded five million dollars in 1957.

Respondent's only direct sales of its replacement filters are to independent warehouse distributors, most of which handle a multiplicity of other automotive parts. Some of these warehouse distributors operate from a single location, while others maintain central warehouses and reship filters as needed to their owned or controlled warehouse branches. Distributors with branches service customers both from their central location and from their multiple branches. Warehouse distributors resell to jobbers, to dealers (garage owners, filling station operators, and other retail establishments), and to truck fleet operators. Jobber customers of the warehouse distributors also resell to dealers and to fleet operators, and thus are in competition with distributors in such sales. Individual car owners purchase from dealers only.²

The prices at which warehouse distributors purchase respondent's filters are dependent upon the channel through which the filters move to the ultimate consumer. The discount accorded to all warehouse distributors was, at the time of the hearing, sixty percent of the suggested consumer list price, plus five percent.³ The resulting purchase price is thus 38¢ on a hypothetical filter with a suggested consumer price of \$1.00. If the warehouse distributor sells either to a jobber or a fleet operator, he receives an additional fifteen percent "external redistribution discount," which lowers respondent's price to the warehouse distributor to 32¢ (40¢—2¢—15% of 40¢ (6¢)). There is no additional discount for sales directly to dealers. Those warehouse distributors maintaining branches are awarded a four percent "internal redistribution discount" on all filters reshipped to their branches from the central warehouse. Thus, the price to the warehouse distributor of a filter sold through one of its branches to a dealer is 36.4¢ (40¢—2¢—4% of 40¢ (1.6¢)). If the filter was sold by the branch to a jobber or fleet operator, the warehouse distributor pays only 30.4¢ (40¢—2¢—6¢—1.6¢).

When the warehouse distributor sells to a jobber, he sells at respondent's suggested resale price of 40¢, which is computed by allowing

² See Appendix I for diagram of respondent's system of distribution. [Page 43 herein.]

³ In computing its discounts, respondent first deducts sixty percent from the suggested consumer list price. On a hypothetical filter sold to the consumer for \$1.00, the discount amounts to 60¢, and the price of the filter is 40¢. Additional discounts granted to the warehouse distributor are computed as percentages of the 40¢ and subtracted from that amount. The discount of 60% and 5% is thus computed by subtracting sixty percent of \$1.00 from \$1.00, leaving 40¢, and then subtracting five percent of 40¢ from 40¢ (\$1.00—60% of \$1.00 (60¢)—5% of 40¢ (2¢)).

a sixty percent discount off the suggested consumer price of \$1.00. When the distributor sells to a dealer, respondent's suggested price entails a 45% discount, making the price 55¢ on the hypothetical \$1.00 filter. Fleet operators now purchase from distributors at the jobber price of 40¢, rather than at dealer prices of 55¢.

Respondent's suggested resale price when jobbers sell to dealers is 55¢—the same as that when distributors sell to dealers. When the jobber sells to a fleet, his price is also the same as that charged by a distributor—40¢. Since the warehouse distributor-jobber price is 40¢, the jobber would thus be selling at cost when he serviced fleets. To provide compensation for the jobber in that situation, respondent grants to the warehouse distributor an additional fifteen percent discount, computed by subtracting fifteen percent of 40¢ from 40¢, on all sales shown to have been made via jobbers to fleet operators. This discount amounts to 6¢ per \$1.00 and is passed on to the jobber by the distributor. Thus, the price to a warehouse distributor for a filter channeled through a jobber to a fleet operator is 26¢ (40¢—2¢—6¢—15% of 40¢ (6¢)).⁴ The warehouse distributor passes the fifteen percent discount to the jobber, who thus pays the distributor 34¢ rather than the normal 40¢ for the filter.⁵

We are presently concerned with price differences in two echelons of respondent's distribution system. First, price differences occur in those instances where warehouse distributors compete with jobbers for sales to dealers and truck fleet operators. The warehouse distributor pays respondent 38¢ for a filter resold to a dealer for 55¢, and thus obtains a 17¢ markup. On the other hand, the jobber purchases filters from the warehouse distributor at respondent's suggested price of 40¢ and resells in competition with the distributor to the dealer for 55¢. The jobber's markup is thus only 15¢. A similar disparity of price occurs when the warehouse distributor competes with the jobber for sales to truck fleet operators. The warehouse distributor pays respondent 32¢ for filters resold to fleets at 40¢, thus receiving a markup of 8¢. The jobber purchases filters from the warehouse distributor at respondent's suggested price of 34¢ and resells to the fleet operator for 40¢, thus receiving a gross profit of only 6¢. In each of the above-mentioned instances, therefore, the jobber is in competition with the warehouse distributor, but realizes 2¢ less on each of its sales of a filter which is eventually sold to the individual car owner for \$1.00.

Secondly, price differences occur as a result of the 4% internal redistribution discount awarded warehouse distributors with branches,

⁴ If the filter is channeled through a warehouse distributor's branch by reshipment, the four percent "internal redistribution discount" is subtracted, making the price of such a filter to the distributor 2¢—4¢. This discount is not passed to the jobber.

⁵ See Appendix II for a chart illustrating respondent's pricing system. [Page 44 herein.]

but withheld from warehouse distributors without branches. The favored warehouse distributor thus pays respondent only 30.4¢ for filters to be resold to fleets and jobbers, while the nonfavored distributors pay 32¢ for filters to be sold to the same customers. The favored distributors pay respondent 36.4¢ for filters to be resold to dealers, while the nonfavored distributors are required to purchase at the higher price of 38¢ when they sell to dealers. This internal redistribution discount not only causes discrimination against those warehouse distributors without branches, but also adversely affects jobbers who compete with the favored warehouse distributors in sales to dealers and fleets. Thus, a warehouse distributor with branches pays respondent 36.4¢ for filters to be resold to dealers, while the jobber pays 40¢ for filters to be similarly resold to the same customers. Since the cost to dealers of these filters is 55¢, the favored warehouse distributors receive profits of 18.6¢, while jobbers receive only 15¢. The favored warehouse distributors pay respondent 30.4¢ for filters resold to fleet operators for 40¢, while jobbers pay the warehouse distributor respondent's suggested resale price of 34¢ for filters similarly resold. Again, there is a 3.6¢ disparity in price on filters sold to the consumer for the hypothetical price of \$1.00. Further, price differences occur as a result of the four percent internal redistribution discount when the filters move through jobbers to fleet operators. The nonfavored warehouse distributors pay respondent 26¢ for filters to be resold to fleet operators via jobbers. The favored distributors pay only 24.4¢. The jobber selling to fleets in competition with the favored warehouse distributor pays respondent's suggested price of 34¢, while the favored distributor selling direct to a fleet pays only 30.4¢. Thus, the internal redistribution discount results in price differences of 1.6¢ between the favored and nonfavored warehouse distributors, and 3.6¢ between the favored distributors and jobbers selling in competition with them.

This case also involves a stipulated violation of Section 2(a) of the amended Clayton Act in connection with the allowance of the fifteen percent external redistribution discount to a single warehouse distributor on goods resold directly to dealers. As previously stated, this discount was generally available only when the distributor sold to jobbers or fleets. The only question regarding this violation is the scope of the order to be issued.

The facts as above stated are undisputed, and the entire case in support of the complaint was submitted on stipulated facts. Respondent urges that the stipulated facts are insufficient to support findings of a violation of Section 2(a) of the amended Clayton Act, and that

Opinion

examiner erred in several legal conclusions predicated upon the stipulated facts.

I.

Respondent first asserts that complaint counsel's evidence does not establish the element of competitive injury required for a holding that it violated Section 2(a) of the amended Clayton Act. As previously noted, it is undisputed that price differentials exist throughout the various echelons of respondent's distribution system. A warehouse distributor without branches pays 2¢ less per dollar for filters sold to dealers and fleet operators than does a jobber. A warehouse distributor with branches pay 3.6¢ less per dollar than a jobber for filters similarly sold and 1.6¢ less than a warehouse distributor without branches. It is further undisputed that this differential in price involves purchasers who are in competition with one another.⁶ Thus, there is a clear case of price discrimination. *Federal Trade Commission v. Anheuser-Busch, Inc.*, 363 U.S. 536 (1960).

Complaint counsel relies upon the following paragraphs from the stipulation of facts to establish that the effect of these price differences may be a substantial lessening of competition.

If competent witnesses were duly called by counsel supporting the complaint and duly sworn at the hearings in this proceeding, the competent, relevant and material testimony of such witnesses, plus competent, relevant and material documentary evidence which would be introduced by counsel supporting the complaint and the hearing Examiner would receive in evidence at such hearings, would constitute substantial evidence in support of the following * * * (Tr. 46, 47.)

Automotive parts wholesaling, whether at the warehouse distributor or jobber level, or across such levels (i.e., where the warehouse distributor competes with the jobber for sales to dealers and fleets), is a keenly competitive business. It is also a business of relatively high costs, at all levels just mentioned. As a direct result of such high operating costs, net profit margins typical of the business range between 3% and 4% (after taxes, which are generally considered a cost of doing business). With such net profit margins, both the warehouse distributor's and jobber's profitability is extremely sensitive to the cost of product acquisition. Consequently, the 2% cash discount, which is offered by respondent and most other suppliers of automotive replacement parts is uniformly taken, whenever possible, and is considered by warehouse distributors and jobbers alike to be important, and sometimes essential, to a profitable business. (Tr. 49.)

Respondent assails the latter paragraph as being insufficient to support a finding of competitive injury for the following reasons. First, the exact meanings of such phrases as "keenly competitive," "relatively high operating costs," and "net profit margins" are not apparent

⁶ Tr. 18, 19, 62.

from a reading of the stipulation. Secondly, the paragraph creates a false impression, since filters, as opposed to automotive parts, are not mentioned and there is no statement that the net profit margins of 3% to 4%, which are typical for the industry as a whole, are typical of respondent's customers. Respondent thus intimates that for all that appears in the record, the cost of handling filters may be *de minimis* and the profit margins on filters may be munificent. Finally, respondent asserts that the price differentials themselves are insignificant and could have little effect on competition.

In construing the stipulation, we note that it avoided the necessity of calling an endless succession of witnesses to establish uncontested but pertinent facts, and immeasurably shortened the time spent in hearings. The stipulation was beneficial to all parties concerned and must be interpreted with this factor in mind. We further note that, as a general proposition, stipulations are favored in law. They may be construed liberally and should be interpreted in conjunction with the entire record and the surrounding circumstances. (*National Labor Relations Board v. J. L. Hudson Co.*, 135 F. 2d 380 6th Cir. 1943), *cert. denied*, 320 U.S. 740 (1943); *Hodgson Oil Refining Co. v. United States*, 74 Ct. Claims 303. Any interpretation should if possible, give effect to the intent of the parties. *Cf. United States ex rel. Hoehn v. Shaughnessy*, 175 F. 2d 116 (2d Cir. 1949), *cert. denied*, 338 U.S. 872 (1949).

After considering the instant stipulation in conjunction with the issues in the case, and all surrounding circumstance, we conclude that the phrases attacked by respondent are, in the absence of countervailing evidence, sufficiently clear. Specifically, we conclude that the questioned paragraph of the stipulation does not create an untrue picture by its use of the phrase "automotive parts" rather than "filters." The phrase "automotive parts" when considered in the context of this proceeding must be interpreted to include automotive filters. If the profit on automotive filters is substantially greater than the average profit on all automotive parts, respondent had the opportunity to produce evidence demonstrating such fact. If the statement that the net profit margins ranged between 3% and 4% after taxes was misleading and may not be accorded its generally accepted meaning, or if that margin was not typical of respondent's customers, respondent was accorded ample opportunity to so show. In the absence of any evidence indicating that the questioned paragraph of the stipulation was basically incorrect or created an untrue picture, we are not constrained to strictly interpret it or to endow it with a construction which would rob it of its intended significance. We further note that the phrases under attack are similar or identical to phrases used by this Commission

