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

LA SALLE EXTENSION UNIVERSITY

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

Docket 5907. Complaint, July 18, 1951—Decision, June 24, 1971

Order modifying an earlier order dated June 29, 1954, 50 F.T.C. 1083, which prohibited a correspondence school offering law courses from misrepresenting that students would be admitted to take bar examinations, by requiring the respondent to disclose in its advertising that its courses alone will not qualify a student for a bar examination.

Mr. Quentin P. McColgin and *Mr. William P. Bergsten* supporting the complaint.

Dow, Lohnes and Albertson, Wash., D.C., by *Mr. Thomas S. Markey*, *Mr. James A. Treanor, III*, and *Mr. James D. Monahan* for respondent.

CERTIFICATION OF RECORD OF THE COMMISSION WITH RECOMMENDATIONS FOR FINAL DISPOSITION

OCTOBER 19, 1970

PRELIMINARY STATEMENT

On July 18, 1951, the Commission issued a complaint *In the Matter of La Salle Extension University*, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act. After hearings, the Commission on June 29, 1954 [50 F.T.C. 1083], issued its findings, conclusions and order.

The Commission in issuing its order found that through the use of various statements and representations the respondent represented that students completing its courses of study and qualifying for its degree of Bachelor of Laws were eligible from the standpoint of education and legal training to be admitted to the bar examinations of the respective States.

The Commission found respondent's representations that such students were thereby eligible or enabled to participate in the bar examinations of the respective states were false, misleading and deceptive. Further, the Commission found that students whose education and legal training were limited solely to respondent's home study courses would not be permitted to participate in the bar examination of 44 States (at the time of the decision there were only 48 States admitted to the Union). The Commission found that as of 1950 Montana, Mississippi, Georgia and California were the only States which did not require that bar candidates' studies be pursued in a resident [1] law school or law office.

The Commission, therefore, issued the following order against the respondent:

ORDER

It is ordered, That respondent, LaSalle Extension University, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of study and instruction, do forthwith cease and desist from representing, directly or by implication, that recipients of respondent's purported academic degrees in law or others satisfactorily completing respondent's course of study through correspondence will be admitted to or are otherwise eligible to participate in bar examinations, unless such representations are expressly limited to those states (specifically named) wherein the requirements for education and legal training requisite to participating in such examinations are fulfilled solely by completion of a course of legal study through correspondence.

On January 19, 1970, the Commission issued an Order to Show Cause against the respondent why the June 29, 1954, order issued by the Commission should not be amended as a result of substantial changes of conditions of fact and law and that the following order be substituted in lieu of the original June 29, 1954 order:

It is ordered, That respondent, LaSalle Extension University, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of study and instruction, do forthwith cease and desist from:

1. Failing, in connection with respondent's courses of study in law, clearly and conspicuously to disclose; (a) in any advertisement or offer to sell; (b) on each page of any promotional material or descriptive brochure; (c) in each enrollment form, application form, sales contract or similar document, in type

[1] As used herein "resident" means that a law student actually attends lecture type classes on the various legal subjects taught on a regular basis, including night classes.

as large as the largest type appearing thereon; that said courses are not recognized or accepted as sufficient education or legal training to qualify the student to become a candidate for admission to the profession of law in any of the States in the United States or the District of Columbia: *Provided,* That, respondent may qualify such disclosure by listing those States which will accept said courses if additional education and legal training requirements are met: *And provided further,* That respondent clearly and conspicuously and in immediate conjunction thereto disclose all such additional requirements.

2. Conferring or offering to confer an LL.B, LL.M, J.D., S.J.D. or any other law degree upon purchasers of respondent's courses of study and instruction in law.

On February 19, 1970, respondent filed its answer to the Order to Show Cause opposing the proposed order and requested that a hearing examiner be appointed to conduct hearings for the receipt of evidence. Thereafter the Commission issued an order reopening the proceeding and directing hearings for the receipt of evidence pursuant to Section 3.72(b)(3) of the Commission's Rules. The matter was subsequently assigned to the hearing examiner to conduct hearings and directing that upon completion of the hearings he certify the record, together with his recommendation for final disposition of this matter to the Commission. Thereafter, hearings were held and proposed findings and briefs filed with the examiner.

This matter is before the hearing examiner for certification to the Commission with his recommendations for final disposition. Consideration has been given to all of the evidence and the proposed findings and conclusions and brief filed by counsel for the respondent and counsel supporting the complaint, and all such proposed findings of fact and conclusions not hereinafter found or concluded are rejected; and the hearing examiner, having considered the entire record herein, makes the following recommended findings of fact, conclusions drawn therefrom and recommends the following order:

RECOMMENDED FINDINGS OF FACT

1. As previously found in the Commission's June 29, 1954, decision, the respondent is an Illinois corporation with its office and principal place of business at 417 South Dearborn Street, Chicago, Illinois. The respondent is engaged in the same type of business as originally found; namely, operation of a correspondence school selling courses of study and instruction in law and other subjects which are pursued by correspondence through the United States mails. During all periods of time the respondent has been engaged in a substantial course of trade in its courses of instruction in commerce between the various States of the United States and in the District of Columbia.

2. In the course and conduct of its business and subsequent to the issuance of the order in this matter on June 29, 1954, respondent has continued to make and does now make representations in newspaper, matchbook and magazine advertisements regarding its correspondence law course in which it advertises that it offers "LAW TRAINING" and the "LL.B. DEGREE." In most instances, such advertisements invite the public to send for additional information.

Typical of representations made by respondent in such newspaper, matchbook and magazine advertisements are the following:

Enjoy the rewards offered law-trained men in business (CX 87).
STUDY LAW at home (CX 26).
LAW TRAINING FOR LEADERSHIP (CX 81).
La Salle law training.
EARN AN LL.B. DEGREE FROM LA SALLE (CX 87).
Upon completion of your training you are awarded a Bachelor of Laws degree, if qualified (CX 81).
Home Study Law Course (CX 86 A).
Earn a Law Diploma for Business Leadership (CX 86 A).
Law Degree (CX 77 B).
LAW COURSES
☐ Bachelor of Law Degree
☐ Business Law
☐ Insurance Law
☐ Claim Adjusting Law
☐ Law for Police Officers
☐ Law for Trust Officers (CX 40, 78).

3. Respondent sends additional promotional materials to members of the public who respond to the newspaper, matchbook and magazine advertisements set forth above. Such promotional materials make certain representations and explain the advantages of legal training and outline the course of study. In addition, respondent has sales personnel who call upon prospective students who have responded to respondent's matchbook, newspaper and magazine advertisements by requesting further information on respondent's courses of study.

Typical and illustrative, but not all inclusive, of representations made by respondent within such promotional materials are the following:

A background in Law, particularly as evidenced by an LL.B. degree, is also recognized as the one cultural asset above all others that increases personal prestige and influence in every area of living. (CX 80.)

Home study is an accepted American method of Law education. (CX 50 C.)

Home study is a popular, convenient, and professional way of acquiring a Law education. (CX 50 C.)

The faculty of the La Salle Law School is composed of people of high per-

sonal and professional standing, experienced both in the practice and teaching of law. (CX 36, 50 C.)

After you have completed your training and complied with all the requirements of the La Salle Law School, you are awarded a diploma of graduation and given the degree of Bachelor of Laws. (CX 36, 50 C.)

The subjects treated in the La Salle Law course are approximately the same as those included in the courses offered by the leading law schools of America. (CX 36, 50 C.)

La Salle is certified as an approved educational institution. (CX 36, 50 C.)

4. Respondent advertises and sells two major correspondence courses of study in law which, when successfully completed, result in the student obtaining a Bachelor of Laws (LL.B.) from respondent. The first of these courses, No. 300, is referred to by respondent as "Complete Law Training" (CX 31; RX 83) and "American Law and Procedure" (CX 16, 19; Tr. 182, 219). This course (hereinafter called Complete Law Training course) consists of 89 lessons at a cost of $550 (Tr. 142). Respondent's courses Nos. 350 and 354, called respondent's "California Law Courses" are basically the same and are designed for students who wish to take the California bar examination. The course No. 354 is the same as respondent's course No. 350 with an additional year devoted to preparation for taking the California bar. There are 99 lessons in the California 3-year law course and the cost of $695 (Tr. 142, 144). The 4-year course consists of 109 lessons and costs $695 (CX 47 B), plus an additional charge for the fourth year.

5. Successful completion of respondent's Complete Law Training course No. 300 or its 3-year California Law Course will not meet the education and legal training requirements necessary for becoming a candidate for admission to the bar in any State of the United States or the District of Columbia (CX 38, 92; Tr. 164). In California a student is required to study law for 4 years by correspondence (CX 35, 92). Consequently, respondent's Complete Law Training course No. 300 or its 3-year California Law Course are not acceptable in any State. No State in the United States or the District of Columbia, with the exception of California, will permit a person to take that State's bar examination as the result of correspondence or extension study of law. While the States vary, the majority require successful completion of resident study at an American Bar Association approved or accredited law school. Some States still allow apprenticeship, study partly in school and in a law office over an extended period, after approval of the apprenticeship is received from the State (CX 38, 92).

6. Respondent's advertisements fail to set forth fully and conspic-

uously that successful completion of its Complete Law Training course No. 300 or its 3-year California Law Course does not qualify anyone to take a bar examination or practice law in any of the 50 States of the United States or the District of Columbia. The advertisements, in the form of matchbook, newspaper or magazine ads, usually only advertise law training or the fact that respondent grants on LL.B. degree and fail to set forth the fact that respondent's courses are of no value for anyone who wishes to practice law. (See Recommended Finding No. 2.) Numerous witnesses testified that it was their impression on reading respondent's ads that they would be able to take the bar examination or practice law in their respective States upon completing respondent's law course. (Tr. 86, 118, 129, 469–470, 475, 491, 523–525, 547, 558, 578–580, 592, 608, 624, 661–662, 667) Respondent's advertisements are usually accompanied by a blank form with which to request further information regarding respondent's courses. Respondent mails pursuant to such requests brochures (CX 36, 50 C, 80, 98) that contain some references to the limitations of respondent's courses and the value of its LL.B. degree. However, these brief explanations, usually in small print, are at least confusing, particularly when read in conjunction with the advertising claims.

7. Only in the State of California is it possible for one to take the bar examination and be admitted after successfully completing respondent's 4-year California Law Course. In addition, in California the rules regulating the admission to the practice of law provide "Before beginning the study of law, every general applicant shall have either: (1) completed at least two years of college work . . . or: (2) reached the age of 23 years and have obtained in apparent intellectual ability the equivalent of at least two years of the college work hereinabove defined." (CX 35, p. 10.) In its advertising respondent has failed to set forth fully and clearly the above requirements for becoming a candidate for admission in the State of California and in fact accepts students in the California Law Course who do not have the requisite 2 years or its equivalent of college work. Consequently, while completion of respondent's 4-year California Law Course meets the legal training requirements for the State of California, additional education or age requirements and tests must be met to qualify a candidate for the bar in the State of California and completion of respondent's 4-year California Law Course does not necessarily mean that such requirements have been or will be met (Tr. 118–121).

8. It is found, therefore, that respondent has failed in its advertis-

ing to point out fully and conspicuously that successful completion of either its Complete Law Training course No. 300 or its 3-year California Law Course does not qualify a person to become a candidate for the bar in any State of the United States or in the District of Columbia, including California. It is further found that respondent has failed to set forth fully and conspicuously that successful completion of either its 3- or 4-year California Law Course will not qualify one to take the California bar without meeting further age and educational requirements and successfully passing certain preliminary tests required by the State of California.

9. The Commission in its Order to Show Cause included a provision in its proposed order to the effect that respondent should be prohibited from conferring or offering to confer an LL.B., LL.M., J.D., S.J.D.[2] or any other law degree upon purchasers of its courses of study in law. Counsel in support of the complaint urge that such a provision is essential because the mere conferring of such degrees are inherently deceptive, since at least some of the persons who received such a degree are misled into believing that such degrees automatically qualifies them to take the bar examinations in the various States of the United States and to practice law in their respective States. Counsel in support of the complaint also contend that the respondent does not have the authority to issue such degrees from its state of incorporation, Illinois. Consequently, the deceptive nature of respondent's conferring of such degrees is somehow enhanced. (CSC's Sixth and Seventh Prop. Findings; see also CSC's Thirteenth, Fourteenth and Fifteenth Prop. Findings.)

10. Respondent is a business corporation organized in 1908 and has been awarding the LL.B. degree since 1915. Its curriculum has been approved by the State of Illinois as recently as January 1, 1970. While its corporate character contains no provision for the issuing of any degree (such a provision, in fact, was stricken from its original corporate charter), respondent, as a university, has assumed the implied corporate power to issue such degrees without challenge until the present proceeding. (RX 13, 19; Tr. 211, 214, 261–265, 269–270, 273–276, 280.)

11. In the examiner's opinion that question of what degrees, if any, can be offered or conferred by respondent is a matter of Illinois law and a function of the Illinois Superintendent of Public Instruction. The Illinois statute is specific and clear with regard to the

[2] The record shows that the only law degree ever advertised or conferred by respondent is the LL.B. degree.

awarding of degrees. (See CSC Sixth Prop. Finding.) The examiner is aware of no authority which would permit the Commission to enter into this field which is specifically regulated by State law. The cases cited by counsel in support of the complaint are not in point. The issue here involved is not whether State law interferes with the Commission's function in regard to deceptive advertising, but whether the Commission should enter into another completely unrelated field; namely, the granting of degrees. For the Commission to prohibit respondent from granting degrees, in effect pre-empting the State from enforcing its own laws in its own fashion, is not essential to the Commission's carrying out its function of prohibiting misleading advertising.

12. In this instance it appears to the examiner that the evil at which the original complaint and the present proceeding is directed is to prohibit the respondent from engaging in false and misleading advertising. The fact that respondent may not have authority from the State to issue law degrees may well be relevant to the question of whether its advertising is deceptive. However, the issue still revolves around respondent's advertising and not the fact that it may be issuing degrees without proper authority from the State of Illinois. There is nothing in the pertinent Illinois statutes which interferes with the Commission's carrying out its function of prohibiting deceptive advertising. The Commission if it so desired in a proper proceeding may well conclude that the respondent should be prohibited from advertising in any way the fact that it issues or confers law degrees.

13. In addition, virtually every witness who had responded to respondent's advertisements conceded that, if a clear explanation or disclaimer accompanied respondent's advertisements pertaining to law degrees, no deception in their regard would be possible (Tr. 103, 130–131, 243, 315, 507–509, 581, 600, 622, 692). As found above the present advertisements of respondent's LL.B. degree are misleading, and it appears to the examiner that an appropriate disclaimer or explanation should appear in immediate conjunction with all advertisements of respondent's law degrees. This will effectively eliminate the evil at which this proceeding is directed without the more drastic and unnecessary remedy of completely prohibiting the issuing of law degrees.

RECOMMENDED CONCLUSION

1. By the use of the statements and representations included in respondent's advertising and promotional materials, respondent has

falsely represented that students who complete its course of study in law and who receive its law degree (LL.B.) are thereby eligible to participate in bar examinations or to become practicing lawyers in their respective States. Such misrepresentations have the tendency and capacity to deceive members of the purchasing public and to induce the purchase of a substantial number of respondent's courses of instruction in commerce.

2. The rules and laws of the States that previously recognized respondent's courses of study in law have been changed so that now no State, except California under certain circumstances found above, recognizes respondent's courses of study in law or its academic degree of Bachelor of Laws (LL.B.) conferred on students completing its courses as meeting the minimum education and legal training requirements requisite to participating in the bar examinations of the respective States and to becoming practicing lawyers in such States.

3. In view of the false representations concerning the law courses and law degrees offered by respondent as well as the changed conditions of fact and law, the public interest requires the Commission to reopen, alter and modify its Cease and Desist Order issued in this proceeding on June 29, 1954, so as to inhibit such false representations.

4. The second paragraph of the proposed order contained in the Commissions Order to Show Cause is omitted as not appropriate or necessary to eliminate the deceptive nature of respondent's advertising of its law degrees.

RECOMMENDED ORDER

As pointed out above, the examiner does not recommend the inclusion of the second paragraph of the order contained in the Commission's Order to Show Cause. In addition, minor changes from the original paragraph 1 of the Commission's order have been made in order to make the order more specific. The following order to cease and desist is recommended.

It is ordered, That respondent, La Salle Extension University, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of study and instruction, do forthwith cease and desist from failing, in connection with advertisements or promotion of respondent's courses of study in law, clearly and conspicuously to disclose (a) in any advertisement or offer to sell in type the same size and appear-

ance as the advertising claims appearing thereon; (b) on the front page or cover and on each page of any promotional material or descriptive brochure wherein respondent's law courses or law degrees are mentioned in type the same size and appearance as the advertising claims appearing thereon; (c) in each enrollment form, application form, sales contract or similar document, in type the same size and appearance as the advertising claims appearing thereon; that said courses are not recognized or accepted as sufficient education or legal training to qualify the student to become a candidate for admission to the profession of law in any of the States in the United States or the District of Columbia: *Provided*, That respondent may qualify such disclosure by listing the State or States which will accept said courses: *And provided further*, That if the State or States listed have any additional age, education, preliminary testing, or other legal training requirements that respondent clearly and conspicuously and in immediate conjunction with such list disclose, in type the same size and appearance as the advertising claims appearing thereon, all such additional requirements.

Opinion of the Commission

JUNE 24, 1971

By Dixon, *Commissioner:*

This matter is before the Commission on exceptions filed by counsel supporting the complaint and respondent from the hearing examiner's recommended findings, conclusions and order, filed October 19, 1970. A Commission order, issued June 29, 1954 [50 F.T.C. 1083], prohibits respondent from representing that receipients of its "purported academic degrees in law or others satisfactorily completing respondent's course of study through correspondence will be admitted to or otherwise eligible to participate in bar examinations unless such representations are expressly limited to those states . . . wherein the requirements for education and legal training requisite to participation in such examinations are fulfilled solely by completion of a course of legal study through correspondence."

The Commission, citing its understanding that respondent continues to offer for sale a correspondence course of study in law and continues to confer a purported academic degree of bachelor of law (LL.B.), and its further understanding that no state recognizes respondent's source of study or degree as meeting the minimum education and legal training requisite to becoming a candidate for admis-

sion to the profession of law, issued, on January 19, 1970, an order to show cause why the 1954 order should not be modified. The proposed order would have respondent affirmatively disclose that its courses of study are "not recognized or accepted as sufficient education or legal training to qualify the student to become a candidate for admission to the profession of law in any of the States in the United States or the District of Columbia; provided that, respondent may qualify such disclosure by listing those states which will accept said courses if additional education and legal training requirements are met; and provided further, that respondent clearly and conspicuously and in immediate conjunction thereto disclose all such additional requirements." The proposed order also would proscribe the conferring of or offering to confer an LL.B. or any other law degree by respondent.

Respondent filed an answer to the order to show cause, and, as the answer raised substantial factual issues, the Commission issued a further order, on February 27, 1970, reopening the proceeding and directing hearings for the receipt of evidence pursuant to Section 3.72(b)(3) of the Commission's Rules. After hearings and the filing of proposed findings and briefs by the parties, the examiner filed his recommendations.

No findings were recommended by the examiner, nor where they proposed by the parties, as to the general background of respondent's business. However, the record is clear in this regard.

Respondent, an Illinois corporation, is a proprietary institution, providing instruction by correspondence in numerous courses of study. In 1969, its overall enrollment exceeded 100,000 students, 10,088 of whom were taking courses purportedly relating to the study of law. In descending order of the number of students enrolled, respondent's leading courses are accounting, high school computer planning, interior decorating, law, business management, and hotel/motel management. La Salle's total revenue from the sale of all its courses, in 1969, was approximately $50,000,000; its gross receipts from the sale of its "complete law courses" were $3,332,750. The "complete law courses" are a three-year course, which cost $550 and consists of 89 lessons, and a four-year course, costing $695 and consisting of 109 lessons. Upon the completion of either of these two courses, respondent confers a bachelor of law degree (LL.B.). No state recognizes the degree as qualifying its recipients as candidates for admission to its bar. California accepts four-year correspondence courses, including respondent's, if the recipient meets several other qualifications.

The examiner found that respondent, in its advertisements, "failed to set forth fully and conspicuously that completion of its three-year [course] does not qualify anyone to take a bar examination or practice law in any of the 50 States of the United States or the District of Columbia," and that in its advertisements respondent usually advertised that its courses of study provided a legal education and could lead to a law degree, but failed to disclose the limited utility of the degree and course of study.

With these findings as a basis of support, the examiner recommended the conclusion that respondent's advertisements and promotional material are deceptive as they represent falsely that "students who complete its course of study in law and receive its law degree (LL.B.) are thereby eligible to participate in bar examinations or to become practicing lawyers in their respective states." The examiner's recommended order would require respondent to make an affirmative disclosure with the same wording proposed in the order to show cause.

Respondent does not take exception to the examiner's recommendation that the order require that disclosure be made, nor does it take exception to the wording of the disclosure. It objects strenuously, however, to the provisions requiring that disclosure be made "in type the same size and appearance as the advertising claims appearing thereon," and that the disclosure appear "on the front page or cover and on each page of any promotional material or descriptive brochure wherein respondent's law courses or degrees are mentioned."

The Type-Size Provision: Respondent questions whether it is necessary in the order to be more precise than to require that the disclosure be clear and conspicuous. But even if a specific provision is to be included, respondent argues, further, that requiring the disclosure to be the same size as the largest advertising claim is unreasonable.

Generally, to lessen the opportunity for misconstruction and misinterpretation of orders, the Commission strives to describe, with as much precision as is feasible, what will constitute compliance. This is clearly of the utmost importance when misconstruction can lead to a violation of the order and penalty proceedings. Imprecision, for that matter, can be fatal to the validity of an order. In *Federal Trade Commission* v. *Henry Broch & Co.*, 368 U.S. 360, 367–368 (1965), the Court said that "the severity of possible penalties prescribed . . . for violations of orders which shall have become final underlines the necessity for fashioning orders which are, at the out-

set, sufficiently clear and precise to avoid raising serious questions as to their meaning and application."

With this in mind, we turn to the question of the reasonableness of the type-size provision. To reiterate, respondent does not dispute the examiner's finding that its representation that it was offering a course in the study of law led purchasers to believe that they could qualify for admission to the bar. This was deceptive, as no state except California recognizes correspondence courses for this purpose. Where, as here, the mere offering of the product or service leads to deception (without further affirmative claims), we believe that it is reasonable and necessary to demand that a disclosure required to dispel the deception be given equal prominence with the offer. We note that in certain promotional material, respondent's practice is to use the word "LAW" in large letters with the text of the ad in much smaller letters. Surely a prospective purchaser is entitled to be informed that the course will not qualify him to take the bar examination in letters equally as large as the letters which we find, on the basis of the record, convey this meaning.[1]

Further specific arguments as to the unreasonableness of the type-size provision were advanced by respondent. Respondent argues that the type-size provision presents problems of indefiniteness and, also, that "in most cases it will be physically impossible with the existing layout designs to fix, in largest matching print, the rather lengthy disclosure required by the recommended order." Respondent also contends that the type-size provision will not assure the visability of the disclosure. To support this argument, respondent imagines an advertisement in which all print is uniformly small so that the matching disclosure would "get lost in the crowd."

We agree with complaint counsel that the type-size provision cannot be considered unreasonable for the reason that it may require respondent to alter the layout of its advertisements. Unlike trademarks or trade names, advertising layouts are generally of transitory value; they rarely, if ever, can be said to constitute a valuable business asset which the Commission would endeavor to preserve if feasible. Moreover, it is well settled that if there is no way to present the claim in a particular medium without making a false representation, the seller must abandon the use of that medium. *Fed-*

[1] The proposed order in the order to show cause provided that the disclosure be made in "type as large as the largest type appearing thereon." As the words in the promotion set in the largest type may not be advertising claims (*e.g.*, in CX 77, "La Salle Extension University" is in the largest type), the examiner's recommended order in this respect is less demanding.

eral Trade Commission v. *Colgate-Palmolive Co., et al.*, 380 U.S. 374 (1965).

Similarly, we reject respondent's contention that the type-size provision is unreasonable because it is indefinite. Although its argument is not entirely clear, respondent seems to base this assertion on the fact that the disclosure will vary among advertisements to the extent that the size of advertising claims vary from one advertisement to another. Whatever the basis for respondent's position, its argument is wholly without merit. Quite clearly, the type-size provision makes the order more definitive, while giving respondent some flexibility in composing its advertisements.

As to the contention that respondent could devise an advertisement with uniform and small-size print so that the disclosure would get "lost in the crowd," it is unlikely that respondent would find that it was to its advantage to compose such an ad, for the promotional claims would also be lost. Irrespective of this, the order, by including this specific provision, does not excuse respondent from complying with the broader "clear and conspicuous" requirement. Respondent's advertisements must, in short, be both of the type-size designated and also clear and conspicuous.

In summary, neither respondent's arguments nor our examination of the record shows that the type-size provision is unreasonable or not feasible. We therefore sustain the examiner's recommended order as to the type-size provision.

The "On Each Page" Provision: In support of its principal contention that the "on each page" provision is "unnecessarily onerous," respondent points out that its promotional material includes multi-page pamphlets relating to courses other than law. Respondent believes that under the wording of the order, it would be required to make the disclosure in such a pamphlet on each page, even though the page made no reference to law degrees or law courses. And even as to those materials devoted exclusively to its purported "courses of law," respondent contends that the number of pages are so numerous and hence the number of disclosures would be so great, that it would be unnecessarily redundant and degrading, and that the impact would be dulled, if it were required to make the disclosure on each page. Specifically, respondent recommends a provision that would require that the disclosure appear "clearly and conspicuously . . . , with such clarity as is likely to be observed and read, . . . in connection with the mention of respondent's law courses or law degrees in any promotional material or descriptive brochure."

To respondent's argument that the examiner's recommended order

would require disclosure on pages not referring to its law degrees or courses of law, complaint counsel contend that respondent has misinterpreted the order, that it is clear that the disclosure need be made only on pages "wherein law courses or law degrees are mentioned." As this conflict between complaint counsel and respondent indicates, the order is somewhat equivocal, and requires clarification. In any event, this conflict of interpretation does not bear upon the essential question, whether this provision should, stripped of any ambiguity, be included in the order.

Respondent's argument that a disclosure on each page will be redundant and degrading might be persuasive if we had reason to believe that prospective purchasers generally read each page of respondent's promotional literature before purchasing.[2] That some purchasers may do so is not controlling. It is more important that others may not, since the Commission's efforts are directed at protecting not only the most careful and intelligent buyers, but also the "ignorant, the unthinking and the credulous," who may base their decision to purchase on a cursory perusal of the literature at hand. *Charles of the Ritz Dist. Corp.* v. *Federal Trade Commission*, 143 F. 2d 676, 679 (2nd Cir. 1944). From our examination of respondent's promotional brochures, any page of which may induce purchase of respondent's course, we find that its argument in this regard is without merit.

* * * * * * *

We consider next complaint counsel's contention that the examiner erred in failing to include in the recommended order a provision preventing respondent from conferring or offering to confer an LL.B. or other law degrees. The examiner based this exclusion on his conclusions that the question of what degrees, if any, can be offered or conferred by respondent is a matter of Illinois law, and that if a clear explanation or disclaimer accompanied respondent's advertisements pertaining to law degrees, no deception in their regard would be possible.

We do not concur in that part of the examiner's holding which suggests that the Commission is powerless to prevent deception if the source of the deception has been approved by state law. To the contrary, we believe that our authority to prevent a deceptive trade

---

[2] *Cf. Bantam Books, Inc.* v. *Federal Trade Commission*, 275 F. 2d 680 (2nd Cir. 1960), where the court upheld a Commission order requiring a disclosure that respondents' books were abridged appear on the front cover and upon the title page of its books. In that matter, there was evidence that buyers of books almost invariably looked at either of these two places before purchasing.

practice in commerce would transcend a state law which may appear to sanction that practice.

However, since there is nothing in the record or in complaint counsel's brief to indicate that the conferring of an LL.B. degree would have the capacity or tendency to deceive the prospective student in any manner other than by conveying the false impression that the recipient of the degree would be qualified to become a candidate for admission to the profession of law and since the disclosure required by our order would dispel this deception, we agree with the examiner that a separate provision in the order prohibiting the conferring of the degree is not warranted on the basis of this record.

The offering of an LL.B. degree may, of course, lead the prospective student to believe that upon receipt of such degree he would be qualified to take a state bar examination. We note, in this connection, that in its initial contact promotions respondent uses small ads, *e.g.*, matchbooks. Since it is possible that respondent may represent in such ads that it offers an LL.B. degree, without specific reference to its courses, we will amend the examiner's order to require that the disclosure be made both as to the courses and to the LL.B.

The remaining exceptions can be quickly disposed of. Complaint counsel argue that the Commission order should require that respondent make the affirmative disclosure in oral offers to sell, as well as written offers, so solicitations by respondent's salesmen would be covered by the order. Since, by our order, the disclaimer will appear on each page of respondent's promotional material, and in prominent size, it appears that interested consumers will be exposed to the disclaimer. Therefore, no further requirement as to the disclosure is necessary and we reject complaint counsel's exception in this regard. The order, however, will be changed to clarify any ambiguity as to this provision.

Respondent takes exception to the examiner's recommended Finding 6, which reads:

> The advertisements, in the form of matchbook, newspaper or magazine ads, usually only advertise law training or the fact that respondent grants an LL.B. degree and fail to set forth the fact that respondent's courses are of *no value* for anyone who wishes to practice law. (Emphasis added.)

The record in the instant matter relates to the question whether respondent's courses of study qualified its recipients for the bar examination, and does not deal with the question of the courses' value to those individuals who wish to practice law. Hence, Finding 6 will be changed, as suggested by respondent, to read:

The advertisements, in the form of matchbook, newspaper or magazine ads, usually only advertise law training or the fact that respondent grants an LL.B. degree and fail to set forth the fact that completion of these courses does not qualify anyone to take the bar examination or practice law in any of the 50 states of the United States or the District of Columbia.

As modified herein, the findings recommended by the hearing examiner are adopted as the findings of the Commission. An appropriate order will be entered.

Chairman Kirkpatrick and Commissioner Jones filed separate opinions.

SEPARATE OPINION

JUNE 24, 1971

BY KIRKPATRICK, *Chairman:*

I am in complete agreement with the majority with respect to the necessity and propriety of modifying the order in this case so as to require a clear and conspicuous disclosure, in all written promotional material, of the limited utility of respondent's course of instruction, in terms of qualification for admission to the profession of law. However, I am unable to agree with the conclusion that this disclosure requirement will be sufficient to fully protect consumers from misleading impressions concerning respondent's course of instruction. I believe that a prohibition on conferring or offering to confer law degrees is an essential supplement to the disclosure requirement.

Assuming that the required disclosure would be fully adequate in the absence of any *oral* promotional efforts, it seems to me that any corrective function served by a written disclosure in this case is susceptible to substantial dilution, if not complete obliteration, by means of representations made by respondent's salesmen, who make personal visits to the homes of consumers responding to advertisements. The majority has modified the examiner's order so as to make clear that the required disclosure provision is not applicable to *oral* offers to sell. I am not disturbed by this change, because required disclosures in oral presentations are largely unenforceable in any practical sense. But that is no reason to abandon any effort to deal with deception in oral presentations. La Salle's continued ability to offer and confer law degrees would be an effective "selling point" in oral presentations, and thus would continue to be a potentially powerful instrument of deception on the part of respondent's salesmen. I think the Commission can and should deal with this problem by prohibiting La Salle from granting or conferring any law degree.

The record is replete with evidence of misleading impressions created by sales representatives in the course of their presentations and

in answers to questions posed by consumers. Several witnesses testified as to their interest in becoming lawyers, and as to their belief—fostered by the oral representations of La Salle's representatives—that the La Salle course would enable them to achieve this goal by receiving a law degree at the end of respondent's course. *See*, *e.g.*, the testimony of Messrs. Mitchell (Tr. 71), [1] Zersen (Tr. 89–90, 93–94),[2] Allen (Tr. 470, 475, 478),[3] Coppolino (Tr. 493–497),[4] Bailey

[1] *Question:* Do you recall anything more specific that she [the Sales Representative] told you about that course at that time?

Witness: Yes, she said I would obtain a LLB degree and that I would be eligible for the bar exam, and all I had to do was have the ambition to take the bar exam and the money to open an office afterwards.

Question: Did you get an impression of what the law degree was at the time she described it to you?

Witness: The way it was described to me, I believe it was a regular lawyer's degree that I would be able to take the bar exam and become a lawyer.

[2] *Question:* Mr. Zersen, after your visit with the salesman, what was your impression with respect to the law degree offered by LaSalle?

Witness: That I still could become a lawyer in the State of Nebraska.

Question: Did you then enroll?

Witness: Yes, I did.

Question: And for what purpose did you enroll in the course?

Witness: So that I could become a lawyer.

[3] *Witness:* Then I asked him [the LaSalle Salesman] could I actually practice law in the State of New Jersey, and he said yes. Thereupon, he stated that if I decided to move, all it would require is sitting for the bar in that particular state and I would be able to practice law there, too.

* * * * * * *

Question: For what reason did you threaten to file a suit against LaSalle?

Witness: I felt that they had misrepresented, that the salesman had misinformed me with regard to obtaining a legal education to practice law . . .

* * * * * * *

Question: At any time, did you consider leaving your State, the State of New Jersey, to practice law in any other State?

Witness: No. I was told that through the means of connection, I could obtain an LLB degree and practice in the State of New Jersey, and if I decided to move, I could just sit for the bar and take the necessary steps and I could practice in any other State.

Question: And who told you this?

Witness: The salesman.

[4] *Question:* And what did you discuss with the salesman when he visited you?

Witness: I asked about the school; if I were successful in receiving an LLB degree, could I sit in the State of Rhode Island bar examination. It was at this time he told me that he didn't know about the basic requirements for the State of Rhode Island. All states had different requirements. But because I did hold a bachelor of science degree, coupled with a legally trained mind this course would give me, perhaps I could sit for the bar.

Question: After this discussion that you had with the salesman, what was your impression with respect to whether or not the LLB degree from LaSalle Extension University would satisfy the prerequisite legal educational requirements?

Witness: I felt that the educational requirements would be fulfilled, but that there might be some other requirements I might have to fulfill with the State of Rhode Island.

Question: What was your impression with respect to these other requirements?

Witness: Well, soundness of mind, moral character, residency in the State, the oath

* * * * * * *

Question: And what was your impression with respect to whether or not the LLB degree from LaSalle Extension University would satisfy the prerequisite legal requirements for sitting for the bar?

Witness: I felt that this education was sufficient to sit for the bar. Other requirements, other than educational requirements, might be pending.

(tr. 571–573),[5] and Cooper (Tr. 611–612).[6]

* * * * * * *

The Commission has recognized, in analogous situations, the ineffectiveness of affirmative disclosure relief or other traditional remedies where oral presentations are a major source of the deceptive practice sought to be cured. *See, e.g., In the Matter of Arthur Murray Studio of Washington, D.C., Inc., et al.*, Docket No. 8776 [p. 401 herein], where the Commission prohibited respondent dance instructors from entering into contracts for dance instruction for an amount in excess of $1,500. The Commission in that case agreed with the hearing examiner that an order without a $1,500 contractual limitation would not "eradicate the root of the evil," and that such a provision "is a necessary and reasonable safeguard to forestall and stop in their incipiency the respondents' unfair and deceptive acts and practices before their purposes become fulfilled." Furthermore, it was determined that without such a provision, the order would not "effectively deter respondents" from engaging in deception. The Commission was clearly concerned with the enforceability of an order that did not contain the contractual limitation:

Since the selling practices involved here almost invariably take the form of oral representations made privately to a student, violations of an order

---

[5] *Question:* Did you tell the salesman you were interested in pursuing a career in law?

Witness: Yes, I told him my purpose in taking the correspondence course would be solely so that I could eventually be admitted to the bar association for the purposes of practicing law.

Question: Which state did you contemplate applying for membership in the bar if you took this course and obtained the degree?

Witness: I felt this had to be the state I would attempt to do this in, New Hampshire.

Question: Did you inquire about whether or not it would qualify you to practice law in those two states?

Witness: You mean of the salesman?

Question: Yes.

Witness: I asked him this question. He said that in Massachusetts it was not possible to qualify, to sit for the bar examinations in Massachusetts through correspondence training. However, he felt it was still possible to do so in New Hampshire, but that in a couple of years it might not be possible any longer. The standards might become more strict.

* * * * * * *

Question: Looking back on that incident now, do you have an opinion as to why he made this statement?

Witness: Yes. I feel he was emphasizing an element of urgency to me, indicating that I should enroll then in order to be permitted to sit for the bar examinations in New Hampshire. If I were to wait, it might possibly be too late.

[6] *Witness:* He [the Salesman] led me, or told me—we talked about sitting for the bar examination in North Carolina, that I could, upon getting a Bachelor of Law Degree, sit for the North Carolina Bar examination.

Question: Your testimony was that the salesman told you if you got a law degree you could sit for the bar. Was that a LaSalle Degree?

Witness: LaSalle Law Degree.

Question: And then you enrolled in this course?

Witness: I enrolled.

addressed to such practices would be extremely difficult to discover and prove. In view of respondents' demonstrated proclivity to utilize such sales methods, we have no doubt that they would continue to use them if they believed they could do so without detection. They would, however, have considerably more difficulty circumventing an order which would prohibit them from entering into contracts in excess of $1500.

The instant case is like *Arthur Murray* in the sense that some prohibition on otherwise lawful conduct is a "necessary and reasonable safeguard" against continued deception, since the offer and conferral of degrees may be the principal prop or initial basis for the conveyance of misleading impressions by respondent's salesmen.

In favoring a ban on the offer or conferral of law degrees, I intend no derogation whatsoever with respect to the inherent value of respondent's course of instruction in law. I have no doubt that the education provided by respondent's courses can be of substantial benefit to many individuals in fields other than the actual practice of law. Since, however, the right to confer law degrees can be a source of deception, it should be proscribed in this case.

Separate Opinion

JUNE 24, 1971

By Jones, *Commissioner*:

This matter arose on the Commission's order to respondent to show cause why the Commission's 1954 order [50 F.T.C. 1083] against respondent should not be modified in two major respects:

First, to require respondent to disclose the fact that the LL.B. curriculum which it offered is not recognized or accepted "as sufficient education or legal training to qualify the student to become a candidate for admission to the profession of law in any of the State in the United States or the District of Columbia," and

Second, to prohibit respondent from conferring the LL.B. or any other law degree upon purchasers of respondent's courses of study and instruction in law.

After a full hearing and a substantial record, the Commission now comes to the anamalous conclusion that it will be sufficient protection for the public if respondent is required to disclose the fact that the legal curriculum which it is selling in no sense constitutes a legal education while at the same time it is permitted to promote this curriculum as enabling the prospective student to earn an LL.B. or equivalent law degree.

The Commission has determined that respondent's advertising is

deceptive because respondent's courses do not amount to law training in the sense of the "minimum education and legal training requirements" of any state in the union. The record clearly supports this conclusion and I agree with the Commission's decision in this regard.

My difficulty arises with the Commission's conclusion that this deception can be cured by the single requirement that respondent disclose that "said courses are not recognized or accepted as sufficient education or legal training to qualify the student to become a candidate for admission to the profession of law in any of the States in the United States."

The deception sought to be eliminated here is of prospective students seeking to earn a law degree. We cannot know the variations in sophistication of the prospective students for respondent's courses. We have no reason to doubt that there may well be students who would like to enroll in a course of study involving the law, earn an LL.B. degree and never engage in the practice of law but simply work in jobs where their law training has been useful. As to these students, respondent's courses will provide exactly that and no more and no deception will exist as to them.[1]

It is a fair inference, however, that a substantial number of prospective students are interested in respondent's LL.B. curriculum because they are seeking to earn their living at the practice of law.

The question before us is whether these students will be protected from the deception which the Commission has found to inhere in respondent's promotional materials by the disclaimer about the uselessness of respondent's courses in qualifying students to sit for a bar examination.

The entire thrust of respondent's promotional material consistently centered on the representation that its law school curriculum would provide the student with "law training" and the "LL.B. degree." We do not know—and this record is silent—on what "being a lawyer" means to all of the young prospective students who may be attracted to respondent's school because of its advertised law degree

[1] It can be questioned, however, whether there is not a serious deception inherent in holding oneself out as having earned an LL.B. degree under these circumstances. Employers or clients might be seriously misled. Thus respondent's practice of awarding degrees may in effect constitute the instrumentality for deceiving a much wider segment of the public than simply prospective students of respondent's courses. However, this possible deception was not raised during the proceedings and I am, therefore, not relying on it in my rationale for dissenting from the Commission's opinion here.

and law training.[2] We do not know whether the students interested in enrolling in respondent's law course are fully aware of the significance of the difference between taking a law course, being awarded an LL.B. degree and being admitted to the bar of a state in order to practice law. Thus the interrelationship or interchangeability between the terms "being a lawyer," "practicing law," "having an LL.B. degree," or "being admitted to practice" cannot be sharply defined by us. Clearly, if we are concerned with preventing prospective students from being deceived by respondent's law courses then it is wholly unrealistic for us to permit respondent to continue the bulk of its advertising about law diplomas, law degrees, LL.B. degrees, and the like and believe that all of the possible connotations which these terms will have for prospective students will be dissipated by a formal disclaimer about admission to the bar.

The disclaimer ordered here, in my judgment, constitutes only partial remedy for the broader deception generated by respondent's promotion of its LL.B. degree. Moreover, in my judgment the disclaimer in respondent's promotional materials when used in conjunction with the promotion of the LL.B. degree may itself be a source of additional confusion because of its basic inconsistency with the permitted representation of respondent that it awards an LL.B. degree. Even if the disclaimer or the inconsistency served to put a prospective student on notice and prompted him to make further inquiry, the extent to which his uncertainty and doubts will be correctly answered will depend on how he phrases whatever question he asks and to whom he directs his question.[3] If he asks "can I practice law with an LL.B. degree without being qualified to become a candidate for admission to the profession of law in any state," he

[2] The record contains testimony principally by students who interpreted "being a lawyer" in terms of sitting for a state bar examination. We cannot conclude from this record—nor was any evidence introduced to support the proposition—that all prospective LaSalle students are aware of the need to take the bar examination in order to become a lawyer. Indeed since the principal point in issue on the liability phrase of this hearing related to whether respondent's promotional materials—which make no express representations with respect to qualifying students to take a bar examination—in fact conveyed this notion and hence were false. Thus, it is likely the students selected to testify were those who had known of the bar requirements and were misled into believing from respondent's representations that its courses would qualify them. Testimony was not offered by students whose misconceptions might have been of a more generalized nature as to the capability of respondent's courses to enable them to become lawyers without any specific knowledge of the essentiality of taking a bar examination in order to practice law.

[3] Several of the witnesses did make inquiry about respondent's courses, wrote to the American Bar Association and received full information about requirements to practice law. We cannot be certain, however, that all applicants will take this route.

will receive a proper answer and the significance of the disclaimer will be clear. But if he asks "can I practice law if I get an LL.B. degree," or "if I get an LL.B. degree can I practice Law," or finally "what do I have to do to be a lawyer," the answers which he gets back may concentrate on going to law school and getting a law degree rather than focusing on the next step which is to pass the bar exams. Since most lawyers eventually pass the bar, when asked about how to become lawyers, they will frequently think only in terms of going to law school. Thus the Commission can in no way be certain that the confusion engendered by respondent's "law training" and LL.B. degree will be dissipated by the disclaimer which relates simply to taking bar examinations.[4]

The Commission is fully empowered to require such relief as in its judgment will totally remove any possibility of deception flowing from a respondent's practices. *Jacob Siegel Co.* v. *FTC*, 327 U.S. 608 (1946). Moreover the Commission is fully authorized to direct the elimination of the source of the deception even if this would involve excision of trade names or trademarks. *FTC* v. *Army & Navy Trading Co.* 88 F. 2d 776, 786 (D.C. Cir. 1937); *Bakers Franchise Corp.* v. *FTC*, 302 F. 2d 258 (3 Cir. 1962). The Commission's relief is not required to track precisely the exact form of the specific deception as it was established by the proof in the record. In the instant case the deception perpetrated here is respondent's misrepresentation that its course of study will enable students to practice law. The proof of the deception is the fact that respondent's graduates are not qualified to sit for any bar examination. In no sense is the Commission limited in its remedy to straightening out that particular fact or compelled to ignore the broader dimensions of the overall deception that respondent's graduates will not be able to practice law. The Commission is specifically authorized in its relief to close off all possible avenues of deception. *FTC* v. *Ruberoid Co.*, 343 U.S. 470, 473 (1952). Clearly the representation that completion of its courses will earn an LL.B. degree is such an avenue to the basic deception.

This Commission will have done a vain act if it rests its relief here solely on the unknown effect of a disclaimer and its hopes that the require disclaimer will in fact wholly and totally eliminate the confusion and deceptions caused by respondent's promotion of its

[4] Several witnesses testified in support of the adequacy of the disclaimer although these witnesses were not asked whether in their judgment it would also be necessary or valuable to limit the promotion of the LL.B. degree as well. One witness, the Executive Director of the State Bar of Wisconsin, did make this point. (Tr. 463 ,465.)

LL.B. degree. Certainty of result is not always available to the Commission. Here, however, certainty is available. The Commission need only prohibit the source of the deception, namely the promotion of the LL.B. degree. When a remedy of this type is to hand, it disserves the public interest and wastes the resources of the Commission to settle for a halfway measure whose impact, effect and capability to cure the deception has not been shown on this record.

In the instant case, the consequences of the slightest ambiguity or capacity of respondent's advertising to mislead are of the most serious kind. Young students who respond to respondent's advertising will invest both their funds—and more important—three years of their life in pursuing their life's career goal. If any confusion or misunderstanding is generated by respondent's advertising, it may not be until after the expiration of this period of time that students will discover that their financial investment has been for naught and that they are no nearer their career goal than when they started. This is the cruelest hoax of all. The Commission under these circumstances cannot risk even the slightest chance that its relief here will not be adequate to remove the deception. Nor is the risk of deception here slight. In my judgment, it is inevitable that some students will be misled unless the major source of the deception is eliminated. The Commission's relief must eliminate all references to any LL.B. or equivalent degree. Any relief short of this will be wholly inadequate.

ORDER

This matter has been heard by the Commission on exceptions filed by respondent and counsel supporting the complaint from the recommended findings, conclusions and order of the hearing examiner, filed October 19, 1970. The Commission has determined that the exceptions should be granted in part and denied in part, and that the recommended findings of the hearing examiner, modified to conform with this opinion, should be adopted as those of the Commission. Other findings of fact and conclusions of law made by the Commission are contained in that opinion. For the reasons therein stated, the Commission has determined that the recommended order entered by the hearing examiner should be amended. Accordingly,

The Commission being of the opinion that the public interest will best be served by modifying its order of June 29, 1954 [50 F.T.C. 1083]:

It is ordered, That the hearing examiner's recommended Finding 6 be, and it hereby is, amended to read:

> The advertisements, in the form of matchbook, newspaper or magazine ads, usually only advertise law training or the fact

that respondent grants an LL.B. degree and fail to set forth the fact that completion of these courses does not qualify anyone to take the bar examination or practice law in any of the 50 states of the United States or the District of Columbia.

It is further ordered, That, as amended herein, the recommended findings of the hearing examiner be, and they hereby are, adopted as the findings of the Commission.

It is further ordered, That the Commission's order of June 29, 1954, be, and it hereby is, modified to read as follows:

It is ordered, That respondent, La Salle Extension University, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of study and instruction, do forthwith cease and desist from failing, in connection with advertisements or promotion of respondent's courses of study in law or of its law degrees, clearly and conspicuously to disclose, in type the same size and appearance as the advertising claims appearing thereon: (a) in any advertisement or written offer to sell; (b) on the front page or cover of promotional material or descriptive brochure wherein respondent's law courses or law degrees are mentioned and in said promotional material or descriptive brochure on each page on which respondent's law courses or law degrees are mentioned; (c) in each enrollment form, application form, sales contract or similar document; that said courses are not recognized or accepted as sufficient education or legal training to qualify the student to become a candidate for admission to the profession of law in any of the States in the United States or the District of Columbia: *Provided*, That respondent may qualify such disclosure by listing the state or states which will accept said courses: *And provided further*, That, if the state or states listed have any additional age, education, preliminary testing, or other legal training requirements, respondent clearly and conspicuously and in immediate conjunction with such list disclose, in type the same size and appearance as the advertising claims appearing thereon, all such additional requirements.

It is further ordered, That respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the nature and form of its compliance with this order.

Chairman Kirkpatrick and Commissioner Jones filed separate opinions.

IN THE MATTER OF

JAMES W. HARRISON TRADING AS INTERSTATE HIGH SCHOOL PRESS ASSOCIATION

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

Docket C-1948. Complaint, June 24, 1971—Decision, June 24, 1971

Consent order requiring a Denmark, S.C., individual doing business as the Interstate High School Press Association to cease using any words implying that respondent's business is nonprofit or affiliated with any press-media, inducing the purchase of advertising by implying that he is aiding athletes, implying that the respondent is an association, misrepresenting that respondent's publications have the endorsement of many high school coaches, and misrepresenting that respondent's directories are distributed free to coaching staffs and public libraries.

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 James W. Harrison, individually and trading as Interstate High School Press Association, hereinafter referred to as respondent, has 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 James W. Harrison is an individual trading and doing business as Interstate High School Press Association with his office and principal place of business located at 226 East Hammond Street, Denmark, South Carolina.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the business of publishing and distributing, on an annual basis, a national directory of high school athletes known as "Who's Who in High School Athletics." Said directory is caused by respondent to be circulated from its point of publication in one State to purchasers located in various other States of the United States. Respondent has also published and distributed a directory of high school athletes called "Who's Who in South Carolina High School Athletics," and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said publications in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondent in the course and conduct of his business represents and has represented, directly or by implication, to prospective advertisers as well as to coaches and athletes of the various high schools throughout the United States, that the "Who's Who" athletic annuals published by Interstate High School Press Association, are endorsed by, affiliated with, or the official publication of the National Federation of State High School Athletic Associations or other nationally recognized high school athletic associations.

Further, a substantial part of respondent's income is derived from the sale of advertising space in the "Who's Who" directories to business concerns located throughout the United States. The respondent contacts said business concerns by mail and other means seeking to induce them to purchase advertising space in said publications by the use of materials which in appearance and form implies that it is a bill for advertising in the "Who's Who" publications and that the recipient thereof is obligated for the amount indicated.

PAR. 4. In truth and in fact, the "Who's Who" athletic annuals published by Interstate High School Press Association are not endorsed by, affiliated with, or the official publication of the National Federation of High School Athletic Associations or other recognized national high school athletic associations, but are independently operated by the respondent.

Moreover, the materials simulating bills for advertising space in the "Who's Who" athletic annuals are, in truth and in fact, merely solicitations for advertising and the recipient is not obligated for the amount designated.

PAR. 5. In the course and conduct of his business, as aforesaid, and for the purpose of selling the "Who's Who" athletic directories or advertising space in said publications, respondent distributes and has distributed by means of the United States mails, and in various other ways to prospective purchasers, letters, circulars, advertising material, advertisements and various other kinds of promotional material containing statements and representations respecting his business. Typical and illustrative of the foregoing, but not all inclusive, are the following:

(a) Published advertisements to high school coaches and athletes:

You have been nominated to *Who's Who in High School Athletics.*

There are many advantages to be gained from such a project as this. College coaches have been begging for such a publication to assist them in their recruiting (sic). Copies are made available to schools and libraries. * * *

The publication will include outstanding athletes from all over the United States. Interstate High School Press Association is sponsoring the publication. * * *

This is an invaluable aid to any college coach involved in the competitive field of recruiting. This could aid us in discovering the talented overlooked athlete.

A North Carolina College Coach

(b) Published materials to advertisers:

"WHO'S WHO IN HIGH SCHOOL ATHLETICS
INTERSTATE HIGH SCHOOL PRESS ASSOCIATION
P. O. BOX 216, DENMARK, SOUTH CAROLINA 29042

_____

_____

_____

_____ PAGE AD '69-'70 EDITION $_____

STATE _____ SECTION _____ REP. _____

THANK YOU FOR HELPING US HELP THE YOUNG PEOPLE OF YOUR STATE."

PAR. 6. By and through the use of the above quoted statements and representations and various other statements and representations of similar import and meaning, but not expressly set forth herein, respondent represents, and has represented, directly or by implication that:

1. Interstate High School Press Association, the trade name used by respondent in its written advertising and promotional materials, is a non-profit organization, which is affiliated with some aspect of the press media and is approved by the National Federation of State High School Athletic Associations or other nationally recognized high school athletic associations.

2. It is an "association" composed of a five member committee which formulates policy and compiles, verifies and evaluates informational data submitted by athletes nominated for publication in the "Who's Who" athletic directories.

3. "Interstate" had received numerous requests after its publication of "Who's Who in South Carolina High School Athletics," to expand into other States and publish "Who's Who in High School Athletics."

4. The "Who's Who" athletic annuals have the endorsement of many high school administrators, coaches and athletes because of its invaluable contribution in recognizing outstanding high school athletes who would otherwise go unnoticed.

5. There are many advantages to be gained from the "Who's Who" athletic directories; one being that college coaches have been begging for such publications to aid them in their recruiting.

6. The nominees who appear in "Who's Who in High School Athletics" are the nation's top high school athletes.

7. Copies of "Who's Who in High School Athletics" are made available "free of charge" to college coaching staffs as well as public and high school libraries.

PAR. 7. In truth and in fact:

1. Interstate High School Press Association is a profit-making concern, which is neither affiliated with any aspect of the press media nor approved by any nationally recognized high school athletic association.

2. "Interstate" is not composed of a committee which formulates its policy but is solely owned and operated by the respondent.

3. The demand to expand "Who's Who in South Carolina High School Athletics" into an athletic directory of national stature was merely a fabrication by respondent to induce participation by the various high school coaches and athletes throughout the United States.

4. The athletic annuals published by Interstate High School Press Association are not endorsed by any high school administrators, coaches or athletes. Furthermore, the "Who's Who" publications do not necessarily honor outstanding high school athletes but recognize only those nominated athletes who wish to participate.

5. College coaches have not shown a genuine interest in the "Who's Who" athletic annuals as evidenced by their lack of enthusiasm in purchasing the annuals for use in their recruiting program; furthermore, the only advantage to be gained by an athlete's appearance in the said directories is for purposes of vanity.

6. The nominees who appear in "Who's Who in High School Athletics" are not the nation's top high school athletes. In actual practice, a small percentage of those high school coaches contacted make nominations in respondent's publication and the information furnished by the athletes is unverified.

7. Copies of "Who's Who in High School Athletics" are not made available "free of charge" to college coaching staffs, or public or high school libraries.

Therefore, the statements and representations as set forth in Paragraphs Three, Five and Six hereof were, and are false, misleading and deceptive.

PAR. 8. The use by the respondent of the aforesaid false, mislead-

ing and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead prospective advertisers, as well as coaches and athletes of the various high schools throughout the United States, into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of either advertising space or the athletic directories by reason of said erroneous and mistaken belief. The unfair and deceptive practice engaged in by the respondent of sending materials simulating bills for advertising space in said publications, without prior authorization, has subjected business concerns to unlawful demands for payment of nonexistent debts.

PAR. 9. In the conduct of his business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals likewise engaged in the publication of newspapers and other periodicals and in the selling of advertising to be inserted therein and particularly with the publishers of newspapers and periodicals published or endorsed by high school athletic associations.

PAR. 10. The aforesaid acts and practices of the respondent, as herein alleged, were and are all to the prejudice and injury of the public and of the respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent James W. Harrison is an individual trading as Interstate High School Press Association with his office and principal place of business located at 226 East Hammond Street, Denmark, South Carolina.

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

ORDER

It is ordered, That the respondent James W. Harrison, individually, and trading as Interstate High School Press Association, or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device in connection with the soliciting, offering for sale or sale in commerce of advertising space in the athletic directory, "Who's Who in High School Athletics," or any other publication, whether published under that name or any other name, and in connection with the offering for sale, sale or distribution of said annual directory, or any other publication, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Press Association," or any other word or words of similar import or meaning, as a part of any corporate or trade name, or representing in any manner that respondent's business is a non-profit concern, connected with the press media and affiliated with or approved by a nationally recognized high school athletic association; or misrepresenting, in any manner, the title or status of respondent's business.

2. Inducing or seeking to induce any business concern to purchase advertising space in or contribute to respondent's publication by means of expressed or implied representations that respondent is a nationally recognized high school athletic association helping athletes of the various States.

3. Sending bills, letters or notices to any person or firm with

regard to advertising space which is to be printed, inserted or published on behalf of said person or firm, or in any other manner seeking to exact payments for any such advertisement, without a bona fide order or agreement to purchase said advertisement.

4. Representing, directly or by implication, that respondent is an "association" composed of a committee which formulates policy and compiles, verifies and evaluates informational data submitted by the various athletes nominated for publication in respondent's athletic directories.

5. Representing, directly or by implication, that a great demand exists or has existed for respondent's publication, "Who's Who in South Carolina High School Athletics," and that such demand prompted publication of respondent's expanded athletic directory; or misrepresenting, in any manner, the demand for respondent's publications.

6. Representing, directly or by implication, that respondent's athletic directories have the endorsement of many high school administrators, coaches and athletes because of the recognition given outstanding high school athletes not previously honored for their athletic achievements; or misrepresenting, in any manner, the endorsement of respondent's publications.

7. Representing, directly or by implication, that a high school athlete's participation in respondent's athletic annuals will greatly enhance the possibility of his receiving an athletic scholarship from a college; or misrepresenting, in any manner, the advantages to be gained by an athlete's appearance in respondent's publications.

8. Representing, directly or by implication, that athletes appearing in respondent's athletic publications are the nation's top high school athletes.

9. Representing, directly or by implication, that copies of respondent's athletic directories are made available "free of charge" to college coaching staffs as well as public and high school libraries; or misrepresenting, in any manner, the distribution of respondent's publications.

It is further ordered, That the respondent notify the Commission at least thirty (30) days prior to any proposed change in respondent's business such as assignment or sale, resulting in the emergence of a successor business, corporate or otherwise, the creation of subsidiaries, or any other change which may affect compliance obligations arising out of the order.

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

IN THE MATTER OF

ERNEST J. KROHSE TRADING AS ERNIE'S SEWING CENTER

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

Docket C-1949. Complaint, June 25, 1971—Decision, June 25, 1971

Consent order requiring a Sioux Falls, S. Dak., individual selling and distributing new and used sewing machines, vacuum cleaners and other products to cease conducting misleading contest, making deceptive pricing claims, misrepresenting guarantees, failing to maintain adequate records, using bait selling tactics, failing to disclose that a customer's note may be assigned to a finance company and using other unfair selling practices.

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 Ernest J. Krohse, an individual, trading and doing business as Ernie's Sewing Center, and formerly trading and doing business as Necchi Sewing Center of Sioux Falls, hereinafter referred to as respondent, has 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 Ernest J. Krohse is an individual, trading and doing business as Ernie's Sewing Center, and formerly trading and doing business as Necchi Sewing Ceter of Sioux Falls, with his principal place of business located at 702 West 11th Street in the city of Sioux Falls, State of South Dakota.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of new and used sewing machines, vacuum cleaners and other products to the public.

PAR. 3. In the course and conduct of his business, as aforesaid, respondent now causes, and for some time last past has caused, his said merchandise, when sold, to be shipped or delivered from his place of business in the State of South Dakota to purchasers thereof located in other States of the United States and has been and now is engaged in causing to be disseminated in newspapers of interstate circulation and by the United States mails, advertisements designed and intended to induce sales of his merchandise, and thereby maintains, and at all times mentioned herein has maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. One of respondent's sales plans is to sponsor a drawing at a high density traffic area where persons are requested or invited to register for a drawing, offering as a prize a free sewing machine. After the free prize is awarded, participants in the drawing and other persons receive from respondent a letter enclosing a discount certificate of specified monetary value to be applied to the purchase of one of respondent's sewing machines or vacuum cleaners. Although respondent advertises low price merchandise in such letters and in his newspaper advertisements, respondent or his salesmen undertake to sell and, in many instances, do sell higher priced merchandise to customers, who respond to such offers.

PAR. 5. In the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his merchandise, respondent has made, and is now making, numerous statements and representations in letters, newspapers and other media with respect to his contests, drawings, prizes, promotions, prices, limitations to offers, the characteristics and guarantees of his merchandise.

Typical and illustrative of such statements and representations, but not all inclusive threof, are the following:

A. In connection with respondent's contests or drawings:

ENTRY BLANK FOR DRAWING ON
NECCHI Sewing Machine

Name _____

Address _____ Phone _____

Drop this in Entry Box

* * * * * * *

CONGRATULATIONS!

Your name was selected in a random drawing to receive this $110.00 Discount Certificate. . . . This Discount Certificate may be applied to any model sewing machine from our entire stock of new sewing machines.

EXAMPLE: A L C O SEWING MACHINE---------- $159.95
LESS: DISCOUNT CERTIFICATE---------- 110.00
Leaves only this small balance---------- 49.95

This Discount Certificate is valuable

Please note that this is an advertising offer which is limited to ten (10) days or one demonstration. THIS CERTIFICATE MAY BE APPLIED TO THE PURCHASE OF A NEW VACUUM CLEANER FROM OUR STOCK.

B. In connection with respondent's newspaper advertisements of sewing machines:

CLOSE-OUT 1968 models. . . . Necchi portable, reg. $229.95. . . . Now only $115.00. . . .

* * * * * * *

FOR SALE: Singer portable sewing machine . . . $25

* * * * * * *

FOR SALE: Wards console sewing machine . . . $29

* * * * * * *

FOR SALE: . . . Necchi super Nova sewing machine, completely automatic, full guarantee, ...

PAR. 6. By and through the use of the above-quoted statements and representations, and others of similar import and meaning not specifically set out herein, separately and in conjunction with oral sales presentations by respondent or by respondent's salesmen, respondent has represented, and is now representing, directly or by implication, that:

1. He is conducting a bona fide contest and a bona fide drawing to determine the winner of a new sewing machine.

2. He is conducting a bona fide game of chance by a random drawing and that in connection therewith, he is awarding a valuable prize of a discount certificate in the amount of a $110 as a credit or allowance to be deducted from the regular retail price of one of his new sewing machines or new vacuum cleaners.

3. His said award of a discount certificate is made only to a limited number of selected persons for one demonstration or for a limited period of ten days.

4. His aforestated prices of $159.95 for the A L C O sewing machine and $229.95 for the 1968 model Necchi portable sewing machine are the prices at which these sewing machines were sold or offered for sale in good faith by respondent at retail for a reasonably substantial period of time in the recent, regular course of his business.

5. He is making bona fide offers to sell sewing machines for $25 and $29 and various other low prices not set out herein.

6. The Necchi super Nova sewing machine operates automatically, by self-operation and by self-regulation.

7. The Necchi super Nova sewing machine is guaranteed without condition or limitation.

PAR. 7. In truth and in fact:

1. Respondent is not conducting a bona fide contest or a bona fide drawing to determine the winner of a new sewing machine. His main purpose in conducting such a contest and drawing is to determine the identity of persons interested in purchasing a new sewing machine.

2. Respondent is not conducting a bona fide game of chance by a random drawing and in connection therewith, respondent is not awarding a valuable prize of a discount certificate in the amount of $110 as a credit or allowance to be deducted from the regular retail price of one of his new sewing machines or new vacuum cleaners. Such a credit or allowance, granted pursuant to the said game of chance, is awarded to all contest participants who failed to win respondent's new sewing machine and to numerous other persons and is not deducted from respondent's regular retail price for one of his new sewing machines or new vacuum clearners but from a fictitious higher price and therefore, such a prize is illusory.

3. Respondent's awards of credits or allowances were not made only to limited number of selected persons but were made generally to members of the purchasing public. Said offers were not limited to one demonstration or to ten days but were available for additional demonstrations and after the ten day period of time.

4. Respondent's prices of $159.95 for the A L C O sewing machine or $229.95 for the 1968 model Necchi portable sewing machine are not the prices at which these sewing machines were sold or offered in good faith for sale by respondent at retail for a reasonably substantial period of time in the recent, regular course of his business.

5. Respondent's advertised offers of sewing machines for $25, $29 and various other low prices not set out herein are not bona fide offers but are made for the purpose of obtaining leads to persons interested in the purchase of sewing machines. After obtaining these leads through responses to the said advertisements, respondent or his salesmen call upon such persons but make no effort to sell the advertised machine. Instead they exhibit what they represent to be the advertised machine which, because of its poor appearance and condition is usually rejected on sight by the prospective purchaser. Concurrently, one or more higher priced sewing machines of superior appearance and condition are presented, which by comparison

disparage and demean the advertised sewing machine. By these and other tactics, the purchase of the advertised sewing machine is discouraged, and respondent or his salesmen attempt to and frequently do sell a higher priced machine.

6. The Necchi super Nova sewing machine does not operate automatically, by self-operation or by self-regulation.

7. The guarantee of the Necchi super Nova sewing machine is subject to numerous conditions and limitations which are not disclosed in respondent's advertising.

Therefore, that statements and representations, as set forth in Pargraphs Five and Six hereof, were, and are, false, misleading and deceptive.

PAR. 8. In the course and conduct of his aforesaid business, respondent and his salesmen have, in many instances, failed to disclose orally or in writing certain material facts to purchasers, including, but not limited to the fact that, at respondent's option, conditional sales contracts, promissory notes or other instruments of indebtedness executed by such purchasers in connection with their credit purchase agreements may be discounted, negotiated or assigned to a finance company or other third party against whom defenses may not be available.

Therefore, respondent's failure to disclose such material facts, both orally and in writing prior to the time of sale, was and is misleading and deceptive, and constituted, and now constitutes, an unfair or deceptive act or practice.

PAR. 9. By and through the use of the aforesaid acts and practices, respondent places in the hands of salesmen and others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 10. In the course and conduct of his aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in commerce with corporations, firms, and individuals in the sale of sewing machines and other merchandise of the same general kind and nature as those sold by respondent.

PAR. 11. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices 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 the merchandise and services offered by respondent by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days and having duly considered the comments filed thereafter, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Ernest J. Krohse is an individual, trading and doing business as Ernie's Sewing Center, and formerly trading and doing business as Necchi Sewing Center of Sioux Falls, with his principal place of business located at 702 West 11th Street in the city of Sioux Falls, State of South Dakota.

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

ORDER

It is ordered, That respondent Ernest J. Krohse, an individual, trading and doing business as Ernie's Sewing Center, and formerly trading and doing business as Necchi Sewing Center of Sioux Falls, or under any other trade name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of sewing machines or other products or services in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that names of winners are obtained through drawings, contests or by chance when all of the names selected are not chosen by lot; or misrepresenting, in any manner, the method by which names are selected.

2. Representing, directly or by implication, that a drawing or other type of game of chance is being conducted to determine a winner or winners of a prize or prizes, unless such drawing or other type of game of chance is in fact designed to select a winner or winners of a bona fide prize or prizes.

3. Representing, directly or by implication, that awards or prizes are of a certain value or worth when recipients thereof are not in fact benefited by or do not save the amount of the represented value of such awards or prizes.

4. Representing, directly or by implication, that any amount is respondent's usual and customary retail price for an article of merchandise, product or service when such amount is in excess of the price or prices at which such article of merchandise, product or service has been sold or offered for sale in good faith by respondent at retail for a reasonably substantial period of time in the recent, regular course of his business.

5. Representing, directly or by implication, that any savings, discount, credit or allowance is given purchasers as a reduction from respondent's selling price for a specified article of merchandise, product or service unless such selling price is the amount at which said article of merchandise, product or service has been sold or offered for sale in good faith by respondent at retail for a reasonably substantial period of time in the recent, regular course of his business.

6. Failing to maintain adequate records (a) which disclose the facts upon which any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 3 through 5 of this

order are based, and (b) from which the validity of any savings claims and comparative value claims, and similar representations of the type described in Paragraphs 3 through 5 of this order are based, and (b) from which the validity of any savings claims and comparative value claims, and similar representations of the type described in Paragraphs 3 through 5 of this order can be determined.

7. Representing, directly or by implication, that an offer of any article of merchandise, product or service is, (a) limited as to time; (b) made to a limited number of persons; or (c) restricted or limited in any other manner, unless such represented limitations or restrictions were actually in force and in good faith adhered to.

8. Advertising or offering any products for sale for the purpose of obtaining leads or prospects for the sale of different products unless the advertised products are capable of adequately performing the function for which they are offered and respondent maintains an adequate and readily available stock of said products.

9. Disparaging in any manner or refusing to sell any product advertised.

10. Using any advertising, sales plan or procedure involving the use of false, deceptive or misleading statements or representations which are designed to obtain leads or prospects for the sale of other merchandise.

11. Representing, directly or by implication, that any products or services are offered for sale when such offer is not a bona fide offer to sell said products or services.

12. Using the word "automatic" or any other word or term of similar import or meaning to describe any sewing machine either in its entirety or as to its over-all function or operation, or using any illustration or depiction which represents that such a machine is automatic in its entirety or as to its over-all function or operation; *Provided, however*, That nothing herein shall be construed to prohibit the use of the word or term "automatic" in describing a sewing machine's specific attachment or component or function thereof, which after activation and by self-operation, will perform without human intervention the mechanical function indicated.

13. Representing, directly or by implication, that respondent's products are guaranteed unless the nature, extent and duration of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and

conspicuously disclosed in immediate conjunction therewith; and unless respondent does in fact promptly perform each of his obligations directly or impliedly represented under the terms of such guarantee.

14. Failing to disclose orally prior to the time of sale of any article of merchandise, product or service that an instrument of indebtedness executed by a purchaser may, at respondent's option and without notice to the purchaser, be discounted, negotiated or assigned to a finance company or other third party to which the purchaser will thereafter be indebted and against which the purchaser's claims or defenses may not be available.

15. Failing to incorporate the following statement on the face of all contracts involving credit extention executed by respondent's customers with such conspicuousness and clarity as is likely to be observed, read and understood by the purchaser:

IMPORTANT NOTICE

If you are obtaining credit in connection with this contract, you may be required to sign a promissory note. This note may be purchased by a bank, finance company or any other third party. If it is purchased by another party, you will be required to make your payments to the purchaser of the note. You should be aware that if this happens you may have to pay the note in full to the new owner of the note even if this contract is not fulfilled.

16. Contracting for any sale, whether in the form of a trade acceptance, conditional sales contract promissory note, or otherwise, which shall become binding on the buyer prior to midnight of the third day, excluding Sundays and legal holidays, after date of execution.

17. Placing in the hands of others any means or instrumentalities whereby they may mislead purchasers or prospective purchasers as to any of the matters or things prohibited by this order.

It is further ordered, That the respondent herein shall forthwith deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondent's merchandise, products or services, and shall secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondent shall notify the Commission at least thirty (30) days prior to any proposed change in his business organization such as dissolution, assignment, incorporation

or sale resulting in the emergence of a successor corporation or partnership or any other change which may effect compliance obligations arising out of this order.

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

IN THE MATTER OF

ALLIED BUILDERS CORPORATION, ET AL.

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

Docket C-1950. Complaint, June 28, 1971—Decision, June 28, 1971

Consent order requiring two Los Angeles, Calif., sellers of home remodeling and other home improvements to cease misrepresenting that they are the largest and oldest home improvement firms in the country, that they can pass on savings to their customers, failing to disclose that work will be done by subcontractors, and making false claims in regard to respondents' franchisees and licensees.

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 Allied Builders Corporation, a corporation, Construction Design-Allied Builders Systems, Inc., a corporation, doing business as Allied Builders Systems, and Harold Hammerman, individually and as an officer of said corporations, hereinafter referred to as the 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 Allied Builders Corporation is a corporation, incorporated under the laws of the State of California, with its principal office and place of business at 451 North La Cienega Boulevard, Los Angeles, California. The aforesaid company was originally incorporated and did business at the above address as Construction Design, Inc.

Respondent Construction Design-Allied Builders Systems, Inc., is a corporation, incorporated under the laws of the State of Califor-

nia and doing business as Allied Builders Systems, with its principal office and place of business located at 451 North La Cienega Boulevard, Los Angeles, California.

Respondent Harold Hammerman is the prinicpal officer of the corporate respondents. He formulates, directs, and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time past have been, engaged in advertising, offering for sale and sale of home remodeling, room additions and other home improvements to the general public, and engaged in advertising, offering for sale and sale of franchises and licenses to various other individuals and corporations for the purpose of selling home improvements as described above.

PAR. 3. In the course and conduct of said business, respondents now cause, and for some time last past have caused advertisements for the sale and construction of home improvements and for the sale of franchises and licenses to be placed in magazines and newspapers of general circulation in States of the United States.

In the further course and conduct of said business, respondents now cause, and for some time last past have caused promotional material, training manuals, contracts and other business materials and documents to be shipped and transmitted from their place of business in the State of California to franchisees and licensees thereof located in various other States of the United States other than the state of origination.

Respondents have engaged in all the aforesaid acts and practices in the course and conduct of their business and all such acts and practices have a close and substantial relationship to the interstate flow of respondents' business. Respondents have maintained, and at all times mentioned herein have maintained, a substantial course of trade in said sales of home improvements, franchises and licenses in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of the aforesaid business, and for the purpose of inducing the purchase of home improvements, franchises and licenses, the respondents have made numerous representations through oral statements made to prospective purchasers by their salesmen, representatives, franchisees or licensees and in newspapers and magazine advertisements and other promotional material, respecting the price and quality of their home improvements and the nature and quality of their business.

Typical and illustrative of said statements and representations made orally and in advertising and promotional material, but not all inclusive thereof, are the following:

Allied, the nation's largest home remodeling contractor offers a complete 1-stop service on remodeling modern kitchens and room additions.

* * * * * * *

SAVE ON *ROOM ADDITIONS*—REMODELING! HERE'S HOW: Allied Builders with offices coast to coast are the nation's largest home remodeling contractors. . . .

* * * * * * *

Allied, the nation's largest home remodeling contractors' huge buying power allows them to buy materials at tremendous discounts. These savings are passed on to you.

* * * * * * *

Allied Builders System Room Additions Home Remodeling is our ONLY business. Since 1903 Allied's family's only business has been home remodeling. . . .

* * * * * * *

The man with you now is not a salesman; he's not in your home to sell you anything.

* * * * * * *

BECAUSE ALLIED BUILDERS, ONE OF THE NATION'S LARGEST HOME REMODELING CONTRACTORS, ARE PRESENT WORKING IN YOUR NEIGHBORHOOD, WE ARE ENCLOSING A FRIEND-MAKING PRESENT. IT'S A CHECK IN THE AMOUNT OF *$250.00* TO USE IF YOU'VE BEEN SERIOUSLY CONSIDERING ADDING THAT MUCH NEEDED EXTRA BEDROOM, FAMILY ROOM, BATHROOM OR ANY ADDITIONAL REMODELING FOR YOUR HOME.

ALLIED BUILDERS, AWARD WINNING REMODELERS, CAN OFFER YOU THIS TREMENDOUS SAVINGS BECAUSE WE CAN SAVE MONEY ON A PER JOB BASIS WHEN WORKING IN THE SAME NEIGHBORHOOD. YOU SEE, OUR MEN EARN A REGULAR HOURLY WAGE, WHETHER OR NOT THEY ARE ACTUALLY WORKING ON A JOB, OR JUST TRAVELING FROM ONE JOB TO ANOTHER. THE MORE JOBS WE CAN SCHEDULE IN THE SAME AREA, THE MORE SAVINGS WE CAN PASS ON TO YOU.

* * * * * * *

The Allied Builders remodeling contracting business can show how you, as others are doing now, can earn $40,000 the first year of operating as a franchisee. We project a minimum of $200,000 in business in order to net this earnings of $40,000, and with a working capital of only $6,000 to $8,000 in your business.

PAR. 5. By and through use of the above-quoted statements and representations, and others of similar import and meaning not specifically set out herein, and through oral statements made by respondents' salesmen, counselors, franchisees, licensees and other representatives, respondents have represented directly or by implication, that:

1. Respondents are the largest home remodeling contractors in the Nation;

2. Respondents are the oldest home remodeling contractors in the Nation;

3. Respondents have been in business for over sixty years;

4. Respondents' buying power allows them to buy building materials at tremendous discounts and pass the savings on to the customer;

5. Respondents' representatives are "counselors" and not salesmen, and are not there to sell the prospective purchaser anything;

6. Respondents' work is performed exclusively by their own employees and, therefore, can be done cheaper than other contractors, who rely on subcontractors;

7. Prospective purchasers can save $250, or some other amount, because respondents achieve substantial savings if two or more jobs can be scheduled in the same neighborhood;

8. Respondents' franchisees and licensees are financially stable and enjoy the financial backing of the franchisor or licensor and that the prospective purchaser enjoys an advantage by dealing with one of respondents' franchisees or licensees that he would not have in dealing with a local contractor;

9. Respondents' representatives are salesmen for another company, not connected with respondents, to induce the belief in a prospective customer, who has already turned down a home improvement proposal by respondents, that he has an alternate bid from a different company; and

10. Franchisees or licensees can earn $40,000, the first year of operation or at any time thereafter as a franchisee or licensee of respondents.

PAR. 6. In truth and in fact:

1. Respondents are not the largest home remodeling contractors in the Nation;

2. Respondents are not the oldest home remodeling contractors in the Nation;

3. Respondents have not been in business for over sixty years;

4. Respondents and their franchisees and licensees purchase building materials on an individual basis and do not enjoy any price advantage over independent, local contractors and, therefore, there are no savings to be passed on to the customer;

5. Respondents' representatives are salesmen paid on a commission basis and are in the prospective purchaser's home to sell a contract for home remodeling, room addition, or some other home improvement;

6. Respondents' work is not performed exclusively by their own employees but is performed mainly by subcontractors, and therefore, cannot be done more cheaply than work of other contractors who rely on subcontractors;

7. Substantial savings can not be achieved by respondents if two or more jobs can be scheduled in the neighborhood;

8. Respondents do not stand behind their franchisees or licensees financially, and the franchise or license agreement specifically requires the franchisee or licensee to hold harmless the franchisor or licensor and to indemnify the franchisor or licensor against any and all claims or legal actions;

9. Said representatives of respondents, who claim that they are working for another company, are working for respondents, and are privy to the exact price that was quoted to the prospective customer by another representative of respondents in the first instance.

10. Franchisees and licensees typically earn substantially less than $40,000 in their first year of operation or at any time thereafter as a franchisee or licensee of respondents.

PAR. 7. Through the granting of licenses or franchises to corporations, partnerships and individuals using respondents' advertising materials and methods of doing business, respondents have placed in the hands of others the means and instrumentalities by and through which they mislead and deceive the public.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents, directly and through their franchisees and licensees have been, and now are, in substantial competition in commerce, with corporations, firms and individuals engaged in the sale of products and services of the same general kind and nature as those sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, and practices 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 to induce a substantial number thereof to buy and purchase said home remodeling, room addition and home improvement contracts, franchises and licenses.

PAR. 10. 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, unfair methods of competition in commerce and unfair and deceptive acts in commerce in violation of Section 5 of 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 Los Angeles Field Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedures prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Allied Builders Corporation is a corporation, organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 451 North La Cienega Boulevard, Los Angeles, California.

Respondent Construction Design-Allied Builders Systems, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of California and doing business as Allied Builders Systems, with its principal office and place of business located at 451 North La Cienega Boulevard, Los Angeles, California.

Respondent Harold Hammerman is an officer of the corporate respondents. He formulates, directs and controls the policies, acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondents.

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 Allied Builders Corporation, a corporation, and its officers, Construction Design-Allied Builders Systems, Inc., a corporation, doing business as Allied Builders Systems or any other trade name or names, and its officers, and Harold Hammerman, individually and as an officer of said corporations, and respondents' representatives, agents, employees, franchisees, and licensees directly or through any corporate or other device, in connection with the advertising, offering for sale, or sale of contracts for home improvements or any other products or services in commerce, and the advertising, offering for sale or sale of franchises and licenses in connection therewith in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

(1) Respondents are the largest home remodeling contractor in the Nation or misrepresenting in any manner the size of respondents' business;

(2) Respondents are the oldest home remodeling contractor in the Nation or misrepresenting in any manner the date of organization of the corporate respondents or the length of time any of the respondents have been in the home remodeling business;

(3) Respondents have been in business for over sixty years or misrepresenting in any manner the age of respondents' business;

(4) Respondents' buying power allows them to buy materials at tremendous discounts or representing in any manner that respondents are able to purchase building materials or supplies for less than competitors;

(5) Respondents are able to pass savings on to the customers because they have buying power enabling them to buy materials at tremendous discounts or representing in any manner that respondents are able to pass savings, discounts or any other benefits on to their customers by virtue of their ability to purchase building materials or supplies for less than their competitors;

(6) Respondents' representatives are not salesmen or misrepresenting their position or function with respondents in any other manner;

(7) Respondents' representatives are not in a prospective customer's home to sell the purchaser anything or misrepresenting in any manner the purpose for which respondents' representatives are in the prospective customer's home;

(8) Respondents' representatives are not on a commission basis;

(9) Work is performed exclusively or mainly by their own employees and not by subcontractors or failing to disclose to prospective purchasers whether the work to be done will be performed by employees of respondents or by independent subcontractors;

(10) Prospective purchasers can save $250, or any other amount, because two or more jobs are scheduled in the same neighborhood or misrepresenting in any manner the savings available to purchasers of respondents' goods or services;

(11) Respondents' franchisees and licensees are financially backed by the franchisor or licensor;

(12) Purchasers will enjoy a financial advantage that they would not otherwise enjoy by dealing with one of respondents' franchisees or licensees;

(13) Respondents' representatives are connected with another company and not affiliated with respondents' company and failing to reveal that salesmen calling upon prospective purchasers are in fact employees, representatives or salesmen of respondents;

(14) Respondents' franchisees or licensees will, or potentially will, earn or profit from the operation of one of respondents' franchises or licenses amounts in excess of those which have been regularly and customarily earned by respondents' other franchisees or licensees.

B. Placing in the hands of others the means of instrumentalities whereby they may mislead customers or prospective customers as to any of the matters or things prohibited by this order.

C. Failing to serve a copy of this order upon each present and every future licensee or franchisee and failing to obtain written acknowledgment of the receipt thereof; and from failing to obtain from each present and every future licensee or franchisee an agreement in writing (1) to abide by the terms of this order, and (2) to cancellation of their license or franchise for failure to so agree in writing.

It is further ordered, That the respondent corporations shall

forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

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

PHYLLIS ANN NOVELTY COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-1951. Complaint, June 29, 1971—Decision, June 29, 1971

Consent order requiring a Dallas, Texas, seller and distributor of women's wearing apparel, including scarves, to cease violating the Flammable Fabrics Act by importing or selling any fabric which fails to conform to the standards of said Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Phyllis Ann Novelty Company, a corporation, and Nathan J. Fox, 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 Flammable Fabrics Act, as amended, 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 Phyllis Ann Novelty Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas. Respondent Nathan J. Fox is an

officer of said corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporation.

Respondents are engaged in the business of the sale and distribution of products, namely women's accessories, hats, umbrellas, gloves, shawls, ponchos, jewelry, and notions including scarves. Their office and principal place of business is located at 1201 Young Street, Dallas, Texas.

PAR. 2. Respondents are now and for some time last past have been engaged in the sale and offering for sale, in commerce, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products, as "commerce," and "product," are defined in the Flammable Fabrics Act, as amended, which fail to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were scarves.

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the Rules and Regulations promulgated thereunder, and as such constituted and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of 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 Division of Textiles and Furs, Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended; 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Phyllis Ann Novelty Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas.

Respondent Nathan J. Fox is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporate respondent.

Respondents are engaged in the business of the sale and distribution of products, namely women's accessories, hats, umbrellas, gloves, shawls, ponchos, jewelry and notions, including scarves. Their office and principal place of business is located at 1201 Young Street, Dallas, Texas.

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 Phyllis Ann Novelty Company, a corporation, and its officers and Nathan J. Fox, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from selling, offering for sale, in commerce or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to any applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to the complaint, of the flammable nature of

said products, and effect the recall of said products from such customers.

It is further ordered, That the respondents herein either process the products which gave rise to the complaint so as to bring them into compliance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the product which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products and of the results thereof, (4) any disposition of said products since August 25, 1970, and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products, and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any products, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Respondents shall submit samples of not less than one square yard in size of any such product, fabric, or related material with this report.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That 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

PAUL E. WELCH TRADING AS WELCH CARPET MILL

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS

Docket C-1952. Complaint, June 29, 1971—Decision, June 29, 1971

Consent order requiring a Spring Place, Ga., individual trading as the Welch Carpet Mill to cease misbranding and failing to maintain proper records in his textile fiber products, namely carpeting.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Paul E. Welch, an individual trading as Welch Carpet Mill, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification 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 Paul E. Welch is an individual trading as Welch Carpet Mill with his office and principal place of business located at Spring Place, Georgia. Respondent's mailing address is Post Office Box 34, Spring Place, Georgia.

Respondent is a manufacturer of textile fiber products, namely carpeting.

PAR. 2. Respondent is now and for some time last past has been engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and has sold, offered for sale, advertised, delivered, transported, and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and has sold, offered for sale, advertised, delivered, transported and caused to be transported after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products were misbranded by respondent in that they were not stamped, tagged, labeled or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

PAR. 4. Respondent has failed to maintain proper records showing the fiber content of the textile fiber products manufactured by him, in violation of Section 6 of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

PAR. 5. The acts and practices of respondent as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted and now constitute, unfair methods of competition and unfair and deceptive acts and practices, 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 respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Division of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission

hereby issues its complaint, makes the following jurisdictional findings; and enters the following order:

1. Respondent Paul E. Welch is an individual trading as Welch Carpet Mill with his office and principal place of business located at Spring Place, Georgia. Respondent's mailing address is Post Office Box 34, Spring Place, Georgia.

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

ORDER

It is ordered, That respondent Paul E. Welch, an individual trading as Welch Carpet Mill or any other name and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding such textile fiber products by failing to affix a stamp, tag, label, or other means of identification to each such textile fiber product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Failing to maintain and preserve proper records showing the fiber content of the textile fiber products manufactured by said respondent, as required by Section 6 of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

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

IN THE MATTER OF

CHATSWORTH CARPET AND RUG COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS

Docket C-1953. Complaint, June 29, 1971—Decision, June 29, 1971

Consent order requiring a Chatsworth, Ga., manufacturer of carpets to cease violating the Textile Fiber Products Identification Act by misbranding its carpets.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Chatsworth Carpet and Rug Company, Inc., a corporation, and Ruben F. Calfee, 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 Textile Fiber Products Identification 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 Chatsworth Carpet and Rug Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. The respondent corporation maintains its office and principal place of business on Route 3, Chatsworth, Georgia. The respondent's mailing address is Post Office Box 638, Chatsworth, Georgia.

Respondent Ruben F. Calfee is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of the corporate respondent including those hereinafter referred to. His address is the same as that of the corporate respondent.

Respondents are engaged in the manufacture of textile fiber products, namely carpeting.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising and offering for sale, in commerce, and in the transportation or causing to be transported in

commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR 3. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were carpets which were not labeled to show:

(1) The true generic name of the fibers present; and

(2) The true percentage of the fibers present by weight.

PAR. 4. The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, 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 Division of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Chatsworth Carpet and Rug Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. Its office and principal place of business is located on Route 3, Chatsworth, Georgia. Respondent's mailing address is Post Office Box 638, Chatsworth, Georgia.

Respondent Ruben F. Calfee is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of the corporate respondent including those hereinafter referred to. The address of Ruben F. Calfee is the same as that of the corporate respondent.

Respondents are engaged in the manufacture of textile fiber products, namely carpeting.

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 Chatsworth Carpet and Rug Company, Inc., a corporation, and its officers, and Ruben F. Calfee, 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, delivery for introduction, manufacture for introduction, sale, advertising or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber prod-

ucts, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from misbranding such products by:

1. Failing to affix a stamp, tag, label, or other means of identification to each such textile fiber product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That 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

ORANGE COAT COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION, THE TEXTILE FIBER PRODUCTS IDENTIFICATION AND THE WOOL PRODUCTS LABELING ACTS

Docket C-1954. Complaint, June 29, 1971—Decision, June 29, 1971

Consent order requiring a Bridgeport, Conn., manufacturer of ladies' coats to cease misbranding its textile fiber products and wool products and failing to maintain adequate records.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939 and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to be-

lieve that Orange Coat Company, a partnership, and Bernhardt M. Wolfson, Irving Applebaum and Harry Schwartz, individually and as copartners trading as Orange Coat Company, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the aforesaid Acts 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 Orange Coat Company is a partnership existing and doing business under and by virtue of the laws of the State of Connecticut with its office and principal place of business located at 40 Cowles Street, Bridgeport, Connecticut.

Respondents Bernhardt M. Wolfson, Irving Applebaum and Harry Schwartz are individuals and copartners trading as Orange Coat Company. Their address is the same as that of said partnership.

Respondents are manufacturers of ladies' coats.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amounts of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were garments with dual labels showing conflicting amounts of constituent fibers therein.

PAR. 4. Certain of the textile fiber products were misbranded by the respondents in that they were not stamped, tagged, labeled or

otherwise identified to show each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the Rules and Regulations under said Act.

Among such misbranded textile products were garments with labels which failed to disclose the true generic names of the fibers present.

PAR. 5. Respondents have failed to maintain and preserve proper records showing the fiber content of the textile fiber products manufactured by them, in violation of Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

PAR. 6. The acts and practices of the respondents as set forth above were and are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

PAR. 7. Respondents, now and for some time last past, have introduced into commerce, manufactured for introduction into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 8. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were ladies' coats made of a woolen fabric containing a polyester foam backing. The backing was not disclosed on the required label and this failure to disclose a material fact had the tendency and capacity to mislead consumers as to the character and amount of constituent fibers contained in the aforesaid ladies' coats.

PAR. 9. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939, and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were wool products with labels on or affixed thereto which failed to disclose the percentage of total fiber weight of the wool product, exclusive of ornamentation not exceeding five per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool when said percentage by weight of such fiber was five per centum or more; and (5) the aggregate of all other fibers.

PAR. 10. The acts and practices of the respondents as set forth in Paragraphs Eight and Nine were, and are, in violation of the Wool Products Labeling Act of 1939, and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 11. Respondents for some time last past have been engaged in the advertising, offering for sale, sale and distribution of products, namely ladies' coats, among others in commerce. The respondents maintained and at all times mentioned herein have maintained a substantial course of trade in said products in commerce as "commerce" in defined in the Federal Trade Commission Act.

PAR. 12. Respondents in the course and conduct of their business as aforesaid have manufactured ladies' coats out of textile fabrics to which were affixed a polyester foam backing. In selling and distributing the aforesaid coats, respondents did not disclose the presence of the foam backing. This failure to disclose a material fact had the tendency and capacity to mislead and deceive consumers as to the quality of respondents' products.

PAR. 13. The acts and practices set out in Paragraph Eleven and Twelve were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices, in commerce, within the intent and meaning of 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 Division of Textiles and Furs, Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Com-

mission, would charge respondents with violation of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Orange Coat Company is a partnership existing and doing business under and by virtue of the laws of the State of Connecticut with its office and principal place of business located at 40 Cowles Street, Bridgeport, Connecticut.

Respondents Bernhardt M. Wolfson, Irving Applebaum and Harry Schwartz are individuals and copartners trading as Orange Coat Company. Their address is the same as that of said partnership.

Respondents are manufacturers of ladies' coats.

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 Orange Coat Company, a partnership, and Bernhardt M. Wolfson, Irving Applebaum and Harry Schwartz, individually and as copartners trading as Orange Coat Company or under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale in commerce, or the transportation or causing to be

transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product, which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising, or otherwise identifying such products as to the name or amount of the constituent fibers contained therein.

2. Failing to affix labels to such textile fiber products showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Failing to maintain and preserve for at least three years proper records showing the fiber content of textile fiber products manufactured by them, as required by Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Rules and Regulations promulgated thereunder.

It is further ordered, That respondents Orange Coat Company, a partnership, and Bernhardt M. Wolfson, Irving Applebaum and Harry Schwartz, individually and as copartners trading as Orange Coat Company or under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to securely affix to or place on, each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner each element of information re-

quired to be disclosed by Section 4(a) (2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Orange Coat Company, a partnership, and Bernhardt M. Wolfson, Irving Applebaum and Harry Schwartz, individually and as copartners trading as Orange Coat Company or under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale and distribution of ladies' coats or any other products do forthwith cease and desist from failing to disclose the presence of a foam backing or of any other substance or material in the said coats or products which might tend to mislead a purchaser as to the weight of the outer or shell fabric of the coats or products.

It is further ordered, That 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

KANDEL KNITTING MILLS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-1955. Complaint, June 29, 1971—Decision, June 29, 1971

Consent order requiring a Portland, Oreg., manufacturer and distributor of various wool and textile fiber products, including scarves, to cease violating the Flammable Fabrics Act by importing or selling any fabric which fails to conform to the standards of said Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Kandel Knitting Mills, Inc., a corporation, and Walter Kandel, 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 Flammable Fabrics Act, as amended, 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 Kandel Knitting Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon. Respondent Walter Kandel is an officer of said corporation. He formulates, directs and controls the acts, practices and policies of said corporation.

Respondents are engaged in the business of the manufacture, sale and distribution of various wool and textile fiber products, and have their office and principal place of business at 4834 North Interstate Avenue, Portland, Oregon. Respondents operate a retail establishment, located at 1218 Lloyd Center, Portland, Oregon, which is engaged in the sale and distribution of various textile fiber products, including, but not limited to, scarves.

PAR. 2. Respondents are now and for some time last past have been engaged in the sale and offering for sale, in commerce, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products, as the terms "commerce" and "product" are defined in the Flammable Fabrics Act, as amended, which products fail to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were scarves.

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the Rules and Regulations promulgated thereunder, and constituted and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of 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 Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended; and

The respondents and counsel for the Commission having there-

after 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Kandel Knitting Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon. Respondent Walter Kandel is an officer of said corporation. He formulates, directs and controls the acts, practices and policies of said corporation.

Respondents are engaged in the business of the manufacture, sale and distribution of various wool and textile fiber products, and have their office and principal place of business at 4834 North Interstate Avenue, Portland, Oregon. Respondents operate a retail establishment, located at 1218 Lloyd Center, Portland, Oregon, which is engaged in the sale and distribution of various textile fiber products, including, but not limited to, scarves.

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

ORDER

It is ordered, That respondents Kandel Knitting Mills, Inc., a corporation, and its officers and Walter Kandel, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from manufacturing for sale, selling, or offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material; or

manufacturing for sale, selling or offering for sale any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" or "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric, or related material fails to conform to any applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to this complaint of the flammable nature of said products, and effect recall of said products from such customers.

It is further ordered, That the respondents herein either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (4) any disposition of said products since November 13, 1970, and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products, and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Respondents shall submit samples of not less than one square yard in size of any such product, fabric, or related material with this report.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate

respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

JOSEPH SPIEGELMAN TRADING AS JOMAC LACE & EMBROIDERY COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-1956. Complaint, June 29, 1971—Decision, June 29, 1971

Consent order requiring a New York City individual trading as the Jomac Lace & Embroidery Company to cease violating the Flammable Fabrics Act by importing or selling any fabric, including lace, which fails to conform to the standards of said Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Joseph Spiegelman, an individual trading as Jomac Lace & Embroidery Company, hereinafter referred to as respondent, has violated the provisions of said Acts, and the Rules and Regulations promulgated under the Flammable Fabrics Act, as amended, 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 Joseph Spiegelman, an individual trading as Jomac Lace & Embroidery Company, operates his business as a single proprietorship in the State of New York.

The respondent is engaged in the business of the importation, sale, and distribution of fabrics including, but not limited to lace with his office and principal place of business located at 110 West 40th Street, New York, New York.

PAR. 2. Respondent is now and for some time last past has been engaged in the sale and offering for sale, in commerce, and has introduced, delivered for introduction, transported and caused to be transported in commerce, and has sold or delivered after sale or shipment in commerce, fabric as "commerce" and "fabric," are defined in the Flamable Fabrics Act, as amended, which fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such fabric mentioned hereinabove was lace.

PAR. 3. The aforesaid acts and practices of respondent were and are in violation of the Flammable Fabrics Act, as amended, and the Rules and Regulations promulgated thereunder, and as such constituted and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Division of Textiles and Furs, Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has

violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Joseph Spiegelman is an individual trading as the Jomac Lace & Embroidery Company. He operates his business as a single proprietorship in the State of New York.

Respondent is engaged in the business of the importation, sale, and distribution of fabrics, including but not limited to lace with his office and principal place of business located at 110 West 40th Street, New York City, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of the proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Joseph Spiegelman, an individual trading as Jomac Lace & Embroidery Company, or under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from selling or offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce any product, fabric, or related material; or selling, or offering for sale, any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to any applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondent notify all of his customers who have purchased or to whom has been delivered the fabric which gave rise to this complaint of the flammable nature of said fabric, and effect recall of said fabric from such customers.

It is further ordered, That the respondent herein either process the fabric which gave rise to the complaint so as to bring it into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said fabric.

It is further ordered, That the respondent herein shall, within ten

(10) days after service upon him of this order, file with the Commission a special report in writing setting forth the respondent's intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the fabric which gave rise to the complaint, (2) the amount of said fabric in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said fabric and effect the recall of said fabric from customers, and of the results thereof, (4) any disposition of said fabric since April 3, 1970 and (5) any action taken or proposed to be taken to bring said fabric into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said fabric, and the results of such action. Such report shall further inform the Commission as to whether or not respondent has in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. The respondent shall submit samples of not less than one square yard in size of any such product, fabric or related material with this report.

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

IN THE MATTER OF

THE GOODYEAR TIRE & RUBBER COMPANY, ET AL.

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

Docket C-1957. Complaint, June 29, 1971—Decision, June 29, 1971

Consent order requiring the Nation's five largest tire manufacturers with headquarters in New York City and Akron, Ohio, to cease refusing to sell special mileage commercial tires to any transit company, entering into any agreement with a transit company which does not contain certain enumerated options to alter the contract, selling such tires with the "buy-out" provision, and making any contract with a transit company for more than five (5) years; also each customer shall have the right to amend its contract to purchase all special mileage commercial tires it has in use, and each respondent shall publish and disseminate to the transit companies lists of prices for such tires.

The Federal Trade Commission having reason to believe that the corporations named as respondents in the caption hereof, and more particularly designated and described hereinafter, have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent The Goodyear Tire & Rubber Company (hereinafter referred to as "Goodyear") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business at 1144 East Market Street, Akron, Ohio.

Respondent The Firestone Tire & Rubber Company (hereinafter referred to as "Firestone") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business at 1200 Firestone Parkway, Akron, Ohio.

Respondent UNIROYAL, Inc. (formerly United States Rubber Company and hereinafter referred to as "UNIROYAL"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 1230 Avenue of the Americas, New York, New York.

Respondent The B. F. Goodrich Company (hereinafter referred to as "Goodrich") 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 at 500 South Main Street, Akron, Ohio.

Respondent The General Tire & Rubber Company (hereinafter referred to as "General") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business at 1708 Englewood Avenue, Akron, Ohio.

PAR. 2. Definitions:

(a) The term "special mileage commercial tire" means any tire supplied by a respondent to a transit company (as hereinafter defined) under the terms of and in connection with a leasing agreement (as hereinafter defined) and includes tires specially constructed for that purpose, exclusive of truck tires.

(b) The term "leasing agreement" means all agreements, arrangements, understandings or contracts, written or oral, whether or not actual leases, under which one of the respondents agrees to supply a transit company (as hereinafter defined) with any or all of its requirements for special mileage commercial tires.

(c) The term "transit company" includes both publicly and privately-owned transit authorities, corporations, partnerships, sole proprietorships and other entities engaged in transporting persons in the United States over public and private roadways in bus coaches, including but not limited to those engaged in operating intracity buses, intercity buses, school buses, charter buses and similar forms of transportation.

(d) "Sale" and "sell" mean any immediate transfer of title and use, whether for cash or on credit.

PAR. 3. The respondents, and each of them, have been and now are engaged in, among other business activities, the business of manufacturing special mileage commercial tires used by virtually every transit company in the United States and distributing said tires through leasing agreements, each of said leasing agreements involving one of the respondents and a transit company. The total revenue derived annually from said business has exceeded the sum of twenty million dollars in each year since 1964, with respondents collectively sharing substantially all of said revenues. The approximate market shares of the individual respondents in said business are: Goodyear 33 percent; Firestone 30 percent; Goodrich 21 percent; General 8 percent; and UNIROYAL 7 percent, with the remaining 1 percent distributed among other manufacturers.

PAR. 4. In the course and conduct of their aforesaid business, respondents now ship, and for some time last past have shipped, their special mileage commercial tires from their respective production facilities in various States to locations in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said tires in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Except to the extent that actual and potential competition among the respondents and with others has been hindered, frustrated, foreclosed, lessened and eliminated by the unfair methods of competition and unfair acts and practices hereinafter set forth, each of the respondents is in direct, substantial competition with the other respondents and others in the manufacture, sale, leasing and servicing of special mileage commercial tires.

PAR. 6. In the conduct of the aforesaid business, the respondents,

and each of them are now using and for many years have used and pursued parallel courses of business behavior constituting unfair methods of competition and unfair acts and practices in commerce.

Among the unfair methods, acts and practices in which respondents, and each of them, have been and are now engaged are the following:

(a) Entering into, establishing and maintaining leasing agreements with transit companies wherein and whereby:

(i) A transit company is obligated to obtain its total requirements or substantially all of its requirements for special mileage commercial tires from one of the respondents for the duration of the leasing agreement, which duration, exclusive of any renewals and extensions, ranges from two to eight years with three to five years being generally employed; and,

(ii) A transit company, on terminating an existing leasing agreement, is required to purchase or "buy-out" all of the special mileage commercial tires then identified to the leasing agreement.

(b) Refusing to sell special mileage commercial tires except on termination of a leasing agreement.

(c) Offering and providing service for special mileage commercial tires only in conjunction with, and as an integral part of, a leasing agreement for said tires with a transit company.

PAR. 7. The purpose and effect of the "buy-out" requirement has been and is now to deter or preclude lessee transit companies throughout the United States from terminating an existing supplier and from seeking a new supplier of special mileage commercial tires, and, if a transit company seeks to shift the burden of said requirement to any new supplier, to deter or preclude any such potential new supplier from soliciting and/or obtaining the special mileage commercial tire business of that transit company.

In order to enhance further the deterrent and prohibitive effect of the "buy-out" requirement, and thereby further hinder, frustrate, foreclose, lessen and eliminate competition among respondents and with other potential competitors, the respondents, and each of them, have been and now are engaged in the following unfair methods, acts and practices:

(a) Inflating, padding and "loading" the inventory of special mileage commercial tires identified to the leasing agreement prior to the expiration thereof; and

(b) Establishing under the leasing agreement, methods or formulae for valuing and/or pricing special mileage commercial tires under the "buy-out" requirement of said leasing agreement, which

methods or formulae produce a purchase price to the transit company substantially in excess of the manufacturer's inventory value for said tires.

PAR. 8. The methods, acts and practices of respondents, and each of them, by and through the special mileage commercial tire leasing agreement and other acts and practices ancillary thereto, as herein described, have had for many years and are now having the effect of hindering, frustrating, foreclosing, lessening and eliminating competition in the sale and leasing of special mileage commercial tires and of allocating transit company customers among respondents, and such acts constitute unfair acts and practices in commerce, all in derogation of the public interest and in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade 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 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, their attorneys 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 respondents that the law has been violated as alleged in such complaint; and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, during which time public comments were received and considered, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent The Goodyear Tire & Rubber Company is a corporation organized, existing and doing business under and by virtue of

the laws of the State of Ohio, with its principal office and place of business at 1144 East Market Street, Akron, Ohio.

2. Respondent The Firestone Tire & Rubber Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business at 1200 Firestone Parkway, Akron, Ohio.

3. Respondent UNIROYAL, Inc. (formerly United States Rubber Company), is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 1230 Avenue of the Americas, New York, New York.

4. Respondent The B. F. Goodrich Company 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 at 500 South Main Street, Akron, Ohio.

5. Respondent The General Tire & Rubber Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business at 1708 Englewood Avenue, Akron, Ohio.

6. 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 The Goodyear Tire & Rubber Company, a corporation; The Firestone Tire & Rubber Company, a corporation; UNIROYAL, Inc. (formerly United States Rubber Company), a corporation; The B.F. Goodrich Company, a corporation; and The General Tire & Rubber Company, a corporation; and each of said respondents and their respective officers, representatives, agents and employees, successors and assigns, directly or through any corporate or other device, in connection with the manufacture, distribution, supply and sale of special mileage commercial tires, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Refusing to sell special mileage commercial tires to a transit company.

(2) Entering into or extending any agreement for the supplying of special mileage commercial tires to a transit company, in which the payments received are based in any way upon the mileage run on said tires, which does not contain an option exercisable by the transit company upon thirty (30) days notice

prior to the expiration date specified in said agreement as follows:

(a) The transit company shall have the right to extend the agreement and continue the use, and in that event the supplier shall continue its interest (if any be retained) in said tires, and if so extended, the agreement shall terminate in thirty-six (36) months, and

(b) Payment for such use shall not exceed the mileage rate formulae in effect during the six-month period immediately preceding the expiration of the agreement, and

(c) The transit company shall continuously use such tires insofar as practicable on its highest-mileage runs, until they are rendered permanently unfit for service, and

(d) No additional tires are to be furnished by the supplier during such extension unless requested by the transit company and agreed to by the supplier, and

(e) Upon expiration of the agreement as so extended, the transit company shall pay for any mileage remaining computed in accordance with the formulae in Par. I(2)(b) above.

(3) Entering into any rental agreement for the supply of special mileage commercial tires to a transit company which requires such company to purchase ("buy-out") any tires at the expiration thereof unless in accordance with the terms of Par. I (2) above.

(4) Entering into any agreement of any kind to provide any transit company with its needs or requirements for special mileage commercial tires for a total period in excess of five years.

(5) Entering into any agreement of any kind with a transit company which does not contain a provision, if requested by the transit company, giving that company the right to test special mileage commercial tires other than the supplier's on five percent (5%) of its fleet.

II

It is further ordered, That each respondent, individually, shall within thirty (30) days from the date of issuance of this order, notify each transit company with which it then has an agreement for the supply of special mileage commercial tires that:

(1) The transit company shall have the right by notice to the respondent within ninety (90) days of the date of issuance of this order, to amend its agreement to provide that at the end of

the term of the agreement, it may purchase and pay for any and all special mileage commercial tires then in use by:

(a) Calculating a cash purchase price for said tires by multiplying the mileage remaining by the mileage rate formulae in effect for the six-month period immediately prior to the termination date, less any charge intended to cover costs for service which is not thereafter to be performed by respondent, and including credit for bonus mileage earned or to be earned, and

(b) Payment of the definite price established by Par. II (1) (a) above by means of equal monthly payments over a maximum period of twenty-four (24) months or a number of months equal to two-thirds (⅔) of the average remaining life of such tires, whichever is less.

(2) All new agreements, including renewals of existing agreements, will be executed by the respondent in accordance with the provisions of this order.

(3) Respondent will not impose legal penalties or financial charges or costs of any kind upon any transit company because it exercises the rights granted by and complies with the conditions specified in Par. II (1) above.

III

It is further ordered, That each respondent, individually, shall:

(1) Establish cash sales prices, exclusive of any present "buy-out" prices, for special mileage commercial tires, and publish and disseminate a list or lists of said prices to existing transit company customers, and to any transit company on request;

(2) Separately state to any transit company rates for service of its special mileage commercial tires whenever an offer is made to supply said service to that company; and

(3) Make available upon request, for purchase by any party, written material setting forth procedures for the proper use, maintenance and service of its special mileage commercial tires.

IV

It is further ordered, That each respondent shall, within thirty (30) days after the date of issuance of this order, notify each and every transit company with which such respondent has a contract, agreement or understanding for the sale or lease of special mileage commercial tires of this order by providing each of them with a copy.

It is further ordered, That each respondent shall, within ninety (90) days after the date of issuance of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied and is complying with each and every specific provision of this order, and the responses to the notices described in Par. II above.

It is further ordered, That each respondent shall, between the fifteenth and eighteenth month after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied and is complying with each and every specific provision of this order.

It is further ordered, That the respondents and each of them notify the Commission at least thirty (30) days prior to any proposed change such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

IN THE MATTER OF

THE PAPERCRAFT CORPORATION

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

Docket 8779. Complaint, Apr. 10, 1969[1]*—Decision, June 30, 1971*[2]

Order requiring a major manufacturer and distributor of gift wrapping paper and ribbons with headquarters in Pittsburgh, Pa., to divest itself of all assets and properties of CPS Industries, Inc., a Chicago, Ill., gift wrapping firm, and for ten (10) years not to acquire any distributor of gift wrapping without prior approval of the Federal Trade Commission, and not to sell to a customer of CPS Industries for a period of three (3) years unless it has sold to such customer prior to December 27, 1967.

COMPLAINT

The Federal Trade Commission having reason to believe that The Papercraft Corporation, a corporation, has acquired the stock, busi-

---

[1] Reported as amended by Hearing Examiner's order of September 9, 1969, by amending the introductory portion of Paragraph 16.

[2] Modified by Commission's order of September 9, 1971, by modifying Paragraph IX of the order, 79 F.T.C. 420.

ness and assets of CPS Industries, Inc., a corporation, in violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. Sec. 18); and, therefore, pursuant to Section 11 of said Act, issues this complaint stating its charges as follows:

I

Definitions

1. For the purpose of this complaint, the following definition shall apply:

"Gift wrapping paper and ribbons" includes all paper and ribbons ordinarily used for the purpose of wrapping gifts.

II

Respondent

2. The Papercraft Corporation, herein referred to as "Papercraft," is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with principal offices located at Papercraft Park, Pittsburgh, Pennsylvania.

3. Papercraft owns two manufacturing subsidiaries: LePage's Inc., which manufactures pressure sensitive tapes and adhesives; and American Universal Plastics, Inc., which manufactures vinyl tablecloths, placemats, and doilies. A third subsidiary, Papercraft Properties, Inc., owns the real estate housing the parent corporation. All three subsidiaries are Pennsylvania corporations.

4. Prior to the aforesaid acquisition, Papercraft was the second largest manufacturer of gift wrapping paper and ribbons. Based on total industry sales of $100,000,000 in 1967, its percentage share of the market based on approximately $16.3 million in sales was 16.3%. Papercraft's total sales of all products in 1966 was $24.1 million.

5. At all times relevant herein, Papercraft has sold and shipped its products, and specifically gift wrapping paper and ribbons, in interstate commerce throughout the United States and was and is engaged in interstate commerce within the meaning of the Clayton Act.

III

CPS Industries, Inc.

6. On December 27, 1967, Papercraft acquired all of the issued and outstanding capital stock and debentures of CPS Industries,

Inc., a Delaware corporation with a main office located at 2300 Logan Boulevard, Chicago, Illinois. At the time of the acquisition, CPS Industries, Inc., had two subsidiaries: CPS Industries (Tenn.) Inc. (a Tennessee corporation), Franklin, Tennessee, Rapid Ribbon, Inc. (a Delaware corporation) (same address as parent).

7. In 1967, CPS Industries, Inc., was the Nation's largest manufacturer of gift wrappings and ribbons. Its 1967 sales of these products of $17,006,112 approximated 17.0% of the total domestic market for such products. The firm's 1966 sales of all products were $20.9 million.

8. At all times relevant herein, CPS has sold and shipped its products, and specifically gift wrapping paper and ribbons, in interstate commerce throughout the United States and was and is engaged in interstate commerce within the meaning of the Clayton Act.

IV

Nature of Trade and Commerce

9. Total production of gift wrappings and ribbons throughout the United States approximates $90 million to $100 million a year. These products are sold to department stores, drugstores, grocery chains, toy stores, gift stores and other outlets.

10. Based upon the figures noted in Paragraph 4 and 7 herein, Papercraft, as a result of its acquisition of CPS, has increased its share of the gift wrappings and ribbon market from approximately 16.3% to 33.3%. The acquisition has also resulted in an increase, from 50% to 60%, in the share of the subject market controlled by the four largest firms.

11. There have been no new entrants into the gift wrappings and ribbon industry since 1962. At least thirteen firms, including one of the largest, withdrew from competition during this period; five others were acquired by larger firms.

12. Within the industry, Papercraft concentrated primarily upon sales to grocery, drug and discount chains. The company produced gift wrapping and ribbons that were functionally identical to that of CPS, but were priced somewhat lower in some cases.

13. CPS competed on every price level within the industry. Several of its brand name products were in direct price competition with those of Papercraft. CPS' main sales thrust was directed to the quality department store and gift shop outlets.

14. Both Papercraft and CPS competed for substantial sales to

chain retail outlets, both in the sales of brand names and private label products. Typical of such customers were S.S. Kresge Co., Sears Roebuck & Co., and Arlan's Department Stores whose total purchases from Papercraft and CPS were $3 million in 1967.

V

The Acquisition

15. On December 27, 1967, pursuant to an agreement dated December 6, 1967, Papercraft acquired all of the stock and debentures of CPS, a privately held corporation, directly from the holders thereof solely in exchange for 285,300 shares of stock of Papercraft valued for purposes of the transaction at $20 a share, or a total consideration of $5,706,000.

VI

Violation

16. The effect of the acquisition by Papercraft of CPS has been, or may be, substantially to lessen competition or tend to create a monopoly, in the United States, in the production and sale of gift wrapping paper and ribbons in violation of Section 7 of the Clayton Act in the following ways, among others:

(a) actual competition between the two firms in the production and sale of gift wrappings and ribbons in general, and to chain department, discount and drugstores, has been or may be eliminated;

(b) potential competition by Papercraft in the production and sale of gift wrapping and paper to quality department stores and gift shops has been or may be eliminated;

(c) concentration of production and sales capacity within the gift wrapping paper and ribbon industry has been substantially increased;

(d) the increased dominance of Papercraft within the industry tends unduly to heighten barriers to the entry of new substantial competitors and render the survival of existing competition tenuous.

The acquisition of CPS by respondent, as alleged above, constitutes a violation of Section 7 of the Clayton Act (15 U.S.C. § 18).

Mr. Joseph J. O'Malley, *Mr. William A. Zolbert*, and *Mr. Larry D. Sharp*, supporting the complaint.

McKean & Whitehead, by *Mr. David J. McKean*, and *Cohn & Marks*, by *Mr. Richard M. Schmidt, Jr.*, for respondent.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

JULY 27, 1970

INDEX

STATEMENT OF PROCEEDINGS

The Federal Trade Commission issued its complaint against the above-named respondent on April 10, 1969, charging it with having violated Section 7 of the Clayton Act, as amended, by reason of its acquisition of the stock, business and assets of CPS Industries, Inc., a manufacturer of gift wrappings and ribbons. After being served with said complaint, respondent appeared by counsel and filed its answer to the complaint denying, in substance, that the acquisition was illegal, and alleging as affirmative defenses that the two companies were not in substantial competition and that CPS was a failing company.

Thereafter, a series of prehearing conferences were held between July 14, 1969, and October 2, 1969, before Leon R. Gross, to whom this proceeding was initially assigned as hearing examiner. Follow-

ing the death of Examiner Gross, the undersigned was assigned to act as hearing examiner herein on December 8, 1969. A further prehearing conference was held before the undersigned examiner on January 13, 1970.

During the prehearing phase of this proceeding, various applications, requests and motions were made by the parties, for purposes of discovery, including a motion to produce by respondent, an application for access by counsel supporting the complaint, a request for admissions by counsel supporting the complaint, and a motion for the issuance of "Special Reports" pursuant to Section 6(b) of the Federal Trade Commission Act by respondent. Most of said applications and motions were ruled upon by Examiner Gross during the pendency of this proceeding before him. Respondent's request for leave to file an interlocutory appeal from said examiner's order ruling on its motion to produce was denied by order of the Commission issued September 30, 1969. Respondent's motion for the issuance of Special Reports pursuant to Section 6(b) (which was certified to the Commission by the former examiner) was denied by order of the Commission issued August 27, 1969. Following the latter action, respondent instituted a suit in the United States District Court for the Western District of Pennsylvania to compel the Commission to conduct a survey under Section 6(b). Said suit was dismissed on January 14, 1970. On February 23, 1970, and March 6, 1970, after the commencement of hearings herein, respondent made application to the undersigned examiner for the issuance of approximately 550 subpoenas duces tecum designed to produce information of the type earlier sought to be obtained through the Section 6(b) survey requested of the Commission. Said applications were denied by order of the examiner dated March 20, 1970. Respondent contends that it was denied due process because of the failure to grant its requests for such information. This contention is hereinafter considered in the context of whether the data sought is relevant in this proceeding.

Hearings for the reception of evidence commenced herein on January 20, 1970, before the undersigned hearing examiner. Complaint counsel's case-in-chief was completed on February 9, 1970, except for the cross-examination of one witness which was delayed until February 16, 1970, at the request of respondent. The presentation of evidence on behalf of respondent commenced on February 10, 1970, and was completed on March 20, 1970. On the latter date rebuttal evidence was also offered by complaint counsel and received. The record was closed on March 20, 1970, subject to the possible filing of a

motion by respondent during the following week, to reopen the record for the purpose of offering certain surrebuttal evidence. A motion to reopen was filed by respondent on April 20, 1970, and was granted by the examiner on April 27, 1970, to the extent of permitting certain affidavits, as to which there was no objection by complaint counsel, to be received in evidence. A supplemental motion by respondent to reopen the record for the purpose of receiving certain additional affidavits was denied by order of the examiner dated April 30, 1970. It may be noted, however, that none of the findings herinafter made by the examiner are based on the testimony of the witness in response to which the aforesaid affidavits were offered.

During the course of the hearings held herein, certain exhibit consisting of sales figures and other business data of third parties purporting to be in competition with respondent were received in evidence and, on request of said third parties, and with the concurrence of complaint counsel, were accorded *in camera* status for a period of five years. Under the examiner's ruling pertaining to such *in camera* documents, access thereto was limited to counsel for the parties to the proceeding, subject to the right of counsel for respondent to request leave of the examiner to disclose to their client any document or portion thereof which they could not understand or interpret without its assistance. (See, for example, Tr. 712.) Counsel for respondent state in their proposed findings that they renew their objection to the examiner's ruling purporting to deny them the right to show or discuss with the repondent any *in camera* documents. It may be noted, however, that at no time during the course of the proceeding did counsel for respondent seek to avail themselves of the right to request leave of the examiner to disclose such documents to their client, or attempt to establish in any way their inability to use or understand such documents without disclosure of the contents thereof to their client.

At the close of all the evidence, the parties were granted leave until May 5, 1970, to file proposed findings of fact, conclusions of law and an order. On application of respondent, the time for filing proposed findings was extended until May 13, 1970. Proposed findings were received from counsel supporting the complaint and comsel for respondent on May 13, 1970. Although an opportunity to file replies to the findings of opposing counsel was granted on application of counsel supporting the complaint, counsel for the parties elected not to file any reply findings.

After having carefully reviewed the evidence in this proceeding

and the proposed findings and conclusions submitted by the parties,[1] and based on the entire record, including his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT [2]

I. Identity and Business of Respondent and Acquired Company

A. *The Respondent*

1. Respondent, Papercraft Corporation (sometimes referred to herein as "Papercraft"), is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal office located at Papercraft Park, Pittsburgh, Pennsylvania 15238 (Adm., Ans., par. 2).

2. Papercraft has two manufacturing subsidiaries: LePage's, Inc., which manufactures pressure sensitive tapes and adhesives; and American Universal Plastics, Inc., which manufactures vinyl tablecloths, placemats, and doilies. A third subsidiary, Papercraft Properties, Inc., owns the real estate housing the parent corporation. All three subsidiaries are wholly owned by Papercraft and are Pennsylvania corporations (Adm., Ans., par. 3; CX 7, pp. 3–4).

3. Papercraft was founded in 1945 as a manufacturer of gift wrap products (Tr. 1152). In 1967 it manufactured and sold gift wrap products, Christmas icicles and Christmas greeting cards, with gift wrap products constituting the bulk of its business. Its total net sales of all products in 1967 were $17,935,000, of which $15,700,000 consisted of gift wrap products. The total net sales of Papercraft and its two operating subsidiaries in 1967 were $27,022,000, and their net income after taxes was $2,215,000 (RX 19; CX 13, p. 10).

4. Papercraft sells its gift wrap products under the brand names "Kaycrest" and "Rhapsody," and under various private labels (Tr. 1188–89, 1169; CX 21–C). Such products are distributed for resale to various retail and wholesale outlets, either directly or through so-called manufacturers' representatives (Tr. 1165–70, 1214; RX

---

[1] Proposed findings not herein adopted, either in the form proposed or in substance, are rejected as not supported by the evidence or as involving immaterial matters. References to proposed findings are made with the following abbreviations: "CPF" (for complaint counsel's proposed findings); and "RPF" (for respondent's proposed findings).

[2] References are herein made to certain portions of the record in support of particular findings. Such references are to the principal portions of the record relied upon by the examiner, but are not intended as an exhaustive compendium of the portions of the record reviewed and relied upon by him. The following abbreviations are used in referring to the record: "Tr." (for transcript of testimony); "CX" (for complaint counsel's exhibits); and "RX" (for respondent's exhibits).

22–A). Papercraft's gift wrap products are manufactured or converted at its plant in Pittsburgh, Pennsylvania, and are distributed to its customers through warehouses located throughout the United States (Tr. 1258–59). At all times material herein, Papercraft has sold and shipped its gift wrap products, in interstate commerce, throughout the United States (Adm., Ans., par. 5).

B. *The Acquired Company*

5. Until its acquisition on December 27, 1967, CPS Industries, Inc. (sometimes referred to herein as "CPS"), was a corporation organized and existing under the laws of the State of Delaware, with its principal office located at 2300 Logan Boulevard, Chicago, Illinois. CPS had two subsidiaries, CPS Industries (Tenn.) Inc., a Tennessee corporation, which was located in Franklin, Tennessee, and Rapid Ribbon, Inc., a Delaware corporation, which was located at the same address as the parent corporation (Adm., Ans., par. 6).

6. CPS was founded in 1916 under the name of Chicago Printed String, Incorporated. During the early 1920's, it began the manufacture and sale of gift wrap ribbon, and during the early 1930's it began to manufacture and distribute gift wrap paper in addition to ribbon (Tr. 1355). CPS operated three manufacturing plants in Chicago until 1964, when it moved the major part of its manufacturing facilities to a new plant in Franklin, Tennessee. However, it still retained one plant in Schiller Park, Illinois. Its subsidiary CPS Industries (Tenn.) Inc., manufactured and converted gift wrap products for sale by the parent corporation. Its other subsidiary, Rapid Ribbon, Inc., manufacture stretch-ties for sale by the parent corporation (CX 10–A, F, G, CX 13, p. 2; Tr. 1307, 1313, 1411).

7. In 1967, just prior to its acquisition, the products manufactured by CPS and its subsidiaries consisted of gift wrap products and industrial tapes. Its total sales of all products in 1967 were $19,250,000, of which $17,300,000 consisted of gift wrap products. The balance, constituting approximately 10% of its total sales, consisted of glass yarn used to wind electrical generator armatures and tapes employed as tear tape openers in corrugated boxes (RX 18; Tr. 1303–06). CPS and its subsidiaries had total assets of $14,220,000, as of October 28, 1967, (CX 25, p. 4679–44).

8. CPS sold its gift wrap products under the brand names "CPS," "Tie-Tie," "Crinkle-Tie," "Galaxy," "Pride," and "Rippl-Tie," and under various private labels. Such products were distributed by CPS through its salesmen, for resale by various retail and wholesale out-

lets, for use by retail establishments in wrapping gifts for customers, and for use by manufacturers of certain consumer products for prewrapping their products (CX 20 C–D, CX 21 D–E, CX 47 A–B; Tr. 595, 600, 617, 1303, 1323, 1330, 1341–42). At all times material herein CPS sold and shipped its gift wrap products, in interstate commerce, throughout the United States (Adm., Ans., par. 8).

C. *The Acquisition*

9. Negotiations between Papercraft and CPS looking toward the former's acquisition of the stock and assets of the latter commenced on or about November 4, 1967, and continued until December 6, 1967, when an agreement was entered into for Papercraft to acquire CPS (CX 10, 12, 25 and 78). Pursuant to said agreement, Papercraft, on December 27, 1967, acquired all of the stock and debentures of CPS directly from the holders thereof, in exchange for 285,300 shares of Papercraft stock valued, for purposes of the transaction, at $20 a share or a total consideration of $5,706,000 (Adm., Ans., par. 15).

II. Nature of the Trade and Commerce

A. *The Line of Commerce*

10. There is sharp disagreement between the parties as to what is the appropriate line of commerce, in terms of which to measure and determine the probable competitive impact of the instant acquisition. As defined in the complaint, it consists of all paper used for the purpose of wrapping gifts, and ribbons ordinarily used for the purpose of tying gift packages. However, during the course of the proceeding complaint counsel conceded that the line of commerce should be expanded somewhat to include decorative foil laminated to paper, pre-made bows as well as the basic ribbon, and several items used as accessories to the basic gift wrap package, such as tags, seals and decorative tie-ons (CPF at 59). It is respondent's position that the overall product market is even broader than that proposed by complaint counsel, and should include various other materials allegedly used in wrapping gifts, such as tissue paper, non-laminated foil, kraft paper, cellophane and plastic film, and various other materials used in addition to ribbon for tying gift packages, such as decorative yarn and pressure sensitive cellophane tape. Respondent also contends that the line of commerce should include various other products that are interchangeable with gift wrap paper and foil, such as gift boxes, gift bags, and industrial pre-wrap (RPF at 60–62).

11. The principal products manufactured by gift wrap manufacturers consist of the basic gift wrap paper, either paper alone or paper laminated with aluminum foil, and the materials used in tying the gift package. The latter consists mainly of ribbon made from textile material or polypropylene plastic, and may include pre-fabricated bows which dispense with the necessity for the customer to make his own bow from the ribbon. Supplementing ribbon as a tying material, some manufacturers produce or sell small quantities of decorative yarn, tinsel cord or pre-fabricated tyings known as snap-ties. Some manufacturers also produce or sell certain ancillary products used in connection with the gift wrapping of packages, such as enclosure cards, and tags and seals which are affixed to the package, decorated plastic tape for closing the package, and tie-ons and other objects for decorating the package. While many gift wrap manaufacturers, particularly the larger ones, produce both wrapping material and tying material, there are some who produce only one of the two basic products used in gift wrapping, *i.e.*, either gift wrap or gift tyings. For the most part, the accessory items are converted by the gift wrap manufacturer from basic material purchased from other manufacturers. Thus, cards and tags are purchased in bulk from printing firms and are cut to size by the gift wrap manufacturer (CX 14, p. 10, CX 31–C, G, CX 36–B, CX 44–A, CX 48–B, CX 56–C, D, CX 59–B, O, CX 60–A, CX 61–C, D, CX 62–D, CX 63–A, CX 64, CX 65–B, CX 67–B, K, L, CX 68–C, CX 70–D, CX 71–A, B, CX 72–A, CX 73–A, CX 74–A, CX 75–D, E, CX 79; Tr. 337, 343, 461–5, 561, 562, 706, 729, 820, 946, 964, 1021, 1079, 1083, 1086, 1198–9, 1303, 1398).

12. The only products carried in the line of gift wrap manufacturers as to which there is any substantial dispute between the parties, concerning their inclusion or exclusion from the relevant line of commerce, are tissue paper and kraft paper. Neither of these products is customarily manufactured by gift wrap manufacturers, but is purchased in bulk from paper companies and cut to size for distribution to the gift wrap manufacturers' customers. Many years ago tissue paper was widely used in the wrapping of gifts, but it has been largely replaced by decorative gift wrap paper or paper laminated with foil. Its use in gift wrapping is largely restricted to that of an inner wrap within a box used to enclose a gift. However, a very minor amount of colored or madras tissue is still used as an outer wrap in lieu of gift wrap paper (Tr. 432–4, 652, 660, 692, 1021, 1081, 1192, 1748; CX 31–D). Complaint counsel apparently concede that colored tissue used as an outer wrap may be considered

as part of the gift wrap product line (CPF at 8–9). Respondent apparently contends that all tissue, irrespective of whether it is used inside or outside of a package and without regard to whether it is distributed by gift wrap manufacturers, should be considered part of the relevant line of commerce (RPF at 61).

13. The record does not disclose whether there is any basic difference between the tissue which is sold by gift wrap manufacturers to be used in connection with the gift wrapping of products, either as an inside or an outside wrap, and that produced and sold by tissue mills or manufacturers generally. However, it does appear that there are a few companies which specialize in producing tissue which is used in the gift wrap market. The principal one is Crystal Tissue Company, which sells over half of its tissue to gift wrap manufacturers, including a number of the major manufacturers whose sales figures are in evidence. Crystal does not manufacture any other gift wrap products. The only gift wrap manufacturer which produces its own tissue is Ben-Mont Papers, whose sales of tissue constitute about 12% of its total sales of gift wrap paper (Tr. 433–5, 652–3, 660–1, 1081–2, 1192; CX 95–A, CX 60–D).

14. In the opinion of the examiner, the only tissue which may conceivably be considered part of the gift wrap product line is that distributed by gift wrap manufacturers or produced by manufacturers specializing in the production of tissue for the gift wrap trade. While the position of complaint counsel that the only type of tissue which should be considered to be part of the gift wrap product line is that customarily used as an outer wrap has considerable merit, it is of little practical significance, for purposes of the disposition of the issues in this proceeding, whether plain tissue used as an inner wrap (and sometimes as an outer wrap) is considered part of the relevant line of commerce. Since the bulk of the tissue used in connection with the gift wrapping of products is distributed through gift wrap manufacturers, and both the universe figure of gift wrap sales and the sales figures of the individual companies include sales of both types of tissue, the exclusion of any portion of the tissue sales from the universe figure would also require the exclusion of such sales from the figures of the individual companies, thus leaving the market-share percentages of the individual companies substantially the same irrespective of whether tissue sales, or any segment thereof, are included or excluded.

15. Like tissue, kraft paper is purchased in bulk quantities from paper manufacturers and converted to smaller size by gift wrap manufacturers. It is not used to gift wrap a package, but as an over-

wrap for the mailing of gift packages. For the most part, the kraft paper sold by gift wrap manufacturers is plain brown paper similar to that used in bags and other packaging material. However, some gift wrap manufacturers distribute kraft paper containing designs printed thereon, particularly that sold at Christmas which contains traditional Christmas motifs. Even where the kraft paper contains a design it is not customarily used in lieu of gift wrap paper, but as an overwrap for mailing purposes (Tr. 337–8, 512–3, 622, 774, 947, 1023, 1080, 1116, 1774, 1903, 1935, 2095; RX 4).

16. It is apparently respondent's position that all kraft paper, irrespective of whether it is distributed by gift wrap manufacturers for use in overwrapping gift packages or by paper manufacturers for general use in packaging, should be considered part of the gift wrap product line. Kraft is not generally used as gift wrap and is not, in the opinion of the examiner, part of the gift wrap product line. To the extent that it is converted and sold by gift wrap manufacturers as part of their gift wrap product line, it may be argued that it is part of the gift wrap line of commerce. However, as a practical matter, it makes no difference, for purposes of the resolution of the issues in this proceeding, whether this category of kraft paper is or is not deemed to be a part of the relevant line of commerce since the universe figure of gift wrap sales in the record and the sales figures of the individual companies generally include sales of kraft paper. If these figures were removed from the universe figure on the ground that kraft is not part of the overall market, they would have to be removed from the sales figures of the individual companies, and the relative market position of the various companies would remain substantially the same. Moreover, since the sales of kraft paper by gift wrap manufacturers and their customers constitute only 1% or less of their total sales, the inclusion or exclusion of such sales would not significantly affect market share percentages (Tr. 652, 880, 1116, 1750, 1806, 1927).

1. *Interchangeable Products*

17. As noted above, respondent contends that the product market should include not only products distributed by gift wrap manufacturers, but certain products which are allegedly interchangeable with, or substitutable for, the basic gift wrap products. The principal items involved in this contention are gift boxes and bags, and industrial "pre-wrap" (RPF at 63–9). Gift boxes are generally manufactured by box manufacturers, and not by gift wrap manufacturers (Tr. 338, 1080, 1193, 1436). One type consists of boxes similar to

plain boxes which are used in wrapping gifts, but are more attractive in color and contain the name of the store imprinted thereon. In some instances store customers insist that such boxes be overwrapped with gift wrap paper. Another type of so-called gift box consists of an ordinary box laminated with gift wrap paper or foil. In the latter situation, the retail stores generally purchase the gift wrap paper separately from a gift wrap manufacturer, and have it shipped to the box manufacturer from which the boxes have been purchased, for lamination to the box. This is done as a labor-saving device to obviate the need for personnel in the retail establishment to wrap the gift package (RX 205–222; Tr. 622–3, 1898–1900, 1907, 2039). While there are some retail stores which carry such gift boxes for resale purposes, there are many which do not. A number of stores which previously carried gift boxes have discontinued stocking them because of the amount of space which they require in comparison with the stocking of plain boxes in knockdown form, and gift wrap paper. To the extent that retail establishments do carry gift boxes, they generally constitute an insignificant portion of the line of gift wrap products carried (Tr. 368, 624, 985, 1080, 1751, 1825, 1952, 2007, 2040, 2088–9). Although several gift wrap manufacturers have considered adding gift boxes to their line, they abandoned the idea as impractical because of the differences in marketing (from regular gift wrap), the high investment and inventory required, and the lack of sufficient demand for the product (Tr. 1081, 1435).

18. The record is not clear as to the type of gift bags that respondent contends are part of the market, except that they are "pre-formed decorative bags into which a gift is inserted" (RPF at 61). Such bags are manufactured by bag manufacturers, and not by gift wrap manufacturers. Respondent, which is one of the largest gift wrap manufacturers, declined an offer to distribute such bags for a prominent bag manufacturer for the reason that "it was not within the scope of our marketing activities" (Tr. 1195; RX 134). The record fails to establish any substantial use of gift bags in lieu of conventional gift wrap material (Tr. 881–2, 984–5, 1023, 1741). For the reasons hereafter discussed, neither gift bags nor gift boxes are part of the gift wrap line of commerce, for purposes of this proceeding.

19. Industrial pre-wrap is used principally by manufacturers of liquor, cosmetics, candy, and hosiery in pre-wrapping their products during certain holiday seasons, particularly Christmas. It consists of materials such as basic aluminum foil, boxes, ribbons and bows, and

accessory items, which are used to wrap the products in automatic wrapping machines. Some of the tying material, such as ribbons and bows, is supplied by gift wrap manufacturers, but most of the basic wrapping material is supplied by other types of manufacturers such as aluminum companies and box manufacturers (Tr. 467–8, 472, 1023–4, 1340–52). To the extent that pre-wrap consists of ribbon and other materials customarily manufactured by gift wrap manufacturers, it may appropriately be considered part of the gift wrap product line. To this extent the sales figures of the principal manufacturers referred to as producing such products are already in the record (CX 53–A, CX 56–B, C, CX 61–C, E, CX 79; RX 21). Such figures disclose that industrial pre-wrap constitutes a relatively minor portion of the sales of gift wrap manufacturers who sell to this class of customer, so that the inclusion or exclusion of such sales would not materially affect the market share percentages of the principal manufacturers.[3] To the extent pre-wrap includes other materials such as basic aluminum foil and boxes supplied by manufacturers of the type which do not normally produce gift wrap, it is not, in the opinion of the examiner, part of the gift wrap product line.

2. *Submarkets*

20. In addition to its contention that the overall gift wrap product market is substantially broader than that proposed by complaint counsel, respondent also contends that the gift wrap line of commerce is divisible into three submarkets, *viz.*, (a) "quality-serviced" gift wrap, (b) "promotional" gift wrap, primarily Christmas gift wrap, and (c) "bulk" or "in-store" gift wrap (RPF at 19–20). Such submarkets are based on alleged differences in the quality, prices and methods of distribution of the three types of gift wrap. Respondent's proposed division of the gift wrap market into three different submarkets coincides with the differences in the areas of specialization between respondent and the company it acquired, CPS. The acceptance of such submarkets as the relevant lines of commerce would tend to minimize somewhat the competitive impact of the instant acquisition. Complaint counsel oppose respondent's effort at division of the gift wrap market into various submarkets, contending that the basic gift wrap products are all part of a single line of commerce (CPF at 25).

21. Historically, the original channel of distribution for gift wrap

[3] CPS's sales of industrial pre-wrap in 1967 were approximately $500,000, out of total gift wrap sales of $17,377,000 (Tr. 1343; RX 21).

was the department store. Gift wrap paper was sold by the manufacturer in large rolls and the ribbon was sold in reels. The department stores used the paper and ribbon in providing a gift wrap service for their customers. Originally the service was provided without charge, but as papers became more expensive and elaborate the customer was given the option of selecting the free gift wrap or of paying for the more expensive types of gift wrap. In due time, gift wrap manufacturers began to supply the paper and ribbon in individual packages for resale by the store to its customers, who would do their own gift wrapping. Eventually, the outlets distributing gift wrap for resale to the consumer included variety stores, drug stores, and card or gift shops. In most instances, the gift wrap resale packages contained pre-marked retail prices affixed by the manufacturer. They were frequently displayed in racks which were furnished by the gift wrap manufacturer, who serviced the racks by keeping the merchandise properly displayed and stocked in accordance with a pre-planned program. The merchandise was either sold to the store directly by the manufacturer, or through wholesalers known as rack jobbers. Where sales were made by the rack jobber rather than the manufacturer, the jobber supplied and serviced the racks. The gift wrap sold consisted of two broad categories, *viz.*, "everyday" wrap and "Christmas" wrap. The former was a designation applied to gift wrap sold for a miscellany of occasions other than Christmas, *e.g.*, weddings, birthdays, confirmations, graduation, Valentine's Day, etc. Christmas wrap generally constituted the greater proportion of gift wrap sold. This distinction between everyday wrap and Christmas wrap has continued in the gift wrap industry (Tr. 338, 599, 654, 884, 996, 1028, 1040, 1084, 1088, 1090, 1355, 1735, 1756, 1796, 1944).

22. During the 1950's when the discount stores and supermarkets came into prominence, gift wrap manufacturers began to sell their gift wrap to such establishments. Papercraft was a pioneer in the distribution of "promotional" gift wrap through discount stores, supermarkets, and other mass merchandising outlets. The great bulk of the gift wrap sold through such establishments consists of Christmas wrap. Unlike so-called "quality" gift wrap which is generally sold in individual packages and rolls, "promotional" gift wrap, particularly Christmas gift wrap, is sold in multiple packages, the larger of which are designated as "Jumbo" rolls. In many instances it is not pre-priced, and a number of the manufacturers do not provide the racks and service which are customarily supplied to the traditional outlets. The gift wrap sold through the discount stores, supermar-

kets, and other mass merchandising outlets is referred to in the industry as "promotional" wrap, since it is not pre-priced and is sometimes used as a vehicle for getting customers into the store. In the case of some manufacturers, the promotional gift wrap paper is of a lighter weight, and contains less elaborate designs, than the regular so-called quality gift wrap, and it sells at a somewhat lower price (Tr. 339, 412, 415, 419, 600, 868, 995, 1030, 1088, 1153, 1156, 1162, 1180, 1323, 1327, 1474, 1550, 1932, 2000, 2116).

23. While the record does establish that there are some differences between so-called "quality" and "promotional" gift wrap, in terms of quality of paper, price, distributional methods used, and types of establishments handling them, they are not, in the opinion of the examiner, of such magnitude as to require the two types to be considered separate lines of commerce for purposes of determining the competitive impact of the instant acquisition. Although, as noted above, the paper used by some manufacturers of promotional gift wrap is somewhat lighter in weight than that generally used in so-called quality gift wrap, there are other manufacturers who use the same weight of paper for both types of gift wrap. Moreover, weight is not necessarily determinative of the quality of the paper. While the designs on some types of promotional gift wrap may be less elaborate than those of quality gift wrap, gift wrap manufacturers often use the same designs on both, except that the promotional gift wrap may consist of designs used on quality gift wrap during a prior season. Moreover, in recent years the differences in quality have narrowed considerably, as manufacturers have sought to upgrade the quality image of their promotional gift wrap and have introduced the more expensive types of gift wrap paper, such as flocked and foil-laminated paper. From the point of view of retail establishments, the differences in quality are minimal. Such differences in quality as do exist involve gift wrap papers only, since there are no quality differences between gift tyings sold in the two lines (Tr. 342, 621, 629, 654–5, 663, 729, 771, 902, 910, 995, 1087–9, 1224–5, 1475, 2023; CX 31–G, CX 106–8, 111–4, 124–7, 129–139, 146–9, 152–4; RX 129–131, 149–151, 166–7, 172–3). The historically lower prices of promotional gift wrap, as compared with quality wrap, have been narrowed in recent years with the upgrading of the former, and there is now considerable overlap in price between the lines. Such differences as do exist are sometimes minimized by selling different sized packages of each at comparable prices (Tr. 621, 1088, 1105, 1248, 1292; CX 47–C, 45, 76–F, 100–G, 141, 143).

24. While there are some manufacturers who specialize in the pro-

duction and distribution of promotional gift wrap, there are a number who produce and distribute both types of gift wrap. The choice is primarily that of the manufacturer. There is nothing inherent in the nature of the two types of gift wrap to prevent a manufacturer from switching from one to the other. The same basic type of machinery is used in the manufacture of both types. While some manufacturers of promotional gift wrap do not provide display racks and service to the retailer, there are some manufacturers who provide it on both types. Moreover, even where a manufacturer of promotional gift wrap does not provide service directly, he may provide it indirectly through a rack jobber, in those instances in which the store makes its purchases through a wholesaler. Furthermore, the lack of service involves principally Christmas gift wrap. Because of the brief, concentrated season and the tremendous quantities involved, even suppliers of so-called quality gift wrap provide only limited service or no service during this period. Even where service or fixtures are available, there are a number of substantial retailers who do not avail themselves of it (Tr. 868, 918, 997, 1027, 1030, 1087–8, 1090–1, 1167, 1233, 1738, 1798, 1834, 1964, 2020, 2102; CX 20–D, E). Despite the concentration of manufacturers of promotional gift wrap on discount stores, supermarkets and other mass outlets, in their distributional pattern, there are a number of manufacturers of so-called quality gift wrap who compete for the business of such establishments, particularly during the large-volume Christmas season. Conversely, a number of the department stores, which are the traditional outlets for quality gift wrap, have added promotional gift wrap to their line (Tr. 375, 403, 515, 600, 614, 654, 680, 906, 914, 1245, 1468, 1800, 1923, 1999, 2002, 2033, 2084, 2094, 2119; CX 142–3, 146–7).

25. Bulk or in-store gift wrap is sold primarily to department stores and independent specialty stores, which provide a wrapping service for customers. In the larger department stores the in-store wrap is purchased by a different buyer than purchases gift wrap for resale, and the price structure between the two types is somewhat different because of the quantities involved in the individual bulk wrap rolls. However, generally the same salesmen represent the manufacturer in selling both in-store wrap and resale gift wrap. Although the bulk of the in-store wrap was originally supplied to the retail customer without charge, at the present time approximately 40% of such wrap is sold to the customer when his package is wrapped. Despite differences in the quantities in which they are sold to the retail stores, there is no substantial difference in the quality of

the gift wrap paper used, between bulk gift wrap and resale gift wrap. While there are a few gift wrap manufacturers who specialize in selling only in-store gift wrap, and some who do not sell bulk gift wrap, most gift wrap manufacturers supply both bulk gift wrap and gift wrap for resale (Tr. 595, 598, 692, 958, 1091–2, 1320, 1440, 1755, 1768). In the opinion of the examiner, the differences between bulk and resale gift wrap, in terms of the quantity sold, prices charged, and distributional methods used are not such as to require that the two types be considered separate lines of commerce, for purposes of determining the competitive impact of the instant acquisition.

B. *Structure of the Industry*

1. *Identity of Companies*

26. The record does not disclose the precise number of manufacturers of gift wrap and gift tyings. However it is clear that the number thereof does not exceed 50 to 60, and that most of these are comparatively small in size (Tr. 344–5, 368, 393, 655, 664, 666, 670–1, 718–20, 860–1, 956–7, 961, 1030–1, 1099–1100, 1161, 1185; CX 21–G, 47, 76–A, 81).[4] For most of the companies in the industry, the manufacture and distribution of gift wrap products is their principal business, while for some it is a subsidiary business. One group of companies in the latter category is the so-called greeting card manufacturers, whose primary business is the manufacture and distribution of greeting cards and whose sales of gift wrap products constitute only about 10–15% of their total sales. The gift wrap sales of the larger greeting card companies range from approximately $12 to $14 million, while those of the smaller manufacturers range from approximately $2 to $5 million (CX 44, 48–51, 63, 64, 75). There are also several other manufacturers, in addition to the greeting card manufacturers, whose gift wrap business is ancillary to some other type of business. However, for most of the companies in the industry the manufacture and sale of gift wrap products constitutes their principal business. A number of the companies manufacture both gift wrappings and gift tying materials, while some manufacture only one of those principal products of the industry. Most of the major companies are members of the industry trade association, the Gift Wrappings and Tying Association (CX 46; Tr. 376, 717, 1083).

[4] One gift wrap manufacturer regarded as a "major" company any company whose volume of gift wrap sales was $500,000 or over, while another characterized as the "principal" companies in the industry those with annual sales of between $2–$4 million (Tr. 504, 661).

27. The largest of the greeting card companies manufacturing and distributing gift wrap products are Hallmark Cards, Inc., and American Greetings Corporation. Each of these manufactures and distributes both gift wrap materials and gift tying products. The greater part of the gift wrap manufactured by these companies is distributed through department stores, gift and card shops, and other traditional outlets. However, both distribute a substantial portion of their gift wrap to discount stores and supermarkets. Most of the gift wrap is sold in resale packages, but a small quantity consists of bulk or in-store wrap. The resale gift wrap is generally displayed by the customer in fixtures supplied by the manufacturer. While the manufacturer services such display rack, the servicing thereof is merely an incident to the servicing of their greeting card line. The bulk of the gift wrap sold by both companies is distributed under the company's trade name, *i.e.*, Hallmark and American Greetings, and is pre-priced by the manufacturer. However, each of these companies also manufactures one or more lower-priced lines, which are distributed through discount stores, supermarkets and other non-traditional outlets. Hallmark's lower-priced line is sold under the name "Ambassador." American Greetings distributes two lower-priced lines, under the names "Laurel" and "Forget-Me-Not." An even lower-priced promotional line, known as "Sapphire," was discontinued by American Greetings because it was not profitable. The gift wrap paper used in the higher and lower-priced lines of these manufacturers is substantially alike, but the designs on the lower-priced lines are somewhat less elaborate or extensive. While the lower-priced lines are also pre-priced, the retailers do not feel obliged to maintain them (CX 44, 47, 48; Tr. 654–5, 656, 658, 994–5, 1087–8, 1834, 2104, 2116).

28. The other greeting card manufacturers which manufacture and distribute gift wrap products are Norcross, Inc., Rust Craft Greeting Cards, Inc., and Gibson Greeting Cards, Inc., with the latter having a division or subsidiary known as Buzza-Cardoza. All three companies distribute both gift wrap paper and tying products. With the exception of Gibson, their gift wrap products are distributed for resale and not for in-store use. While Norcross distributes its gift wrap products entirely through the so-called quality retail outlets, Rust Craft and Gibson's subsidiary Buzza-Cardoza sell to discount chains and supermarkets, as well as traditional outlets (CX 63–B, 72–B, 75–D, 47; Tr. 884, 898, 731).

29. Among the largest of the non-greeting card gift wrap manufacturers is Cleo Wrap Corporation, although it too has indirect

connections with a greeting card company through its ownership by CIT Financial Corporation, which also owns Gibson Greeting Cards, Inc., and the latter's Buzza-Cardoza Division. Cleo is primarily a producer of so-called promotional gift wrap paper and foil, which it distributes through a variety of outlets other than department stores and card shops. It also distributes a minor amount of ribbon and bows and other gift wrap accessories (CX 75–E, 47; Tr. 706, 718, 732, 806, 987, 1030, 2033).

30. The acquired company herein, CPS Industries, Inc., was the largest single gift wrap manufacturer in 1967, not counting the combined companies constituting the CIT complex. If the CIT-affiliated companies (Cleo, Gibson and Buzza-Cardoza) are considered as one entity, then their combined sales would exceed CPS's by approximately $2 million. CPS, which was initially a manufacturer of gift tying ribbons, was a substantial producer of both gift wrap paper and foil, and gift tying products. Its gift wrap products were sold principally under the brand names "Tie-Tie," "Crinkle-Tie," "Rippl-Tie," "Galaxy," and "Pride." Sales of bulk gift wrap for in-store use constituted approximately 40% of CPS's gift wrap sales. The predominant portion of its resale merchandise consisted of so-called quality gift wrap sold under the brand names "Tie-Tie" and "Crinkle-Tie" to department stores, card shops, variety stores and drug stores. However, it also distributed promotional gift wrap under the "Galaxy" and "Pride" labels and under private labels, primarily to discounters and supermarkets, but also to some department, drug, and variety stores. The bulk of its promotional gift wrap consisted of Christmas wrap. Promotional gift wrap constituted 16% of CPS's total gift wrap sales and 28% of its resale gift wrap (RX 21; CX 75, CX 10–B, C, D, CX 20–C, D, CX 21–B, D, E, CX 47; Tr. 595, 597–603, 607–9, 611–6, 625–6, 628, 887–9, 1326–8, 1330, 1442–4, 1999–2000, 2057–8).

31. The respondent herein, Papercraft Corporation, was the second largest manufacturer of gift wrap products in 1967, its gift wrap sales being approximately $1.6 million less than those of CPS. Substantially all of its gift wrap products were promotional gift wrap and 95% of its sales involved Christmas gift wrap. Its products are sold under two brand names, "Kaycrest" and "Rhapsody," which are identical in quality, and under various private label brands. Its principal customers for gift wrap are discount department stores, supermarkets, discount drug stores, variety chains, and mass merchandisers such as Sears Roebuck. It does not sell any merchandise to conventional department stores or to card shops, and it

does not sell bulk gift wrap for in-store use (CX 20–B, D, E, CX 21–C, D, CX 47; RX 19; Tr. 1163–4, 1188–9, 1230, 409–410).

32. Following CPS, Papercraft, Cleo, and the two largest greeting card companies (all with sales in excess of $10 million annually), there were seven companies with gift wrap sales of between $4.5 million and $6.9 million in 1967. These were Artistic Manufacturing Company, Minnesota Mining and Manufacturing Company (3–M), Wrap-Tures Gift Wrap, Inc., d/b/a Ben-Mont Papers, Susan Crane Packaging, Dennison Manufacturing Company, Archer Products, Inc., and Gibson Greeting Cards, Inc., (whose operations have been described above). Artistic is a division of Sun Chemical Company, and produces only gift tyings, which are sold to a variety of retail outlets other than department stores and card shops. It produces a small amount of store-use tyings and makes some tying products for other members of the industry (CX 53; Tr. 706–7, 713–5, 730). Among the broad spectrum of products manufactured by the 3-M Company are gift tying products, which it distributes primarily to discount retailers, but also to some variety stores and drug chains. It also distributes an in-store line of bulk gift wrap products, including a small quantity of paper and foil purchased from other manufacturers and converted by it (CX 56, CX 47; Tr. 945–6, 2050). Ben-Mont manufactures and distributes primarily gift wrap paper, but it also distributes a small amount of tying products which it purchases from other manufacturers. Its product line includes tissue, it being the only gift wrap manufacturer to produce its own tissue. Its products are distributed to a variety of retail outlets, other than department stores and gift shops (CX 47, 60–A, D; Tr. 510, 806, 989, 1030). Susan Crane, a division of The Cole National Corporation, is a producer and distributor of both gift wrap paper and ribbon, which it distributes primarily for in-store use. It discontinued the distribution of resale gift wrap at the end of 1967, except to a few private label customers. Some of its gift wrap is sold to manufacturers of consumer products for use as pre-wrap (CX 61). Dennison is a manufacturer of both gift wrap paper and tying products, which it distributes to wholesalers and to a variety of retail outlets for resale and for in-store use (CX 65–B, 67, 47–B; Tr. 1024, 1030). Archer Products, which is a division of Reynolds Tobacco Company, manufactures and distributes only wrapping products. Most of its distribution is to retail outlets other than department stores and card shops. However, it also manufactures wrapping products for in-store use and for resale to other members of the gift wrap industry (CX 79, 47–A; Tr. 814, 820, 867–8).

33. Following the above-mentioned companies is a group of about 10 companies with gift wrap sales ranging from approximately $1–3 million. These include two of the previously-mentioned greeting card companies, Rust Craft and Norcross and, in addition, Hy-Sil Manufacturing Co., George S. Carrington Company, Tuttle Press Company, St. Clair Mfg. Corp., Berwick Textile Products Co., Inc., Wm. E. Wright Company, Technical Tape, Inc., and Delaware Ribbon Manufacturers, Inc. Hy-Sil is one of the oldest manufacturers of gift wrap in the United States and produces both gift wrap paper and tying products, which it distributes to all types of retail outlets both for resale and for in-store use (CX 36; Tr. 338, 341, 403, 510). Carrington manufactures both gift wrap paper and ribbon, which it distributes to wholesalers and to retail outlets other than department stores and card shops (CX 59; RX 14). St. Clair also manufactures both gift wrap paper and ribbon, but its products are sold primarily in bulk for in-store use, although it also distributes a small amount for resale (CX 68–9). Tuttle Press and Technical Tape manufacture only gift wrap paper, and their products are distributed to a variety of retail outlets, for resale, with Tuttle also distributing some in-store gift wrap (CX 47, 62, 73). Berwick, Wright and Delaware Ribbon manufacture and sell only tying products. Berwick's and Wright's sales are made largely to variety stores for resale, although both also sell some in-store ribbon. Delaware Ribbon's products are sold largely for in-store use (CX 47, 70, 71, 92; Tr. 961).

34. The record also contains statistical evidence or testimony concerning the operations of a number of other smaller manufacturers or converters of gift wrap products, including Brown Company, the Champion Division of U.S. Plywood, East House and Steven Lawrence (CX 52, 74; Tr. 393, 1749–50). However, it is clear that these are all relatively small and insignificant manufacturers or converters, insofar as their gift wrap line of products is concerned, with sales of not more than $500,000 for any company. The record is also clear that the companies specifically described above constitute the heart of the gift wrap industry, and account for the bulk of its sales.

2. *Market Shares and Concentration*

35. Complaint counsel's statistical case, insofar as it purports to establish the market shares of the companies involved and the degree of concentration in the industry, is based primarily on (a) sales data obtained by subpoena *duces tecum* from 20-odd companies, each

with sales of over $1 million, and (b) published data of the Bureau of Census reflecting the value of shipments of gift wrap paper and the data obtained by subpoena *duces tecum* from the principal companies do not include all the companies in the industry and the Census figures do not include certain accessory products, complaint counsel have made certain adjustments in the above figures, based on the expert testimony of industry witnesses (CPF at 34–45). Thus, the data obtained by subpoena *duces tecum* from the principal companies in the industry disclose sales of gift wrap products of approximately $132 million in 1967 (CX 36, 44, 48, 50, 52, 53, 56, 59, 60–75, 79; RX 21). Based on the testimony of several industry witnesses that the principal companies accounted for somewhere between 80 to 92% of total industry sales, complaint counsel suggest an adjustment of 13% in the total sales figure of the principal companies, resulting in a total universe figure of $152 million (CPF at 43). The Bureau of Census figures disclose shipments of gift wrap paper and tying products totaling $146 million in 1967 (CX 83–86). Because such figures admittedly do not include sales of cards, tags and seals, complaint counsel make an adjustment of 17% to account for the missing products, resulting in a total adjusted Census figure of $176 million (CPF at 41). Utilizing these two groups of statistics, and the testimony of various industry experts who estimated industry sales as being between $136 million and $177 million, complaint counsel suggest a total figure of $162 million as a reasonable industry universe estimate, arrived at by averaging the adjusted sales and Census statistics, and the average of the expert witnesses (CPF at 45).

36. Respondent contends that the statistical evidence offered by complaint counsel is not sufficiently complete to afford an adequate basis for a determination of market shares and concentration in the gift wrap industry. Specifically, respondent contends that there are many more companies than the 20-odd companies whose sales data were offered in evidence by complaint counsel, and that the Bureau of Census figures do not include data for certain gift wrap products and are incomplete for other categories of such products (RPF at 78–80, 88–91).

37. Based on the testimony of industry witnesses (both manufacturers and retailers) called by both complaint counsel and respondent, and other evidence concerning the constituency of the industry, the examiner is satisfied that the companies whose sales figures were offered in evidence by complaint counsel constitute the heart of the gift wrap industry and that the statistical evidence offered with re-

spect to such companies is unquestionably adequate to permit an informed assessment concerning the statistical structure of the industry, to the extent such an assessment is required in order to make a proper determination of the probable competitive impact of the instant acquisition. The examiner is satisfied that such statistical evidence includes substantially all manufacturers of basic gift wrap (paper-foil and/or tying products) with sales of $1 million or over, and that the combined sales volume of the manufacturers from whom data were not obtained would, in all probability, not account for more than 10–12%, and probably less, of total industry sales of gift wrap) Tr. 344–6, 393, 655–6, 664, 718–720, 806, 860–1, 956–7, 961, 975, 987–8, 1025–6, 1083, 1092, 1161, 1185, 1197, 1235–6, 1758, 1796, 1956, 2015, 2021, 2033, 2050; CX 21–G, CX 76, CX 81, CX 36–C, CX 71–C, CX 73–C).

38. The statistical evidence in the form of sales data of gift wrap manufacturers offered by complaint counsel establishes total sales of approximately $133 million for 25 companies.[5] The estimates of industry witnesses on which complaint counsel rely, as to the percentage of the total market accounted for by the principal companies, were actually based on the sales of a lesser number of companies than the 25 companies whose figures were offered in evidence by complaint counsel.[6] Adjusting the figures of record by 12% (which in the opinion of the examiner would be an overly generous adjustment) yields an industry total of just under $150 million in sales. This figure comports with the estimates of various indutry representatives, whose estimates of total sales in the industry ranged from $136 million to $177 million (Tr. 348, 670, 695, 725–7, 738, 1044; CX 31–C).[7] More importantly, it accords with the statistical evidence obtained from the Bureau of the Census, indicating total sales of basic gift wrap and tying products of $146 million in 1967.

39. As noted above, respondent contends that the Bureau of Cen-

---

[5] The above figures reflect sales of all companies included in complaint counsel's computations, including those of several subsidiaries of some of the major companies, and several companies with sales under $1 million whose figures are in evidence. In addition, the examiner has included the sales of Delaware Ribbon, on the assumption that the figures in evidence (CX 92) involve only sales of gift wrap ribbon.

[6] One witness, who estimated that the major companies accounted for 80–85% of industry sales, named about 15 companies as being the principal companies in the industry (Tr. 344–6, 516–7). The same witness regarded as a major company, any company with sales over $500,000 (Tr. 501). Another member of the industry estimated that the 10 principal companies accounted for approximately 76% of the industry's sales (Tr. 670). Another estimate was that out of 37 companies manufacturing Christmas gift wrap, 7 companies (all of whose figures are in evidence, except for one company whose sales were estimated at about $1 million) accounted for 80% of the market (CX 76–A).

[7] Some of the estimates of industry witnesses require downward adjustment to give effect to an increase in industry sales since 1967.

sus figures are incomplete. Basically, it contends that such figures do not include tags and seals, gift wrap tissue, imported gift wrap, and gift boxes, and that the Census reporting forms are such that gift wrap manufacturers may have improperly classified their gift wrap products (RPF at 88–91). The examiner is satisfied that the Census reports offered in evidence by complaint counsel are substantially complete and accurate, and that they include substantially all gift wrap products produced in the United States, with the exception of tags and seals and a small amount of tissue. Since tags and seals are basically produced in the printing industry, being merely converted by gift wrap manufacturers, they are reported on Census forms applicable to the printing industry, which do not break them out from the broad category of printed tags (Tr. 1141, 1199, 1587). However, the testimony of industry witnesses indicates that tags and seals, plus certain other accessory items such as decorative tie-ons, are approximately 5% of total sales (Tr. 983, 1082, 1298, 1925, 1949, 2003, 2007, 2038, 2049, 2106). Adjusting the Census figure by 5% would yield a total of approximately $153 million. With respect to gift wrap tissue, the record indicates that gift wrap manufacturers normally report tissue along with other gift wrap paper under Census product code 26492 (CX 91–A). The only companies which do not do so are the few which are exclusively in the tissue business and are not basic producers of gift wrap products. As previously noted, the principal producer of tissue for gift wrap is Crystal Tissue, whose sales of tissue other than those made to gift wrap manufacturers are less than $1 million (CX 95–A). As far as other types of misclassification by gift wrap manufacturers are concerned, the examiner is satisfied that the likelihood of misclassification is not significantly greater in this industry than in other industries (2147–8, 2150–2, 2194–7).[8] With respect to the matter of imported gift wrap, there is no reason to believe that the volume thereof is of such magnitude as to significantly affect the market share percentages disclosed by the statistical evidence in the record.

40. Respondent argues that it was deprived of the opportunity of establishing the inadequacy of the data relied upon by complaint counsel because of the examiner's refusal to issue subpoenas *duces tecum* to 551 companies, including 230 companies, which respondent believed to be manufacturers of basic gift wrap products and 321

[8] The reports of several of the leading manufacturers which are in evidence, including those of respondent and CPS, indicate that their gift wrap products were classified in accordance with the Census categories on which the Census reports offered by complaint counsel are based (CX 90–94, CX 22–B, CX 23–B).

box companies which it believed were sellers of gift-wrapping boxes. Respondent contends that the examiner's denial of its application for subpoenas *duces tecum* addressed to such companies constituted a denial of due process (RPF at 99–102). The examiner's refusal to issue subpoenas *duces tecum* to the 321 box manufacturers was based on his conclusion that gift-wrapping boxes are not part of the gift wrap line of commerce. His refusal to issue 230 subpoenas to companies alleged to be sellers of gift wrap was based on the grounds that, (1) the evidence before him already established who the principal gift wrap manufacturers were, (2) it was highly questionable whether many of the companies whose names were included in respondent's list were manufacturers of gift wrap, and (3) to the extent some of them were producers of gift wrap, their volume was not of sufficient magnitude as to have any significant impact on the statistical evidence in the record.

41. Respondent notes, in its proposed findings, that there are approximately 90 manufacturers actually referred to in the record as gift wrap manufacturers, which are not accounted for in the statistical evidence offered by complaint counsel (RPF at 80–83). For the most part, such companies are not basic gift wrap manufacturers. They are either producers of certain basic materials used by gift wrap manufacturers or by other types of manufacturers for use as industrial pre-wrap, or they are printers of gift wrap for other gift wrap manufacturers (whose gift wrap sales are largely reported), or they are relatively small producers of ancillary products such as tags and seals or bows, or they are converters of gift wrap products manufactured by others. To the extent some of them are gift wrap manufacturers, they are relatively minor factors who were unknown to most of their competitors, and their volume of sales is more than taken into account by the upward adjustment in the figures of the reporting companies proposed by complaint counsel. In the opinion of the examiner, a determination of market shares and the extent of concentration in a proceeding of this type does not require a drag-net, detailed statistical compilation of the type envisioned by respondent's applications for 551 subpoenas *duces tecum*, and the undue protraction of the proceeding which would be entailed thereby.

42. Based on the largely uncontradicted testimony and other evidence identifying the principal gift wrap manufacturers, and the statistical evidence relating to such companies, it is possible to obtain a meaningful statistical picture of the structure of the industry without going through the involved process, engaged in by complaint counsel, of averaging various estimated and adjusted universe

figures. Using the total sales of the principal companies in the industry, amounting to approximately $133 million, which accounts for substantially all companies with sales of over $1 million and a few companies with sales under that figure, CPS and Papercraft are disclosed to have been the number one and number two companies in the industry in 1967, with market shares of 13.7% and 11.8%, respectively. This accords, substantially with their rank according to the testimony of several industry witnesses (Tr. 370–1, 680–1, 1029, 1033; CX 76–A). The five largest companies, each with sales in excess of $10 million (including Hallmark, American Greetings and Cleo, in addition to Papercraft and CPS) accounted for 54.6% of the sales of the principal companies in the industry. On the basis of the nine companies with sales in excess of $5 million (including 3-M, Gibson-Buzza Cardoza, Dennison and Artistic, in addition to those named above) such companies accounted for 73.8% of the sales of the principal companies.

43. While, in the opinion of the examiner, the universe figure proposed by complaint counsel ($162 million) overstates total industry sales in 1967 by approximately $12 million, such figure may be utilized as providing a meaningful basis for estimating market share percentages and the structure of the market.[9] The market picture revealed on such basis is likewise one on which the acquired and acquiring companies accounted for substantial shares of the market, and in which they and their three closest competitors accounted for almost half of the industry's sales. On this basis, CPS's share of the gift wrap market in 1967 was 10.7%, Papercraft's was 9.7%, that of the top five companies was 44.8%, and that of the top nine companies was 61%. Even using the maximum universe figure suggested by the evidence, that of $177 million (which one of respondent's officials used as an approximation of the industry's total sales),[10] the

[9] As previously noted, such figure comports with Census data and the estimates of industry witnesses. One industry witness estimated total industry sales at between $125 million and $150 million (Tr. 347–8; CX 36–D), while another estimated it at $160–170 million as of 1969, with an annual rate of increase of 10–12% (Tr. 670, 695). Another witness estimated total sales of resale gift wrap (excluding in-store bulk sales) at $120 million (Tr. 1044). Still another, whose company specialized in store-use gift wrap paper (but not ribbon), estimated total sales in that segment of the market to be $17 million (Tr. 577, 581). The record indicates that sales of paper predominate over ribbon by a ratio of 3 or 4½ to 1 (Tr. 728, 1198). An industry witness whose company specializes in Christmas gift wrap, estimated that market at $100–110 million (CX 76–A). Census data indicate that Christmas paper is 62% of gift wrap paper shipments and that Christmas ribbon is 71% of gift wrap ribbon shipments (CX 83, p. 3; CX 85, p. 3).

[10] The above figure appeared in an article in a trade publication, which was approved by respondent's president (CX 31–32). Respondent suggests, in its proposed findings, that the figure has no validity since it was taken by the writer of the article from an earlier article by another writer in another magazine (RPF at 87). However, it is clear that, irrespective of where or when the figure originated, it was adopted by respondent's president as a meaningful current estimate of industry sales, when he approved the article in 1968, even making appropriate changes therein.

market picture would not be significantly changed. On this basis, CPS's and Papercraft's market shares in 1967 were 9.8% and 8.9%, respectively, that of the top five companies was 41.0%, and that of the top nine companies was 55.4%.

3. *Changing Structure of the Industry*

44. The last 10 to 15 years have witnessed a considerable shakeout in the gift wrap industry. A number of companies have left the industry completely, a number have been absorbed by other companies and a number have curtailed their product lines. The number of major companies in the industry has declined substantially. Some of the formerly leading companies have suffered a substantial decline in their market standing. While a few new companies have entered the industry, only one has become a substantial factor (Archer), and it has undoubtedly been assisted by the fact that it has the financial support of its parent company, Reynolds Tobacco Company (Tr. 344, 368–70, 393–4, 541, 661–2, 714–5, 753, 759–60, 814–6, 1235–6, 1286–9, 2057; CX 76–B, C).

45. Among the leading companies whose fortunes have changed (mainly for the worse) in recent years are: Dennison Manufacturing Company, which dropped its Christmas line of gift wrap (a much larger volume line than everyday wrap); the 3-M Company, which has ceased the manufacture of gift wrap paper and has confined itself largely to tying products; St. Clair Manufacturing Company, which has ceased the manufacture of gift wrap for resale, although it continues to manufacture and sell gift wrap for in-store use; and Artistic Manufacturing Company, which sold out its paper line to Cleo, but has continued in tying products. A formerly active company, Orchard Paper Company, was acquired by Boise-Cascade Paper Company and later resold to St. Clair. Ben-Mont, which was formerly one of the top companies in the industry, has experienced financial difficulties and a declining market position. Susan Crane was acquired by Cole National Corporation in 1966, and has discontinued the manufacture of resale gift wrap except to a few private label customers, although it has continued in bulk in-store gift wrap. Cleo, which became a part of the CIT complex of companies, has become more aggressive and has supplanted Ben-Mont as one of the industry's leaders. Included in the group of companies acquired by CIT have also been Gibson and Buzza-Cardoza (Tr. 344, 368–70, 394, 661, 715, 719, 1235–6; CX 61, 76). In early 1968, following the acquisition of CPS by respondent, Technical Tape decided to discontinue its gift wrap operation and sold its manufacturing equipment to George S. Carrington Company (CX 73–B).

46. Respondent suggests that the gift wrap industry is a fragmented one, with no dominant companies and vigorous competition throughout (RPF at 92). While the industry is characterized by a number of relatively small companies, a handful of large companies have the lion's share of the business, as the statistical evidence above discussed discloses. They are the leaders in pricing and advertising, and are the principal suppliers of the large variety chains, drug chains, mass merchandisers, department stores and supermarkets. In the field of quality gift wrap, particularly everyday wrap, CPS was a leading, if not the leading, company. In the field of promotional gift wrap, particularly Christmas gift wrap, Papercraft was far and away the leading company (Tr. 901, 909, 922, 987, 1029, 1033, 1735, 1796, 1812, 1815, 1834, 1836, 1917, 1920, 1944, 1999, 2015, 2032, 2052, 2084, 2102, 2104; CX 76). While several of the companies have been acquired by larger, well-financed companies doing business in other areas, only Cleo and Archer seem to have been able to combine their newly acquired financial assistance with their own expertise to maintain or improve their position in the gift wrap market (CX 76–A, B, C). Although, as respondent notes, total gift wrap sales have been increasing at an annual rate of 10 to 12%, the sales and profits of most of the smaller companies have not kept pace with the industry's growth. Some have experienced declining sales and some, like Hy-Sil Manufacturing Company, have been able to maintain a viable position only by acquiring smaller competitors (CX 36–C, CX 52, CX 53–A, CX 56–C, D, CX 60–A, CX 71–A, B, CX 72–B, CX 73–B; Tr. 370).

III. Competitive Impact

A. *Elimination of Competition*

47. Respondent's contention that competition will not be affected by the instant acquisition is based largely on the alleged lack of substantial competition between the two companies because of the fact that CPS was largely a manufacturer of so-called quality gift wrap, which it distributed for in-store use and resale, whereas Papercraft was primarily in the promotional gift wrap field and did not sell any gift wrap for in-store use. However, despite differences in the areas of specialization of the two companies, the record establishes that substantial competition existed between them and that, in addition, Papercraft was a potential competitor of CPS and was one of the companies which was in the best position to enter the so-called quality gift wrap field at any time it chose to do so.

48. It is conceded by respondent that Papercraft and CPS were in

direct competition in 1967, insofar as Papercraft's principal gift wrap lines and CPS's Galaxy and Pride lines are concerned (RPF at 21, n. 3; Tr. 1243). While respondent has sought to minimize the extent of such competition, the fact is that sales of the Galaxy-Pride lines amounted to $2,887,763 in 1967, and constituted 16% of CPS's gift wrap sales (RX 18). This can hardly be considered as an insubstantial volume, in terms of the order of magnitude of sales in the gift wrap industry. CPS's sales of Galaxy-Pride substantially equalled or exceeded the total gift wrap sales of a number of manufacturers which were referred to by their competitors as being among the important companies in the industry, including Hy-Sil, Carrington, Tuttle Press, Rust Craft, Berwick, Technical Tape, Buzza-Cardoza, Wright and Norcross.

49. While Papercraft did not sell to traditional department stores, which accounted for 29% of CPS's sales, it did sell gift wrap to a number of the same types of establishments as did CPS. Seventy-two percent of Papercraft's sales and 35% of CPS's sales were made to the same types of establishments (RX 22–A). Among the important types of customers of each were drug store chains, variety chains, and mass merchandisers such as Sears Roebuck and Montgomery Ward, which accounted for 29% of Papercraft's sales and 23% of CPS's sales. In a number of instances, they sold to, or competed for, the gift wrap business of the identical customers, including Newberry, McCrory, Kresge, Sears, Montgomery Ward, and Arlans' Department Stores. Sales to three of these customers (Kresge, Sears and Arlans') accounted for 11.9% of Papercraft's total gift wrap sales in 1967 and 12.7% of CPS's sales in that year (CX 21–C, D, E; RX 21; Tr. 901, 907, 2015, 2033, 2084).

50. Respondent suggests that to the extent it and CPS were selling to the same type of establishment, it was largely a matter of CPS selling its Tie-Tie or other quality line (consisting primarily of everyday merchandise), and Papercraft selling its promotional lines (primarily for Christmas). However, it is by no means clear from the record that this was the case. CPS not only offered its Galaxy line to variety stores and mass merchandisers, but also submitted bids for Christmas private label merchandise, in accordance with the individual customer's specifications, as did Papercraft (Tr. 887–89, 892, 899, 907, 2015, 2017, 2019, 2052, 2084–5, 2119; CX 21–D, E). Despite differences in terminology, the top lines of so-called promotional gift wrap manufacturers are comparable to those of the quality gift wrap manufacturers (Tr. 901–4). Some retailers purchase

from both groups of manufacturers and offer the merchandise for resale to their customers in the same advertisements.[11] The reality of the competition which existed between the two companies is attested to by the fact that following Papercraft's acquisition of CPS, one or the other of the two companies ceased bidding for the business of customers which both had previously sold to or solicited (Tr. 632–3, 907, 1827–8, 1842, 2094–5).

51. Aside from the actual competition which existed between the two companies, it is clear that there also existed a potential for substantial and increasing competition between them. Department stores, which were traditionally the stronghold for so-called quality gift wrap, have begun to carry promotional gift wrap in recent years in order to entice customers from the discounters. At the same time, some of the discount-type department stores and variety stores have been upgrading their gift wrap lines. As previously noted, the qualitative differences between the two lines have narrowed considerably. Before its acquisition CPS was already selling its promotional line to some of the department stores which carried its Tie-Tie line (Tr. 611–6, 1042, 1245, 1801). This would have been a natural area for Papercraft to expand into. Some of its competitors in the promotional gift wrap field were also selling to traditional outlets (Tr. 403, 1030). With the upgrading of its line, Papercraft was in a position to expand into the regular gift wrap departments of the department stores, or to sell them promotional gift wrap. Several manufacturers of gift wrap agreed that there was basically nothing to prevent a manufacturer of promotional gift wrap from selling to department stores and gift shops if it chose to do so, and that of all the manufacturers of promotional gift wrap, Papercraft and Cleo were the two best able to do so (Tr. 868, 1041). While some manufacturers of promotional gift wrap do not provide service to their customers, this does not present an insurmountable obstacle to manufacturers of promotional gift wrap in the event they decide to solicit department stores. Most of the promotional gift wrap is sold during the Christmas season and even manufacturers of quality gift wrap which normally provide service for their everyday gift wrap, provide little or no service during the Christmas season due to the tremendous quantities involved and the brief period of time available for service (Tr. 997–8, 1090–1, 1963–4, 2020).

[11] CPS's Tie-Tie line was advertised for resale by Montgomery Ward along with gift wrap of Cleo and Archer, both promotional gift wrap manufacturers (Tr. 887–94, 899; CX 54 at 244–5). Papercraft also submitted a bid for Montgomery Ward's business, but was not successful in 1967 (Tr. 907–9).

B. *Competitive Advantage*

52. The record is clear that the merging of the two largest gift wrap manufacturers will, in all probability, result in conferring on them certain advantages not available to their smaller competitors with more limited lines to offer. A number of the manufacturer witnesses, including the CPS representative, and some of the customers purchasing gift wrap, attested to the advantage in getting business that a manufacturer offering a broad line of products to customers has (Tr. 345–6, 715–6, 735, 761, 897, 1426). While most of the testimony involved the ability to offer a customer both a gift wrap line and a tying product line, a similar advantage exists in favor of a manufacturer who can offer both quality and promotional gift wrap lines.[12] The fact that a number of the manufacturers of quality gift wrap have seen fit to enter the promotional gift wrap end of the business in recent years is indicative of such advantage. Papercraft itself looked to the acquisition of CPS as a vehicle for improving its competitive position. Aside from the advantage of being able to offer customers a broader line, with attendant flexibility in price quotations, the merger offered other advantages through economies in manufacturing and distribution costs (CX 21–H, 12, 14 at 3, CX 10–I, CX 39; Tr. 624, 693–4, 737, 1423).

53. Respondent seeks to minimize the competitive impact of the acquisition by citing the testimony of some customer-witnesses regarding the lack of competition between quality and promotional gift wrap, and the lack of effect of the merger on them (RPF at 22–24, 92). The opinions of retailers concerning the existence of competition between manufacturers and as to the effect of an acquisition on them are no more binding on the examiner, who is charged with the ultimate responsibility of determining the competitive impact of an acquisition, than are the opinions of witnesses to an accident binding on the judge or jury in determining the issue of negligence. A determination of the existence of competition and of competitive impact must be made from the basic operative facts and not from the conclusions of witnesses. It may be noted, however, that a number of the manufacturers themselves attested to the existence of competition between quality and promotional gift wrap and saw the acquisition as having adverse implications for them, by strengthening their largest competitor and enabling it to achieve cer-

[12] As one manufacturer testified (Tr. 347), "When we sell an account, usually the buyer likes to buy the whole line of gift wrapping, all the way from the low end paper to the luxury type paper, and the ribbons and bows that go along with it."

tain economies through the merger (Tr. 692–3, 737–8, 860, 1033, 1038). It may also be noted that of the 8 retailers whose testimony is cited by respondents indicating that the merger had no effect on retailers (RPF at 92), the testimony of 3 establishes that they were representatives of traditional department stores of the type that had never been solicited by Papercraft (Tr. 1799, 1903, 1947). As to the remaining 5, with respect to which the evidence does disclose that the merged companies were previously in competition, the amount of weight which should be given to the negative opinions cited by respondent, as to the effect of the merger on them, may be judged from the fact that the testimony of 4 of them, reveals that after the acquisition of CPS by Papercraft one or the other of the 2 companies ceased soliciting their business (Tr. 907, 987, 1842, 2095). Such basic facts are entitled to considerably more weight on the issue of competitive impact than are the generalized conclusions of these witnesses.

C. *The Failing Company Defense*

54. Respondent has pleaded the "failing company" defense, as barring the possibility of competitive injury. It contends that the financial structure of CPS was such during the several years prior to its acquisition that it may be considered to have been a failing company at the time it was acquired and that, therefore, the acquisition is not within the ban of Section 7 (RPF at 97). The record fails to sustain respondent's defense since, whatever financial difficulties CPS may have had, they were hardly of such a nature as to justify any finding that it was a "failing company" within the meaning of the failing company doctrine.

55. In the four fiscal years ending June 30, from 1961 to 1964, CPS operated at a profit in each year except 1964, when it showed a loss of $216,616 (RX 202–A). However, this was due largely to "non-recurring problems" resulting from the move of its manufacturing operations to Franklin, Tennessee, in January 1964 (CX 10–A). In 1965 CPS changed its fiscal year from one beginning July 1 to one beginning January 1. For the 18-month period ending December 31, 1965, it showed a profit of $593,359 (RX 202–A). The apparent improvement in its financial picture was due, in part, to the fact that this period included sales for two Christmas seasons (1964–1965), which are the most profitable periods of the year. For the fiscal year ending December 31, 1966, it continued to operate at a profit, albeit a relatively small one, *viz.*, $154,638 (RX 202–A). For the 10-month period ending October 28, 1967 (just prior to the ac-

quisition by Papercraft), it showed a profit of $162,451, which did not cover sales for what are normally the most profitable two months of the year (CX 25 at 4679–95). However, in March 1968, following the acquisition, a review of CPS's operations by the accountants, resulted in a write-off of $774,000, due partly to an alleged inventory shrinkage and partly to obsolescence of inventory (Tr. 1889). As a result, the revised financial statement of CPS's operations showed a loss of $344,111 for the fiscal year ending December 31, 1967 (CX 26–G).

56. Respondent's contention that CPS was a failing company is based on the loss disclosed for its last calendar year of independent operation, its allegedly flat profit picture, and the testimony of an official of the bank which had been carrying its credit that the bank would not have renewed CPS's loan in 1968 on the basis of the figures disclosed in the revised financial statement (Tr. 1861). Despite CPS's ostensible loss for the last year of operation, its financial condition was hardly one which can be described as a "failing" one, within the meaning of the failing company doctrine. While CPS's profit record was somewhat flat and uninspiring, its financial profile cannot be said to be that of a company "with resources so depleted and the prospect of rehabilitation so remote that it faced the grave probability of a business failure" (*International Shoe Co.* v. *Federal Trade Commission*, 280 U.S. 291). Part of its financial problems stemmed from its move to Tennessee and the condition was reversed in less than a year, following completion of the move (CX 14 at 3). Despite the bank official's prognostication concerning what recommendation he would have made to the bank with respect to the renewal of CPS's credit, the examiner notes that the bank continued to renew CPS's credit each year, including 1964 when the loss was almost as high as that revealed in the revised financial statement for 1967. Even assuming that CPS might have had some difficulty in obtaining a renewal of its loan, and even granting that it was having some financial difficulty, its condition in no way resembled that of a failing company.

CONCLUSIONS

I. Engagement in Commerce

1. Respondent admits and the record establishes that at all times relevant herein, it and CPS Industries, Inc., sold and shipped their products, and specifically gift wrapping paper and ribbons, in interstate commerce throughout the United States (Ans., par. 5 and 8) It is accordingly concluded and found that at all times relevant in

this proceeding respondent and CPS were each a corporation engaged in commerce, as "commerce" is defined in the Clayton Act.

II. The Relevant Market

A. *The Product Market*

2. As previously noted, complaint counsel contend, essentially, that the relevant product market consists of (a) gift wrapping paper (including foil laminated to paper, and tissue used as an outer gift wrap), (b) ribbons, bows and other gift tyings and (c) certain accessories to the wrapping of gift packages, such as tags, seals and decorative tie-ons (CPF at 59). Respondent has presented alternative proposals with respect to the appropriate product market. On the one hand it argues for the existence of three separate submarkets as being the appropriate product markets, *viz.*, (a) "Quality-Serviced" gift wrap such as is usually sold through department stores and card shops, (b) "promotional" gift wrap, consisting primarily of Christmas gift wrap, and (c) "bulk" gift wrap sold for "in-store" use and to manufacturers of consumer products for "pre-wrapping" their merchandise (RPF at 19–21). However, respondent recognizes that since a gift need be wrapped only once, all gift wrap, irrespective of quality or type, competes for the consumer's dollar (RPF at 56). Accordingly, it suggests as an alternative product market, one that is "drawn along the outer boundaries of the product market, those determined by reasonable interchangeability" (RPF at 60). On this basis, respondent proposes that there should be included in the gift wrap market not only the gift wrapping materials proposed by complaint counsel but other materials that can be used for wrapping gifts, such as tissue paper of all types, Kraft paper, cellophane, plastic film, and unsupported aluminum foil. In addition to wrapping materials, respondent proposes that the product market should include gift boxes and bags in which a gift may be placed without further wrapping. In addition to the gift tyings which complaint counsel propose, respondent suggests that plain, pressure-sensitive tape (such as Scotch Tape) should be included (RPF at 61–2).

3. Respondent's theories with respect to the appropriate product market stem essentially from the Supreme Court's decision in *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 325 (1962), in which the Court laid down the principle that the "outer boundaries of a product market are determined by reasonable interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it." However, the Court also noted that "within this broad

market, well-defined submarkets may exist which, in themselves, constitute product markets for antitrust purposes." Respondent seeks to justify its division of the gift wrap market into the three submarkets initially proposed by it, on the basis of the criteria referred to in *Brown Shoe* as being the "practical indicia" of a submarket, *viz.*, "industry or public recognition of the submarket as a separate economic entity, the product's peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes and specialized vendors."

4. A resolution of the question of what is the appropriate product market—whether it consists of the basic products of an industry, whether it is appropriate to divide the products of the industry into submarkets, or whether it is appropriate to combine the products of more than one industry—is not a mere academic exercise in economic semantics. "[T]he purpose of delineating a line of commerce is to provide an adequate basis for measuring the effects [on competition] of a given acquisition." *United States* v. *Continental Can Co.*, 378 U.S. 441, 457. Since the law is violated if the effect may be adverse in "any" line of commerce, it is not necessary to make a determination as to all of the possible lines of commerce which will be affected by an acquisition. If the effect may be adverse in "a product line which [is] sufficiently inclusive to be meaningful in terms of trade realities" that is sufficient for purposes of Section 7. *Crown Zellerbach Corp.* v. *Federal Trade Commission*, 296 F.2d 800, 811 (9th Cir., 1961), *cert. denied*, 370 U.S. 937; cited with approval *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 357 (1963).

5. Any determination of what is the appropriate product market must start with the product or products of the acquired and acquiring companies. As the Court stated in *Brown Shoe*, "the boundaries of the relevant market must be drawn with sufficient breadth to include the competing products of each of the merging companies and to recognize competition where, in fact, competition exists" (370 U.S. at 326). Where the basic products of the acquired and acquiring companies compete, any meaningful grouping of these products may be considered the appropriate product market, even though it does not include all of the products that either of them, or some of their competitors, may produce. *Crown Zellerbach Corp.* v. *Federal Trade Commission*, *supra*; *United States* v. *Philadelphia National Bank*, *supra*. It is not necessary in such a case to determine whether there are smaller groupings of products, or submarkets, which will be affected by the acquisition. Thus, despite the pronouncement in *Brown Shoe* cited by respondent, that "well-defined submarkets may

exist" within a broader product market, the Court upheld as the relevant lines of commerce, the basic products which the acquired and acquiring companies produced or sold, and concluded that "a further division of product lines based on 'price/quality' differences would be 'unrealistic.' " As the Court stated in its most recent pronouncement on the subject, "submarkets are not a basis for the disregard of a broader line of commerce that has economic significance" *United States* v. *Phillipsburg National Bank & Trust Co.*, June 29, 1970, ATRR June 30, 1970, D–3.

6. On the other hand, where the acquired and acquiring companies are in essentially the same line of business and the products produced by them constitute a meaningful grouping of products, in terms of trade realities, it is unnecessary to consider the effect of the acquisition in terms of a still broader grouping of products which would include those of other industries, even though the latter may, to some extent, compete with the products of the acquired and acquiring companies. *United States* v. *Philadelphia National Bank*, *supra*. In the latter case, the acquired and acquiring companies were both commercial banks, and commercial banking was held to be the appropriate line of commerce, even though other types of institutions such as savings banks and small loan companies competed with them in some phases of their business. In the *Phillipsburg National Bank* case, *supra*, there was also involved a merger between two commercial banks. The Court held to be erroneous the conclusion of the lower court that the product market consisted not only of the products and services of commercial banks, but those of other financial institutions which competed with them. The Court stated that while such a market definition might be relevant "in analyzing the effect on competition of a merger between a commercial bank and another type of financial institution" it was not relevant in a merger between two commercial banks.

7. The cases in which the Court has upheld lines of commerce which cross basic industry lines have been those involving mergers between companies in different industries. *United States* v. *Aluminum Co. of America*, 377 U.S. 271; *United States* v. *Continental Can Co.*, 378 U.S. 441. In the *Continental Can* case, where a producer of metal containers acquired a producer of glass containers, it was considered appropriate to combine both groups of containers into a single market for purposes of determining the competitive impact of the acquisition. It may be noted, however, that the Court refused to accept the defendant's argument that if glass and metal containers were combined as a line of commerce, then containers

made from other materials, such as plastic, paper and foil (which the acquired company did not produce), should also be included. The Court held that while there might be an even broader market consisting of containers made from all of these materials, this did not "necessarily negative" a narrower market or submarket of containers made of metal or glass, which were the principal products of the two companies (*Id.* at 458).

8. In the instant case the acquired and acquiring companies were essentially producing the same group of products, gift wrap products. Both used essentially the same machinery in producing them and both were part of a recognized and recognizable industry, the gift wrap industry. Such differences as existed in their products, on the basis of price, quality, or the service provided, are not of such a nature as to require a further fragmentation of the basic industry line of commerce into submarkets. This is not to say that in an appropriate case, such as one involving a merger between two companies producing only gift tying products, or between two companies producing only promotional-type gift wrap, it might not be appropriate to consider the impact of the acquisition in terms of narrower submarkets. However, where, as here, both companies are producing substantially the full spectrum of gift wrap products, and where the acquisition's impact is likely to be felt throughout the industry, and not in a narrow segment thereof, it is more appropriate to consider the impact in terms of the basic grouping of products of the industry.

9. On the other hand, there is no reason to extend the product line beyond that of the gift wrap industry, to include the products of box manufacturers, bag manufacturers, tissue manufacturers generally or those of other types of paper manufacturers. While such a combination might be appropriate in a Section 2 Sherman Act case involving a monopolization charge (*United States* v. *Du Pont & Co.*, 351 U.S. 377; *cf. United States* v. *Du Pont & Co.*, 353 U.S. 586), or in a Section 7 Clayton Act case involving a merger between a gift wrap manufacturer and a manufacturer of gift boxes, bags or tissue (see dicta from *Phillipsburg National Bank* case cited *supra*), it is not appropriate in a case involving a merger between two gift wrap manufacturers. The differences in the production and distributional methods, and in the uses, of these other groups of products are such as to require that they be considered separate lines of commerce from the gift wrap product market, or at the very least several submarkets.

10. Based on the evidence heretofore discussed, it is concluded and

found that the appropriate product market, or line of commerce, for purposes of this proceeding, consists of (a) gift wrap paper (including foil laminated to paper, and tissue used as an outer wrap), (b) gift tying materials, including ribbons, bows, snap ties and other tying products normally sold by gift wrap manufacturers (not including undecorated plastic tape), and (c) accessory items used in the wrapping of gifts, such as are normally sold by gift wrap manufacturers, including tags, seals, cards and tie-ons. It is further concluded that kraft paper, general purpose tissue paper, wrapping materials made from plastic film, cellophane and unsupported foil,[13] and gift bags and boxes, are not part of the appropriate line of commerce.

B. *The Geographic Market*

11. Complaint counsel contend, respondent admits, the record establishes, and the examiner concludes and finds, that the United States as a whole constitutes a geographic market for the sale of gift wrap, and is an appropriate section of the country, within the meaning of Section 7 of the Clayton Act, as amended (Response to Request for Admissions, September 26, 1969; Tr. 198–9).

III. Competitive Impact

12. Respondent contends that the record fails to sustain the charge of an adverse impact resulting from the present acquisition for the reasons that, (a) the statistical evidence offered by complaint counsel to establish market shares and concentration is inadequate since it does not contain a breakdown by submarkets, does not include sales data for all gift wrap manufacturers and does not include data for box manufacturers producing gift boxes, (b) the market was so fragmented and vigorously competitive that the acquisition can have no competitive impact, (c) Papercraft and CPS were not in substantial competition, and (d) CPS was a failing company. As is apparent from the findings heretofore made, there is no merit to any of these contentions.

13. Since as has been found above, the appropriate product market consists of the basic gift wrap products of the gift wrap industry, there is no deficiency in the record by reason of the alleged lack of statistical evidence for the various submarkets proposed by re-

[13] Although considerable evidence was offered by respondent concerning the alleged use of kraft paper and tissue as gift wrap, no substantial evidence was offered to establish that plastic film, cellophane, or unsupported aluminum are normally used as gift wrap materials by consumers, or are produced in substantial quantities by gift wrap manufacturers.

spondent, or for the inter-industry market of gift wrap products and gift boxes and bags, which respondent alternatively proposes. As has been heretofore found, the record contains adequate statistical evidence, based on the sales figures of the principal manufacturers in the industry (which are corroborated by Census data and the testimony of industry witnesses), to permit an informed judgment concerning the structure of the gift wrap product market. There is no need in a Section 7 case for the "type of precision in detail" contemplated by the exhaustive subpoena request made by respondent, addressed to hundreds of alleged industry members, where the "broad picture" is adequately presented "through study of a fair sample" of the industry. *Brown Shoe Co.* v. *United States*, 370 U.S. at 341–2 and notes 68–9.

14. The statistical evidence discloses that at the time of the acquisition the acquired and acquiring companies were the first and second ranking companies in the gift wrap industry, with a combined market share of from approximately 20% to 25% of the market, depending on which of the alternative bases of comparison heretofore discussed is chosen. Their combined market share gave them almost 2½ times the market share of their closest competitor. The statistical evidence also discloses that there were only about 23 companies in the industry which had sales of over $1 million in 1967. Of these, only 5 had sales in excess of $10 million, and only 9 had sales in excess of $5 million. The top 5 companies (including Papercraft and CPS) accounted for approximately 45% of the total sales of the gift wrap industry in 1967, while the top 9 companies accounted for approximately 60%. The statistical evidence establishes that while there may have been a fairly large number of companies in the industry, a substantial part of the industry's business was concentrated in the hands of a relatively few companies.

15. While it may be, as respondent contends, that the industry as a whole has been growing, in terms of overall sales, the record establishes that many of the companies have not participated in the industry's growth. The number of major companies has declined substantially, and there have been few entries of any consequence. A number of the remaining companies have had to curtail their product lines, and some have been acquired by larger companies outside the industry. The sales and profits of a number of the smaller companies have been static or have declined.

16. The evidence establishes that in 1967 Papercraft was one of the largest companies in the industry, and was a growing and aggressive company, particularly in the promotional gift wrap end of

the business. Despite its lesser progress in terms of growth and profitability, CPS remained one of the industry's leaders in 1967, particularly in the area of so-called quality gift wrap marketed through the traditional establishments. It was in no sense a failing company. It had expanded in recent years into the establishments carrying so-called promotional gift wrap, in substantial competition with Papercraft. While Papercraft was not distributing gift wrap to the traditional outlets carrying quality gift wrap, it had the clear capability to do so, and was one of the most likely companies to enter this area of the gift wrap market. The combination of the two companies removed from the market one of Papercraft's substantial competitors in promotional gift wrap and, further, removed the additional competition which Papercraft was capable of providing CPS in the area of quality gift wrap. Given the statistical evidence and testimony concerning the structure of the market, the ranking and substantial market shares of the acquired and acquiring companies, the substantial degree of concentration in the gift wrap industry, the declining number of competitors, and the trend toward acquisition and merger therein, there can be no doubt that the effect of Papercraft's acquisition of CPS may be substantially to lessen competition, or to tend to create a monopoly in the production and sale of gift wrap products in the United States, and it is so concluded and found.

FINAL CONCLUSIONS OF LAW

1. Respondent The Papercraft Corporation and CPS Industries, Inc., were at all times material herein corporations engaged in commerce, as "commerce" is defined in the Clayton Act.

2. The acquisition by respondent, The Papercraft Corporation, of the stock or assets of CPS Industries, Inc., constitutes a violation of Section 7 of the Clayton Act.

THE REMEDY

1. Respondent suggests that if substantial competition is found to have existed between Papercraft and CPS by reason of the latter's production and sale of its "Galaxy" and "Pride" lines, any order of divestiture which may issue should be limited to CPS's "Galaxy" and "Pride" business (RPF at 104, n. 13). In the opinion of the examiner, no such limitation in the order of divestitute is appropriate since competition between the two companies has not been found to be limited merely to the two lines in question and, moreover, it has been found that Papercraft was a potential competitor of CPS's in

the sale of so-called quality gift wrap to traditional gift wrap outlets. Effective competition can be restored only by reestablishing CPS as a full-line company in the production and sale of gift wrap products, as it was prior to its acquisition. The public interest would not be served by reestablishing merely an emasculated version of the company which Papercraft acquired.

2. Complaint counsel's proposed order contains several provisions which the examiner finds not to be justified. One would permit divestiture only to a new corporation. Presumably this provision was included because divestiture to any existing corporation in the industry would be as anti-competitive as the original acquisition. However, there is no reason to believe that this would be true of a divestiture made to an existing corporation not presently in the industry. Moreover, the provision requiring Commission approval would tend to minimize the possibility of an anticompetitive divestiture being made to an existing corporation. The examiner can find no justification for arbitrarily limiting divestiture to a new corporation. The examiner can likewise find no justification for the provision proposed by complaint counsel to require respondent to guarantee the credit borrowings of the new corporation for a period of five years, up to certain limits. In addition, their proposal for a complete prohibition on further acquisitions in the gift wrap industry appears to be unjustified. A 10-year limitation on such acquisitions would be adequate.

ORDER

I

It is ordered, That respondent, The Papercraft Corporation, a corporation, and its officers, directors, agents, representatives, employees, subsidiaries, affiliates, successors and assigns, within six (6) months from the date of service upon it of this order, shall divest, absolutely and in good faith, subject to the approval of the Federal Trade Commission, all assets, properties, rights and privileges, tangible and intangible, including, but not limited to, all plants, equipment, machinery, inventory, customer lists, trade names, trademarks and goodwill, acquired by The Papercraft Corporation as a result of its acquisition of CPS Industries, Inc., together with all additions and improvements thereto, of whatever description, made since the acquisition.

II

It is further ordered, That none of the assets, properties, rights or privileges described in Paragraph I of this order shall by such di-

vestiture be transferred, directly or indirectly, to any person who is at the time of the divestiture an officer, director, employee, or agent of, or under the control or direction of, respondent or any of respondent's subsidiary or affiliated corporations, or owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of The Papercraft Corporation, or to anyone who is not approved in advance by the Federal Trade Commission.

III

If respondent divests the assets, properties, rights and privileges, described in Paragraph I of this order, to a new corporation or corporations, the stock of each of which is wholly owned by The Papercraft Corporation, and if respondent then distributes all of the stock in said corporation or corporations to the stockholders of The Papercraft Corporation, in proportion to their holdings of The Papercraft Corporation stock, then Paragraph II of this order shall be inapplicable, and the following Paragraphs IV and V shall take force and effect in its stead.

IV

No person who is an officer, director, or executive employee of The Papercraft Corporation, or who owns or controls, directly or indirectly, more than one (1) percent of the stock of The Papercraft Corporation, shall be an officer, director or executive employee of any new corporation or corporations described in Paragraph III, or shall own or control, directly or indirectly, more than one (1) percent of the stock of any new corporation or corporations described in Paragraph III.

V

Any person who must sell or dispose of a stock interest in The Papercraft Corporation or the new corporation or corporations, described in Paragraph III, in order to comply with Paragraph IV of this order may do so within six (6) months after the date on which distribution of the stock of the said corporation or corporations is made to stockholders of The Papercraft Corporation.

VI

It is further ordered, That no method, plan or agreement of divestiture to comply with this order shall be adopted or implemented by respondent save upon such terms and conditions as shall first be approved by the Federal Trade Commission.

VII

It is further ordered, That pending divestiture, respondent shall not make or permit any deterioration in any of the plants, machinery, buildings, equipment or other property or assets of the company to be divested which may impair its present capacity or market value, unless such capacity or value is restored prior to divestiture.

VIII

It is further ordered, That for a period of ten (10) years from the date of service of this order upon it respondent shall not acquire, directly or indirectly, through subsidiaries, joint ventures or otherwise, without the prior approval of the Federal Trade Commission, the whole or any part of the stock, share capital or assets of any concern engaged in the manufacture, production, sale or distribution of any decorative gift wrap product, nor shall respondent enter into any arrangement with any such concern by which respondent obtains the market share, in whole or in part, of such concern.

IX

It is further ordered, That for a period of three (3) years from the date of divestiture The Papercraft Corporation is prohibited from selling any decorative gift wrap products to any customer account which at any time has been sold any decorative gift wrap products by CPS Industries, Inc., unless such customer account was sold such decorative gift wrap products by The Papercraft Corporation prior to December 27, 1967.

X

As used in this order, the acquisition of assets includes any arrangement by The Papercraft Corporation with any other party, pursuant to which such other party discontinues manufacturing any of the products described in Paragraph VIII of this order under a brand name or label owned by such other party and thereafter distributes any of said products under any of Papercraft's brand names or labels.

XI

As used in this order, the word "person" shall include all members of the immediate family of the individual specified and shall include corporations, partnerships, associations and other legal entities as well as natural persons.

OPINION OF THE COMMISSION

JUNE 30, 1971

BY MACINTYRE, *Commissioner:*

This matter is before the Commission on appeal from an initial decision of a hearing examiner in which it was found that respondent Papercraft Corporation, a manufacturer of gift-wrap products, had acquired a competing manufacturer of such products, CPS Industries, Inc., in violation of Section 7 of the amended Clayton Act, 15 U.S.C. 18. The examiner issued an order requiring divestiture of the acquired firm and prohibiting any further acquisitions by the respondent for a period of ten (10) years.

Summary of Evidence

As detailed in our Findings of Fact, the evidence indicates that total gift-wrap sales in the United States were approximately $150 million in 1967, the year of the acquisition, and that the acquired and acquiring firms were the 1st and 2nd largest manufacturers in the industry, with gift-wrap sales of $17.3 million and $15.7 million, and market shares of approximately 11.5% and 10.5%, respectively. The new Papercraft-CPS combination thus controls some 22% of the industry, or more than double the share of its next largest competitor (9.1%), and the share of the market held by the four (4) largest firms in the industry has been increased from 39.3% to an estimated 47%. The eight (8) largest manufacturers of gift-wrap products in the United States in 1967 and their respective sales volumes and estimated market shares are summarized in the table below.[1]

Firm	1967 sales	Market share
	Millions of dollars	*Percent*
CPS	$17.3	11.5
Papercraft	15.7	10.5
Hallmark	14.4	9.1
American Greetings	12.3	8.2
4-Firm total		39.3
Cleo	11.5	7.7
Minnesota Mining	7.0	4.6
Dennison	6.2	4.1
Susan Crane	5.7	3.8
8-Firm total		59.5

[1] Finding 75.

The evidence further establishes that the number of firms in the gift-wrap industry has been declining sharply in recent years;[2] that entry barriers are already high around the industry and have been raised even higher by the merger of these two firms, the 1st and 2nd largest in the industry;[3] that Papercraft was already the strongest and most aggressive firm in the industry prior to the acquisition and has been made even stronger as a result of it;[4] that the trade believes the industry will ultimately be reduced to no more than four significant firms;[5] and that, given the significant cost and other advantages accruing to the larger-volume manufacturers, there is a substantial probability that the advantages of the Papercraft-CPS combination will ultimately prove decisive in character and that it will emerge as the dominant firm in a tight-knit oligopolistic industry of precisely the kind the merger provision of the Clayton Act was designed to prevent.[6]

Respondent's Arguments on Appeal

Respondent's principal arguments on this appeal are (1) that the relevant product market includes a number of products and a number of producers not included in the $150 million universe figure or in the market share figures found here, *i.e.*, that the former should be doubled or more, and the latter should thus be reduced by half or more; (2) that respondent was denied due process of law by the examiner's denial of its request for subpoenas *duces tecum* to some 550 alleged manufacturers of gift-wrap; (3) that the acquired and acquiring firms were not competitors in the gift-wrap industry but were, instead, producers of products that are sold in non-competing gift-wrap "submarkets"; (4) that the acquired firm, CPS, was a "failing" company; and (5) that respondent was denied due process of law by the examiner's order placing the sales figures of the third-party manufacturers *in camera* and thus denying the corporate respondent itself (as contrasted with its counsel) access to the evidence used against it.

I. Relevant Product Market

The term "gift-wrap" refers to a number of items used in the preparation of an object for presentation to another person as a gift,

[2] Findings, 67, 76.
[3] Findings, 68, 76.
[4] Findings 67, 68, 73, and 76.
[5] Finding 76.
[6] *Id.*

i.e., to enhance the object's beauty.[7] In the early decades of the century, plain white tissue paper (plus colored string for tying) were the only products used as gift-wrap and the acquired firm, CPS Industries, Inc. (formerly Chicago Printed String), the largest and one of the oldest firms in the industry (founded in 1916), was a pioneer in the field. Most gift-buying was done in department stores and that particular type of outlet accordingly became, along with the traditional greeting card shop, the principal outlet for gift-wrap products. Later, of course, the spectrum of gift-wrap items widened considerably, today's retail gift-wrap department featuring a wide variety of elaborately designed, colored, and embossed papers, plus a wide assortment of such accessory items as ribbons, bows, tie-ons, seals, and the like.[8]

In addition, however, there have been particularly significant changes in the channels of distribution through which gift-wrap products move from the manufacturer to the consumer. The consumer can purchase gift-wrap paper and accessories not only in the traditional department stores and greeting card shops but in "discount-type" department stores (*e.g.*, Gem's, Korvette's, and the like), variety stores (Kresge, etc.), drug stores, supermarkets, and so forth. In addition, the consumer has the choice of (1) buying the gift-wrap items for home use, *i.e.*, for wrap-it-yourself consumption (what the trade refers to as the "resale" sector of the market); (2) having the retailer that sells the gift supply the gift-wrap materials and do the wrapping (the "in-store" sector); and (3) buying a gift that is wrapped by the manufacturer before the item is introduced into the wholesale and retail channels of trade, *e.g.*, such Christmas-wrapped items as liquor, cosmetics and cigarettes (the "pre-wrapped" sector).[9]

Perhaps the most important product distinction in this industry is that between "everyday" gift-wrap, on the one hand, and "Christmas" gift-wrap, on the other. These two product categories refer to the gift-giving *occasion* involved. "Christmas" gift-wrap, the papers, ribbons, and the like used to wrap gifts given during the several weeks preceding that holiday, accounts for well over half of all gift-wrap sold in the United States. "Everyday" gift-wrap, a category used to describe all non-Christmas gift-wrapping products (*e.g.*, for weddings, showers, birthdays, anniversaries, Mother's Day, and the like), accounts for the rest. Consumers generally tend to buy

[7] Finding 59.
[8] *Id.*
[9] See Findings 60, 61.

these two broad categories of gift-wrap products in a somewhat different manner. The purchase of "everyday" gift-wrap tends to center on the giving of a single gift to a specific person on a particular occasion (*e.g.*, the birthday or wedding of a close friend or relative), and thus tends to be bought in a fairly selective fashion, including a concern for such things as "quality" and "fashion" in design, color, and the like.[10] "Christmas" gift-wrap, on the other hand, is bought by the consumer in relatively large quantities, to take care of the shopper's entire Christmas gift-wrapping needs. Here the consumer's concern for "quality" and "fashion" is tempered by an interest in quantity, price, and the appropriateness of the colors and designs to the season, the result being that most "Christmas" gift-wrap is "traditional" in design (Santas, reindeer, etc.) and color (reds, greens, etc.) and is sold in multi-roll (*e.g.*, "Jumbo") packages at "promotional" (discount) prices.[11]

One of the most significant developments in the gift-wrap industry was the appearance, in the early 1950's, of the so-called "discount" stores and other mass-merchandise retail outlets, particularly the supermarket and drug chains. The department stores and greeting card shops, the traditional outlets for gift-wrap, had merchandised these items in their own distinctive way, the most significant of these merchandising characteristics being a rigidly-maintained resale price structure: department stores and greeting card shops always sell gift-wrap products at exactly 200% of what they pay for them.[12] In addition, the product, at least the so-called "everyday" gift-wrap, is generally packaged in small units (*e.g.*, in single rolls or in small packages containing one or a few flat sheets), displayed in distinctive "fixtures" or cabinets, ordered frequently and in small quantities (e.g., a $100 order every two weeks), physically reordered and stocked by the manufacturer's salesmen, and sold as a "quality" product,[13] one that is "fashionable" in color, design, and the like. The "discounters" and other mass-merchandise retailers, on the other hand, sell gift-wrap that appeals to the broadest possible category of

---

[10] Finding 69. "Everyday the sales are mostly flat folds and single rolls of paper." Tr. 419. "The principal ['everyday'] item is a 25-cent package of flat wrap, two sheets 20 by 30, in a transparent 10-by-10 bag; and, then, the individual rolls that retail at 39 cents, or 59 cents, and on a few occasions more." Tr. 1024–1025. "Basically, everyday gift wrapping is paper which has a specific design or color for a specific occasion, such as a wedding, shower, birthday, so forth." Tr. 996–997.

[11] Finding 69. "Christmas it is mostly jumbo rolls and multiple rolls of paper." Tr. 419. See also tr. 1038, 1445, 2023–2024, 2033–2035.

[12] Finding 69; tr. 920–921. Thus an item that cost the retailer $1 would retail for $2.

[13] Finding 71.

customers, order it infrequently in very large quantities, sell it at "discount" prices, and display it in the most casual manner (frequently in the original shipping cartons).[14]

Respondent Papercraft, founded in 1945, abandoned its sales through the traditional paper wholesaler in 1953 and, in effect, went "discount," *i.e.*, it began selling its gift-wrap directly to the discount retailers, particularly the discount-type department stores, variety stores, supermarkets, and drug chains, concentrating on low prices and so-called "boiler-plate" designs and colors. A pioneer in this effort to sell gift-wrap through the mass-merchandise outlets, it was eminently successful and was soon being emulated by other gift-wrap manufacturers. The discounters and chain stores found "Christmas" gift-wrap a profitable item ("everyday" gift-wrap in not a particularly fast-moving product) and, through their lower price structure, took the bulk of that market away from the "traditional" gift-wrap outlets, the department stores and greeting card shops.[15] CPS, the acquired firm here, as the leading supplier of "everyday" gift-wrap to those "quality" retail outlets, found itself in a declining sector of the industry. Responding to this competitive erosion of its business, it introduced two "promotional" brands of gift-wrap in the early 1960's, "Galaxy" and "Pride," these ultimately accounting for some 15% of its total sales volume. Its response to this competitive pressure from Papercraft and the other manufacturers of "promotional" gift-wrap was not sufficient to protect its profit picture, however, and it sold out to Papercraft in December 1967.

Respondent contends, as noted, that it and the acquired firm, CPS, operate in separate, non-competing "submarkets" and hence that the acquisition could not have lessened competition within the meaning of Section 7 of the amended Clayton Act. In its view, gift-wrap is sold in three such economically distinct submarkets, (1) the so-called "quality-serviced" market (the product sold in department stores and greeting card shops); (2) the "promotional" gift-wrap market (that sold in discount stores and the like); and (3) the bulk or "in-store" market (that used by the retailers in wrapping gifts for their consumer-customers). The argument here is that there are some physical differences in the gift-wrap products sold in these three categories; that different marketing techniques and channels are involved; and that separate and distinct price structures are maintained in those three areas. Thus CPS, which sells 55.5% of its $17.4 million worth

[14] Finding 62.
[15] Finding 70.

of gift-wrap in the "everyday" sector [16] (versus 5% for Papercraft), uses heavier paper (45 lbs. versus 21 lbs. in some uses),[17] more expensive ink,[18] and more "fashionable" designs and colors.[19] Secondly, CPS' "quality" gift-wrap is sold in "prestige" department stores and greeting card shops, while Papercraft's moves through discounters and other mass-merchandisers. And, finally, the former invariably maintain, as noted, higher, rigid resale prices (100% markup on all gift-wrap products), while the latter charge whatever the local "discount" competition dictates, with markups frequently in the range of 50% or less.

The difficulty with this argument for placing Papercraft and CPS in non-competing submarkets is that (1) the alleged physical differences are minor in nature and (2) there is in fact a significant interrelationship between sales in the three submarkets respondent would have us recognize. The "quality" outlets (the department stores and card shops), faced with increasing volume losses to the newly-emerged mass-merchandizers in the 1950's, began handling, in addition to their "quality" Christmas gift-wrap, the "promotional" variety as well. And the discounters, anxious to extend still further their capture of the Christmas gift-wrap market, began carrying increasingly higher "quality" gift-wrap products,[20] with the result that both categories are now frequently sold side-by-side in both kinds of retail outlets.[21] Secondly, however, and more importantly, the massive increase in the mass-merchandisers share of the dominant "Christmas" market (from zero in the early 1950's to over half in 1967), makes it inescapably clear that these discount retailers are in "competition" with the "quality" outlets for the consumer's total gift-wrap dollar, *i.e.*, that there is a high "cross-elasticity" of demand between the two categories of retail outlets and products. The presence or absence of cross-elasticity, where the evidence is clear on the point, is "determinative" of product-market issues. *In Re Golden Grain Macroni Co.*, Dkt. 8737 (January 18, 1971), pp. 9–10 [p. 63, 161 herein].[22]

---

[16] RX 21 (in camera).

[17] Tr. 1557–1559.

[18] Tr. 1634.

[19] RX 24–32.

[20] Finding 69; tr. 614–616.

[21] Finding 70; CX 146, 147; tr. 1244–1251.

[22] The test of cross-elasticity is whether *price* changes on one product result in *volume* changes for the other, not, as respondent argues, whether the two products maintain identical prices. Sellers of the one product can always elect to ignore a competing product's lower prices and choose, instead, to let those lower prices compete away its volume. Cross-elasticity is absent only if price changes on one of the two products results in *neither* a price nor a volume change for the other.

Not all of the output of the acquired firm, CPS, competes in this direct manner, however, with the output of the acquiring firm, Papercraft. While there is, as noted, direct competition in the sale of gift-wrap between the two major classes of retail outlets involved here, department stores and discount houses, the record suggests that perhaps only a minor portion, if any, of the "everyday" category of gift-wrap paper can be used by consumers as a substitute for "Christmas" wrap and vice versa, *i.e.*, that there is little or no cross-elasticity of demand between Christmas gift-wrap and, for example, the kind used to wrap wedding gifts (everyday). Thus, while the different emphasis in terms of retail outlets selected does not, as respondent contends, demonstrate a lack of competition between Papercraft's everyday wrap and CPS' everyday wrap, and between Papercraft's Christmas wrap and CPS' Christmas wrap, there is presumably little or no immediate competition between, for example, Papercraft's *Christmas* gift-wrap and CPS' *everyday* gift-wrap. As indicated in the table below (RX 21, *in camera*), 95.5% of Papercraft's total sales are of the Christmas variety and thus are directly competitive with the Christmas portion of CPS' sales, 44.5%. Similarly, 55.5% of CPS' sales are in the everyday category and thus encounter direct and immediate competition from only the 4.5% of Papercraft's sales that are made in this everyday class.

Total Sales of Papercraft and CPS, by Sales Category (RX 21)

Sales category	Papercraft		CPS	
	Dollars	Percent	Dollars	Percent
Christmas	14,998,046	95.5	7,701,762	44.5
Everyday	706,714	4.5	9,605,568	55.5
Total	15,704,760	100.0	17,377,330	100.0

The injury to competition from the merger in question is thus direct and immediate in these "overlapping" product areas. There is equally significant injury to *potential* competition, however, in the merger of these two firms in the remaining or non-overlapping product areas. Both the everyday and Christmas categories of gift-wrap paper are produced with the same manufacturing facilities, using basically the same materials, technology, and production processes, and hence the manufacturer of the one can and does shift readily to the production of the other in response to price and profit opportunities, *i.e.*, entry barriers at the manufacturing level are relatively low to the broad-line volume producer of either Christmas or

everyday wrap contemplating entry into the other gift wrap area. See *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 325, n. 42. There are, as discussed in our findings, substantial barriers at the distribution level, at least for the new entrant and the narrow-line, small-volume producer. (Findings 67 and 68.) These are hardly insuperable, however, for already-established gift-wrap producers of Papercraft's and CPS' production and marketing capacity and potential.

In short, there is a relatively high degree of potential competition between the major producers of Christmas and everyday gift-wrap, one that would be expected to result in actual cross-entry if prices (and thus profit opportunities) increased substantially on the other product line. Preservation of this potential competition, with its obviously restraining effect on consumer prices in both lines, is no less important than preservation of existing competition. In re *Kennecott Copper Corp.*, Docket 8765 (May 5, 1971), Opinion of the Commission, p. 15 [p. 744, 924–925 herein].

II. Size of Gift–Wrap Market—Request for 550 Subpoenas Duces Tecum

Respondent's argument that the examiner's $150 million universe figure understates the true size of the gift-wrap market by improperly excluding other producers and products is related to its contention that it was denied due process by the examiner's refusal to issue some 550 subpoenas *duces tecum* to as many alleged additional gift-wrap manufacturers.[23] Had these subpoenas been issued, respondent maintains, it would have been discovered that total gift-wrap sales in the United States in 1967 were not $150 million but probably twice as much or more, and hence that the proportionate shares of it and the firm it acquired, CPS, would have been reduced by half or more. A finding of a law violation on the basis of incomplete and erroneous market information, when complete and accurate information could have been had by issuance of the requested subpoenas, amounts, respondent argues, to a denial of due process.

[23] During the earlier stages of this proceeding, respondent filed a request for the issuance of an order requiring these several hundred other alleged gift-wrap manufacturers to file special reports under Section 6(b) of the Federal Trade Commission Act setting forth their gift-wrap sales and related information. This was denied by the Commission on September 30, 1969, and respondent subsequently filed suit in the United States District Court for the Western District of Pennsylvania for an order directing the Commission to conduct the survey in question. This suit was dismissed on January 14, 1970, on the ground that the Court had no jurisdiction to compel such an action until the administrative process had been completed. *Papercraft Corporation* v. *Federal Trade Commission,* 307 F. Supp. 1401 (W.D. Pa. 1970).

Counsel supporting the complaint, as part of its case in chief, submitted the sales figures of the 21 "major" manufacturers of gift-wrap products in the United States (subpoenaed from those companies).[24] Then, on direct examination, officials of several of those companies were requested to (1) name the major firms their respective companies compete with, (2) estimate how much of the total gift-wrap market those named "majors" account for, (3) estimate the total dollar volume of gift-wrap sales in the United States in 1967, and (4) explain the bases for their estimates. The substance of this manufacturer-testimony in the case is that the 21 major firms in question account for 80% or more of the total gift-wrap market, that the total United States market in 1967 was in the general range of $150 million, and that they had developed these estimates from informal market surveys based on direct observation and experience in the market.[25] Salesmen report the brands of gift–wrap they see on the retailers' shelves and the relative quantities of each brand found in each of the major (chain) outlets. On the basis of the manufacturer's own experience in those chains where its gift-wrap products are sold exclusively, it knows the total quantity of gift-wrap that a retail outlet of a given size, location, and character should be able to sell. In brief, each of the major manufacturers, knowing the identity, gift-wrap potential, and major gift-wrap suppliers of all important retail outlets in the country, believes itself able to estimate total gift-wrap sales and the relative shares of its competitors within some reasonable range of accuracy.[26]

The issuance of orders requiring special written reports, or of subpoenas *duces tecum*, to 550 companies should obviously be undertaken only if there is no other reasonable way to develop the necessary industry data. In industries such as the one involved here, where there is a central "core" of major firms surrounded by a score or more of relatively unimportant local or regional producers, really precise market data can be prohibitively expensive and burdensome to obtain. As the Supreme Court said in *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 343 (n. 69), "although appellant may point to technical flaws in the compilation of these statistics, we recognize that in cases of this type precision of detail is less important than the accuracy of the broad picture presented." See also *Luria Bros.* v. *Federal Trade Commission*, 389 F.2d 847, 858 (CA–3, 1968), *cert.*

[24] Finding 66.

[25] Finding 65. The 21 major manufacturers subpoenaed by Commission attorneys had total sales of $134 million in 1967. Finding 66.

[26] Finding 65.

denied, 393 U.S. 829 (1968). We think it quite unlikely that this group of experienced executives in the gift-wrap industry was substantially inaccurate in its identification of the major competitors it faces in the marketplace and its overall assessment of the general order of their aggregate share of the market in question.[27]

We agree, however, that the examiner defined the relevant product market too narrowly in two other respects. First, we think such accessory (and/or complementary) products as gift bags, gift boxes, tissue (both used as stuffing and the colored variety used as outer wrap), and kraft (brown) paper used as additional outer wrap for mailing purposes, to the extent that they are in fact used as an accessory in the wrapping or giving of a gift, should be included as part of the overall gift-wrap market.[28] They are insignificant in quantity, however (paper, ribbons, and bows constitute 80% or more of the total gift-wrap market), and the bulk of their sales are accounted for by the major gift-wrap manufacturers and hence are included in the figures in the record.[29] Secondly, we agree that gift-wrap products, whether produced by acknowledged gift-wrap manufacturers or by firms primarily engaged in other industries, should be included in the relevant product market. Again, however, our finding that all but a relatively insignificant portion of gift-wrap sold in the United States is produced by the 20 major firms precludes a finding that any other such firms, whether members of the gift-wrap "industry" or not, manufacture a sufficient volume of such products to significantly affect the total market involved or the relative market shares of Papercraft and CPS.[30]

III. "Failing Company" Defense

Respondent's contention that the acquired firm, CPS, was a "failing company" is based on the fact that, in three (3) of the more recent years of its 50-year history, the latter firm sustained operating losses.[31] In 1964 and 1965, CPS lost $217,000 and $135,000, respectively, these losses being associated with the movement of its major plant from Illinois to Franklin, Tennessee, and thus nonrecurring in

[27] The published figures of the Census Bureau in this area were also received in evidence and are generally consistent with the testimony of the industry witnesses. CX 83–86; tr. 1134–1148. While subject to margins of error associated with inconsistent product reporting by individual companies, there is no evidence that these errors are more prevalent in gift-wrap products than in other product categories. Tr. 2160.

[28] Finding 74.

[29] *Id.*

[30] *Id.*

[31] RX 203; RX 10A; tr. 1653–1667; 1879–1894.

character.[32] Similarly, its 1967 losses ($344,000) were presented as an "inventory shrinkage," an accounting writedown reflecting a judgment made after the acquisition that some $300,000 worth of its gift-wrap inventory was "obsolete." [33] The remainder of CPS' 50 years in the industry have been profitable. Its sales, as noted, were over $19 million in 1967 (the largest in the industry) and its total assets are over $14 million.

It seems fairly clear, however, that CPS did in fact have a management problem during the mid and late 1960's. There were apparently a number of significant inefficiencies in its production and marketing methods [34] and, perhaps equally important, there was an inadequate response to the competitive inroads of Papercraft and the other suppliers of the "discounters" and other mass-merchandisers that emerged in the 1950's and eventually became the dominant factors in the larger Christmas ("promotional") sector of the gift-wrap industry.[35] This management difficulty, in turn, led to general unprofitability and problems in securing financing at the accustomed low-cost rate.[36]

The leading case on the "failing company" defense, *Citizen Publishing Co.* v. *United States*, 394 U.S. 131 (1969), establishes three (3) criteria for a successful showing on this point: (1) The resources of the company must be so depleted, and the prospect of rehabilitation so remote, that the firm in question faces the "grave probability of a business failure"; (2) the prospects for reorganization through bankruptcy or similar proceeding must be dim or nonexistent; and (3) all efforts to find a purchaser other than the acquiring firm must have been exhausted, 394 U.S. at 137–138. In addition, the injury to competition flowing from the failing-com-

---

[32] *Id.*

[33] *Id.*

[34] RX 10, a 11-page memorandum prepared by the president of Papercraft, Mr. Joseph M. Katz, on the eve of the acquisition, summarizes the strengths, weaknesses, and future prospects of CPS in the gift-wrap industry. His judgment on the relative inefficiency of CPS' management is supported by the testimony of other manufacturers in the industry. See also tr. 737.

[35] Finding 76.

[36] The gift-wrap industry, being seasonal in character, depends heavily on borrowing for the financing of inventory build-up during the off-season period (spring and summer). With the onset of "tight money" in 1966, plus a declining confidence in the ability of CPS' management to "do the job," officials of the bank it had been borrowing from for 50 years (First National Bank of Chicago) had resolved in 1967 not to handle the firm's loan (approximately $5 million, on sales of $19 million) for the following year. Tr. 1854–1876. Assuming CPS' inability to get financing from another bank, this would mean borrowing from a finance company and paying, instead of the 6.5% it had been accustomed to paying, the going finance company rate of 15% or more. Tr. 1862–1865.

pany merger, if any, must be more than outweighed by other factors relevant to the public interest.[37] None of those tests are met here. New management, which is basically what Papercraft brought to CPS, was the company's basic need, as a 11-page memorandum prepared by the president of Papercraft, Joseph M. Katz, on the eve of the acquisition, makes clear. "The basis for our determination [to acquire CPS] will be our considered opinion that CPS Industries, operating as a subsidiary or division of Papercraft, can earn a minimum of 10% on its sales before taxes. Based on my own feelings at this writing, I think we can do better than this during the second year of ownership." [38] A 10% return on CPS' sales of over $19 million would mean, of course, pre-tax earnings of $1.9 million per year, a figure that hardly suggests a company beyond hope of rehabilitation.

IV. In Camera Ruling

There was no error in the examiner's protective order placing the sales figures of the various third-party manufacturers *in camera* for a limited period of time, subject to viewing by respondent's counsel and, on a showing of necessity, to viewing by officers of the corporate respondent. See *United States* v. *Lever Brothers Co.*, 193 F. Supp. 254, 258 (S.D.N.Y. 1961); *United States* v. *American Optical Co.*, 39 F.R.D. 580, (N.D. Cal. 1966); and *Federal Trade Commission* v. *United States Pipe and Foundry Co.*, 304 F. Supp. 1254 (D.C.C. 1969). Respondent's counsel, taking the position that the corporate officers of Papercraft had an absolute right to view the detailed sales figures of its competitors, declined to attempt a showing of need therefor and claimed, instead, a violation of due process. The case law is otherwise.

---

[37] In the first Supreme Court decision on the "failing-company" doctrine, *International Shoe* v. *Federal Trade Commission,* 280 U.S. 291 (1930), the Court grounded its acceptance of the defense on the fact that the acquisition of the failing company involved in that case did "not substantially lessen competition or restrain commerce within the intent of the Clayton Act." 280 U.S. at 302–303. As the Court had said earlier in that opinion: "Obviously, such acquisition will not produce the forbidden result if there be no pre-existing substantial competition to be affected. . . ." 280 U.S. at 297, 298. *Cf. In the Matter of United States Steel Corporation,* Dkt. 8655 (December 2, 1968) [74 F.T.C. 1270], *remanded,* 426 F. 2d 592 (CA–6, 1970). "We believe the court [in *International Shoe*] did no more than balance the probable injury to competition against injury to stockholders and other third persons and, in the circumstances of that case, decided that the prevention of the latter was of greater importance. [Ftn. omitted.] We agree . . . [that] in any case involving the acquisition of a failing company we must determine whether the acquisition may result in a substantial lessening of competition and, if so, the acquisition must be declared illegal in the absence of probable harm to innocent individuals so serious and substantial that the public interest requires that the acquisition nonetheless be permitted." Opinion of the Commission, pp. 17–18 [74 F.T.C. 1287–1288].

[38] CX 10J–K.

V. Injury to Competition

The acquisition involved in this proceeding is so far outside the pale of permissible combinations that, even if we accepted respondent's efforts to expand the universe figure to double or more the figure we believe to be reasonably correct and to place the two firms in question in separate "submarkets" of the overall gift-wrap field, we would still be constrained to enter an order restoring this acquired firm to its former status as a separate full-line gift-wrap producer. No matter how the product markets (or submarkets) might be defined, the facts still would remain, as noted, that the 1st and 2nd largest gift-wrap manufacturers have been combined into one; that the combination thus created is more than twice the size of the next-largest competitor; that those two firms were the most likely entrants into all aspects of gift-wrap production; [39] that the number of significant firms in the industry has been decreasing; that the trade expects this trend to continue, with only four significant firms ultimately remaining in the industry; and that there is no prospect for any new firms to enter the industry in the future. The case law simply does not sanction acquisitions of this kind. *Brown Shoe Co.* v. *United States*, 370 U.S. 294 (1962); *United States* v. *Continental Can Co.*, 378 U.S. 441 (1964); *United States* v. *Von's Grocery Co.*, 384 U.S. 270 (1966); *United States* v. *El Paso Natural Gas Co.*, 376 U.S. 651 (1964); *United States* v. *Philadelphia National Bank*, 374 U.S. 321 (1963); *Federal Trade Commission* v. *Procter & Gamble Co.*, 386 U.S. 568 (1967); *United States* v. *Wilson Sporting Goods Co.*, 288 F. Supp. 543 (N.D. Ill. 1968).

An appropriate order will be entered.

Findings as to the Facts, Conclusions and Order

The Federal Trade Commission issued its complaint in this matter on April 10, 1969, charging that respondent Papercraft Corporation, a manufacturer of gift-wrap products, had violated Section 7 of the amended Clayton Act, 15 U.S.C. 18, in acquiring another manufacturer of gift-wrapping products, CPS Industries, Inc. A series of prehearing conferences were held between July 14, 1969, and January 13, 1970. Testimony and other evidence in support of and in opposition to the allegations of the complaint were received in evidentiary hearings held between January 20, 1970, and March 20, 1970.

---

[39] Given new and more aggressive management, the acquired firm, CPS, would undoubtedly be constrained to move still further into the growing "Christmas" sector of the market (45% of its sales are already in that area, as are 95% of Papercraft's).

In an initial decision of July 27, 1970, the examiner concluded that the charges were supported by the evidence and entered an order that would require divestiture of the acquired firm and other supplementary relief.

The Commission, having considered the appeal filed by respondent and the entire record, and having determined that the examiner's findings of fact, conclusions, and order, as modified and supplemented herein, should be adopted as the findings, conclusions, and order of the Commission, now makes its findings as to the facts, its conclusions drawn therefrom, and its order.

FINDINGS AS TO THE FACTS

The Acquiring and Acquired Firms

1. through 56. The Commission finds the facts to be, except as expressly modified herein, as set forth in findings 1 through 56 (pages 1359 through 1386) of the hearing examiner's initial decision of July 27, 1970, and adopts those findings as its own.

57. The acquiring firm, Papercraft Corporation, of Pittsburgh, Pennsylvania, had total sales of $17,935,000 in 1967, of which $15,700,000 were sales of gift-wrap products. Together with its two subsidiaries, it had sales of $27 million and net profits of $2,215,000. The acquired firm, CPS Industries, Inc., a Delaware corporation with its main offices in Chicago, Illinois, had total sales of $19,250,000 in 1967, of which $17,300,000 were sales of gift-wrap products. Its total assets as of October 28, 1967, were $14,220,000. The acquisition was consummated on December 27, 1967, Papercraft acquiring all of the stock and debentures of CPS in exchange for 285,300 shares of its own (Papercraft) stock valued, for purposes of the transaction, at $20 a share ($5,706,000).

58. The acquiring firm, Papercraft, produces its gift-wrap products at its plant in Pittsburgh, Pennsylvania, and sells them to various retail and wholesale outlets, either directly or through manufacturers' representatives, under the brand names of "Kay crest," "Rhapsody," and various private labels. Founded in 1945, Papercraft pioneered in the sale of gift-wrap products to discount houses, supermarkets, drug stores and other relatively low-price mass ("promotional") outlets. The acquired firm, CPS Industries, Inc. (initially Chicago Printed String), founded in 1916, began producing gift-wrap ribbons in the early 1920's and gift-wrap paper in the early 1930's. It produces its gift-wrap products in its two plants, one in Franklin, Tennessee, the other in Schiller Park, Illinois, and dis-

tributes them through its salesmen to various wholesale and retail outlets under the brand names "CPS," "Tie-Tie," "Crinkle-Tie" "Galaxy," "Pride," and "Rippl-Tie." CPS, a pioneer in the gift-wrap industry itself, has sold the bulk of its gift-wrap products through the more traditional retail outlets, particularly the more traditional-type department stores and greeting card shops, at least until the advent of the so-called "discount" stores and other mass merchandise outlets in recent years.

The Gift-Wrapping Industry

59. Gift-wrapping products are those items of paper, ribbons, and accessories that are used for the enhancement of the appearance of a product intended to be given as a gift. "My definition for gift wrap would be any plain, printed or embossed paper, film, foil that might be used as a loose over-wrap for an article to enhance its beauty. They are usually associated with ribbons, ties, seals, wraps, bands, and tie-ons." [1] Sales are divided into two major categories, "Christmas" and "everyday," these terms referring to the gift-giving occasion involved.[2] More than half of all sales of gift-wrap products are made at Christmas (in a period of several weeks preceding that holiday), the bulk of the remainder during such occasions as Mother's Day, Father's Day, Valentine's Day, weddings, "showers," birthdays, graduations, and the like.[3] In terms of distribution channels, gift-wrap products (initially consisting of white tissue and string) were historically sold almost exclusively in department stores and greeting card shops. Later, however, and particularly with the advent of "discounting" in the post-war period, the discount department stores, supermarkets, and drug stores began to account for an increasing share of total gift-wrap sales.[4]

60. In addition to these variations in the character of the outlets in which consumers purchase gift-wrap products, there are also variations in the form in which they are received by the consumer. One of the three principal categories here is referred to in the trade as "in-store" sales. In the traditional transaction in which the consumer bought a gift at a department store and had it gift-wrapped by the store's own employees (either "free" or for a small extra charge), the sale of the gift-wrap accompanied the sale of the gift, *i.e.*, the gift and the gift-wrap were sold by the same store, either in combina-

[1] Tr. 561, 981, 337.
[2] Tr. 418–19.
[3] Id.
[4] Tr. 1035–36.

tion or separately. Here the store purchases the wrapping products from the manufacturer in "bulk" form (paper in "ream" rolls, ribbons in large rolls, bows in large boxes, etc.) and performs the entire wrapping operation for the consumer. A second category of sales recognized by the trade is the industrial "pre-wrap" classification, one involving not sales directly to the consumer but to manufacturers of other goods who gift-wrap certain of their products prior to introducing them into wholesale and retail channels of trade, particularly manufacturers of liquor (distillers), cosmetics, and cigarettes, and particularly at Christmastime. The third and currently the most significant form in which the consumer receives gift-wrap products involves what the trade refers to as the "resale" category, wrapping paper and accessories sold to a retailer in quantities and packaged in such a way as to facilitate their "resale" to the wrap-it-yourself consumer.[5]

61. There are also a number of product variations that are associated with certain of these variations in the channel of distribution through which gift-products move to the consumer and in the exact form in which they are received by the consumer. In the case of the "in-store" gift-wrap purchased in bulk by the retail stores and the industrial "pre-wrap" purchased by, as noted, manufacturers of such other products as liquor, cosmetics, and cigarettes, the initial user of the gift-wrapping product is a business organization, not a consumer, and the sale is thus one between two business organizations, in bulk quantities, and on a product geared expressly to the needs of the purchasing business organization, thus producing minor differences in design, materials, and terms of sales from those prevailing in the other categories of sale.[6]

62. Similarly, within the major "resale" category itself, the one involving the straightforward movement of gift-wrapping products through the retailer into the hands of the wrap-it-yourself consumer, there are some minor variations in these dimensions of design, materials (paper "weight" or thickness, type of ink, and the like), and terms of sale (including price) associated with the tastes, incomes, and the like of the consumers that patronize the different categories of retail outlets. In general, those department stores that attempt to project a "prestige" or "quality" image, and the greeting-card shops, have historically sold a gift-wrap product that was slightly higher in price, more "fashionable" or "exclusive" in design, sometimes of

[5] Tr. 338–342; 345; 564; 603; 659–660: 879: 918–928; 958–960; 1153–1174; and 1355.

[6] Tr. 959–960; 1193; 1410.

heavier (more expensive) paper, and with more or better quality (more expensive) ink, than that sold by, for example, the "discount-type" department stores and the supermarket and drug chains that emphasize price rather than prestige in their selling efforts. Thus the "prestige" department store, in its efforts to cater to the most discriminating tastes and highest consumer income levels, has sold gift-wrap products with "high-style" designs and colors ("shocking pink," avocado, etc.), that were invariably "pre-priced" (with the manufacturer's suggested retail price to the consumer), and invariably took a markup of 100% *i.e.*, double what the store paid for the merchandise. The "mass" outlets, on the other hand, have traditionally sold gift-wrap products with the broadest possible appeal (*e.g.*, the "traditional" Christmas colors and designs) and have done so on a "promotional" basis, *i.e.*, on the basis of competitive prices.[7]

Retailing of Gift-Wrap

63. The S. S. Kresge Company, operator of approximately 900 retail stores in the United States, including both variety stores and discount department stores ("K Marts" and "Jupiters"), believes itself to be the largest retailer of gift-wrap products in the country, with total gift-wrap sales in 1969 of "over $17,000,000." [8] Approximately 82% of its total gift-wrap sales are accounted for by the basic gift-wrap products, namely, papers, ribbons, and bows.[9] Its purchases of the various other accessory items were: tissue, $1.1 million; seals and tags, $800,000; gift boxes, $500,000; tie-ons, $400,000; and kraft paper, approximately $225,000.[10] The latter item, kraft paper (the common brown paper used in, for example, grocery store bags), was used for mailing purposes[11] rather than as a decoration. Approximately 55% of the tissue paper was of the "Madras" [12] or colored type that is commonly used for wrapping gifts.

64. Other retailers report similar patterns in their purchases and sales of gift-wrap products. An official of the DeKoven Drug Co., Winnetka, Illinois, a chain of 6 drug stores and 30 lease-department discount stores in 8 States, testified that, of its total gift-wrap purchases of nearly $400,000 annually, the accessory items accounted for the following percentages of those total gift-wrap sales: gift tape

[7] Tr. 1158–1170.
[8] Tr. 2007, 2023.
[9] Tr. 2008–2010.
[10] Tr. 2003–2008
[11] Tr. 2010.
[12] Tr. 2029.

(cellophane), 3% to 4%; gift boxes, 2.5%; tissue 1% to 2%; kraft paper, 1% or less; tie-ons, ¾ of 1%; tinsel, ½ of 1%; and decorated twine, ¼ of 1%.[13] An official of McCrory, McClellan, and Green Stores, York, Pennsylvania, a variety-store chain with 608 retail stores in the United States and annual gift-wrap purchases of more than $1 million, described the gift-wrap industry as one consisting primarily of paper, tissue, ribbon, bows, yarn, tags, and seals. Of this firm's total gift wrap sales, tissue (mostly white, with a small amount of decorated) accounted for 5%; tie-ons, 2% to 3%; yarn, 1/10th of 1%; elasticized ties, 1/10th of 1%; cellophane, 1/16th of 1%; and gift bags, 1/10th of 1%.[14] His stores attempted to sell pre-wrapped gift boxes and they "just did not sell."[15] A representative of Turnstile Family Centers, Inc., operator of 15 department stores in the Boston and Chicago areas and over 180 drug stores throughout the country, testified that, among the gift-wrap items, bows and ribbons account for from 10% to 12% of its total gift-wrap sales; cellophane (*e.g.*, "Scotch") tape, 5%; tissue, 1% to 2%; and kraft paper, less than 1%.[16]

Size of Gift-Wrap Market

65. Total sales of all gift-wrap products in the United States in 1967, the year of the acquisition at issue here, were approximately $150 million. An official of Hy-Sil Manufacturing Co., one of the major gift-wrap producers, testified on this point as follows:

Q. . . . [A]s a result of your experience, have you arrived at any estimate or opinion as to the size of the gift wrap market in the United States?

A. Are you talking about wholesale or retail?

Q. Well, either figure, sir.

A. Okay. At the wholesale figure, I'd estimate it to be about $150,000,000.

Q. And what does that include?

A. The type of products?

Q. Yes, sir.

A. That would include all gift wrapping paper, including printed, plain, coated papers and printed and embossed foils. That would include card tags and seals, resale ribbons, bows, tinsel cords, and package decorations.[17]

An official of American Greeting Corp., another major manufacturer of gift-wrap, testified as follows:

Hearing Examiner Lewis: What is your estimate as to the overall total of sales made in the industry?

---

[13] Tr. 1823–1826.
[14] Tr. 982–984.
[15] Tr. 986.
[16] Tr. 1927–1940.
[17] Tr. 347–348.

The Witness: About 160 to $170 million.[18]

An official of Archer Products, Inc., a wholly owned subsidiary of R. J. Reynolds Tobacco Co., another major factor in the gift-wrap industry:

Hearing Examiner Lewis: Would you have any statements as to the market today, the size of it?

The Witness: In my opinion, it is about 160 [million dollars], something like that.[19]

A former official of Dennison Manufacturing Co., a major manufacturer of gift-wrap:

Hearing Examiner Lewis: You are saying that the size of the market was about $120 million at the manufacturer's level?

The Witness: At the manufacturer's.[20] ["Resale" gift-wrap only, i.e., exclusive of "instore," "pre-wrap," etc.].

Mr. Joseph Katz, the president of Papercraft Corporation, the acquiring firm in this matter, gave his express, written approval to a published statement that: " 'The size of the gift wrapping market is about $177 million a year. * * *' "[21]

While figures of this kind can never be entirely precise in industries with, as here, a numerically large fringe of relatively unimportant regional firms, at least in the absence of an inordinately expensive and time-consuming study, their general reliability is amply supported by the record. The industry members that provided these estimates are officials of the major firms with long experience in the sale of gift-wrap products. They have availed themselves of numerous techniques of studying the industry and the positions of their own respective firms in it, including studies based on trade journals, financial source books, census data, trade sources, and the like.[22] A particularly comprehensive technique for example, and one that is used extensively by the firms in the industry to estimate and compare their own and their competitors' sales volumes and market shares, is the direct observation (through sales personnel) of the specific brands of gift-wrap on the shelves of the retail outlets that carry the product. Based on its own sales to retail accounts that sell its own gift-wrap products exclusively, the manufacturer knows the amount of gift-wrap that each retail store of a given size and charac-

[18] Tr. 670.
[19] Tr. 831.
[20] Tr. 1044.
[21] CX 31A–C.
[22] CX 41; CX 76; CX 81; Tr. 478–479; 502–503; 522–557; 581; 668–672; 720–728; 912–917; 974–976; 1133–1145.

ter is generally able to sell. Its salesmen, in their rounds soliciting the major retailers (particularly the chain or multi-store retail organizations), observe which of its competitors' products are in fact on the shelves of each of those major chain outlets. Then using its own experience with chains having stores of similar size and character the manufacturer totals up the aggregate amount of gift-wrap products sold by each of its competitors, adds them together, and computes its own and its competitors' shares of that total. "I know, basically, the major manufacturers in the industry, I know the products that they sell, I know basically who they sell to." [23] "I know most of the large accounts that these [competing] companies are selling. I have a fairly good idea of what a store can use in everyday and Christmas giftwrapping." [24] "[I]t is an estimate based on what we think we do in like accounts and get an estimate of the number of like accounts that our competition may have, and it is a figure that we fix from year to year for each of our [competing] manufacturers. * * *" [25] "We have a list on every customer in the business. We see what we sell them and estimate what we think * * * other competitors would sell these same accounts, based on conversations with the buyers, and if people, customers who do not buy from us, we would say, well he has 500 stores and we have a customer that has a 1000 stores and, therefore, his approximate purchases would be just half that amount." [26] While these estimates naturally carry a margin of error, particularly on the shares of individual firms, [27] they are generally consistent with actual sales figures of the major firms [28] and with the industry totals reported by the Census Bureau.[29]

Market Shares of the Major Manufacturers

66. Approximately 20 firms account for an estimated 80% of total gift-wrap sales in the United States.[30] These major firms reported their total 1967 gift-wrap sales as follows:

---

[23] Tr. 946.
[24] Tr. 478.
[25] Tr. 668–669.
[26] Tr. 720–723; 829–839.
[27] Tr. 482–484.
[28] See Finding 66, below.
[29] CX 83–86; tr. 1133–1148.
[30] See, *e.g.*, tr. 517, 670.

Firm	1967 sales	Source [31] (In camera)
DPS	$17,300,000	RX 18
Papercraft	15,700,000	RX 19
Hallmark	14,375,000	CX 48B
American Greetings	12,300,201	CX 44A
Cleo	11,546,830	CX 75E
Minnesota Mining & Manufacturing	6,965,141	CX 56CD
Dennison	6,221,000	CX 65B
Susan Crane	5,715,128	CX 61K
Artistic	5,578,218	CX 53A
St. Clair	5,109,000	CX 68D
Gibson Greeting Cards	5,017,562	CX 75D
Carrington	4,934,764	CX 60A
Ben-Mont	4,543,582	CX 60D
Archer	4,498,000	CX 79
Berwick Textile	3,176,270	CX 70B
Norcross	2,931,901	CX 72B
Wm. E. Wright Co	2,903,982	CX 71B
Rust Craft	1,735,994	CX 64C
Tuttle Press	1,605,023	CX 62C
Technical Tape	1,600,000	CX 73B
Champion Papers	531,294	CX 74B
Total	134,288,890	

[31] The hearing examiner received the exhibits detailing the sales volumes of all third-party firms, and particularly their sales in particular product categories and to particular buyer-accounts, *in camera* subject to whatever disclosure the Commission might deem necessary in order to perform its adjudicative functions. In view of the fact that these figures are already four (4) years old, and that they are not broken down here by product category (*e.g.*, paper, ribbons, etc.), no third-party interests are likely to be harmed by their disclosure at this point in the interests of sound adjudication.

Entry Barriers in the Gift-Wrap Industry

67. The number of economically-significant firms engaged in the manufacture of gift-wrap products has been declining in recent years. A number of firms have been merged out of existence, several others have reduced the scope of their gift-wrap production, and some have withdrawn from the production of gift-wrap products altogether.[32] Only one new gift-wrap producer of any significance, Archer (a wholly-owned subsidiary of R. J. Reynolds Tobacco), has entered the field in the past decade.[33] The trade believes that "the market will eventually firm up with only four companies." [34]

68. There are significant entry barriers facing would-be manufacturers of gift-wrap products, particularly the cost disadvantages, vis-a-vis established leaders in the field, associated with the marketing of new and narrower lines of merchandise. The major buyers of gift-wrap products, particularly such large retail chains as Kresge, Montgomery Ward's, and Newberry, prefer to buy their full complement of gift-wrapping needs from a single supplier, including

[32] Tr. 368–370; 393–394; 542; 662.
[33] Tr. 518–519; 2057.
[34] Tr. 832.

paper, ribbons, tags, seals, and the like.[35] Thus a former product manager of the Brown Co., Kalamazoo, Michigan (a subsidiary of the Gulf & Western complex), testified that his firm had been unsuccessful in its efforts to sell to the large chain accounts because of its narrow line of gift-wrap products—paper only, with no ribbons, tags, seals, and the like—and its resulting inability to get enough sales volume to reduce its costs to competitive levels. Demands by the larger buyers for especially low prices on three or four items, for example, pose no serious difficulties for the manufacturer selling a broad line of perhaps 13 or 14 items: the low-profit items are compensated for by the remaining higher-profit items that are also sold to that buyer. The manufacturer that sells only those few items, however, is at a disadvantage in that regard.[36] Moreover, each individual item in the line of gift-wrap products must be produced and sold in a relatively large volume if costs of production and distribution on each are to be kept at a competitive level.[37] An official of CPS, the acquired firm involved in this matter, testified, for example, that his company's sales to the chains had never been profitable because "we were never ever able to achieve any volume and, therefore, we had all of the same costs to start up a line, designing, packaging, equipment and manufacturing, and we never created enough volume to make the line profitable." [38]

Product Market—Cross-Elasticity of Demand

69. While there are, as noted, minor differences in the gift-wrap products sold in the different types of retail outlets, and thus in the products produced by the manufacturers that have historically specialized to a greater or lesser degree in distributing their gift-wrap items through those different kinds of outlets, the similarities exceed the differences and there is a clear competitive relationship between those groups of outlets for the consumer's gift-wrap dollar. Thus notwithstanding the minor differences in designs, colors, paper and ink qualities, and the like that sometimes appear in the gift-wrap products sold in the so-called "quality" department stores and card shops, on the one hand, and those sold in the more "promotional" (lower-priced) discount-type department stores and other mass merchandise outlets, on the other, the latter group of retailers have

[35] Tr. 346–347; 987.
[36] Tr. 763–764.
[37] Tr. 763–781.
[38] Tr. 1329.

steadily eroded the share of the gift-wrap market held by the former.

Prior to the advent of the "discounters" [39] in the early 1950's, the "old-line" department stores and card shops had enjoyed a virtual monopoly in the retailing of gift-wrap products. Thus CPS, the acquired firm here and the largest manufacturer of gift-wrap in the country, had initially maintained a firm company policy against selling to the expanding discounters.[40] In time, however, CPS was forced by the competition of other gift-wrap manufacturers particularly the firm that ultimately acquired it, Papercraft—not only to develop two "promotional" [41] brands of gift-wrap of its own ("Galaxy" and "Pride") but to sell its highest-quality brand ("Tie-Tie") to the mass outlets.[42] The latter, on the other hand, having successfully competed away much of the department stores' gift-wrap business on the basis of price competition, began to "upgrade" their own operations, *i.e.*, to compete on the basis of "quality" and service,[43] including the inauguration of in-store wrapping services, attractive carpeting, and other department-store "luxury" features.[44] Over time, the differences between the discount and department stores have, for all practical purposes, been largely eliminated.[45] Both "quality" and "promotional" gift-wrap are now sold in stores of widely varying character and their competition is direct. "[W]ell, for example, take a shopping plaza where you have a supermarket, a variety chain, a discount store and various other retail operations. One will respond very quickly and very actively to an operation structure of his neighbors two or three or five doors away and there is a constant juggling during the season to maintain leadership." [46] There is similarly direct competition between "in-store" and "resale" gift-wrap.[47]

Christmas gift-wrap, as noted, now greatly outsells the other category, "everyday" gift-wrap. And the overhwelming majority of the former is, today, "promotional" or competitive in character. Thus the big variety chain mentioned above, McCrory, McClellan, and Green of York, Pennsylvania, with 608 stores, and total gift-wrap sales of $1.25 million annually, sells approximately $1 million at

---

[39] Tr. 1165–1166.
[40] Tr. 600–615, 1355.
[41] Tr. 1323–1324; 1330.
[42] Tr. 600–616.
[43] Id.
[44] Id.
[45] Tr. 614–616.
[46] Tr. 1179; 616.
[47] Tr. 349, 660, 958.

Christmas, the remaining $1/4 million being its year-round volume of "everyday" gift-wrap sales.[48] Other retailers report a similar disproportion between their Christmas and their "everyday" sales, and a shift to the lower-priced "promotional" gift-wrap in the bulk of their Christmas sales. An official of Turnstile Family Centers, for example, a retail chain with 15 department stores in the Chicago and Boston areas and over 180 drug stores throughout the country, testified that, of its total gift-wrap purchases of $250,000 per year, $150,000 to $175,000 was "promotional" gift-wrap bought from Papercraft, the $75,000 remainder being almost entirely "everyday" bought from such "quality" manufacturers as American Greetings, Rustcraft, and Buzza-Cardoza. (Its "quality" Christmas sales amount to "no more than a couple of hundred dollars.")[49]

Competition Between Acquiring and Acquired Firms

70. The acquiring firm here, Papercraft, is engaged primarily in the sale of gift-wrap products of the "promotional" variety sold at Christmas in, for the most part, the mass-merchandise outlets, including discount-type department stores, drug stores, variety chains, and supermarkets, these categories of retail outlets having accounted for approximately 75% of its total sales in 1967.[50] The acquired firm, CPS, on the other hand, sold approximately 30% of its gift-wrap products through those particular outlets in that year, the largest single outlet for its products being the traditional non-discount department store (29% of its total gift-wrap sales in 1967).[51] Narrowed more sharply to the sale of its "promotional" brands ("Galaxy" and "Pride") in the so-called "mass-merchandise" outlets, approximately 15% of the acquired firm's total sales shared a direct competitive "overlap" with the acquiring firm, Papercraft. (As a Papercraft official testified at one point, ". . . Galaxy [CPS] has been a competitor of Papercraft for a number of years.")[52]

This measures only the extent of CPS' efforts to enter the lower-priced (promotional) market, however, not the extent of Papercraft's and other promotional manufacturers' encroachment on the so-called non-promotional market for gift-wrap products. In view of the capture of virtually the entire Christmas portion of the gift-wrap market from the "quality" (non-promotional) products, by the

---

[48] Tr. 991–998; CX 82 (in camera).
[49] Tr. 1925–1926; 1821–1822, 1849.
[50] RX 22–A (in camera).
[51] Id.
[52] Tr. 1243; 1323.

promotional gift-wrap merchandise, it would be unrealistic to find that the two are not in competition across that whole dominant sector of the market. The single most reliable indicator that two products are in the same market is a shift in sales volume away from one of them in response to price movements of the other one. The power of the discounters' pricing efforts to take the department stores' sales volume leaves no room for a finding that the two are not in the same relevant product market. The minor differences in designs, paper weight, ink quality, and point-of-sale service pointed to by Papercraft indicate, in these circumstances, no more than marginal product variations to reflect relatively insignificant differences in purchasing patterns. They are sold in the same retail outlets, frequently side-by-side and even industry experts have difficulty distinguishing the two.[53]

Potential Competition Between Acquiring and Acquired Firms

71. There are, as noted, significant barriers impeding entry into the gift-wrap industry, particularly the problem of securing sufficient volume on each of several items to permit relatively efficient, low-cost production and hence prices as low as those of established firms.[54] These barriers are particularly formidable in the case of the "everyday" sector of the market. Whereas Christmas gift-wrap, being almost entirely "promotional" in character and thus bought largely on the basis of price by the mass-merchandisers, *e.g.*, the multi-store (chain) organizations with hundreds (and even thousands) of stores each, and all during a single short period of time, "everyday" gift-wrap is sold piece-meal throughout the year in small-lot orders to many thousands of individual retail organizations, particularly department stores. Thus Papercraft, which sold Christmas gift-wrap almost exclusively prior to its acquisition of CPS, had approximately 2,400 customers in 1967 (sales of $15.7 million), its average invoice size (shipment) being just over $1,300 and its total sales force consisting of only 19 manufacturers' representatives.[55] CPS, on the other hand, which had its $17.4 million gift-wrap sales divided almost equally between Christmas and "everyday" (44.5% and 55.5%, respectively),[56] had 16,000 accounts in 1967, a sales force of 72 salesmen (plus five divisional salesmen), and an average invoice (shipment) size of $172.[57]

---

[53] CX 146, 147; Tr. 1244–1251; 905, 910–912; 1225; 1323–1325; 2241–2249.
[54] See Finding 68, *supra*.
[55] Tr. 1176–1177.
[56] RX 21 (in camera).
[57] Tr. 1282–1284.

The major sellers of "everyday" gift-wrap, particularly the department stores and greeting card shops, require considerable servicing from the manufacturers, including stocking, display arrangement, and the like, and thus are called upon by the manufacturers' salesmen every two weeks or so.[58] Moreover, "brand" or "prestige" factors are important here,[59] thus putting the would-be entrant at a still greater disadvantage vis-a-vis the older, established firms. The result is that entry into this "everyday" sector of the market is more difficult and more costly than entry into the Christmas gift-wrap category. Archer, the only significant new entrant in the past several years, entered the Christmas (promotional) sector only. "[W]e have gone in more for the mass volume merchandisers as a way for us to get into the business faster." [60] The retail outlets, not being tied to their suppliers for servicing and the like on Christmas gift-wrap, are able to readily shift their patronage from one manufacturer to another on their purchases of that category of merchandise. On the "everyday" gift-wrap, a change of suppliers would be difficult. "It would take quite a while. I don't know, I never contemplate doing it once I got something going. But I imagine it would take a year, two years, to phase in and phase out." [61]

72. Papercraft, with 4.5% of its total gift-wrap sales being "everyday" in 1967,[62] was one of the most likely entrants into that sector of the gift-wrap market on a substantial scale. It was the second largest manufacturer in the industry (second only to CPS, the firm it acquired) and one of its financially strongest ($2.3 million after-tax income in 1967), most aggressive, and fastest growing firms.[63]

Q. Mr. Mumma, of the other companies, that you have mentioned previously which are in the gift-wrap field in 1967, which two companies were best able and qualified to enter the department store field . . . ?

* * * * * * *

The Witness: Well, I will say the two people best equipped to move into this field would be Papercraft and Cleo from the standpoint of their technical skills and their design capabilities and their marketing personnel.[64]

Given this plain capacity for entering the "everyday" field, together with its pattern of growth in broadening its distribution into

---

[58] Tr. 1919, 2032–2035.
[59] Tr. 1796–1799.
[60] Tr. 868.
[61] Tr. 2035.
[62] RX 21 (in camera).
[63] Tr. 737; 1038; 1041–42; CX 3, p. 10.
[64] Tr. 1041.

additional types of retail outlets,[65] there was a substantial probability that, had it not been for the acquisition in question, Papercraft would have entered this area of gift-wrap distribution on its own.

73. For firms already in the "everyday" gift-wrap business, entry into the "Christmas" sector is difficult but not impossible. Thus "Hy-Sil originally sold only fine department stores and the better gift shops. Our salesmen did not know anything about promotional or discount store selling. When we got into this market, we had to show the salesmen how this type of sale had to be made." [66]

CPS, the largest manufacturer of gift-wrap products in the United States at the time of its acquisition in 1967, was already a substantial factor in the Christmas gift-wrap field, its Christmas sales in that year constituting, as noted, $7.7 million or approximately 44.5% of its total gift-wrap sales in that year.[67] Hence it was one of Papercraft's major competitors in that sector of the gift-wrap market. In view of the further fact that it is this sector, not "everyday" gift-wrap, that is growing most rapidly, under more aggressive management CPS would undoubtedly have become a still more important factor in the Christmas field where Papercraft had been and continues to be the leading firm.[68]

Related Items of Gift-Wrap

74. Gift-wrapping includes, in addition to the paper, tying materials, and accessory items accepted by the hearing examiner in this matter,[69] such other related items as tissue (both inner-and outer-wrap), kraft paper, cellophane (*e.g.*, "Scotch") tape, gift-bags, and gift-boxes, whether manufactured by recognized gift-wrap manufacturers or others, where these items are in fact used in the wrapping of a gift or, in the case of kraft paper, in making it suitable for mailing.[70] In view of the fact that the basic papers, ribbons, and bows account for an estimated 80% or more of total gift-wrap sales,[71] together with the fact that the bulk of those accessory items are sold by the major gift-wrap manufacturers themselves and hence are included in the sales figures of those firms in the instant record,[72] the inclusion of those additional items can have no significant

[65] Tr. 1042.
[66] Tr. 470.
[67] RX 21 (in camera).
[68] Tr. 737; CX 10D–K.
[69] Initial Decision (July 27, 1970), pp. 1390–91.
[70] Tr. 367; 422; 455; 466; 692; 881–882; 939; 982–986; 1001–1003; 1021–1023; 1193; 1759–1762; 1807; 1818–1821; 1897–1988; 1950–1960; 2006–2030; 2055–2057.
[71] Tr. 1753; 1965; 2008–2010; and Finding 63, *supra*.
[72] Finding 66, *supra*.

effect on the general order of concentration prevailing in this industry.

Competitive Injury

75. Based on total gift-wrap sales in the United States of approximately $150 million in 1967,[73] the eight (8) largest manufacturers of the product in that year were as follows:

Firm	1967 sales	Market share
	Millions of dollars	*Percent*
CPS	17.3	11.5
Papercraft	15.7	10.5
Hallmark	14.4	9.1
American Greetings	12.3	8.2
4-Firm total		39.3
Cleo	11.5	7.7
Minnesota Mining	7.0	4.6
Dennison	6.2	4.1
Susan Crane	5.7	3.8
8-Firm total		59.5

As a result of the merger, Papercraft's share has moved up from 10.5% to 22%. The share held by the four largest producers of gift-wrap has moved up from 39.3% to 47%.

76. At the time of this acquisition in 1967, Papercraft was already, as found above, the strongest and most aggresive of the country's gift-wrap producers, in an industry with substantial entry barriers and a declining number of firms.[74] With its market share now increased to over 20%, more than double the size of its nearest competitor; with the marketing advantages associated with that dominant size, particularly the cost economies and merchandising advantages associated with the volume and breadth of product line that it now controls;[75] and with the already difficult position of most of the other major producers in the industry,[76] the number of firms in the industry will very likely continue to decline in the future. "[I]t [the merger] has removed one competitor and made the industry that much tougher . . . [T]hey are both stronger because of the merger . . . [W]e are finding more sales resistance to sell our merchandise."[77] Thus, "the buyers think that the [gift-wrap] market will eventually firm up with only four companies."[78] In time, the

[73] Findings 65 and 66, *supra*.
[74] See Findings 67, 68, and 73, *supra*.
[75] Ibid.
[76] Ibid.
[77] Tr. 693, 736–737.
[78] Tr. 832.

wide disparity between the size and cost advantages of the Papercraft-CPS combination and the other firms will undoubtedly make it the price leader in the industry and raise a substantial probability of the industry becoming a tight-knit, administered-price oligopoly of the kind that the courts have said Section 7 of the amended Clayton Act is particularly addressed to.

CONCLUSIONS

1 through 16. Except as modified and supplemented herein, the Commission accepts and adopts the conclusions of the hearing examiner in this matter (pages 1386 through 1393, initial decision of July 27, 1970).

17. Papercraft Corporation and CPS Industries, Inc., were at the time of this acquisition corporations engaged in commerce, as "commerce" is defined in Section 7 of the amended Clayton Act, 15 U.S.C. 18.

18. The relevant market in which to assess the competitive effects of Papercraft's acquisition of CPS is the manufacture and sale of gift-wrap and accessory products in the United States, as found herein. There is a significant interrelationship (cross-elasticity of demand) between the sale of gift-wrap products in the various forms and outlets and hence there are no significant sectors of the industry that can be designated as separate "lines of commerce" within the meaning of Section 7 of the amended Clayton Act.

19. Total sales of gift-wrap and accessory products in the United States in 1967, the year of the acquisition in question, were approximately $150 million. While there is always a margin of error in estimates of this kind, the number of industry experts that testified on this point, their long experience in the industry, and their detailed testimony as to their estimating procedures precludes a finding that those estimates are unreliable, at least as to the general order of magnitude of the industry's total sales volume. "[I]n cases of this type precision in detail is less important than the accuracy of the broad picture presented." *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 343, n. 69 (1962).

20. The acquiring firm, Papercraft Corporation, had total gift-wrap sales of approximately $15.7 million in 1967 and the acquired firm, CPS Industries, had total gift-wrap sales of approximately $17.3 million in that year. The merger thus combined the 1st and 2nd largest gift-wrap producers in the country: CPS, with approximately 11.5% of total industry sales, and Papercraft, with approximately 10.5%, for a combined Papercraft-CPS market share of ap-

proximately 22%, or more than double the share of the next largest producer of gift-wrap (9.1%). The share held by the four (4) largest firms in the industry increased from approximately 39.3% prior to the merger to approximately 47% as a result of the merger.

21. Direct competition has been eliminated between the acquiring and acquired firms in the whole of the Christmas sector of the gift-wrap market and in a part of the remaining ("everyday") gift-wrap sector. In addition, potential competition has been eliminated between Papercraft and CPS in all phases of the gift-wrap market.

22. There are significant entry barriers impeding the entry of firms into the gift-wrap industry, particularly the cost and marketing disadvantages, vis-a-vis the larger established firms, of introducing and selling a more limited line of gift-wrap products on a lesser volume-scale than that of the leading firms in the industry, particularly Papercraft-CPS. The number of significant firms in the industry has been declining sharply over the past decade and it is probable that, given the significant advantages accruing particularly to the Papercraft-CPS combination, that the industry will eventually have no more than four (4) significant firms and that this Papercraft-CPS combination will become the dominant firm or price leader in a tight-knit oligopolistic industry characterized by non-competitive prices and other such poor performance characteristics associated with such industries.

23. The acquired firm, CPS Industries, Inc., was not a "failing company" within the meaning of that term as interpreted by the courts in the relevant case law.

24. Papercraft Corporation's acquisition of CPS Industries, Inc., may have the effect of substantially lessening competition and tending to create a monopoly in the manufacture and sale of gift-wrap products in the United States and is unlawful under Section 7 of the amended Clayton Act, 15 U.S.C. 18.

25. The examiner's protective orders placing the sales figures of third-party manufacturers and others *in camera* and limiting access to them to respondent's counsel, except for good cause shown for their release to respondent's corporate officials, were in accord with established precedent and did not violate respondent's rights to due process of law.

26. The Commission's interlocutory denial of respondent's application for the issuance of special report orders to several hundred thirty-party firms allegedly engaged in gift-wrap production and sales, and the examiner's denial of respondent's application for subpoenas

duces tecum to those third-party firms, was necessary and reasonable and did not violate respondent's due process rights.

27. The examiner's denial of respondent's motion to require production of material received by the Commission from third-party complainants and not made a part of the record was in accord with the Commission's Rules of Practice (Rule 2.2(d)) and does not constitute a denial of due process.

ORDER

This matter having been heard by the Commission on the exceptions of respondent Papercraft Corporation to the hearing examiner's initial decision finding respondent's acquisition of CPS Industries, Inc., in violation of Section 7 of the amended Clayton Act, 15 U.S.C. 18, and directing divestiture and supplemental relief; and

The Commission having determined that the market data established on this record is sufficiently complete and reliable in character that there was no necessity for the issuance of questionnaires or subpoenas to the more than 500 alleged gift-wrap manufacturers named by Papercraft and that there was no denial of due process in the denial of respondent Papercraft's request for such issuance; and

The Commission having determined that there was no denial of due process by reason of the examiner's protective order placing the sales figures of various third-party manufacturers *in camera;* and

The Commission having determined that there was no denial of due process in the examiner's denial of respondent's motion to require production of material submitted to the Commission by third-party complainants and not made a part of the record; and

The Commission having determined that the examiner's findings of fact and conclusions of law, as modified and supplemented herein, should be adopted as the findings and conclusions of the Commission, and that the examiner's order should be adopted as the order of the Commission:

It is ordered, That respondent Papercraft Corporation's exceptions to the hearing examiner's initial decision be, and they hereby are, denied;

It is further ordered, That the examiner's findings of fact and conclusions of law, as modified and supplemented herein, be, and they hereby are, adopted as the findings and conclusions of the Commission, and that the examiner's order be, and it hereby is, adopted as the order of the Commission.