

## Complaint

## XI

*It is further ordered,* That the documents identified as CX 11, CX 124 A-N, CX 125 A-C, CX 196 A-H, and RX 186 be, and they hereby are, a part of the public record.

## XII

*It is further ordered,* That respondent's requests for reconsideration of its motion of December 31, 1968, that Commissioner Jones withdraw from participation in this proceeding, or, in the alternative, that the Commission determine that Commissioner Jones be disqualified from such participation be, and it hereby is, denied.

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 IN THE MATTER OF

## TOWN TALK COAT CO., INC., ET AL.

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

*Docket C-1910. Complaint, May 5, 1971—Decision, May 5, 1971.*

Consent order requiring a New York City manufacturer and distributor of wearing apparel, including ladies' coats, to cease violating the Flammable Fabrics Act by importing and 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 Town Talk Coat Co., Inc., a corporation, and Gerald Becker, 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 Town Talk Coat Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Gerald Becker

## Complaint

78 F.T.C.

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

The respondents are engaged in the manufacture, sale and distribution of wearing apparel, including but not limited to ladies' coats, with their office and principal place of business located at 247 West 37th Street, New York, New York.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacture for sale, the sale or 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; and have been engaged in the manufacture for sale, sale and offering for sale of products made of fabrics or related materials which have been shipped and received in commerce, as "commerce," "product" and "fabric" are defined in the Flammable Fabrics Act, as amended, which products and fabrics failed 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 ladies' coats.

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 Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with 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 Town Talk Coat Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Gerald Becker is an officer of said corporation. He formulates, directs and controls the acts, practices and policies of said corporation.

Respondents are manufacturers of women's and misses' coats with their office and principal place of business located at 247 West 37th Street, New York, New York.

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 Town Talk Coat Co., Inc., a corporation, and its officers, and Gerald Becker, 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, 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 and 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 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 such products, and affect recall of such products from said customers.

*It is further ordered,* That the respondents herein either process the products which gave rise to the complaint so as to bring them within the applicable flammability standards of 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 January 16, 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 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.

## Complaint

IN THE MATTER OF  
DANIEL WIENER

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

*Docket C-1911. Complaint, May 5, 1971—Decision, May 5, 1971*

Consent order requiring a New York City individual engaged in the sale and distribution of fabrics to cease violating the Flammable Fabrics Act by importing and 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 Daniel Wiener, an individual trading as Daniel Wiener, 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. Daniel Wiener is an individual trading as Daniel Wiener with his office and principal place of business located at 37 West 57th Street, New York, New York.

Respondent is engaged in the sale and distribution of fabrics.

PAR. 2. Respondent is now and for some time last past has been engaged in the sale and offering for sale, in commerce, and in the importation into the United States, 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, fabrics as the terms "commerce" and "fabric" are defined in the Flammable Fabrics Act, as amended, which fabrics failed 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 fabrics mentioned hereinabove were materials consisting of 100 percent Cotton Organdy.

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 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 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 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 § 2.35 (b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Daniel Wiener is an individual trading as Daniel Wiener.

Respondent is engaged in the sale and distribution of fabrics with his office and principal place of business located at 37 West 57th Street, New York, New York.

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 Daniel Wiener, individually and trading as Daniel Wiener, 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, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transport-

ing 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 an 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 have been delivered the fabrics which gave rise to the complaint, of the flammable nature of said fabrics, and effect the recall of said fabrics from such customers.

*It is further ordered,* That the respondent herein either process the fabrics 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 fabrics.

*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 fabrics which gave rise to the complaint, (2) the amount of said fabrics in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said fabrics and effect the recall of said fabrics from customers, and of the results thereof, (4) any disposition of said fabrics since August 15, 1969 and (5) any action taken or proposed to be taken to bring said fabrics into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said fabrics 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. 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.

Complaint

78 F.T.C.

IN THE MATTER OF

## SUN-GLO PRODUCTS CORPORATION, ET AL.

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

*Docket C-1912. Complaint, May 5, 1971—Decision, May 5, 1971*

Consent order requiring a Miami, Fla., importer and seller of men's, women's, and children's wearing apparel, including vacation type sweat shirts, to cease violating the Flammable Fabrics Act by importing and 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 Sun-Glo Products Corporation, a corporation, and George J. Kotler, 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 Sun-Glo Products Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida. Respondent George J. Kotler is an officer of said corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporation.

The respondents are engaged in the importation and sale of men's, women's and children's wearing apparel, including, but not limited to vacation type sweat shirts with their office and principal place of business located at 1130 NW 159th Drive, Miami, Florida.

PAR. 2. Respondents are now and for some time last past have been engaged in the sale or offering for sale, in commerce, and the importation into the United States, 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 vacation type sweat shirts designated as styles #7103 and #7104.

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 Sun-Glo Products Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida.

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

Respondents are engaged in the importation and sale of men's, women's and children's wearing apparel, including, but not limited to vacation type sweat shirts with their office and principal place of business located at 1130 NW 159th Drive, Miami, Florida.

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 Sun-Glo Products Corporation, a corporation, and its officers, and George J. Kotler, 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" 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 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

## Complaint

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 July 28, 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 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 this 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.

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IN THE MATTER OFMURDOCK ACCEPTANCE CORPORATION DOING BUSINESS AS  
DIXIEMART-CORONDOLET CREDIT DEPARTMENT

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

*Docket C-1913. Complaint, May 10, 1971—Decision, May 10, 1971*

Consent order requiring a Memphis, Tenn., money lending corporation to cease violating the Truth in Lending Act by failing to include in the "finance charge" any charges for credit life, accident or health insurance, failing to disclose the annual percentage rate correctly, and failing in any consumer credit transaction or advertisement to make all disclosures required by Regulation Z of said Act.

Complaint

78 F.T.C.

## COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Murdock Acceptance Corporation, a corporation, doing business as Dixiemart-Corondolet Credit Department, hereinafter referred to as respondent, has violated the provisions of said Acts and implementing regulation, 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 Murdock Acceptance Corporation, doing business as Dixiemart-Corondolet Credit Department, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located in Memphis, Tennessee.

PAR. 2. Respondent is now, and for some time last past has been engaged in the lending of money to the public.

PAR. 3. In the ordinary course and conduct of its business as aforesaid, respondent regularly extends and for some time last past has regularly extended consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondent, in the ordinary course and conduct of its business and in connection with its lending of money on open end credit account plans, as "open end credit" is defined in Regulation Z, mailed to its customers a notice of the availability of credit life, accident and health insurance. The notice contained the following paragraph, which is typically illustrative but not necessarily all inclusive of the notice: "If for any reason you do not wish this bill paying insurance, please so indicate in the box provided on the back of the certificate and return it. Or, you may simply deduct the amount of the premium cost from your statement. Otherwise, from this very minute, your family is protected." Respondent thereby indicated that unless otherwise instructed by said customers, insurance premiums would be charged to said customers' open end accounts. This is commonly known as a "negative option plan."

PAR. 5. Subsequent to July 1, 1969, respondent, in the ordinary

course and conduct of its business and in connection with its lending of money, and subsequent to delivery to customers of the notice referred to in Paragraph Four, debited to its customers' open end credit accounts premiums for credit life, accident and health insurance, which premiums were paid by respondent on customers' behalf without said customers' specific dated and separately signed affirmative written indication of their desire to purchase such insurance. Respondent thereby:

1. Understated the finance charge by failing to disclose, separately itemized, as part of the finance charge on disclosures made pursuant to Section 226.7(b) of Regulation Z, the aforesaid insurance premiums, as required by Section 226.4(a)(5) of Regulation Z.

2. By failing to include in the finance charge the amount of the aforesaid insurance premiums, understated the Annual Percentage Rate disclosed to said customers in its periodic billing statement sent pursuant to Section 226.7(b)(6) of Regulation Z, in violation of Section 226.4 of Regulation Z.

PAR. 6. Pursuant to Section 103(q) of the Truth in Lending Act, respondent's failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondent thereby violated 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 staff of the Federal Trade Commission 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 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 Murdock Acceptance Corporation, doing business as Dixiemart-Corondolet Credit Department is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 400 Union Avenue, Memphis, Tennessee.

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 Murdock Acceptance Corporation, a corporation, doing business as Dixiemart-Corondolet Credit Department or under any other name, and its officers, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with any consumer credit extension as "consumer credit" is defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to include in the "finance charge" any charges or premiums for credit life, accident or health insurance written in connection with any credit transaction unless:

a. The insurance coverage is not required by the creditor and this fact is clearly and conspicuously disclosed in writing to the customer; and

b. Any customer desiring such insurance coverage gives specific dated and separately signed affirmative written indication of such desire after receiving written disclosure to him of the cost of such insurance, as required by Section 226.4(a)(5) of Regulation Z.

2. Failing to disclose the annual percentage rate correctly, as determined in accordance with Section 226.5 of Regulation Z, both on the disclosure statement made at the opening of a new account in accordance with Section 226.7(a) of Regulation Z and on the periodic statement required by Section 226.7(b) of Regulation Z.

3. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Section 226.4 and Section 226.5 of Regulation Z, in the manner,

form and amount required by Sections 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

*It is further ordered,* That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent, and other persons engaged in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

*It is further ordered,* That the respondent 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 this order.

*It is further ordered,* That respondent 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 manner and form in which it has complied with the order to cease and desist contained herein.

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IN THE MATTER OF

OPERATION SKIP-LOCATE, INC., TRADING AS INTERSTATE  
CREDIT CORPORATION ET AL.

*Docket C-1914. Complaint, May 10, 1971—Decision, May 10, 1971*

Consent order requiring three Blue Bell, Pa., collection agencies to cease misrepresenting that they have offices or affiliated agencies throughout the United States, that legal actions have been or will be taken against any debtor, failing to inform debtor that the decision to take action rests with the attorney, misrepresenting that any action is being taken through any Government agency, and misrepresenting the significance or effect of any legal document affecting any debtor.

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 Operation Skip-Locate, Inc., a corporation, also trading as Interstate Credit Corporation; City Credit Control, Inc., a corporation, also trading as Financial Representatives, Inc.; First State Financial Corporation, a corporation, and John W. O'Hara and Ronald D. Steinman, indi-

vidually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charge in that respect as follows:

PARAGRAPH 1. Respondent Operation Skip-Locate, Inc., 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 1777 Walton Road, Blue Bell, Pennsylvania. Said corporation has traded and is now trading under various names including Interstate Credit Corporation.

Respondent City Credit Control, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 1777 Walton Road, Blue Bell, Pennsylvania. Said corporation has traded and is now trading under the name Financial Representatives, Inc.

Respondent First State Financial Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1777 Walton Road, Blue Bell, Pennsylvania.

The coordinating office of the aforesaid corporations is located at 1777 Walton Road, Blue Bell, Pennsylvania.

Respondents John W. O'Hara and Ronald D. Steinman are officers of said corporations. Said individual respondents are now, and for sometime last past have been formulating, directing and controlling the acts and practices of the said corporate respondents, including the acts and practices set forth herein.

Individual respondents' business address is the same as that of the coordinating office of the aforesaid corporations.

All of the aforementioned respondents cooperate and act together in carrying out the acts and practices herein set forth.

PAR. 2. Respondents currently are and for sometime last past have been, engaged in the business of collecting delinquent accounts from debtors for and on behalf of third-party creditors.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have engaged in and are now engaged in oral and written communication with debtors located in the States of New Jersey, Pennsylvania, Delaware and other various States of the United States, and at all times mentioned herein have maintained a substantial course of trade through said collection of delinquent accounts in commerce, as "commerce" is defined in the Federal Trade Commission Act.



PAR. 4. Respondents, in the course and conduct of their business as aforesaid, and for the purpose of inducing individuals, firms and corporations, to assign accounts to respondents for collection, have made and are now making certain statements and representations descriptive of and respecting their business. These statements and representations are made orally by respondents and appear in respondents' advertising and promotional material. Typical, but not inclusive of such statements and representations, are the following:

1. That delinquent accounts are often forwarded to attorneys and collection agencies located throughout the United States for a localized collection effort.

2. Using a brochure containing the following statements:

In 1959, the Associated Claims Locators, which is a nationwide skip locating firm, was founded out of necessity, by ICC.

\* \* \* \* \*  
Throughout the last fiscal year ending November 31, 1967, ICC has recovered over \$1,210,000 in otherwise abandoned or lost accounts.

\* \* \* \* \*  
Collection Procedures . . . all accounts forwarded to our office for collection are first placed with our analysis department for complete verification of addresses, places of business, and all other important information that would aid our collection department. At this point, all skip accounts are placed in the hands of ASSOCIATED CLAIMS LOCATORS. It is their sole function to investigate and furnish addresses and places of business with the help of Local Credit Bureaus, Retail Merchants Credit Associations, and other exchanges throughout the area. These directors of ASSOCIATED insist that 7 out of 10 skips placed with them are located within thirty days. At the end of the 72-hour period, all debtors living and working at known locations are contacted by our trained phone specialists. This essential step takes place until a unit supervisor feels the account cannot be broken without the aid of an outside adjuster. At this point, an adjuster, having personal contact, takes on further responsibility. He is assigned a placement for ten days. At the end of a ten-day period, it is necessary for him to fill out a complete written report and have it in the hands of our Analysis Department for further reviewing . . .

\* \* \* \* \*  
Our four major departments are headed by: A. T. Galardi, Commercial Accounts Department; Stanley P. Gorski, Retail Accounts Department; R. T. Vance, Field Supervisor; James Cahill, Jr., Doubtful Accounts Department.

3. Having a sign, placed on and near the entrance of one of its offices which has the following language and appearance.

O.S.I., Inc. (inside of and outlined by a map of the United States).  
San Francisco, California

Houston, Texas  
Atlanta, Georgia  
Denver, Colorado  
Miami, Florida  
Boston, Massachusetts

PAR. 5. By and through the use of aforesaid statements and representations set forth in Paragraph 4 hereof, and others of similar import and meaning but not expressly set out herein, respondents represented, and now represent, directly or by implication, that:

1. The business of respondents is nationwide in scope and that respondents have a nationwide network of corresponding attorneys and collection agencies directly affiliated and connected with them.
2. Respondents have a skip locating or investigating division or company separate and distinct from its other business.
3. The business of respondents is departmentalized and that respondents employ a large staff of employees.
4. Respondents have collected large sums of money from debtors.
5. Respondents employ investigators or adjusters who personally contact debtors.

PAR. 6. In truth and in fact:

1. The business of respondents is not nationwide in scope and does not have a nationwide network of corresponding attorneys or and collection agencies directly affiliated and connected with them.
2. Respondents have no skip-locating or investigation division or company separate and distinct from its other business.
3. The business of respondents is small, employing only a few persons and it is not divided into functional departments.
4. Respondents have not collected from debtors the large sums of money represented.
5. Respondents do not employ adjusters or investigators who personally contact debtors.

Therefore, the statements, representations, acts and practices set forth in Paragraphs Four and Five were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of the aforesaid collection business, respondents have transmitted and mailed to debtors various forms, letters, and other printed material.

Typical and illustrative of statements and representations appearing in such forms, letters and other printed material, but not all inclusive thereof, are the following:

963

Complaint

You are hereby (sic) requested to contact our office regarding legal action.

PRE SUMMONS DEMAND

\* \* \* \* \*

Unless we hear from you within 48 hours from the receipt of this letter we will proceed with processing these affidavits to your local area for legal action, which may include judgment and a garnishee of your wages . . . Pay this obligation to our office within 48 hours to avoid the above action. Affiliated with credit bureaus coast-to-coast.  
 Call this office within 24 hours . . . legal file No. 1A11 643-5880.  
 . . . Be advised that as of this date a complaint will be filed with your local credit reporting agency concerning your indifference . . . (This mark against your rating will become part of your permanent record.)  
 Your local credit bureau has been alerted and we are in the process of protecting our client's interest in a legal manner.  
 All medical reporting agencies have been contacted concerning this indebtedness . . .  
 This representation consists of a possible judgment to be taken. Please also note that if judgment is taken a garnishee of your wages where applicable will follow. We will wait 48 hours for your reply . . .

Sincerely,

LINDSEY DEWILDE,  
*Legal Accounts Advisor.*

Office of Anthony Galardi

PRE SUMMONS DEMAND

\* \* \* \* \*

Failure to return this with full payment will result in our agent being dispatched to your home, and all expenses, mileage, legal fees and replevin costs will be charged to you . . . Pay this obligation to our office within 48 hours or be prepared for the action that will follow . . .

Immediately below the next preceding paragraph is the following language:)

INSTRUCTIONS TO KEY PUNCH OPERATORS DISTRIBUTION CHART

For Office Use Only

Code No. 368 491	A	Area	B
District n	A1	C	B1
County Seat	Court Jurisdiction		
Mileage	Deputy Process		
Zone Costs	Court		
A _____	Replevin		
B _____	Damages		
C _____	Attorney		

## Complaint

78 F.T.C.

Duplicate and triplicate forms NCC-OL uncleared in three days to be routed in accordance with field operating manual, and distribution information completed and turned over to area supervisor.

PAR. 8. By and through the use of the aforesaid forms, letters, and other printed material bearing the statements and representations aforesaid, and other statements of import and meaning but not specifically set forth herein, respondents have represented, directly or by implication:

A. That said language "Pre Summons Demand" and language in other forms used by respondents in form and content are official documents duly issued or approved by a court of law or other government agency;

B. That failure of a debtor to remit money to respondents within the periods of time indicated will result in the immediate institution of legal action to effect payment;

C. That suit will be filed without evaluation of the claim;

D. That legal action has been commenced against the debtor owing the delinquent account and that only payment of the alleged debt by the debtor within the time period specified could stop further proceedings of the legal action commenced.

E. That no formal hearing or other recourse is available to the debtor once legal proceedings begin;

F. That medical reporting agencies and credit bureaus are affiliated with respondents and that such agencies and bureaus are furnished information concerning delinquent debtors' credit worthiness.

PAR. 9. In truth and in fact:

A. Forms used by respondents are not official documents issued or approved by a court of law or other governmental agency, but on the contrary are wholly private in origin;

B. The failure of an alleged debtor to remit money to respondent within time period(s) indicated does not always result in the immediate institution of legal action to effect payment. On the contrary, respondents rarely if ever resort to legal proceedings to collect debts;

C. Attorneys with whom accounts are referred exercise discretion in determining which debtors are ultimately sued and suit will not be filed without evaluation of the claim;

D. Legal action has not been commenced against the debtor owing the alleged delinquent account. On the contrary, respondents in many instances have no authority to institute legal action against debtors in the name of or on behalf of creditors of such debtors. Further, respondents are prohibited by the laws of some states

963

## Complaint

from instituting legal actions against debtors on behalf of or in the name of creditors of such debtors;

E. Debtors are forwarded notices proscribed by local statute once legal proceedings have commenced and are afforded an opportunity to defend against any action brought to collect alleged debts;

F. Respondents are not affiliated with medical reporting agencies and credit bureaus and do not report information concerning debtors' credit worthiness to such bureaus.

Therefore, the statements, representations, acts and practices set forth in Paragraphs Seven and Eight were and are false, misleading and deceptive.

PAR. 10. In the course and conduct of the respondents' business as aforesaid and for the purpose of inducing payment of past due accounts, respondents have caused various statements and representations to be made over telephone lines. Typical and illustrative of aforesaid statements and representations, but not all inclusive thereof are the following:

We will forward this to our local offices with a recommendation that suit be filed.

Before we get involved with any type of appropriate action, we thought we would give you a chance to make restitution. We have to have this solved or appropriate action will be taken.

We will report your indifference to our client and recommend that suit be filed.

PAR. 11. By and through the use of the above quoted statements and representations, and others of similar import and meaning but not expressly set out herein, respondents have represented, directly or by implication:

A. The business of respondents is nationwide in scope and that they have a nationwide network of offices with corresponding attorneys and collectors directly affiliated and connected with them.

B. That respondents will file an action without evaluation of the claim.

C. That respondents will recommend to their creditor clients that such action be filed.

PAR. 12. In truth and in fact:

A. The business of respondents is not nationwide in scope and does not have a nationwide network of offices with corresponding attorneys and collectors directly affiliated and connected with them.

B. Failure of the debtor to pay the debt does not necessarily or always result in further legal action.

C. Failure of the debtor to pay the debt does not necessarily or

always result in respondents recommending to their creditor clients that suit be filed.

PAR. 13. Therefore, the statements, representations, acts and practices set forth in Paragraphs Ten and Eleven, hereof, were and are false, misleading and deceptive.

PAR. 14. The use by respondents of the aforesaid unfair acts and false, misleading and deceptive statements, representations, acts and practices has had and now has, the capacity and tendency to mislead a substantial number of creditors and debtors into the erroneous and mistaken belief that such representations were, and are, true, and into the assignment of accounts to it for collection and into the payment of substantial sums of money by reason of said mistaken belief.

PAR. 15. 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 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 respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Washington Area 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 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 Operation Skip-Locate, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 1777 Walton Road, Blue Bell, Pennsylvania.

Respondent City Credit Control, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1777 Walton Road, Blue Bell, Pennsylvania.

Respondent First State Financial Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1777 Walton Road, Blue Bell, Pennsylvania.

Respondents John W. O'Hara and Ronald D. Steinman are individuals and officers of said corporations. Said individuals formulate, direct and control the policies, acts and practices of the corporate respondents, including the acts and practices under investigation. Said individual respondents' address is the same as that of the corporate respondents.

Respondents cooperate and act together in carrying out the acts and practices being investigated.

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 Operation Skip-Locate, Inc., City Credit Control, Inc., First State Financial Corporation, corporations, and John W. O'Hara and Ronald D. Steinman, individually and as officers of said corporations, and respondents' agents and employees, directly or through any corporate or other device, in connection with the solicitation of accounts for collection, the collection of, or attempt to collect accounts, 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 respondents have offices throughout the United States or that respondents are affiliated with or correspond with credit bureaus, collection agencies or attorneys: *Provided, however*, That it shall be a de-

fense in any enforcement proceeding instituted hereunder for respondents to establish that they have offices throughout the United States and/or are affiliated with or correspond with credit bureaus, collection agencies or attorneys.

2. Representing, directly or by implication, that respondents' business has employees, agents or adjusters, engaged in making personal calls on debtors.

3. Representing, directly or by implication that:

- (a) Legal action has been taken against the debtor; or
- (b) Legal action will be taken against the debtor; or
- (c) Reports which reflect unfavorably on the credit rating or credit worthiness of the debtor have been or will be made to medical reporting agencies or credit bureaus.

*Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that they have authority and in good faith intend to take any represented action.

4. Representing, directly or by implication, that suit or other action against a debtor may be taken unless the debtor is informed that the final decision to institute suit or other action rests with an attorney to whom the debtor's account will be referred.

5. Representing, directly or by implication, that any communication with respect to an alleged delinquent account is being made by, through, under the aegis of, or in connection with any government entity or agency, whether state, federal or local.

6. Representing, directly or by implication, to a debtor, that an affidavit or other legal document has been received or is being processed, unless a complaint has been filed or judgment entered against the debtor; or misrepresenting in any manner the significance or effect of any legal document.

7. Misrepresenting or inaccurately stating the post judgment right of a creditor to garnish wages of a debtor, or otherwise informing a debtor of a creditor's right after judgment without disclosing at the same time that no judgment may be entered against the debtor unless the debtor has first been given notice and an opportunity to appear and defend himself in a court of law.

8. Misrepresenting, directly or by implication, the size of respondents' business.

*It is further ordered,* That the respondent corporations shall forth-



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

*It is further ordered,* That respondents deliver a copy of this order to all of its present and future personnel and that respondents secure a signed statement acknowledging receipt of said order from each such person.

*It is further ordered,* That respondents 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 of their compliance with this order.

*It is further ordered,* That respondents notify the Commission at least (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 this order.

*It is further ordered,* That respondents maintain for a least a two (2) year period last past, records which fully reflect the oral and written representations made to creditors and debtors.

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IN THE MATTER OF

JOHNSON & JOHNSON DOING BUSINESS AS CHICOPEE  
MANUFACTURING COMPANY, ETC.

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

*Docket C-1915. Complaint, May 10, 1971—Decision, May 10, 1971*

Consent order requiring a New Brunswick, N. J., manufacturer of industrial and hospital items, including nurses' caps, to cease violating the Flammable Fabrics Act by importing and distributing 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 Johnson & Johnson, a corporation, doing business as Chicopee Manufacturing Company and under its own name or any other name or names, and Chicopee Mills, Inc.,

## Complaint

78 F.T.C.

a 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 Johnson & Johnson is a corporation, doing business as Chicopee Manufacturing Company and under its own name among others. Said corporation is organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Chicopee Mills Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents are engaged in the manufacture, sale and distribution of a broad range of industrial, consumer and hospital items in which are included products and fabrics subject to the Flammable Fabrics Act, as amended. Among the products so sold and distributed were nurses' caps and among the fabrics were those used in the manufacture of infants' shirts, nurses' caps and other hospital garments. The business address of the above-named respondents is 501 George Street, New Brunswick, New Jersey.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacture, sale and offering for sale in commerce, and in the importation into the United States, 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 and fabrics; and have manufactured for sale, sold, or offered for sale, products made of fabrics or related materials which have been shipped and received in commerce, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which products, fabrics and related materials 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 fabrics mentioned hereinabove, but not limited thereto, was a fabric described as Masslin brand non-woven fabric and designated as "Style S400 6260 39" Pink.

Among such products, but not limited thereto, were nurses' caps.

PAR. 3. Respondents furnished a false guaranty that certain of their fabrics were not so highly flammable as to be dangerous when worn by individuals, when respondents in furnishing such guaranty

## Decision and Order

had reason to believe that the fabric so falsely guaranteed might be introduced, sold or transported in commerce, in violation of Section 8(b) of the Flammable Fabrics Act, as amended.

PAR. 4. 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 heretofore determined to issue its complaint charging the respondents named in the caption hereof with the violation of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 Johnson & Johnson is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Said firm does business under its own name and as Chicopee Manufacturing Company, Chicopee Mills, Inc., is a corporation organized, existing and doing business under, and by virtue of the laws of the State of New York.

Respondents are engaged in the manufacture of articles of wearing apparel including nurses' caps. Respondents are further engaged in the manufacture, importation and sale of fabrics, including, but not limited to, fabrics that were sold for use in the manufacture of infants' shirts, nurses' caps and other hospital garments. The business address of said respondents is 501 George Street, New Brunswick, New Jersey.

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 the respondents Johnson & Johnson, a corporation, doing business as Chicopee Manufacturing Company and under its own name or any other name or names, and its officers, and Chicopee Mills, Inc., a corporation, and its officers, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from manufacturing for sale, 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 wearing apparel, or fabric or related material which fabric or related material may reasonably be expected to be used in such wearing apparel; or manufacturing for sale, selling or offering for sale any wearing apparel made of fabric or related material which has been shipped or received in commerce, as "commerce," "fabric," "related material" and "wearing apparel" are defined in the Flammable Fabrics Act, as amended, which wearing apparel, fabric or related material fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

*It is further ordered,* That respondents, if they have not done so heretofore, notify all of their customers who have purchased or to whom have been delivered the fabrics or wearing apparel made from said fabrics, which gave rise to this complaint of the flammable nature of such fabrics or wearing apparel and effect recall of such fabrics or wearing apparel from said customers.

*It is further ordered,* That the respondents herein, if they have not done so heretofore, either process the fabrics which gave rise to this complaint and any wearing apparel made from said fabrics so as to bring them within the applicable flammability standards

of the Flammable Fabrics Act, as amended, or destroy said fabrics or any wearing apparel made therefrom.

*It is further ordered,* That respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission an interim special report in writing setting forth the respondents' intention as to compliance with this order. This interim special report shall also advise the Commission fully and specifically concerning the identity of the fabrics which gave rise to the complaint and any wearing apparel made from said fabrics, (1) the number of such fabrics or articles of wearing apparel in inventory, (2) any action taken and any further actions proposed to be taken to notify customers of the flammability of such fabrics or articles of wearing apparel and of the results of such actions, (3) any disposition of such fabric or articles of wearing apparel since December 1969 and (4) any action taken or proposed to be taken to flameproof or destroy such fabrics or articles of wearing apparel and the results of such action. Such report shall further inform the Commission whether respondents have in inventory any fabric, product or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or combinations thereof in a weight of two ounces or less per square yard, or having a raised fiber surface made of cotton or rayon or combinations thereof. Respondents will submit samples of any such fabric, product or related material with this report. Samples of the fabric, product or related material shall be of no less than one square yard of material.

*It is further ordered,* That respondents Johnson & Johnson, a corporation, doing business as Chicopee Manufacturing Company and under its own name or any other name or names and its officers, and Chicopee Mills Inc., a corporation, and its officers, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a guaranty under the Flammable Fabrics Act, as amended, with respect to any product, fabric or related material which guaranty is false and when respondents have reason to believe that such product, fabric or related material may be introduced, sold, or transported in commerce.

*It is further ordered,* That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of successor corporations, the creation or dissolution of subsidiaries

Complaint

78 F.T.C.

or any other change in the corporations which may affect compliance obligations arising out of the order.

*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 respondent 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.

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IN THE MATTER OF

SIEGEL'S HOME EQUIPMENT COMPANY, INC., ET AL.

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

*Docket C-1916. Complaint, May 10, 1971—Decision, May 10, 1971*

Consent order requiring a Richmond, Va., distributor and seller of furniture, appliances and other merchandise to cease violating the Truth in Lending Act by failing to disclose the amount of the downpayment in property, failing to disclose the difference between the cash price and the total downpayment, failing to disclose accurately the unpaid balance, the amount financed, the finance charge, the deferred payment price, and failing to make other disclosures required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Siegel's Home Equipment Company, Inc., a corporation, and Henry Shapiro, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, 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 Siegel's Home Equipment Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia with its principal office and place of business located at 7 West Broad Street, Richmond, Virginia.

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

PAR. 2. Respondents are now and for some time last past have been engaged in the advertising for sale, offering for sale, and sale and distribution of furniture, appliances and other merchandise to the general public through its retail store located at 7 West Broad Street in Richmond, Virginia.

PAR. 3. Since July 1, 1969, in the ordinary course and conduct of their business as aforesaid, respondents regularly extend, and for some time last past have regularly extended, consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents in the ordinary course and conduct of their business and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused and are causing their customers to execute personal loan notes, installment loan contracts, or retail installment contracts, each hereinafter referred to as "the contract." By and through the use of the contract, respondents:

1. Failed to make all disclosures required to be made by Regulation Z clearly, conspicuously and in a meaningful sequence, as required by Section 226.6(a) of Regulation Z.
2. Failed to disclose the amount of the downpayment in property and to describe that amount as the "trade-in," and failed to disclose the sum of the "cash downpayment" and the "trade-in" and to describe that sum as the "total downpayment," as required by Section 226.8(c) (2) of Regulation Z.
3. Failed to disclose accurately the "unpaid balance of cash price" as the difference between the "cash price" and the "total downpayment," as required by Section 226.8(c) (3) of Regulation Z.
4. Failed to disclose all other charges, individually itemized, which are part of the amount financed but which are not part of the finance charge, as required by Section 226.8(c) (4) of Regulation Z.
5. Failed to disclose the amount of the "unpaid balance" accurately as the sum of the "unpaid balance of cash price" and all other charges which are part of the "amount financed" but are not part of the "finance charge," as required by Section 226.8(c) (5) of Regulation Z.
6. Failed to disclose accurately the "amount financed," and failed to describe that amount as the "amount financed," as required by Section 226.8(c) (7) of Regulation Z.

## Complaint

78 F.T.C.

7. Failed in some instances to disclose accurately and to describe individually the amounts of all charges required by Section 226.4 of Regulation Z to be included in the finance charge, and failed in some instances to include all such amounts in the amount of the finance charge, as required by Section 226.8(c) (8) (i) of Regulation Z.

8. Failed in some instances to disclose the annual percentage rate, and failed in some instances to disclose the annual percentage rate accurately to the nearest quarter of one percent as computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b) (2) of Regulation Z.

9. Failed to print the terms "finance charge" and "annual percentage rate," where required to be used, more conspicuously than the other required terminology, as required by Section 226.6(a) of Regulation Z.

10. Failed to disclose the "deferred payment price" accurately as the sum of the cash price, all other charges which are part of the amount financed but are not part of the finance charge, and the finance charge, as required by Section 226.8(c) (8) (ii) of Regulation Z.

11. Failed in some instances to disclose the number, amount, and due dates or periods of payments scheduled to repay the indebtedness, and failed in some instances to disclose that information accurately, as required by Section 226.8(b) (3) of Regulation Z.

12. Failed to make all the required disclosures in any one of the following three ways, as required by Section 226.8(a) of Regulation Z:

(a) Together on the contract evidencing the obligation on the same side of the page and above or adjacent to the place for the customer's signature;

(b) On one side of the separate statement which identifies the transaction; or

(c) On both sides of a single document containing on each side thereof the statement "NOTICE: See other side for important information," with the place for the customer's signature following the full content of the document.

PAR. 5. Subsequent to July 1, 1969, in the ordinary course and conduct of their business, respondents have caused to be published advertisements for their goods and services as "advertisement" is defined in Regulation Z, which advertisements aid, promote, or assist directly or indirectly extensions of consumer credit. Through these advertisements, respondents by stating "payments start in December," represent that no downpayment is required in connection with a con-



sumer credit transaction, without also stating all of the following terms, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d) (2) thereof:

1. The cash price;
2. The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
3. The amount of the finance charge expressed as an annual percentage rate; and
4. The deferred payment price.

PAR. 6. Pursuant to Section 103(k) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents thereby violated 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, the Truth in Lending Act and the implementing Regulation promulgated thereunder; and

The respondents 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 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 Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

## Decision and Order

78 F.T.C.

1. Respondent Siegel's Home Equipment Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia with its principal office and place of business located at 7 West Broad Street, Richmond, Virginia.

Respondent Henry Shapiro is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, including the acts and practices hereinafter set forth. His address is the same as that of said corporation.

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

## ORDER

*It is ordered,* That respondents Siegel's Home Equipment Company, Inc., a corporation, and its officers, and Henry Shapiro, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with any extension of consumer credit or any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90-321, 15 U.S.C. 1601 *et. seq.*), do forthwith cease and desist from:

1. Failing to make all disclosures required to be made by Regulation Z clearly, conspicuously and in a meaningful sequence, as required by Section 226.8(a) of Regulation Z.

2. Failing to disclose the amount of any downpayment in property or to describe that amount as the "trade-in," or failing to disclose the sum of any "cash downpayment" and the "trade-in" and to describe that sum as the "total downpayment," as required by Section 226.8(c)(2) of Regulation Z.

3. Failing to disclose accurately the difference between the "cash price" and the "total downpayment," and failing to describe that difference as the "unpaid balance of cash price," as required by Section 226.8(c)(3) of Regulation Z.

4. Failing to disclose all other charges, individually itemized, which are part of the amount financed but are not part of the finance charge, as required by Section 226.8(c)(4) of Regulation Z.

5. Failing to disclose the amount of the "unpaid balance" accurately as the sum of the "unpaid balance of cash price" and all other charges which are part of the "amount financed" but are not part of the "finance charge," as required by Section 226.8(c) (5) of Regulation Z.
6. Failing to disclose accurately the "amount financed," and failing to describe that amount as the "amount financed," as required by Section 226.8(c) (7) of Regulation Z.
7. Failing to disclose accurately and to describe individually the amount of each charge required by Section 226.4 of Regulation Z to be included in the finance charge, and failing to include each such amount in the amount of the finance charge, as required by Section 226.8(c) (8) (i) of Regulation Z.
8. Failing to disclose the annual percentage rate, and failing to disclose that rate accurate to the nearest quarter of one percent, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b) (2) of Regulation Z.
9. Failing to print the terms "finance charge" and "annual percentage rate," where required to be used, more conspicuously than the other required terminology, as required by Section 226.6(a) of Regulation Z.
10. Failing to disclose the "deferred payment price" accurately as the sum of the cash price, all other charges which are part of the amount financed but are not part of the finance charge, and the finance charge, as required by Section 226.8(c) (8) (ii) of Regulation Z.
11. Failing to disclose accurately the number, amount, and due dates of periods of payments scheduled to repay the indebtedness, as required by Section 226.8(b) (3) of Regulation Z.
12. Failing to make all the required disclosures in any one of the following three ways, as required by Section 226.8(a) of Regulation Z:
  - (a) Together on the contract evidencing the obligation on the same side of the page and above or adjacent to the place for the customer's signature; or
  - (b) On one side of the separate statement which identifies the transaction; or
  - (c) On both sides of a single document containing on each side thereof the statement "NOTICE: See other side

for important information," with the place for the customer's signature following the full content of the document.

13. Stating in any advertisement the amount of the downpayment required or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless they state all of the following items in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) of Regulation Z:

- (a) The cash price;
- (b) The amount of the downpayment required or that no downpayment is required, as applicable;
- (c) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
- (d) The amount of the finance charge expressed as an annual percentage rate; and
- (e) The deferred payment price.

14. Failing, in any consumer credit transaction to make all disclosures, determined in accordance with Section 226.4 and Section 226.5 of Regulation Z, in the manner, form and amount required by Section 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

*It is further ordered,* That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the offering for sale, or sale of any products or in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

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

Complaint

IN THE MATTER OF

GREEN BROOK CORPORATION, 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-1917. Complaint, May 10, 1971—Decision, May 10, 1971*

Consent order requiring a Hialeah, Fla., manufacturer and seller of ladies' dresses and sportswear to cease misbranding and deceptively advertising its textile fiber products.

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 Green Brook Corporation and Jomar Realty, Inc., corporations, and Robert Solovei and Edward Solovei, individually and as officers of said corporations, and Fontaine Modes, Inc., a corporation, and Joseph Germano, individually and as an officer of Jomar Realty, Inc. and Fontaine Modes, Inc., 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. Respondents Green Brook Corporation, Jomar Realty, Inc., and Fontaine Modes, Inc., are corporations, organized, existing and doing business under and by virtue of the laws of the State of Florida. Green Brook Corporation has its office and principal place of business located at 1085 East 14th Street, Hialeah, Florida. Jomar Realty, Inc., and Fontaine Modes, Inc., both have their office and principal place of business located at 1080 East 15th Street, Hialeah, Florida.

Respondents Robert Solovei and Edward Solovei are officers of Green Brook Corporation and Jomar Realty, Inc. They participate in the formulation, direction and control of the acts, practices and policies of the aforesaid corporations. Their address is the same as that of Green Brook Corporation. Proposed respondent Joseph Germano is an officer of Jomar Realty, Inc., and of Fontaine Modes, Inc., and he participates in the formulation, direction and control

## Complaint

78 F.T.C.

of the acts, practices and policies of these two corporations. His address is the same as that of these said corporations.

Respondents are engaged in the manufacture and sale of ladies' dresses and sportswear.

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 products" 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 promulgated under said Act.

Among such misbranded textile products were garments with labels which failed:

1. To disclose the true generic names of the fibers present; and
2. To disclose the true percentages of such fibers.

PAR. 5. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that the required information as to fiber content was not set forth in such a manner as to separately show the fiber content of each section of textile fiber products con-

taining two or more sections, in violation of Rule 25(b) of the aforesaid Rules and Regulations.

PAR. 6. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and assist directly or indirectly in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such textile fiber products, but not limited thereto, were ladies dresses which were falsely and deceptively advertised by means of, among others, a brochure published in the State of Florida, and having a wide circulation in said state and various other States of the United States, in that the said textile fiber products were advertised by means of fiber implying terms such as "avril" and "duck" without the aforesaid required information being set forth.

PAR. 7. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the Rules and Regulations promulgated thereunder in that a fiber trademark was used in advertising textile fiber products containing more than one fiber and such fiber trademark did not appear at least once in the said advertisement in immediate proximity and conjunction with the generic name of the fiber in plainly legible and conspicuous type, in violation of Rule 41(b) of the aforesaid Rules and Regulations.

PAR. 8. 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.

#### 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 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. Respondents Green Brook Corporation, Jomar Realty, Inc., and Fontaine Modes, Inc., are corporations, organized, existing and doing business under and by virtue of the laws of the State of Florida. Green Brook Corporation has its office and principal place of business located at 1085 East 14th Street, Hialeah, Florida. Jomar Realty, Inc., and Fontaine Modes, Inc., both have their office and principal place of business located at 1080 East 15th Street, Hialeah, Florida.

Respondents Robert Solovei and Edward Solovei are officers of Green Brook Corporation and Jomar Realty, Inc. They participate in the formulation, direction and control of the acts, practices and policies of the aforesaid corporations. Their address is the same as that of Green Brook Corporation. Proposed respondent Joseph Germano is an officer of Jomar Realty, Inc., and of Fontaine Modes, Inc., and he participates in the formulation, direction and control of the acts, practices and policies of these two corporations. His address is the same as that of these said corporations.



Respondents are engaged in the manufacture and sale of ladies' dresses and sportswear.

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 Green Brook Corporation and Jomar Realty, Inc., corporations, and their officers, and Robert Solovei and Edward Solovei, individually and as officers of said corporations, and Fontaine Modes, Inc., a corporation, and its officers, and Joseph Germano, individually and as an officer of Jomar Realty, Inc., and Fontaine Modes, Inc., 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 constituent fibers contained therein.

2. Failing to affix a stamp, tag, label, or other means of identification to each such 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.

3. Failing to make a disclosure on the required label on or affixed to textile fiber products composed of two or more sections of different fiber composition, in such a manner as to show the fiber composition of each section in all instances where such disclosure is necessary to avoid deception.

B. Falsely and deceptively advertising textile fiber products by:

1. Making any representations by disclosure or by implication as to the fiber content of any textile fiber product in any written advertisement which is used to aid, promote, or assist, directly or indirectly, in the sale or offering for sale of such textile fiber product, unless the same information required to be shown on the stamp, tag, label or other means of identification under Section 4(b)(1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

2. Using a fiber trademark in advertising textile fiber products containing more than one fiber without such fiber trademark appearing in immediate proximity and conjunction with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness.

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

*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 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.

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IN THE MATTER OF

PERFECT FILM & CHEMICAL CORPORATION ET AL.

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

*Docket C-1918. Complaint, May 13, 1971—Decision, May 13, 1971*

Consent order requiring New York City, Philadelphia, Pa., and Fort Worth, Texas, corporations engaged in using deceptive and unfair means to sell magazine subscriptions and collect accounts to cease misrepresenting that they are conducting surveys or contests, performing services for the Youth Opportunity Program, failing to reveal that their contacts are to sell maga-

## Complaint

zines, harassing customers by phone and falsely threatening legal action, and failing to give all essential details on their subscription contract; the order also defers the effective date of the subscription contract for 72 hours and gives the customer the right to cancellation within the period; it also forbids respondents to use third-party solicitors unless such third parties agree to be bound by the order.

## 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 Perfect Film & Chemical Corporation, a corporation; Perfect Subscription Company, a corporation; and Keystone Readers' Service, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Perfect Film & Chemical Corporation (hereinafter referred to as Perfect Film) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 641 Lexington Avenue in the city of New York, State of New York. Respondent Perfect Film is a diversified corporation with a substantial interest in the publishing, sale and distribution of magazines and periodicals. A substantial portion of Perfect Film's income is derived from the sale and distribution of magazines and periodicals through newsstand and subscription sales. Subscription sales are those in which the subscribers remits the full amount of the subscription price at the outset or in which the subscriber remits the price of the subscription contract at monthly intervals during the first half of the term of the subscription contract. The latter form of subscription sales, hereinafter referred to as "paid-during-service" or "PDS" subscription sales, are solicited by respondent Keystone Readers' Service, Inc. Net sales for Perfect Film for the year 1968 were over 100 million dollars.

Respondent Perfect Subscription Company (hereinafter referred to as Perfect Subscription) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at Independence Square in the city of Philadelphia, State of Pennsylvania. It is a wholly-owned subsidiary of respondent Perfect Film.

Perfect Subscription is primarily engaged in the business of selling and distributing magazines and periodicals through its various

operating divisions and subsidiaries, such as respondent subsidiary Keystone Readers' Service, Inc. Perfect Subscription's volume of business in the sale and distribution of magazines and periodicals to the general public is substantial.

Respondent Keystone Readers' Service, Inc. (hereinafter referred to as Keystone), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at the Transamerica Building, Seventh and Main Streets, in the city of Fort Worth, State of Texas. It is a wholly owned subsidiary of respondent Perfect Subscription.

Keystone is engaged in the business of selling and distributing magazines and periodicals to the general public through its franchisees and subfranchisees, sometimes referred to as Regional Franchise Operators (RFOs) and Local Franchise Operators (LFOs). Subscription contracts are sold on an installment basis (PDS) for a large number of publishers through telephone and door-to-door solicitations. Keystone authorizes the use of five trade names under which subscriptions can be solicited and written: Keystone Readers' Service, Ben Franklin Reading Club, Publishers' Associated Service. Sales by Keystone for 1968 were over 24 million dollars.

Keystone is essentially the same corporation formerly wholly-owned by the Curtis Publishing Company. In June of 1968, all of the assets of Keystone were transferred to Perfect Film where for a time it was operated as a division. Subsequently, in November of 1968, Keystone was transferred to Perfect Subscription where it operated as a division until January of 1970. Subsequently, Keystone has operated as a wholly-owned subsidiary of Perfect Subscription.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. In the course and conduct of their business of selling and firms who have entered into franchise agreements with Keystone, and through representatives engaged by or through franchisees and subfranchisees, have induced members of the general public to subscribe to various publications.

Respondents, through their said franchises, subfranchises, and representatives engaged by or through said franchisees and subfranchisees, place into operation and, through various direct and indirect means and devices, control, direct and implement sales methods whereby members of the general public are contacted by telephone calls and door-to-door solicitations, and by means of state-

ments, representations, acts and practices as hereinafter set forth, are induced to sign subscription contracts purporting to list publications of the purchasers' choice, a stated subscription period for each, and the terms and conditions for payments by installments for the purchase price.

The executed subscription contracts are thereafter forwarded through various representatives engaged by or for the franchisees and subfranchisees to Keystone business. Respondent Perfect Film, through its subsidiary Perfect Subscription, accepts the revenues flowing from said circulation, sale and distribution of the various publications offered.

In the manner aforesaid, respondent Perfect Film dominates, controls, furnishes the means, instrumentalities, services and facilities for, and condones, approves, and accepts the pecuniary and other benefits flowing from the acts, practices and other benefits hereinafter set forth, of the respondents Perfect Subscription and Keystone, and the respective franchisees, subfranchisees, and their representatives engaged by or through said franchisees, and subfranchisees hereinafter referred to as respondents' representatives.

PAR. 3. In the course and conduct of their subscription sales business, as aforesaid, respondents now cause, and for sometime last past have caused, said publications, when sold, to be shipped by mail from respondents' places of business or sources of supply to purchasers thereof located in various States of the United States other than the state of origination, and have transmitted and received, and caused to be transmitted and received, in the course of selling, delivering, and collecting payment for said publications among and between the several states of the United States, contracts, invoices, checks, collection notices and various other kinds of commercial paper and documents. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in such products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as foresaid, and for the purpose of inducing members of the general public to sign subscription contracts, respondents and their representatives utilize or display sales promotional materials or other means and instrumentalities furnished, approved or ratified by respondents. In conjunction therewith, respondents and their representatives have made oral statements and representations concerning the terms and conditions of said subscription contracts, their renewal or cancellation, special offers, the nature and purpose of the solicitation, and

the identity of the solicitor. In the foregoing manner, respondents and their representatives have represented, directly or indirectly:

(a) That they are primarily conducting or participating in bona fide surveys, quizzes or contests.

(b) That their offers are being made only to specially selected persons.

(c) That they represent, or are performing services for bona fide non-commercial organizations, or other similar organizations such as Youth Opportunity Program.

(d) That publications or other products will be given free, or for the cost of mailing, handling, editing or printing said publications, or at special or reduced prices.

(e) That subscribers will be allowed to cancel the subscriptions if they should decide to do so.

(f) That a free gift subscription to a publication will be sent to a subscriber's friend or relative.

PAR. 5. In truth and in fact:

(a) Said representatives were not primarily conducting or participating in bona fide surveys, quizzes or contests, but to the contrary, were, and are, engaged in inducing the general public to sign subscription contracts in the manner aforesaid.

(b) Respondents' said offers were not being made only to specially selected persons, but to the contrary, were made to numerous members of the general public through frequent solicitations of broad segments thereof.

(c) Said representatives neither represented nor performed services for bona fide non-commercial organizations, or other similar organizations such as Youth Opportunity Program, but to the contrary, represented or performed services for respondents in the manner aforesaid.

(d) Publications or other products were not given free, nor solely for the cost of mailing, handling, editing or printing of said publications, nor at special or reduced prices. To the contrary, the subscription contracts provided for payment to cover respondents' regular or prevailing subscription contract prices.

(e) On a substantial number of occasions subscribers were not allowed to cancel their subscription contracts or were only allowed to do so after extended delay.

(f) Gift subscriptions to a person designated by the subscriber were not given free, but to the contrary, the cost of said gift subscriptions were included within the price of the subscription contract.

Therefore, the statements and representations as set forth in Paragraph Four hereof were, and are, false, misleading and deceptive.

## Complaint

PAR. 6. In the further course and conduct of their business, and in furtherance of their purpose of inducing the purchase of and payment for said publications by the general public, respondents and their representatives, directly or indirectly, have engaged in the following additional acts and practices:

(a) In a substantial number of instances, they have stated approximate costs of a subscription contract on a weekly basis in conjunction with statements of typical subscription periods as, for example, a cost of "50 cents per week" and a period of 60 months. Respondents and their representatives falsely and deceptively fail to disclose, in connection with such statements, the material fact that their contracts seldom, if ever, provide for weekly installment payments, or for payments spread over 60 months. In truth and in fact, the contracts require monthly installment payments of substantially higher amounts over a substantially shorter period of time than stated during such oral presentations.

(b) In a substantial number of instances they have induced customers to sign a subscription contract by falsely and deceptively representing it to be a preference list, a guarantee, a route slip, or a document of an import or nature other than a subscription contract.

(c) In their efforts to collect what respondents elect to treat as delinquent accounts of customers who have been induced to sign subscription contracts, they have resorted to telephone calls at unreasonable hours and other forms of harassment, by means of which they have unfairly, falsely and deceptively represented, directly or indirectly:

- (1) That the general or public credit rating or standing of any such customer will be adversely affected unless payment is made;
- (2) That the failure of a customer to remit money to respondents will result in the institution of legal action to effect payment; and
- (3) That the failure of a customer to remit money to respondents will result in said customer's account being turned over to a bona fide, independent collection agency for collection.

In truth and in fact, respondents seldom, if ever, take any action, including legal action or referral of said accounts to a bona fide, independent collection agency, which adversely affects the general or public credit rating of such subscribers.

(d) In a substantial number of instances, respondents have substituted publications for those originally contracted for by subscribers without first giving the subscriber an option to choose the substituted magazine or other publication, or to receive a full return with

## Complaint

78 F.T.C.

respect to the pro rata portion of the contract price representing the price of the undelivered issues of that magazine or other publication.

(e) In a substantial number of instances, respondents and their salesmen and solicitors have induced persons to sign subscription contracts without clearly, conspicuously, and adequately designating and disclosing:

- (1) The total cash price,
- (2) The downpayment,
- (3) The unpaid balance of the cash price,
- (4) The number, amount, and due dates or period of payments scheduled to satisfy the payment of the contract.

Therefore, respondents' statements, representations, acts and practices, and their failure to reveal material facts, as set forth herein were, and are, unfair, false, misleading, and deceptive acts and practices.

PAR. 7. In addition to the foregoing statements, representations, acts and practices, respondents have engaged in door-to-door solicitations of magazine subscriptions, either without prior invitations to solicit such sales from prospective purchasers or by using one or more of the deceptive means and methods aforesaid to gain access to prospective purchasers at times and under circumstances when such prospective purchasers were not otherwise considering the purchase of magazine subscriptions, and without either:

(a) Affirmatively stating and affording such purchasers the right to cancel any resulting subscription contract for a period of not less than 72 hours, or

(b) By refusing to honor any such right purportedly given either orally or in writing, or thwarting the exercise of any right so given.

The solicitation of subscription sales without permitting cancellation within a reasonable time constitutes an unfair, false, misleading and deceptive practice where such sale involves long term obligations on the part of the subscriber and where it is made under the conditions and circumstances herein alleged.

Therefore, respondents' acts and practices as set forth herein were, and are, unfair, false, misleading and deceptive acts and practices.

PAR. 8. By and through the use of the aforesaid acts and practices, respondents place in the hands of 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. 9. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individ-



uals in the sale of products of the same general kind and nature as that sold by respondents.

PAR. 10. The use by respondents of the aforesaid unfair and false, misleading and deceptive statements, representations and practices, and their failure to disclose material facts, as aforesaid, 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 complete, and into the purchase of substantial quantities of said products by reason of said erroneous and mistaken belief and unfairly into the assumption of debts and obligations and the payment of monies which they might otherwise not have done.

PAR. 11. 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 and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption here of 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 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 complaint to issue herein, a statement that the signing of said argument 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 considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Perfect Film & Chemical Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 641 Lexington Avenue in the city of New York, State of New York.

Respondent Perfect Subscription Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 841 Chestnut Street, in the city of Philadelphia, State of Pennsylvania.

Proposed respondent Keystone Readers' Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at the Transamerica Building, Seventh and Main Streets, in the city of Fort Worth, State of 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

I

*It is ordered,* That respondents Perfect Film & Chemical Corporation, a corporation, Perfect Subscription Company, a corporation, and Keystone Readers' Service, Inc., a corporation, and respondents' officers, representatives, employees, successor or assigns, franchisees, sub-franchisees, salesmen, agents or solicitors, and the men, agents or solicitors engaged by or through respondents' franchisees or sub-franchisees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of magazines or any other publications or merchandise, or subscriptions to purchase any such magazines or services, or in the collection or attempted collection of any delinquent or other subscription contract or other account, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that respondents are primarily conducting or participating in any survey, quiz or contest, or are engaged in any activity other than soliciting business; or misrepresenting, in any manner, the purpose of the call or solicitation.

2. Representing, directly or indirectly that any offer to sell said products or services is being made only to specially selected

## Decision and Order

persons; or misrepresenting, in any manner, the persons or class of persons afforded the opportunity of purchasing respondents' products or services.

3. Representing, or performing services for Youth Opportunity Program or any similar organization, or any individual or firm other than one engaged in soliciting business; or misrepresenting, in any manner, the identity of the solicitor or of his firm and of the business they are engaged in.

4. Representing, directly or indirectly, that any merchandise or service is free, or is provided as a gift to either the subscriber or a person designated by him, or without cost or that any merchandise or service can be obtained free or as a gift or without cost or charge, in connection with the purchase of, or agreement to purchase any merchandise, or combination of merchandise or service, unless the stated price of the merchandise or service or combination thereof required to be purchased in order to obtain such free merchandise or gift is the same or less than the customary and usual price at which such merchandise or service or combination thereof required to be purchased has been sold separately from such free or gift item, for a substantial period of time in the recent and regular course of business in the trade area in which the representation is made.

5. Representing that any price is a special or reduced price unless it constitutes a significant reduction from an established selling price at which such product or service has been sold in substantial quantities in the recent and regular course of trade; or misrepresenting, in any manner, the savings which will be accorded or made available to purchasers, or that any price for any product or service covers only the cost of mailing, handling, editing, printing, or any other element of cost, or is at or below cost.

6. Refusing or failing upon request to cancel a contract when the representation has been made, either directly or indirectly, that the contract will be cancellable.

7. Failing, clearly, and unqualifiedly to reveal initially at all contacts or solicitations of purchasers or prospective purchasers, whether directly or indirectly, or by telephone, written or printed communication, or person-to-person, that the purpose of such contact or solicitation is to sell publications, products or services, as the case may be, which purpose shall be identified with particularity at the time of each such contact or solicitation.

8. Making any reference or statement concerning "50¢ per week," "60 months," or any other statement as to a sum of money or duration or period of time in connection with a subscription contract or other purchase agreement which does not in fact provide, at the option of the purchaser, for the payment of the stated sum, at the stated interval, and over the stated duration or period of time; or misrepresenting, in any manner, the terms, conditions, method, rate or time of payment actually made available to purchasers or prospective purchasers.

9. Representing, directly or indirectly, that a subscription contract or other purchase agreement is a "preference list," "guarantee," "route slip" or any kind of document other than a contract or agreement; or misrepresenting, in any manner, the nature, kind or legal characteristics of any document.

10. Failing, clearly and unqualifiedly, to reveal orally to each purchase or prospective purchaser before execution, and in writing on each document, the identity, and nature of any document, such as a "contract" they are requested or required to execute in connection with the purchase of any product or service; and orally that the terms of any such document are binding on the parties to the document.

11. Attempting, by the use of telephone calls or any other means, to harass or intimidate customers in order to effect payment of any account.

12. Misrepresenting, directly or indirectly, that in the event of nonpayment or delinquency of any account or alleged debt arising from any subscription contract or purchase agreement, the general or public credit rating or standing of any person may be adversely affected, unless respondents actually do refer information concerning delinquencies to a bona fide credit reporting agency.

13. Failing, clearly and unqualifiedly, to disclose to a debtor or an alleged debtor, on each contact, that the collection agency to which the delinquent account will be referred, or said collection agency which is contacting a debtor or an alleged debtor, is an operating division of the respondents', and is not an independent bona fide collection agency unless in fact said collection agency is an independent, bona fide collection agency.

14. Representing, either directly or indirectly, that legal action may be instituted unless respondents in good faith intend to institute legal action against each delinquent debtor or alleged debtor to whom such representation is made; or misrepresenting,

in any manner, the action or results of any action which may be taken to effect payment of any such account or debt or alleged debt.

15. Contracting for any sale in the form of a subscription contract or other purchase agreement which shall become binding on the purchaser prior to a period of time not less than 72 hours after the date of signing by the purchaser.

16. Failing to disclose orally prior to the time of sale, and in writing on any subscription contract or other agreement with such conspicuousness and clarity as will be likely to be observed and read by such purchaser, that the purchaser may rescind or cancel the sale by directing or mailing a notice of cancellation to residents' address prior to 72 hours after the date of signing by the purchaser.

17. Failing to provide either on the contract or on a separate sheet a clearly understandable form which the purchaser may use as a notice of cancellation.

18. If coupon books are used, failing to include with each coupon book furnished to a subscriber:

(a) A legend, on the cover, stating "check the number of coupons in this book and their amounts against your original subscription contract: (See Page 1)."

(b) A statement, on the first separate inside page, showing the total number of coupons in the book, the dollar amount of each such coupon and the total dollar amount of all such coupons;

(c) The address, on the first separate inside page, of Keystone Readers' Service, Inc., its successors or assigns.

19. Failing to furnish to each subscriber at the time of his signing of the subscription contract a duplicate original of the contract showing the exact number and name of the magazines or other publications to which the purchaser is subscribing, the number of issues for each, and the total price for each magazine and for all such magazines: *Provided, however*, As an alternative, the price for each magazine may be furnished on a separate schedule attached to each of said contracts.

20. Failing to furnish with each coupon book initially provided to each subscriber, a copy of the original sales contract.

21. Substituting, requesting substitution or permitting substitution, except at the request of the customer, at any time during the collection period of the contract, of any magazine or publication for any magazine or publication covered by the contract

## Decision and Order

78 F.T.C.

without first providing the subscriber an option in writing, as stated in the subscription contract, to reduce his future payments by the pro rata portion of the remaining payments due on the cancelled magazine or other publication. *Provided*, That respondents may offer to those subscribers with paid-in-full contracts an option to either lengthen already existing subscriptions or to select from among all of respondents' then currently offered magazines or publications, a magazine or publication as a substitute for the remaining period of the subscription.

22. Failing or refusing to cancel, at the subscriber's request, all or any portion of a subscription contract whenever respondent in good faith finds that any misrepresentation prohibited by this order has been made.

23. Failing to clearly, conspicuously, and adequately designate and disclose both orally, and in writing on the subscription contract, on the same side of the page and above or adjacent to the place for the customer's signature:

- (a) The total cash price,
- (b) The downpayment,
- (c) The unpaid balance of the cash price,
- (d) The amount financed, if any,
- (e) The rate of the finance charge, if any, expressed as the annual percentage rate, and
- (f) The number, amount, and due rates or period of payments scheduled to satisfy the payment of the contract.

24. Furnishing or otherwise placing in the hands of others the means and instrumentalities by and through which the public may be misled or deceived in the manner or by the acts and practices prohibited by this order.

## II

*It is further ordered:*

(a) That respondents herein deliver, or have delivered, a copy of this decision and order, or the contents of this decision and order, to each of their present and future dealers or franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors, or other representatives who sell, promote or distribute the products or services included in this order.

(b) That respondents herein deliver or have delivered to each person so described in Paragraphs (a) above a form clearly stating his intention to be bound by and to conform his business

## Decision and Order

practices to the requirements of this order which shall be forwarded to the respondents.

(c) That respondents inform or have informed all such present and future dealers or franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors, or other representatives who sell, promote or distribute the products or services included in this order that the respondents shall not use any third party, or the services of any third party for the solicitation of magazine subscriptions unless such third party agrees that it will be bound by the provisions contained in this order and the respondents are so informed.

(d) If such party will not so agree and the respondents and the Commission are not so informed then the respondents shall not use such third party or the services of such third party to solicit subscriptions.

(e) That respondents so inform or have informed the persons so engaged that the respondents are obligated by this order to discontinue on their own the deceptive acts or practices prohibited by this order.

(f) That respondents institute a program of continuing surveillance to reveal whether the business operations of each of said persons so engaged conform to the requirements of this order: and

(g) That respondents upon receiving information or knowledge from any source concerning two or more bona fide complaints prohibited by this order against any franchisee, his employees or agents during any one-month period will be responsible for either ending said practices or securing the termination of the franchisee or the employment of the offending employee or agent.

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

*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.

Complaint

78 F.T.C.

IN THE MATTER OF

## TIME INCORPORATED, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT*Docket C-1919. Complaint, May 13, 1971—Decision, May 13, 1971*

Consent order requiring a major New York City magazine publisher and its wholly-owned subsidiary engaged in soliciting magazine subscriptions to cease making various false representations in inducing customers to subscribe to magazines, refusing to cancel a contract on request, failing to reveal all significant details of the subscription contract, harassing customers by phone or otherwise to effect payment of accounts, making sales contracts which are binding before midnight of the third day, and failing to notify purchaser of his right to rescind contract within three days. The order also binds any third party which respondent may engage to solicit subscriptions.

## 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 Time Incorporated, a corporation, and Family Publications Service, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Time Incorporated, hereinafter referred to as Time, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in the Time Life Building, Rockefeller Center, in the city of New York, State of New York.

Family Publications Service, Inc., hereinafter referred to as Family, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1212 Avenue of the Americas, in the city of New York, State of New York. It is a wholly-owned subsidiary of respondent Time, and operates some thirty-four branch offices located throughout the United States that are managed by employees of Family. The volume of business of said respondent subsidiary corporation in the sale and distribution of magazines and periodicals to the general public is substantial, averaging in excess of \$25,000,000 annually during the period of 1967 through 1969.



The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondent Time, through its various organizational divisions and through its wholly-owned subsidiary corporation Family, publishes, sells and distributes magazines and other periodicals including LIFE, a general interest publication. The magazines and other publications which Family sells nationwide include those published by Time and by others as well. All such products, whether magazines, books or any other printed matter will hereinafter be referred to as "publications."

Subscription sales are made to consumer members of the general public, hereinafter referred to as "customers," "subscribers" or "purchasers;" said subscription contracts generally run from two to five years depending upon the number and type of publications solicited by the customer, and vary in price from approximately \$60 to \$125.

PAR. 3. In the course and conduct of its business of selling said publications pursuant to subscription sales contracts as aforesaid, respondent Time through its subsidiary Family, their agents, salesmen, or other solicitors, hereinafter referred to as "employees," have induced members of the general public to subscribe to LIFE and other publications.

Respondents, through said employees, place into operation and, through various direct and indirect means and devices, control, direct and implement sales methods whereby members of the general public are contacted by telephone calls and door-to-door solicitations, and by means of statements, representations, acts and practices as hereinafter set forth, are induced to sign subscription contracts purporting to list publications of the purchasers' choice, a stated subscription period for each, and the terms and conditions for payment by installments of the purchase price. The executed subscription contracts are thereafter forwarded by the branch offices to the respondent corporate subsidiary's headquarters for processing in the usual course of respondents' business. This method of selling is referred to in the industry as "Paid-During-Service," (PDS).

Thereafter subscriber makes payments, directly or indirectly, to respondents and respondents accept the revenues flowing from said circulation, sale and distribution of said publications.

In the aforesaid manner, respondent Time dominates and controls, furnishes the means, instrumentalities, services and facilities for, condones and approves, and accepts all the pecuniary and other benefits flowing from the acts, practices and policies of respondent Family and its employees.

PAR. 4. In the course and conduct of their subscription sales busi-

ness, as aforesaid, respondents now cause, and for more than three years last past have caused said publications, when sold, to be shipped from their place of business or sources of supply by mail to purchasers thereof located in the same and various other States of the United States other than the state of origination, and have transmitted and received in the course of selling, delivering and collecting payment for said publications among and between the several States of the United States, contracts, invoices, checks, collection notices and various other kinds of commercial paper and documents. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in such products and commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their business as aforesaid and for the purpose of inducing members of the general public to sign subscription contracts, respondents and their sales employees utilize or display sales promotional materials or other means and instrumentalities furnished, approved or ratified by respondents. In conjunction therewith, they have made certain oral statements and representations concerning the terms and conditions of said subscription contracts, their renewal or cancellation, special offers, the nature and purpose of the solicitation, and the identity of the organization purportedly involved in the solicitation. In the foregoing manner, respondents and their employees have represented, directly or indirectly:

(a) That their offers are being made only to specially selected persons, such as, but not limited to contest winners and those who participated in polls or surveys.

(b) That they represent, or are performing services for bona fide noncommercial or other nonprofit organizations, such as "Welcome Wagon."

(c) That publications or other products will be given free or for the cost of mailing, handling, editing or printing said publications, or at special or reduced prices.

(d) That subscribers will be allowed to cancel the subscriptions if they should decide to do so.

PAR. 6. In truth and in fact:

(a) Respondents' said offers were not being made only to specially selected persons, but, to the contrary, were made to numerous members of the general public through frequent solicitations of broad segments thereof.

(b) Said employees neither represented nor performed services for

bona fide non-commercial or other non-profit organizations such as "Welcome Wagon" but, to the contrary, represented or performed services for respondents in the manner aforesaid.

(c) Publications or other products were not given free, nor solely for the cost of mailing, handling, editing or printing of said publications, nor at special or reduced prices. To the contrary, the subscription contracts provided for payment to cover respondents' regular or prevailing subscription contract prices.

(d) On a substantial number of occasions, subscribers were not allowed to cancel their subscription contracts, or were allowed to do so only after extended delay.

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

PAR. 7. In the further course and conduct of their business, and in furtherance of their purpose of inducing the purchase of and payment for said publications by the general public, respondents and their employees, directly or indirectly, have engaged in the following additional acts and practices:

(a) In a substantial number of instances, they have stated approximate costs of a subscription contract on a weekly basis, in conjunction with statements of typical subscription periods as, for example, a cost of 45 cents per week and a period of 60 months. Respondents and their employees falsely and deceptively fail to disclose, in connection with such statements, the material fact that their contracts seldom, if ever, provide for weekly installment payments, or for payments spread over 60 months. In truth and in fact, the contracts require monthly installment payments of substantially higher amounts over a substantially shorter period of time than stated during such oral presentations.

(b) In a substantial number of instances they have induced customers to sign contracts by failing to fully inform the customers as to the cost, name and number of issues of each publication, the total cost of the contract, the amount of the down payment, the amount and due date of each payment and the total number of such payments.

(c) In a substantial number of instances, they have induced customers to sign a subscription contract by falsely and deceptively representing it to be a preference list, a guarantee, a route slip, for a document of an import or nature other than subscription contract.

(d) In their efforts to collect what respondents elect to treat as delinquent accounts of customers who have been induced to sign subscription contracts, they have unfairly, falsely and deceptively represented, directly or indirectly:

## Complaint

78 F.T.C.

(1) That the general or public credit rating or standing of any such customer will be adversely affected unless payment is made.

(2) That the failure of a customer to remit money to respondents will result in the institution of legal action to effect payment.

In truth and in fact, respondents seldom if ever take any action, including legal action, which adversely affects the general or public credit rating of such subscribers.

Therefore, respondents' statements, representation, acts and practices, and their failure to reveal material facts, as set forth herein were, and are, unfair, false, misleading and deceptive acts.

PAR. 8. In addition to the foregoing statements, representations, acts and practices, respondents have engaged in door-to-door solicitations of the aforesaid subscriptions, either without prior invitations to solicit such sales from prospective purchasers or by using one or more of the deceptive means and methods aforesaid to gain access to prospective purchasers at times and under circumstances when such prospective purchasers were not otherwise considering the purchase of magazines or other publications, and without either;

(a) affirmatively stating and affording such purchasers the right to cancel any resulting subscription contracts for a period of not less than 72 hours following such solicitations, or

(b) by refusing to honor any such right purportedly given either orally or in writing, or thwarting the exercise of any right so given.

The solicitation of subscription sales without permitting cancellation within a reasonable period of time constitutes an unfair, false, misleading and deceptive practice where such sale involves long-term obligations on the part of the subscriber and where it is made under the conditions and circumstances herein alleged.

PAR. 9. By and through the use of the aforesaid acts and practices, respondents place in the hands of 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 their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 11. The use by respondents of the aforesaid unfair and false, misleading and deceptive statements, representations and practices, and their failure to disclose material facts, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said state-

ments and representations were and are true and complete, and into the purchase of substantial quantities of said products by reason of said erroneous and mistaken belief and unfairly into the assumption of debts and obligations and the payment of monies which they might otherwise not have incurred.

PAR. 12. 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 and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

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

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed 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 in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Time Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located in the Time-Life Building, Rockefeller Center, in the city of New York, State of New York.

Respondent Family Publications Service, Inc., is a corporation organized, existing and doing business under and by virtue of the

laws of the State of Delaware, with its office and principal place of business located at 1212 Avenue of the Americas, in the city of New York, State of New York.

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, Time Incorporated, a corporation and its officers, Family Publications Service Inc., a corporation and its officers, and their successors or assigns, and respondents' respective representatives, employees, salesmen, agents or solicitors, in connection with the advertising, offering for sale, sale or distribution of magazines or any other publications (hereinafter sometimes referred to as products or services) by subscriptions to purchase any such products or services through a "paid-during-service" plan, or through a "cash sale" plan (as "cash sale" is hereinafter defined) or in the collection or attempted collection of any delinquent paid-during-service or cash sale subscription account obtained through door-to-door, mail or telephone solicitation, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that any employee or other person calling upon a customer or prospective customer for the purpose or with the result of inducing or securing a subscription to, order for, or the purchase or agreement to purchase any products or services:

(a) Is making such offer to specially selected persons; or misrepresenting, in any manner, the type or class of persons to whom such offers are being made.

(b) Represents, or is performing services for "Welcome Wagon" or any educational, charitable, social or other organization, or any individual or firm other than one engaged in soliciting business; or misrepresenting, in any manner, the identity of the solicitor or of his firm and of the business they are engaged in.

(c) Will give any product or service free or as a gift or without cost or charge, or that any product or service can be obtained free or as a gift or without cost or charge, in connection with the purchase of, or agreement to purchase any product or service, unless the stated price of the product or service required to be purchased in order to

## Decision and Order

obtain such free product or gift is the same or less than the customary and usual price at which such product or service required to be purchased has been sold separately from such free or gift item, and in the same combination if more than one item is required to be purchased, for a substantial period of time in the recent and regular course of business in the trade area in which the representation is made.

2. Failing, clearly, emphatically and unqualifiedly to reveal, at the outset of the initial contact and all subsequent sales solicitations of purchasers or prospective purchasers, whether directly or indirectly, or by telephone, written or printed communication, or person-to-person that the purpose of such contact or solicitation is to sell products or services as the case may be, which shall be identified with particularity at the time of each such contact or solicitation.

3. Representing, directly or indirectly, that any price for any product or service covers only the cost of mailing, handling, editing, printing, or any other element of cost, or is at or below cost; or that any price is a special or reduced price unless it constitutes a significant reduction from an established selling price at which such product or service has been sold in substantial quantities by respondents in the same combination of items in the recent and regular course of their business; or misrepresenting, in any manner, the savings which will be accorded or made available to purchasers.

4. Representing, directly or indirectly that any subscription contract or other purchase agreement can be cancelled at the purchaser's option, or that the right to cancel will be accorded to any purchasers, when there is no provision in such contract or agreement for cancellation on the terms and conditions represented, and unless cancellation is in fact granted on such terms and conditions.

5. Refusing or failing upon request to cancel a contract when the representation has been made directly or indirectly that the contract will be cancellable.

6. Making any reference to a sum of money or a period of time such as "45¢ a week" or "60 months" or any other similar references to the terms of a subscription contract which are not the actual terms and conditions of sale prior to notifying the customer or prospective customer clearly and precisely of the exact terms and conditions of sale, including but not limited to the actual total dollar amount of the contract involved, the

dollar amount of the down payment, and of each subsequent payment and the interval and number of such payments or misrepresenting in any manner the terms, conditions, methods, rate or time of payment actually made available to purchasers or prospective purchasers.

7. Failing to clearly reveal orally prior to the time the subscription contract is signed by the customer:

(a) The name, the exact number of issues, and the exact number of months of service of each publication covered by the contract;

(b) The total price to the subscriber of all the publications covered by the contract; and

(c) The down payment required and the number, amount, and due dates of all subsequent payments.

8. Representing, directly or indirectly, that a subscription contract or other purchase agreement which is presented to the purchaser during the course of the solicitation is a "preference list," "guarantee," "route slip" or any kind of document other than a contract or agreement; or misrepresenting, in any manner, the nature, kind or characteristics of any document.

9. Failing, clearly, emphatically and unqualifiedly to disclose orally and in writing to each purchaser or prospective purchaser before execution, the identity, nature and import of any document he is requested or required to execute in connection with the purchase of any product or service.

10. Harassing customers in order to effect payment of any account by any means, including the following:

(a) Repeated telephone calls within the same day or week, abusive telephone calls, or telephone calls at unreasonable hours.

(b) The use of forms or any other items of printed or written matter purporting to be legal documents or process.

(c) Representatives, direct or indirect, that in the event of non-payment or delinquency of any account or alleged debt arising from any subscription contract or other purchase agreement, the general or public credit rating or standing of any person may be adversely affected, unless respondents refer the information concerning such delinquency to a bona fide credit reporting agency.

(d) Representing that legal action may be instituted unless it is intended in good faith that such legal action be instituted; or misrepresenting in any manner the action



to be taken or results of any action which may be taken to effect payment of any such account or alleged debt.

11. Cancelling a subscription contract for any reason other than a breach by the subscriber without either arranging for the delivery of publications already paid for or promptly refunding money on a pro rata basis for all undelivered issues of publications for which payment has been made in advance.

12. Contracting for any sale in the form of a subscription contract or other purchase agreement which shall become binding on the purchaser prior to midnight of the third day, excluding Sundays and legal holidays, after the date of notification of acceptance as provided in Paragraph 15.

13. Failing to disclose to the purchaser in writing on any subscription contract or other purchase agreement signed by the purchaser with such conspicuousness and clarity as likely to be understood by such purchaser, that the purchaser may rescind or cancel the sale by mailing a notice of cancellation to the address specified by the agency or respondent subsidiary prior to midnight of the third day, excluding Sundays and legal holidays, after the date upon which the purchaser signed such subscription contract.

14. Failing to furnish each subscriber at the time of his signing of the subscription contract a duplicate original of the contract showing date signed by the customer and name of salesman together with his agency's address and telephone number and showing on the same side of the page, above or adjacent to the place for the customer's signature, the exact number and name of the publications being subscribed for; the number of issues for each; the down payment required; the number, dollar amount and due dates of each subsequent payment; amount and rate of finance charge, if any; the charge, if any, for late payment and the conditions under which such charge shall be assessed and the total price to the subscriber for all such publications.

15. Failing to provide at the time the customer is notified of the acceptance of the contract a clearly understandable form showing the magazines or other publications covered by the contract, inviting specific attention to the variations therein, if any, from the purchase agreement signed by the purchaser; the price to the subscriber ascribed by the respondents for each publication for the term of the contract and the total price to the subscriber of all such publications covered by the contract, and

the name and address of the agency or respondent subsidiary which the purchaser may use as a notice of cancellation at any time prior to midnight of the third day, excluding Sundays and legal holidays, after the date of receipt thereof; and such form shall advise such purchaser of his right so to cancel.

16. In the event of the discontinuance of publication, or other unavailability, of any magazines subscribed for, at any time during the life of the contract, failing to offer the subscriber the right to substitute one or more magazines or other publications, or the extension of subscription periods of magazines already selected.

17. Failing or refusing to cancel, at the subscriber's request, all or any remaining portion of a subscription contract whenever any misrepresentation prohibited by this order has been made to such subscriber.

18. Furnishing or otherwise placing in the hands of employees or other authorized representatives the means and instrumentalities, such as sales pitches, instruction sheets, collection or advertising materials by and through which the public may be misled or deceived in the manner or as to things prohibited by this order.

*It is further ordered*, That Time Incorporated, directly or indirectly through Family Publications Service, Inc., or any other present or future subsidiary or controlled affiliate of respondents:

(a) Deliver by registered mail or by hand a copy of this Decision and Order to each of their present and future dealers or franchisees, if any, representatives, licensees, employees, salesmen, agents, solicitors, independent contractors, or other authorized representatives who, as described in the main preamble to this order, are engaged, in the promotion, offering for sale, sale or distribution of the products or services included in this order by means of paid-during-service or cash sale plans employing door-to-door, mail or telephone solicitation of subscription contracts: *Provided, however*, That the provisions of this Paragraph (a) shall not apply to those who are merely engaged in the physical distribution of magazines or other products included in this order;

(b) Provide each person so described in Paragraph (a) above with a form to be signed by such person clearly stating his intention to conform his business practices to the requirements of this order;

(c) Inform each person so described in Paragraph (a) above

that the respondents shall not use any third party, or the service of any third party for the solicitation of magazine subscriptions unless such third party agrees to conform to the provisions contained in this order;

(d) If any such third party will not agree to conform to the provisions of the order, the respondents shall not use such third party, or the services of such third party to solicit subscriptions;

(e) So inform each person so described in Paragraph (a) above that the respondents are obligated by this order to discontinue dealing with those persons who continue on their own the deceptive acts or practices prohibited by this order;

(f) Institute a program of continuing surveillance adequate to reveal whether the business operations of each person so described in Paragraph (a) above conform to the requirements of this order; and

(g) Discontinue dealing with the persons revealed by the aforesaid program of surveillance to be continuing on their own deceptive acts or practices prohibited by this order.

*It is further ordered,* That respondents herein shall notify the Commission at least thirty (30) days prior to any proposed change in the structure of either of 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 respective corporations which may affect the compliance obligations arising out of this order.

*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.

As used in this order, the term "cash sale" shall mean the sale of products or services by a subscription contract by that category of sales personnel referred to in the trade as "field representatives" or "traveling crews" who sell subscriptions during the course of door-to-door solicitations to one or a few products in consideration of one immediate full payment or few payments as contrasted with the more numerous products and payments involved in paid-during-service plans.

As used in this order the phrase "door to door, mail or telephone solicitation" of subscription contracts relates only to such solicitation used to initiate or effect sales or collections pursuant to a paid-during-service plan or a cash sale plan.

By the Commission, with Chairman Kirkpatrick not participating, and Commissioner Jones dissenting.

Complaint

78 F.T.C.

## IN THE MATTER OF

EVERETT EUGENE MILLER TRADING AS  
MIDWESTERN CONSTRUCTION AND SUPPLY COMPANYCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL COMMISSION AND THE TRUTH IN LENDING ACTS*Docket C-1920. Complaint, May 13, 1971—Decision, May 13, 1971*

Consent order requiring a Tulsa, Okla., individual engaged in the sale and distribution of residential aluminum siding to cease misrepresenting that the price of his products is special or reduced, failing to disclose the details of his guarantees, misrepresenting certain of his customers' homes as model homes, failing to disclose to purchasers that their notes may be negotiated to third parties, and failing to make certain disclosures required by Regulation Z of the Truth in Lending Act.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the regulations promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Everett Eugene Miller, an individual trading as Midwestern Construction and Supply Company, hereinafter referred to as respondent, has violated the provisions of said Acts, and of the regulations promulgated under the Truth in Lending 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 Everett Eugene Miller is an individual trading as Midwestern Construction and Supply Company, with his office and principal place of business located at 2323 East 71st Street, Tulsa, Oklahoma.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of residential aluminum siding products to the general public and in the installation thereof.

## COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count I as if fully set forth verbatim.

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 products, when sold, to be shipped from his place of business in the State of Oklahoma to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his aforesaid business, and for the purpose of inducing the purchase of his products, respondent and his salesmen or representatives have represented, and now represent, directly or by implication, in advertising and promotional material and in oral solicitations to prospective customers that:

1. Respondent's siding materials and/or installations are being offered for sale at special or reduced prices.

2. Respondent's siding materials and/or installations are unconditionally guaranteed in every respect without condition or limitation for a lifetime.

3. Homes of prospective purchasers have been specially selected as model homes for the installation of the respondent's products; that after installation such homes will be used for demonstration and advertising purposes by respondent; and, that as a result of allowing their homes to be used as models, purchasers will be granted reduced prices or will receive allowances, discounts or commissions.

4. Respondent's salesmen are connected or affiliated with the manufacturer of respondent's products and in many cases specifically deny that they are salesmen or sales representatives of respondent.

PAR. 5. In truth and in fact:

1. Respondent's siding materials and/or installations are not being offered for sale at special or reduced prices and savings are not thereby afforded respondent's customers because of a reduction from respondent's regular selling prices. In fact, respondent does not have a regular selling price but the prices at which respondent's said products and/or installations are sold vary from customer to customer depending on the resistance of the prospective purchasers.

2. Respondent's siding materials and/or installations are not unconditionally guaranteed in every respect without conditions or limitations for a lifetime or for any other period of time. Such guarantee as may be provided is subject to numerous terms, conditions and limitations, and fails to set forth the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder. Furthermore, in a substantial number of cases, respondent or his salesmen fail to furnish any written guarantee to the customer.

## Complaint

78 F.T.C.

3. Homes of prospective purchasers are not specially selected as model homes for the installation of respondent's products, after installations such homes are not used for demonstration and advertising purposes by respondent; and purchasers as a result of allowing or agreeing to allow their homes to be used as models are not granted reduced prices nor do they receive allowances, discounts or commissions.

4. Respondent's salesmen are not connected or affiliated with the manufacturer of respondent's products and are in fact sales representatives for respondent.

Therefore, the statements and representations as set forth in Paragraph Four hereof were and are false, misleading and deceptive.

PAR. 6. In the further course and conduct of his business, and in furtherance of a sales program for inducing the purchase of his residential siding materials, respondent and his salesmen or representatives have engaged in the following additional unfair and false, misleading and deceptive acts and practices:

1. In a substantial number of instances and in the usual course of his business, respondent sells and transfers his customers' obligations, procured by the aforesaid unfair, false, misleading and deceptive means, to various financial institutions. In any subsequent legal action to collect on such obligations, these financial institutions or other third parties, as a general rule, have available and can interpose various defenses which may cut off certain valid claims customers may have against respondent for his failure to perform or for certain other unfair, false, misleading or deceptive acts and practices.

Therefore, the acts and practices as set forth in Paragraph Six hereof, were and are unfair and false, misleading and deceptive acts and practices.

PAR. 7. 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 engaged in the sale of products of the same general kind and nature as those sold by respondent.

PAR. 8. 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 such statements and representations were and are true, and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

## Complaint

PAR. 9. 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 violation of Section 5 of the Federal Trade Commission Act.

## COUNT II

Alleging violation of the Truth in Lending Act and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 10. In the ordinary course and conduct of his business, as aforesaid, respondent regularly extends, and for some time last past has regularly extended, consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 11. Subsequent to July 1, 1969, respondent in the ordinary course and conduct of his business and in connection with credit sales as "credit sale" is defined in Regulation Z, has caused and is causing his customers to execute retail installment contracts, hereinafter referred to as the contract.

PAR. 12. By and through the use of the contract, respondent:

(a) In a number of instances fails to disclose the annual percentage rate to the nearest quarter of one percent, as required by Section 226.5(b)(1) of Regulation Z.

(b) Fails to disclose the date on which the finance charge begins to accrue, that date being different from the date of the transaction, as required by Section 226.8(b)(1) of Regulation Z.

PAR. 13. By and through the use of respondent's contract to perform various home improvements, a security interest, as "security interest" is defined in Section 226.2(z) of Regulation Z, is or will be retained or acquired in real property which is used or expected to be used as the principal residence of the respondent's customers. Respondent's retention or acquisition of such security interest in said real property thereby entitles his credit customers to be given the right to rescind that transaction until midnight of the third business day following the consummation of the transaction or the day of delivery of all the disclosures required by Regulation Z, whichever is later.

Respondent has failed in a number of instances to disclose to the

customer the date by which the customer may give notice of cancellation, as required by Section 226.9(b) of Regulation Z.

Respondent has caused the following additional information and clause to appear in the contract:

Owners agree(s) that in the event of cancellation of this contract by owner(s) before work is started, owner(s) shall pay to contractor on demand twenty five (25%) of the contract price as its stipulated damages for the breach.

By and through the use of the above-quoted additional information and clause, respondent has and is representing to his customers that they are liable for damages in the event that these customers exercise their right to rescind, thereby violating Section 226.9(d) of Regulation Z. And, said additional information is stated and utilized so as to mislead or confuse the customer and contradicts, obscures and detracts attention from the information required by Regulation Z to be disclosed, thereby violating Section 226.6(c) of Regulation Z.

PAR. 14. Pursuant to Section 105 of the Truth in Lending Act, respondent's aforesaid failure to comply with the provisions of Regulation Z constitute violations of that Act, and, pursuant to Section 108 thereof, respondent thereby violated the Federal Trade Commission Act.

#### DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent 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 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 complaint to issue herein, 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 considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed 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 in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:



1. Respondent, Everett Eugene Miller, is an individual trading as Midwestern Construction and Supply Company, with his office and principal place of business located at 2323 East 71st Street, Tulsa, Oklahoma.

Respondent Everett Eugene Miller formulates, directs and controls the policies, acts and practices of said company.

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 Everett Eugene Miller, an individual trading as Midwestern Construction and Supply Company, or under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, distribution or installation of residential aluminum siding or other home improvement products or services or any other products, 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 any price for respondent's products and/or installations is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products and/or installations have been sold in substantial quantities by respondent in the recent regular course of his business; or misrepresenting, in any manner, the savings available to purchasers.

2. Representing, directly or by implication, that any of respondent's products and/or installations are guaranteed, unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed; or making any direct or implied representations that any of respondent's products and/or installations are guaranteed unless in each instance a written guarantee is given to the purchaser containing provisions fully equivalent to those contained in such representations.

3. Representing, directly or by implication, that the home of any of respondent's customers or prospective customers has been selected to be used or will be used as a model home, or otherwise, for advertising purposes.

4. Representing, directly or by implication, that any reduced price, allowance, discount, commission or other compensation is

granted by respondent to purchasers in return for permitting or agreeing to allow the premises on which respondent's products are installed to be used for model homes or demonstration purposes.

5. Representing, directly or by implication, that respondent's salesmen or sales representatives are connected or affiliated with the manufacturer of respondent's products, or misrepresenting the business connections or affiliations of respondent or his salesmen or sales representatives.

6. Failing to disclose prior to the time of sale in writing on any conditional sales contract or other similar instrument executed by a purchaser, and with such conspicuousness and clarity as is likely to be observed and read by such purchaser, that:

"Any such instrument, at respondent's option and without notice to the purchaser, may be discounted, negotiated or assigned to a finance company or other third party to whom the purchaser will thereafter be indebted and against whom the purchaser's claims or defenses will not be available."

## II

*It is further ordered,* That respondent Everett Eugene Miller, an individual trading as Midwestern Construction and Supply Company, or trading or doing business under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the consumer credit sale of home improvement products or services, or any other products or services, as "credit sale" is defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90-321, 15 U.S.C. 1601 *et seq.*), forthwith cease and desist from:

1. Failing to disclose the annual percentage rate, where and when required by Regulation Z to be used, to the nearest quarter of one percent, in accordance with Section 226.5(b)(1) of Regulation Z.

2. Failing to disclose the date on which the finance charge begins to accrue when that date is different from the date of the transaction, as required by Section 226.8(b)(1) of Regulation Z.

3. Failing to disclose to the customer the date by which the customer may give notice of cancellation of the transaction, that date being not earlier than the third business day following the date of the transaction, in accordance with Section 226.9(b) of Regulation Z.

4. Representing, directly or by implication, on retail installment contracts, promissory notes, or on any written document, or orally, that customers will or may be liable for damages, penalties or any other charges for exercising their right to rescind that is provided by Section 226.9 of Regulation Z.

5. Supplying any additional information, contract clause or other statement about the customer's liability or obligations in the event that the customer exercises his right to rescind except that information furnished in accordance with Section 226.9 of Regulation Z.

6. Supplying any additional information, in writing or orally, that is stated, utilized or placed so as to mislead or confuse the customer or that contradicts, obscures or detracts attention from the information that is required to be disclosed by Regulation Z.

7. Engaging in any consumer credit transaction within the meaning of Regulation Z of the Truth in Lending Act without making all disclosures that are required by Sections 226.8 and 226.9 of Regulation Z in the amount, manner and form therein specified.

### III

*It is further ordered,* That respondent 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 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 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 STANLEY WORKS

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

*Docket 8760. Complaint, Apr. 30, 1968—Decision, May 17, 1971*

Order requiring a New Britain, Conn., manufacturer and seller of power tools and hardware products to divest itself of all assets of a Rockford, Ill., manufacturer of certain hardware products, and not to acquire for a period of ten (10) years any firm engaged in the manufacture and sale of cabinet hardware without prior approval of the Federal Trade Commission.

Complaint

78 F.T.C.

## COMPLAINT

The Federal Trade Commission has reason to believe The Stanley Works, respondent herein, has violated the provisions of Section 7 of the Clayton Act (U.S.C., Title 15, Section 18) and Section 5 of the Federal Trade Commission Act, (U.S.C., Title 15, Section 45) by its contract, combination and merger with Amerock Corporation, and therefore issues this complaint, stating its charges in that respect as follows:

## I

## Definitions

1. *Hardware* includes contract and residential hardware such as hinge, latch, hanger, door, furniture, closet and cabinet hardware intended for use in residential and commercial building and remodeling, and distributed principally to furniture, cabinet, door and window manufacturers, builders' suppliers, and hardware stores and departments.

2. *Cabinet hardware* includes pulls, knobs, hinges, latches, and catches and related products designed primarily for residential, commercial and architectural cabinet work, principally kitchen cabinets. (Corresponds to Census Product Code 34294-61, excluding cabinet locks.)

## II

## The Stanley Works

3. The Stanley Works (hereafter "Stanley") is a corporation organized and existing under the laws of the State of Connecticut, with its principal office and place of business at 195 Lake Street, New Britain, Connecticut.

4. In 1966, Stanley's sales and earnings totaled \$198.3 million and \$9.4 million, respectively. It had assets of \$126 million, and a cash flow of \$15 million in that year.

5. Stanley is one of the nation's leading producers of a full line of hardware and related products. In 1964, hardware products accounted for about one-fourth of Stanley's sales and represented national market penetration in particular hardware products as follows: cabinet hardware, 4.5%; hinge hardware, 47%; folding and sliding door hardware, 16%; blind, screen and sash hardware, 17%; and furniture hardware, 6.5%. Stanley is also a leading producer of artisan's hand and power tools, and manufactures steel, steel strapping and component parts.

6. At all times relevant herein, Stanley sold and shipped products in interstate commerce and engaged in "commerce" within the meaning of the Clayton Act and Federal Trade Commission Act.

## III

## Amerock Corporation

7. Amerock Corporation (hereafter "Amerock") is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at 4000 Auburn Street, Rockford, Illinois.

8. Amerock had demonstrated consistently increasing sales and earnings in the years prior to its acquisition by Stanley. Between 1963 and 1965, its sales increased from \$24.4 million to \$32.9 million, and its earnings grew from \$1.7 million to \$2.8 million. In 1965, its assets totaled \$28.3 million and its cash flow generated \$3.6 million.

9. Amerock held the dominant national position in cabinet hardware, ranked second in national acceptance of its functional furniture hardware, and was a significant producer of a number of other hardware products.

10. At all times relevant herein, Amerock sold and shipped products in interstate commerce, and was engaged in "commerce" within the meaning of the Clayton Act and Federal Trade Commission Act.

## IV

## Trade and Commerce

11. Cabinet hardware represents up to one-third of the total hardware dollars in home construction. Growth of cabinet hardware sales has been significantly in excess of hardware sales generally, increasing up to 65% during the years 1957-1963.

12. The manufacture of cabinet hardware is highly concentrated in both national and local markets. In 1963, two firms were estimated to account for half of the nation's \$21 million in domestic cabinet hardware sales, of which Amerock alone held nearly 36%. Stanley ranked fifth in the manufacture of cabinet hardware in that year, with approximately 4.8% of domestic cabinet hardware sales. Of the remaining 52 industry firms, 7 of every 10 accounted for less than 1% of cabinet hardware sales.

13. Local market concentration is significantly greater; as in Rochester, New York where Stanley and Amerock held more than three-fifths of retail hardware display space, ranking first and third, respectively, in 1964.

## Background of the Violation

14. Beginning in 1963, with the development of "Operation G.A.P." (Growth through Acquisition Program), Stanley has engaged in acts and practices pursuant to a policy which substitutes acquisition or merger for internal development and expansion in competing and compatible hardware and related products selected for substantial entry or sales increases by Stanley.

15. In 1963, Stanley reappraised its position in the cabinet hardware business and formulated a long range plan to increase substantially Stanley's share of the cabinet hardware market. Cabinet hardware is a natural component of Stanley's hardware lines, and Stanley's marketing contacts and skills enable it to reach the major portions of the market by bringing multi-divisional strengths to bear, a resource giving it the ability to offer a more complete line of hardware products than competing firms.

16. Stanley recognized its ability to overcome past limitations and re-establish a large position in the cabinet hardware industry through a program of internal development, but determined to acquire Amerock, the dominant firm in the cabinet hardware industry. Stanley believed a strong entry via product development could be expected to accentuate industrywide decline in prices and profits, while a strong entry by acquisition could reverse a downward trend in prices and profits. Stanley focused on Amerock as its first acquisition target to obtain the dominant position in cabinet hardware manufacturing and distribution, to avoid the slow course of internal development, and to knock out the largest competitor, among other reasons.

17. After Amerock initially declined interest in merger, Stanley took steps to strengthen internally its position in cabinet hardware. New product development began in hinge, catch and pull, and knob cabinet hardware products. In 1964 and 1965, it planned greatly expanded new product development efforts and advertising stressing Stanley's full hardware line capabilities. Declining cabinet hardware sales were substantially arrested in 1965, and in 1966 Stanley embarked on a program designed to increase sales and profits. Stanley's 1966 cabinet hardware marketing plans called for the introduction of more new cabinet hardware products and more promotions and advertising than in any year in its recent history.

## Complaint

## VI

## Merger Charged

18. Pursuant to an agreement and plan of merger dated June 2, 1966, Amerock was merged into Stanley, effective August 1, 1966, in a transaction valued at \$32 million.

## VII

## Effects of the Merger Charged

19. The effects of the contract, combination and merger of Amerock and Stanley may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of hardware, generally, and cabinet hardware in particular, throughout the United States and in sections thereof, in violation of Section 7 of the Clayton Act (U.S.C., Title 15, Section 18); and to create an unreasonable restraint of trade in commerce, or to hinder or have a dangerous tendency to hinder competition unduly in the manufacture and sale of hardware, generally, and cabinet hardware, in particular, in violation of Section 5 of the Federal Trade Commission Act, U.S.C., Title 15, Section 45, in the following, among other, ways:

(a) Substantial actual and potential competition has been, or may be, eliminated;

(b) The substitution of Stanley, with its multi-divisional manufacturing and marketing strengths, tends unduly to increase barriers to the entry of new competition and to deprive smaller limited-line rivals of an equal opportunity to compete; cumulatively entrenching Stanley in its acquired dominant and monopolistic position;

(c) Members of the purchasing public and the ultimate consumer have been, or may be, denied the benefits of free and open competition; and

(d) The cumulative effect of the merger charged has been, or may be, to accelerate an increasing level of concentration by encouraging tendencies toward combination and merger by actual and potential competitors.

20. The merger by respondent, as alleged above, constitutes a violation of Section 7 of the Clayton Act (U.S.C., Title 15, Section 18, as amended).

21. The acts and practices by respondent, as alleged above, including, without limitation, Paragraphs 14 and 16-18, constitute unfair

methods of competition in violation of Section 5 of the Federal Trade Commission Act.

*Mr. Alan D. Reffkin and Mr. Harold Brandt* supporting the complaint.

*Mr. John W. Douglas*, Wash., D.C., *Mr. Robert A. MacFarlane*, New Britain Conn., *Mr. Daniel M. Gribbon* and *Mr. Bingham B. Leverich*, Wash., D.C., for respondent.

INITIAL DECISION BY ELDON P. SCHRUP, HEARING EXAMINER

NOVEMBER 7, 1969

INDEX

	Page.
STATEMENT OF THE PROCEEDINGS.....	1029
(1) The issues (as stipulated).....	1029
(2) The United States relevant product market (as stipulated).....	1030
(3) The United States relevant geographic market (as stipulated).....	1030
(4) The United States relevant product market sales universe (as stipulated).....	1030
(5) The United States relevant product market share of Stanley (as stipulated).....	1030
(6) The United States relevant product market share of Amerock (as stipulated).....	1030
(7) Table of witnesses testifying.....	1030
FINDINGS OF FACT.....	1032
I. Amerock Corporation.....	1032
(1) Products inclusive of cabinet hardware manufactured and shipped in interstate commerce.....	1032
(2) Financial size, sales, assets, and net earnings.....	1032
II. The Stanley Works.....	1033
(1) Products inclusive of cabinet hardware manufactured and shipped in interstate commerce.....	1033
(2) Financial size, sales, assets, and net earnings.....	1033
III. The Relevant Product and Geographic Market.....	1033
(1) Amerock and Stanley sales of cabinet hardware and market percentage shares in United States cabinet hardware market.....	1033
(2) Tabulation ranking in sales volume various type suppliers of cabinet hardware in United States cabinet hardware market as compiled from respondent's Exhibits Nos. 4 and 5.....	1034
IV. The Competitive Effect of the Acquisition and Merger.....	1034
(1) Cabinet hardware by residential and architectural type and distribution channels for each.....	1036
(2) Pre-merger sales competition between Amerock and Stanley in residential and architectural type cabinet hardware.....	1039
(3) Stanley's internal expansion to promote architectural type cabinet hardware.....	1042, 1046



	Page
(4) Stanley's pre-merger sales of residential type cabinet hardware.....	1040
(5) Stanley's dilemma of acquisition v. internal expansion to promote residential type cabinet hardware sales.....	1041
(6) Analysis of the pre-merger concentration in the United States cabinet hardware market of suppliers of various type cabinet hardware, ranked in order of sales volume as shown on tabulation compiled from respondent's Exhibits Nos. 4 and 5.....	1046
(7) Stanley's potential ability to internally expand and achieve on its own a significant market position in the sale of residential type cabinet hardware.....	1042-1045, 1046-1048
(8) The competitive effect of the acquisition and merger of Amerock by Stanley is not reflected solely by their combined market share percentages of the United States cabinet hardware market.....	1048-1050
V. Conclusions.....	1051
VI. Foreword to Order.....	1051
ORDER.....	1053

## STATEMENT OF PROCEEDINGS

The complaint herein alleges the acquisition and merger of the Amerock Corporation by The Stanley Works to violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The complaint was issued April 30, 1968 and following a motion for a more definite statement filed May 20, 1968 and oral argument thereon June 18, 1968, answer was filed June 28, 1968.

Prehearing conferences were held on July 29, September 24 and 25, October 11 and 30, November 21, December 19, 1968, and January 3, 27, 1969.<sup>1</sup> Evidentiary hearings were held on January 27,<sup>1</sup> 28, 29, 30, February 25, March 12, April 15, 22, 29, 30, May 1, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 22, 23, 26, 27, 28, June 3, 18, 1969. The record for the reception of evidence was closed June 25, 1969.

The parties on November 21, 1968, entered into a record stipulation of issues and facts<sup>2</sup> later amended on April 10, 1969,<sup>3</sup> which recites:

1. The only issues for resolution in this proceeding are as follows: (1) Whether the effect of the contract, combination and merger of Amerock and Stanley may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of cabinet hardware throughout the

<sup>1</sup> Stipulation negotiations between trial counsel both as to the specific issues to be resolved and the allowable introduction into evidence of the numerous proposed exhibits, plus the many third-party discovery subpoenas and the accompanying *in camera* problems raised on the materials being returned account for this spacing of the prehearing conferences.

<sup>2</sup> Tr. 225-231, prehearing conference of November 21, 1968.

<sup>3</sup> Tr. 925-927, Resp. Ex. 160 (revising the figures in Paragraph 5 of the stipulation) copied into record of the hearing on April 15, 1969.

United States in violation of Section 7 of the Clayton Act; (2) whether the effect of the contract, combination and merger of Amerock and Stanley may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of cabinet hardware throughout the United States in violation of Section 5 of the Federal Trade Commission Act, (3) if said contract, combination and merger constituted a violation of the aforesaid Section 7 of the Clayton Act or Section 5 of the Federal Trade Commission Act or both, whether Stanley should be compelled to divest itself of Amerock and/or whether and to what extent the Commission should order any other relief, including possible restraint for a stated period of time of any future acquisition by Stanley, without the prior approval of the Commission, of any firm engaged in the manufacture of hardware products (as defined in the complaint) within the United States.

2. Cabinet hardware is the relevant product market in this case. It includes pulls, knobs, hinges, latches, catches, and related products, including drawer slides and shelving hardware designed primarily for residential, commercial and architectural cabinet work, principally kitchen cabinets. There are no relevant submarkets of cabinet hardware. Cabinet hardware sales in the United States in 1965 were approximately \$76,000,000 to \$80,000,000. Sales of cabinet hardware have increased annually since 1962.

3. The only relevant geographic market in the case is the United States and there are no relevant geographic submarkets.

4. Stanley's sales of cabinet hardware in 1965 were approximately \$800,000, representing 1% of all cabinet hardware sales in the United States in that year. Stanley's percentage share of the cabinet hardware market in 1964 and 1966 was neither significantly greater nor significantly less than in 1965. Its percentage share of the market in 1964 declined slightly from its share in 1963.

5. Amerock's sales of cabinet hardware in 1965 were approximately \$18,218,474, representing between 22% and 24% of all cabinet hardware sales in the United States in that year. Amerock's percentage share of the total cabinet hardware market in each of the years 1963, 1964 and 1966 was neither significantly greater nor significantly less than in 1965. In each of these years Amerock was the largest manufacturer of cabinet hardware in the United States.

6. In 1967 and 1968 Stanley's percentage share of the total cabinet hardware market was neither significantly greater than nor significantly less than its share in 1965. In 1967 and 1968 Amerock's percentage share of the total cabinet hardware market was neither significantly greater than nor significantly less than its share in 1965. Complaint counsel does not concede that the foregoing facts in this paragraph are relevant or material.

7. (deals only with evidentiary questions regarding proposed exhibits not here necessary of delineating)

8. The facts stipulated herein shall prevail over any conflicting evidence.

The names and occupations of the various witnesses and the transcript locations of their testimony are as follows:

CASE-IN-CHIEF

Charles C. Hager, Vice President of Finance

Hager Hinge Company, 139 Victor Street, St. Louis, Missouri, Tr. 420-472.

1023

## Initial Decision

Ross Escalette, Marketing Vice President  
 Ajax Hardware Corporation, 825 South Ajax Avenue, City of Industry,  
 California, Tr. 474-723.

## DEFENSE

Norris A. Aldeen, President  
 Amerock Corporation, 4000 Auburn Street, Rockford, Illinois, Tr. 982-1051.  
 John Bosworth, General Sales Mgr.  
 Amerock Corporation, 4000 Auburn Street, Rockford, Illinois, Tr. 1053-1265.  
 Roger S. Linderoth, Executive V. Pres.  
 Amerock Corporation, 4000 Auburn Street, Rockford, Illinois, Tr. 1267-1309.  
 Francis E. Hummel, Director of Marketing  
 Consumer Divisions, The Stanley Works, 195 Lake Street, New Britain,  
 Conn. Tr. 1312-1798.  
 Donald W. Davis, President  
 The Stanley Works, 195 Lake Street, New Britain, Conn., Tr. 1801-1860.  
 John F. Bates, Vice President and General Manager  
 Hardware Division, The Stanley Works, 195 Lake Street, New Britain,  
 Conn., Tr. 1862-1921.  
 R. J. Becker, Controller  
 The Stanley Works, 195 Lake Street, New Britain, Conn., Tr. 1924-1962.  
 Richard Hudnut, Product Standards Coordinator  
 Builders Hardware Manufacturers Association, 60 East 42nd Street, New  
 York, New York, Tr. 1965-2017.  
 Gerald Eklund, Vice President  
 National Lock Company, Rockford, Illinois, Tr. 2020-2068.  
 Fred Moore, Hardware Buyer  
 American Wholesale Hardware, 1500 W. Anaheim Street, Long Beach,  
 California, Tr. 2070-2093; 2387-2393.  
 Garland Hedgepeth, Executive V. Pres.  
 Scheirich Hardware, 250 Ottawa Street, Louisville, Kentucky, Tr. 2095-2143.  
 E. Eugene Thomas, President  
 Frederick Trading Company, 225 East 8th Street, Frederick Maryland,  
 Tr. 2146-2178.  
 William Mashaw, Executive Director  
 National Retail Hardware Assoc., 964 North Pennsylvania Street, Indi-  
 anapolis, Indiana, Tr. 2180-2196.  
 Howard W. Price, President and General Manager  
 Salt Lake Hardware Company, 105 North 3rd West, Salt City, Utah,  
 Tr. 2201-2251.  
 John Gibson, President  
 McKinney Manufacturing Co., 820 Davis Street, Scranton, Pennsylvania,  
 Tr. 2261-2306.  
 Robert Haaf, President and Gen. Mgr.  
 Cabinet Hardware Supply, 4514 Hollis Street, Emeryville, California,  
 Tr. 2308-2342.  
 Jack L. Nelson, Vice President—Marketing  
 Ekco Building Products Co., 1250 Bedford Avenue, S.W., Canton, Ohio,  
 Tr. 2345-2377.

## REBUTTAL

Ralph Gordon, Secretary-Treasurer  
 Jaybee Manufacturing Company, 2734 Oakhurst Avenue, Los Angeles,  
 California, Tr. 2397-2423.

Initial Decision

78 F.T.C.

The record, in addition to such testimony, embraces a substantial number of documentary and physical exhibits, all of which have been considered in this initial decision. Pursuant to a joint request by counsel for an extension of time granted by the Commission upon certification, proposed findings of fact, conclusions and briefs were filed by respective trial counsel September 5, 1969, and replies thereto were filed October 3, 1969.

Proposed findings of fact and conclusions as submitted by counsel and not hereinafter adopted or found in substance or form are rejected. Following a thorough review of the record in this proceeding and based upon both observation of all witnesses testifying and consideration of their overall testimony, the following Findings of Fact, Conclusions and Order are hereby made and issued:

## FINDINGS OF FACT

## I. Amerock Corporation

1. On August 1, 1966, Stanley merged with the Amerock Corporation, an Illinois corporation with principal place of business in Rockford, Illinois, pursuant to an Agreement And Plan Of Merger dated June 2, 1966, in a transaction valued at \$32,000,000.<sup>4</sup>

2. At the time of the merger, Amerock was engaged in the manufacture and sale of certain hardware products, consisting principally of a broad line of cabinet hardware products for use primarily in kitchens, as well as certain window, appliance, furniture and general household hardware products. At all times relevant to this proceeding, Amerock sold and shipped products in interstate commerce and was engaged in commerce within the meaning of the Clayton Act and the Federal Trade Commission Act.<sup>5</sup>

3. Amerock's domestic sales, total assets and total earnings for the years 1963, 1964, 1965, 1966 were as follows:<sup>6</sup>

[In millions of dollars]

Year	U.S. sales	Total assets	Net earnings
1963 <sup>1</sup>	23.8	21.7	1.9
1964 <sup>1</sup>	26.4	23.1	2.4
1965 <sup>1</sup>	29.4	25.1	2.8
1966 <sup>1</sup>	30.7	20.0	

<sup>1</sup> Fiscal year ending November 30.

<sup>4</sup> RPF 3 (Respondent's Proposed Finding No. 3).

<sup>5</sup> RPF 4.

<sup>6</sup> CPF 46 (Complaint counsel's Proposed Finding No. 46).

## II. The Stanley Works

4. The Stanley Works is a Connecticut corporation, with its principal place of business in New Britain, Connecticut, Stanley manufactures and sells hand and power tools, hardware products, steel and steel strapping, and component parts and at all times relevant to this proceeding sold and shipped products in interstate commerce and engaged in commerce within the meaning of the Clayton Act and the Federal Trade Commission Act.<sup>7</sup>

5. Stanley operates numerous production facilities including plants located at Pittsburgh, California; New Britain, Connecticut; Farmington, Connecticut; North Miami, Florida; Newark, New Jersey; New Bern, North Carolina; Windsor, Ohio; Chattanooga, Tennessee; Stockbridge, Vermont, and Rockford, Illinois.<sup>8</sup>

6. Stanley's domestic sales, total assets and total income for the years 1963 thru 1966 were as follows:

[In millions of dollars]

Year	U.S. sales	Total assets	Net earnings <sup>1</sup>
1963.....	94	95	4.2
1964.....	104	106	4.6
1965.....	123	126	6.6
1966.....	177	174	.....

<sup>1</sup> After income taxes.<sup>9</sup>

## III. The Relevant Product and Geographic Market

7. Cabinet hardware includes pulls, knobs, hinges, latches, catches, and related products, including drawer slides and shelving hardware designed primarily for residential, commercial and architectural cabinet work, principally kitchen cabinets. Cabinet hardware is the relevant product market in this case and there are no relevant submarkets of cabinet hardware. Cabinet hardware sales in the United States in 1965 were approximately \$76,000,000 to \$80,000,000. The only relevant geographic market in the case is the United States and there are no relevant geographic submarkets.<sup>10</sup>

8. Amerock was a highly successful, profitable company with good growth record.<sup>11</sup> Amerock's sales of cabinet hardware in 1965 were approximately \$18,218,474, representing between 22% and 24% of all

<sup>7</sup> RPF 1, 2.

<sup>8</sup> CPF 10, in part.

<sup>9</sup> CPF 24.

<sup>10</sup> Record stipulation between the parties.

<sup>11</sup> RPF 16 A.

cabinet hardware sales in the United States in that year. Amerock's percentage share of the total cabinet hardware market in each of the years 1963, 1964, 1966, 1967 and 1968 was neither significantly greater nor significantly less than in 1965. In each of these years Amerock was the largest manufacturer of cabinet hardware in the United States.<sup>12</sup>

9. Stanley's sales of cabinet hardware in 1965 were approximately \$814,000, representing 1% of all cabinet hardware sales in the United States in that year. Stanley's percentage share of the cabinet hardware market in 1964 and 1966 was neither significantly greater nor significantly less than in 1965. In 1967 and 1968 Stanley's percentage share of the total cabinet hardware market was neither significantly greater than nor significantly less than its share in 1965.<sup>13</sup>

10. Based upon figures contained in the returns on third-party subpoenas *duces tecum* issued at respondent's request and the figures for Amerock and Stanley in respondent's possession, tabulations were prepared and introduced into evidence as respondent Exhibits Nos. 4 and 5. Compiled from respondent's aforesaid tabulations is the following tabulation with accompanying explanatory footnotes. The tabulation shows, among other matters, the total 1965 sales of cabinet hardware by the 14 suppliers listed thereon in numerical ranking according to the cabinet hardware sales total of each supplier. The total cabinet hardware sales of these 14 suppliers during 1965 add to approximately \$53,791,808. Based upon the stipulated total cabinet hardware sales for 1965 in the United States of approximately \$76,000,000 to \$80,000,000, the cabinet hardware sales of these 14 suppliers account for roughly 70% of the first figure of \$76,000,000 and 68% of the second figure of \$80,000,000, being the stipulated total of 1965 cabinet hardware sales in the United States.

#### IV. The Competitive Effect of the Acquisition and Merger

11. The record stipulation<sup>14</sup> between the parties recites that the only issues in this proceeding are as follows:

(1) Whether the effect of the contract, combination and merger of Amerock and Stanley may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of cabinet hardware throughout the United States in violation of Section 7 of the Clayton Act;

(2) Whether the effect of the contract, combination and merger

<sup>12</sup> RPT 29.

<sup>13</sup> Record stipulation between the parties.

<sup>14</sup> See fn. 2, *supra*.

Initial Decision

	1965			1966		
	Cabinet hardware sales in United States	Total sales in United States	Total assets	Cabinet hardware sales in United States	Total sales in United States	Total assets
Amerock Corp.	18,218,474	29,440,464	25,133,914	18,881,231	30,742,188	30,026,358
National Lock Co. <sup>1</sup>	11,409,445	49,466,724	37,992,215	12,487,464	64,280,927	39,449,484
Alax Hardware Corp.	6,013,000	7,120,726	3,338,412	7,560,000	8,228,846	4,561,002
Knappe and Vogt Mfg. Co.	3,988,763	18,404,666	7,968,450	6,195,007	14,165,396	10,023,647
Jaybee Mfg. Corp.	2,988,807	3,732,201	1,710,989	2,998,397	3,615,473	1,645,828
Grant Pulley & Hardware Corp.	1,400,000	6,277,310	2,869,165	2,683,952	7,223,743	2,562,680
David Allison Co., Inc. <sup>2</sup>	1,308,000	6,301,029	1,500,000	1,750,000	6,523,654	1,750,000
Tassel Industries, Inc. <sup>3</sup>	1,344,464	1,371,202	2,483,424	1,702,958	3,012,359	3,012,359
Haver Hardware Mfg. Corp.	834,000	23,100,000	524,452	1,527,275	1,556,697	8,533,267
Stanley Hardware Division <sup>4</sup>	888,000	1,232,860	125,926,000	916,000	25,300,000	174,337,000
Cardinal of Adrian	203,000	140,863,118	100,884,696	735,450	1,416,980	174,898,675
Bassack-Sack	148,897	45,240	45,240	206,855	161,764,861	107,453,287
Florenta of California, Inc.	28,554	42,876	59,312	137,501	180,837	50,671
Advanced Affiliates, Inc. <sup>5</sup>				31,151	206,459	72,151
Faultless Caster Co. <sup>6</sup>				14,203	105,324,000	53,453,000
Leslie Metal Arts Co., Inc.					3,966,602	3,532,189

<sup>1</sup> Cabinet hardware sales figures include estimated two or three million dollars of furniture trim hardware (Tr. 2032). National Lock is a subsidiary or division of Keystone Consolidated Ind. Inc. Total 1965 sales of Keystone were \$153,306,412 and assets \$134,062,482. For 1966 corresponding figures were \$141,605,982 and \$131,818,172.  
<sup>2</sup> Does not manufacture but imports for resale in United States. Figures are estimates agreed upon by trial counsel (Tr. 900-901).  
<sup>3</sup> Subsidiary or division of Gulf & Western Ind. Inc. Total 1965 sales of Gulf & Western were \$177,777,000 and assets \$104,096,000. For 1966 corresponding figures were \$309,152,000 and \$294,239,000.  
<sup>4</sup> Total 1965 product sales of Stanley were \$123,247,000 and assets \$125,926,000. For 1966 corresponding figures were \$176,777,000 and \$174,337,000.  
<sup>5</sup> Subsidiary or division of Stewart-Warner Corporation. Total 1965 sales of Stewart-Warner were \$140,863,118 and assets \$100,884,696. For 1966 corresponding figures were \$161,764,361 and \$107,453,287.  
<sup>6</sup> Does not manufacture but imports for resale in United States.  
<sup>7</sup> Subsidiary or division of Bliss & Laughlin Ind. Inc. Total 1965 sales of Bliss & Laughlin were \$105,324,000 and assets \$53,453,000.

of Amerock and Stanley may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of cabinet hardware throughout the United States in violation of Section 5 of the Federal Trade Commission Act;

(3) If said contract, combination and merger constituted a violation of the aforesaid Section 7 of the Clayton Act or Section 5 of the Federal Trade Commission Act or both, whether Stanley should be compelled to divest itself of Amerock and/or whether and to what extent the Commission should order any other relief, including possible restraint for a stated period of time of any future acquisitions by Stanley, without the prior approval of the Commission, of any firm engaged in the manufacture of hardware products (as defined in the complaint) within the United States.

12. The business judgment good or bad by Amerock and Stanley leading to the acquisition and merger here in question is not believed necessary of discussion for it would not serve as a legal excuse if the competitive effect of the acquisition and merger is found to be in violation of law.<sup>15</sup>

13. Cabinet hardware used in residences, both houses and apartments, is generally referred to as "residential cabinet hardware," and is different in nature from the cabinet hardware used in commercial or institutional buildings such as office buildings, schools, churches, airports and recreational buildings, which is generally referred to as "architectural" or "institutional" cabinet hardware. The differences in these two basic types of cabinet hardware may be briefly described as follows:

A. *Residential cabinet hardware* is highly stylized and is offered in an extremely wide variety of styles, designs and finishes to go with or accent the various styles and motifs of today's kitchen and bathroom cabinets. Virtually all residential knobs and pulls are now made by the die-cast method because of the intricate designs and styling which this method of manufacture permits. However solid brass cabinet knobs and pulls, which are more expensive than the die-cast variety, are occasionally still used in the construction of extremely expensive homes in the \$100,000 and up category. Residential cabinet hinges are made of metal stampings but are styled, designed and finished to match the knobs and pulls with which they are sold as a set.

B. *Architectural cabinet hardware* is not highly stylized. On the contrary, it is designed to have the clean, functional lines of the

<sup>15</sup> This would dispose of RPF 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20; CPF 95, 96, 97, 98, 99, 100.



institutional buildings in which it is used. Architectural cabinet hardware is rarely made by the die-cast method. It is almost always made of bronze, brass, aluminum or steel, which is more durable than die-cast material, so that it can better withstand the heavier wear to which it is subjected in an institutional building. Architectural cabinet hinges are generally made of a heavier gauge metal than residential cabinet hinges. As a result, architectural cabinet hardware is generally heavier and more expensive than residential cabinet hardware.<sup>16</sup>

14. Cabinet hardware is sold through six channels of distribution: (1) full-line wholesalers, (2) specialty wholesalers, (3) national accounts, (4) OEM manufacturers of residential cabinets, (5) OEM manufacturers of institutional cabinets, (6) contract hardware distributors. Each of the six channels is described briefly below.

A. *Full-line wholesalers* sell a wide variety of products, including builders' hardware, paints, heating and plumbing supplies, electrical appliances and supplies, hand and power tools, toys, sporting goods and housewares, to retail hardware stores, lumber yards, department stores and, to a small extent, local builders and contractors. A few full-line distributors also have a separate contract hardware department which performs the services of a contract hardware distributor, as described in F below.

B. *Specialty wholesalers* are wholesalers which specialize in a given field of products. Wholesalers specializing in cabinet hardware may also carry some related items such as fasteners, adhesives, abrasives, wood finishers and paints. Specialty wholesalers of cabinet hardware sell primarily to cabinet shops and, to a lesser extent, to lumber yards and retail stores. Cabinet shops are small companies with from five to fifty employees which build cabinets and sell them in finished form, with the hardware attached, to local builders and contractors. Some cabinet shops produce residential cabinets for installation in homes and apartment buildings. Others produce institutional cabinets for use in institutional buildings such as schools, churches, office buildings and the like. Cabinet shops producing residential cabinets purchase residential cabinet hardware, whereas shops which produce institutional cabinets purchase institutional or architectural cabinet hardware. There are no cabinet shops which produce both residential and institutional cabinets.

C. *National Accounts* are large chain store companies, such as Sears, Montgomery Ward, K-Mart, Penny and the like. These companies purchase cabinet hardware directly from the cabinet hard-

<sup>16</sup> RPF 34.

ware manufacturers and sell it through their chains of outlets, usually under a private label.

D. *OEM manufacturers of residential cabinets* are large companies engaged in the manufacture of finished residential kitchen and bathroom cabinets, with the cabinet hardware attached, for sale to builders and contractors of homes and apartments. Original Equipment Manufacturers (OEM) of residential cabinets are differentiated from the residential cabinet shops primarily by size. They are large companies, usually automated, which employ a large number of people and sell their cabinets in a much broader geographic area than the cabinet shops. Some sell nationwide. As a result, they purchase their cabinet hardware direct from the suppliers rather than through the specialty distributors. The cabinet hardware which they purchase is residential cabinet hardware.

E. *OEM manufacturers of architectural cabinets*, also sometimes referred to as architectural millwork houses, are large companies engaged in the manufacture of finished institutional cabinets, with the cabinet hardware attached, for sale to contractors putting up institutional buildings. They are differentiated from the institutional cabinet shops primarily by size, in that they are larger, usually automated companies which sell in a broader geographic area than the cabinet shops. As a result, the OEM institutional cabinet manufacturers purchase their cabinet hardware direct from the suppliers rather than through specialty distributors. The cabinet hardware which they purchase is institutional or architectural cabinet hardware. There are no OEM cabinet manufacturers which manufacture both residential and institutional cabinets.

F. *Contract hardware distributors* are wholesalers which sell architectural builders' hardware products, including architectural cabinet hardware, to contractors who are building institutional buildings. These items are sold to the contractors on a bid basis for each building project, so that the contract hardware distributor which submits the lowest bid on a particular building will receive the award to supply all the builders' hardware needed for that building. Occasionally a contract hardware distributor will also be asked to supply the hardware, including cabinet hardware, needed in residential buildings such as high-priced homes in the \$100,000 and up category or suburban doctor's offices. In such cases the contract hardware distributor may supply the contractor with residential cabinet hardware. However, approximately 95% of the typical contract hardware distributor's business is selling architectural hardware products for use in institutional buildings. Thus approximately

95% of the cabinet hardware sold by contract hardware distributors is architectural cabinet hardware. Contract hardware distributors do not sell to retail outlets of any kind, although there are a very few which have a separate retail outlet of their own.<sup>17</sup>

15. In the year prior to the merger, 1965, Stanley had total cabinet hardware sales of \$814,000, representing approximately 1% of the total cabinet hardware market of \$76,000,000-\$80,000,000.

A. Of Stanley's total \$814,000 of cabinet hardware sales, \$200,000 was of residential cabinet hardware and the remaining \$614,000 was in architectural cabinet hardware. Amerock, on the other hand, had \$200,000 in sales of architectural cabinet hardware, and approximately \$18,000,000 of residential cabinet hardware.

B. Of Stanley's \$200,000 of residential cabinet hardware, approximately \$191,959 was sold through full-line wholesalers for resale to retail hardware and lumber outlets or direct from Stanley to certain hardware and lumber companies with more than one retail outlet. The remaining \$8,041 was sold to one national account, Montgomery Ward & Co.

C. Of Stanley's \$614,000 of architectural cabinet hardware sales, between 90% and 95%, or approximately \$570,000, was sold through contract hardware distributors or through the contract hardware departments of certain full-line wholesalers. Amerock's sales of architectural cabinet hardware through contract hardware distributors totaled about \$40,000.

D. The remainder of Stanley's \$614,000 of architectural cabinet hardware sales, or approximately \$44,000 was accounted for by sales to OEM manufacturers of institutional cabinets. Amerock's sales of architectural cabinet hardware to OEM manufacturers of institutional cabinets totaled approximately \$160,000.

E. The channels for distribution through which both Stanley and Amerock sold cabinet hardware were (a) the full-line wholesalers, (b) the contract hardware distributors, (c) the OEM manufacturers of institutional cabinets and (d) national accounts for resale under private labels.<sup>18</sup>

16. Approximately two-thirds of Amerock's cabinet hardware sales are made to OEM manufacturers of residential cabinets and specialty distributors selling to residential cabinet shops. The remaining third goes to full-line wholesalers and national accounts for resale at the retail level.<sup>19</sup> The key to selling decorative residential cabinet

<sup>17</sup> RPF 35.

<sup>18</sup> RPF 63, 64 in part; CPF 16; CX 13 A.

<sup>19</sup> RPF 67 in part. Included in Findings Nos. 15 and 16 above are CX Nos. 12 and 13 A, which are to be read to obtain the full Stanley-Amerock competitive picture in the pre-merger stage. Further, see Tr. 1067-1068.

hardware to wholesalers, national accounts and OEM manufacturers of residential cabinet hardware is style and design. Consumers purchasing in retail stores select the style which appeals to them most, regardless of the name of the manufacturer, and cabinet manufacturers likewise seek to select styles and designs which will appeal to the homeowner. As a result, residential cabinet hardware has become an extremely fashion-oriented business, with rapidly changing styles and designs and a trend towards increasingly more ornate styles and designs. In order to be successful, a manufacturer of decorative residential cabinet hardware must therefore have or hire a competent staff of designers to keep abreast of and lead the changing trends in style.<sup>20</sup>

17. In order to compete successfully for sales of decorative residential cabinet hardware, a company must offer die-cast knobs and pulls. Stamped knobs and pulls are a thing of the past and, with the exception of the traditional black colonial-style sets, are simply not used on today's cabinets. The reason is that it is not possible to produce stamped knobs and pulls of the highly stylized nature which today's market demands at prices which are competitive with the prices of die-cast knobs and pulls.<sup>21</sup>

18. The only residential cabinet hardware items which the Stanley Hardware Division sold prior to the merger (\$200,000 worth in 1965) were sold through wholesale hardware distributors for resale to retail outlets. The division offered three uni-racks of cabinet hardware items. An example of one was introduced as RX 102-5 and pictures of the other two are shown at pages 243 and 256 of the Stanley Hardware Catalog, a copy of which was introduced as CX 61. RX 102-5 is a line of "contemporary" cabinet hardware of which the Division purchases the knobs and pulls from Jaybee (at an average annual cost of \$9,000) because it does not have the die-casting facilities necessary to produce them. The second uni-rack consists of a line of black-strap, non-die cast colonial cabinet hardware and the third consists of four cabinet catches. These three uni-racks accounted for approximately \$100,000 in sales in 1965. Poly bag packs of the same items shown on these three uni-racks, plus a few miscellaneous items, accounted for the remaining \$100,000 of the division's total \$200,000 residential cabinet hardware sales in 1965.<sup>22</sup>

19. A witness from the Jaybee Manufacturing Company from which Stanley purchased the die-cast cabinet hardware items de-

<sup>20</sup> RPF 39.

<sup>21</sup> RPF 41.

<sup>22</sup> RPF 101.

scribed in Finding 18 above testified herein at Tr. 2397-2423. In summary part, this witness testified that the machinery necessary to manufacture die-cast hardware is obtainable from various sources in the United States and that people knowledgeable in the operative technology are either available or trainable, and that outside professional designers of cabinet hardware products can be employed if found necessary.

20. In 1963 a Stanley Hardware Division preliminary task force report recommended that the Division's long-range objectives for cabinet hardware should be to attain \$2,500,000 gross sales and \$225,000 pre-tax profit by the end of 1969 and that the task force should present a final report analyzing in detail two alternative ways in which these objectives might be achieved:

Alternate 1: Acquire a cabinet hardware manufacturer with established distribution and with the knowledge of the art and experience in die-cast manufacturing, finishing and design.

Alternate 2: Procure die-cast and die-cast finishing facilities supported with appropriate engineering, design and marketing staff, with a complete product and market development program.<sup>23</sup>

Stanley instead of updating its cabinet hardware products in a residential cabinet hardware line proposed in Alternate 2, as distinguished from the architectural cabinet hardware line in which Stanley met no such manufacturing problem, eventually chose to go the merger route proposed in Alternate 1 above.

21. In 1964 a Stanley Hardware Division final task force report with reference to Alternate 1 in Finding No. 20 above recommended acquisition of Ajax or Jaybee (see tabulation of competitors in preceding Finding No. 10) as the only way in which the Division could achieve its long-range objectives for cabinet hardware of \$2,500,000 in gross sales and \$225,000 in pre-tax profits.

With reference to Alternate 2 in Finding No. 20 above, it recommended that the second alternative of internal development into die-cast cabinet hardware be dropped, since the task force's analysis of this alternative showed that it would require a minimum investment of \$600,000 to attain the \$2,500,000 sales goal by the end of 1969.<sup>24</sup>

<sup>23</sup> RPF 159. With reference to above Alternate 2 it is noted that there are substantial sales areas in the stipulated United States market for cabinet hardware not requiring die-cast facilities. For example, Knape & Vogt and Grant Pulley and Hardware Company, ranked No. 4 and No. 6 on the tabulation in preceding Finding No. 10, produce and sell drawer slides which are cabinet hardware products used extensively in household cabinets (Tr. 505-506, 627, 1723-1724, 1901-1902).

<sup>24</sup> RPF 166 A, citing CX 87 G-H. With regard to Alternate 1 above and the recommended acquisition by Stanley of Ajax or Jaybee in that order, CX 87 States—This assumes a bona fide attempt has been made and failed to interest Amerock, since Amerock is really our first choice.

22. In a 1964 meeting held by the Stanley Hardware Division management and Stanley corporate management represented by Donald W. Davis (now president of Stanley and a witness in this proceeding) the Hardware Division further recommended against Alternate 1 in Finding No. 21 above for reasons as alleged in RPF 173. The Hardware Division was told to speed up their timetable for a new line of architectural cabinet hardware and according to RPF 178, Mr. Davis further stated that pending development of an expanded architectural line, the door should be left open in the event a decision was subsequently made to acquire die-casting facilities and develop a residential cabinet hardware line, and further that the sales goal of \$2,500,000 was too low and the objective should be \$4,500,000 at the end of the five years.

23. As a result of the meeting in Finding No. 22 above, the Hardware Division immediately began to expand its efforts in product development of architectural cabinet hardware and it was decided not to pursue the possibility of acquiring a short line manufacturer of architectural cabinet hardware. Management of the Hardware Division decided that it could easily develop the necessary architectural items internally since architectural cabinet hardware is not made on die-casting equipment and that it would be preferable to develop its own line rather than take over a line by acquisition.<sup>25</sup>

24. Stanley and Amerock have well established nationwide sales organizations. The name Stanley related to a hardware product has been long associated in the trade with a reputation for reliability and quality. Tr. 2124-2125 discloses the following testimony from an OEM or kitchen cabinet manufacturer called as a witness by respondent:

Q. You indicated that Scheirich was one of the leading cabinet manufacturers in terms of sales. Would you consider yourself to be one of the leading purchasers of decorative cabinet hardware items for use on kitchen cabinets?

A. Yes.

\* \* \* \* \*

Q. Mr. Hedgepeth, if the Stanley Works, in your opinion, decided to venture into the manufacture and supply of decorative kitchen cabinet hardware items, would you consider their particular product line as a serious subject of purchase?

A. Yes, if they came to us, we would certainly give them consideration. We would have to examine all the factors.

Another of respondent's witnesses, a full line wholesaler of hardware products with annual sales of around 7 million dollars, testified to the following at Tr. 2154-2156:

<sup>25</sup> RPF 180 in part.

1023

## Initial Decision

Q. If Stanley were to develop a new line of residential cabinet hardware and attempt to sell it to you, would they, in order to sell it to you, have to do more in order to persuade you to take that line than they would have had to do if they had never sold you cabinet hardware in the past?

A. To a degree, they would have to do more, because they had a bad experience, and anybody that experiences this kind of thing does have to put their best foot forward to convince somebody that they are now out in front.

HEARING EXAMINER SCHRUP: Would you consider that an impossible task?

THE WITNESS: No, sir.

\* \* \* \* \*

Q. Why do you purchase your cabinet hardware from Amerock?

A. Well, we are purchasing from Amerock because we like the products; it is excellent design; it is splendid eye-appeal. I think one of the major factors in buying from Amerock is the type of people who represent the company, people that come into our place from Amerock. They are the type of people we like to see come in our front door. It is an excellent distributor relationship. They have a policy that supports the distributor's type of operation, in that they do not go direct to the consuming public. To me, it is just a fine company to do business with.

At Tr. 2170 this wholesaler testified his company to have carried Stanley hardware since 1936 or 1937. When asked his opinion of Stanley as a manufacturer and distributor of hardware, the witness answered as follows:

THE WITNESS: I have considered Stanley as one of the leading manufacturers in the country. In fact, I am aware of the fact that they are one of the oldest manufacturers in the country and they are also considered by the hardware industry as the toolbox of the world.

25. Commission Exhibit 30, a Stanley press release, states the merger "brings together two companies whose products and means of distribution are compatible. Amerock and Stanley see the move as two companies joining together to complement and reinforce each other and to better serve the trade and the ultimate consumer."<sup>26</sup>

Under cross-examination at Tr. 1037, Norris A. Aldeen, president and chief executive of Amerock and a director of Stanley, testified to the following:

Q. Is it true that Stanley uses Amerock customer lists and Amerock uses Stanley customer lists?

A. We have knowledge in the trade of our various customer lists, yes.

HEARING EXAMINER SCHRUP: That answer isn't quite clear to me as I gather the import of the question. Are you implying or asking whether there is an exchange of customer lists between Amerock and Stanley?

MR. REFFKIN: Since the merger, yes.

<sup>26</sup> CPF 34. At Tr. 1843 the president of Stanley testified:

"We would see no advantage in transferring the architectural cabinet hardware business to Amerock because they would add nothing to that. This is the area in which Stanley has strength and Amerock doesn't."

HEARING EXAMINER SCHRUP: Would you answer that question?

THE WITNESS: Yes. We have knowledge of their customers and they have knowledge of our customers in certain markets.

In this connection a veteran in the hardware industry and the vice president of finance for the Hager Hinge Company testified his company to have been in existence since 1849 and that he had been associated with it since 1946 and for ten years had formerly acted as vice-president of sales. At Tr. 435 this witness testified:

Q. Who, in your view, would be the leading company, as far as your competition was concerned?

A. At that time?

Q. In cabinet hardware, yes.

A. Stanley Works was the leading distributor of architectural cabinet hardware at that time. And I believe the Amerock Corporation was the leader and distributor of wholesale cabinet hardware to distributors.

At Tr. 445 the witness testified:

Q. Is there any advantage to a company producing hardware products, in general, also to product cabinet hardware products, in particular?

A. Yes, sir.

Q. What advantage would there be?

A. The distribution system that that company would already have.

Q. In what respect?

A. The sales force calling on the same customer that could use his products, or would distribute it.

At Tr. 455-456 the witness testified:

Q. Mr. Hager, is there a distinct advantage for the Hager Company in selling cabinet hardware products in connection with its hardware line?

A. Yes, sir.

Q. In what respect?

A. If we are talking of one class of cabinet hardware, architectural or commercial cabinet hardware, the advantages that we would supply a distributor for that particular job, the full breadth of cabinet and hinge hardware required for that job, for that specific building or office or structure, the advantage, if it were a wholesale distributor, would be that he could purchase a full line from one manufacturer. I think there are advantages to him in that.

In response to the question of whether Hager as a competitor was concerned with the Stanley-Amerock merger, the witness replied at Tr. 463-464:

THE WITNESS: We did have a concern with the resulting merger, that the distributors presently for Amerock of cabinet hardware and our line of other builders hardware might be encouraged to discontinue buying our other line of builders hardware and buy Stanley.

As shown on the tabulation in preceding Finding No. 10, the Stanley Hardware Division had sales of \$23,100,000 in 1965 and \$25,300,000 in 1966. The principal product line which the Stanley



Hardware Division manufacturers is hinges, primarily architectural and residential door hinges, as well as general farm and utility hinges and a variety of other hinges including those suitable for use as cabinet hardware.<sup>27</sup> The Hager Hinge Company also manufacturers such hinges for competitive resale on a nationwide scale.<sup>28</sup>

26. John C. Bosworth, general sales manager of Amerock, at the hearing on April 30, 1969 testified to the following at Tr. 1140-1141:

Q. You said "key competitor." What did you mean by that?

A. I think in Kitchen Business, which is one of the trade magazines in our industry, this past March or April or February, they listed, I think, 97 competitors in kitchen cabinet hardware. So, when I say "key competitors," it is staying down with the first 10 or 20.

The witness from Ajax, the third ranking manufacturer and seller of cabinet hardware in the United States shown on the tabulation in preceding Finding No. 10, testified at Tr. 505-506:

HEARING EXAMINER SCHRUP: I would like to get this record pretty clear on this point.

Now, you are talking about competitor, and you are talking about the competitor in the sales of cabinet hardware, sir?

THE WITNESS: Competitors, yes, sir.

HEARING EXAMINER SCHRUP: Who are they?

THE WITNESS: There are, in my mind, eight competitors. I would establish these as Amerock, National Lock, Jaybee, Hyer, David Allison, Tassel, Liberty Hardware, and Stanley.

HEARING EXAMINER SCHRUP: Why do you restrict yourself to these particular eight firms?

THE WITNESS: They are the ones that are most active and the ones we encounter most often in our product lines.

There are some others in specific product areas that are competitors in those areas.

HEARING EXAMINER SCHRUP: Who would they be?

THE WITNESS: Such as in the drawer slide area, Knape & Vogt, Hardware Designers, Grant Pulley & Hardware Company—

At Tr. 511-512 the witness further testified to the following:

HEARING EXAMINER SCHRUP: Are you familiar with Kitchen Business Magazine?

THE WITNESS: Yes, sir.

HEARING EXAMINER SCHRUP: What is it?

THE WITNESS: It is the trade magazine servicing the kitchen industry, with its editorial primarily directed to the kitchen cabinet dealer, the man who would sell a kitchen cabinet, complete kitchen, to a homeowner, remodeling or—

HEARING EXAMINER SCHRUP: This exhibit states there are fifty-five manufacturers of cabinet hardware. Have you any knowledge about that situation?

<sup>27</sup> CPF 5, 6, 7 and RPF 86.

<sup>28</sup> Tr. 425-431. RX 6 shows Hager overall hardware sales in the United States to have been \$10,648,264 in 1965 and \$11,561,108 in 1966. See further, Tr. 1067-1068.

THE WITNESS: I have seen that list, sir, and it includes people who make one product in the cabinet hardware field.

For example, a manufacturer that would only make a cabinet catch and no other products.

Upon further questioning as to the various suppliers of cabinet hardware shown on the said exhibit and the possible significance of such an overall large number of suppliers, the witness responded at Tr. 517:

THE WITNESS: Well, there are several things that I think affect this list. Number one, to the best of my knowledge, that list included importers as well as domestic manufacturers.

Secondly, it includes people who, as I previously explained, make perhaps one product that could be considered, or that is considered cabinet hardware.<sup>29</sup>

27. In the premerger year 1965, according to the tabulation in preceding Finding No. 10, the sales of cabinet hardware by Stanley and Amerock totaled \$19,032,474. The next three leading competitors of Stanley and Amerock accounted for \$24,310,749, or a combined total with Stanley and Amerock of \$43,343,223, which was 57% of the stipulated total of \$76,000,000 and 54.2% of the stipulated total of \$80,000,000 of cabinet hardware sales in the United States. Adding to this total the sales of the next five leading competitors of Stanley and Amerock, each over the \$1,000,000 mark, shows a combined total of \$52,821,357 for these few leading suppliers in the cabinet hardware market. This represents 69.5% of the stipulated United States total sales cabinet market of \$76,000,000, and 66% of the total United States cabinet sales market of \$80,000,000. The combined total for the next four supplier competitors of Stanley and Amerock shown on the tabulation for 1965 total but \$970,451. The two new supplier competitors shown on the tabulation for the year 1966 had sales of only \$31,151 and \$14,203, respectively. While overall sales by all these cabinet hardware competitors show annual increasing sales volume (with the exception of Jaybee), the market share of Stanley and Amerock in the annually increasing sales volume of cabinet hardware has not significantly varied over the years according to the stipulation of record between the parties.<sup>30</sup>

28. Stanley had early recognized and determined that the United States cabinet hardware market was large and important to Stanley.<sup>31</sup> It took affirmative internal steps to advance its sales position in architectural cabinet hardware. In 1965 the Hardware Division developed a number of new architectural cabinet hardware products

<sup>29</sup> See and compare CX 18 B and CX 85 Z-34, Z-35. Also see, Tr. 1072-1075, 2065-2067.

<sup>30</sup> See footnote 23, *supra*, and Finding No. 31, *infra*.

<sup>31</sup> CPF 79.

and the expanded line of architectural cabinet hardware was announced in 1965 by a division letter to the trade introducing the new line, accompanied by a brochure illustrating and describing it. A copy of said letter and brochure were introduced as RX 84 and CX 64, respectively. It also developed sets of two architectural cabinet hardware display boards for its salesmen to use in attempting to sell the products to contract hardware distributors and OEM manufacturers of institutional cabinets. Examples of these two display boards were introduced as RX 103-2 and RX 103-3. In 1966 the division spent between \$50,000 and \$60,000 in trade advertisements and promotions to introduce its new architectural cabinet hardware line to the trade.<sup>32</sup>

29. In 1964 the Stanley Hardware Division management conveyed certain conclusions with reference to its cabinet hardware situation to Donald W. Davis then executive vice president of Stanley and acting general manager of the Hardware Division. The report stated in part:

The Division should hire a new marketing manager for cabinet hardware who had experience in both the field of architectural cabinet hardware products and in residential die-cast cabinet hardware products, in case it should be decided to move into the die-cast field at a later date. It was also recommended that the Division hire an industrial designer to help the engineering department develop the proposed new cabinet hardware items.<sup>33</sup>

Stanley sought to employ the vice president for marketing of Ajax, a manufacturer and seller of both architectural and residential cabinet hardware on a nationwide basis.<sup>34</sup> Ajax as shown on the tabulation in preceding Finding 10 was the third ranking supplier of cabinet hardware in the United States with sales for 1965 of \$6,798,000 and for 1966 of \$7,560,000. The vice president for marketing of Ajax, a former employee of Stanley, testified in pertinent part to the following at Tr. 526-528:

Q. Did you indicate at that time whether you would accept the position at Stanley?

A. I was interested in the position. We discussed salary; I indicated what it would take to interest me enough to make the move, and he stated that he was considering it and would let me know further.

Q. What was your interest in the position?

A. Well, I saw a great opportunity to become a major factor in the cabinet hardware industry, on the part of Stanley, and consequently to put myself in a very responsible managerial position. Stanley had the resources in terms of

<sup>32</sup> RPF 192 and RPF 193 in part. See also, Tr. 2025.

<sup>33</sup> RPF 176 subpart B. See RPF 235 as to the ability of the Stanley Hardware Division to accomplish significant internal development of new products and to achieve substantial new product sales.

<sup>34</sup> RPF 180 in part.

financial ability, manufacturing capabilities, and sales force to really sell a product of this type.

Q. Would you explain what you mean by resources?

A. Well, Stanley is a large, well-financed company. To the best of my knowledge, they would be capable of buying necessary equipment, the die casting equipment, to purchase the design, to hiring people internally to do it, or hiring outside designers, and they have the manufacturing capability already on hand to make the rest of the product line, to the best of my knowledge.

Q. What did you mean by sales forces?

A. Well, Stanley has a directly employed sales force. These are employees of Stanley, and not manufacturers representatives, to the best of my knowledge. These are men who are already calling on the types of customers who would buy cabinet hardware. I don't know the size of their sales force, but what would be sufficient to sell their present product lines must be sufficient to sell cabinet hardware.

30. The Stanley Works on August 19, 1966, filed with the Securities and Exchange Commission a Registration Statement, which at pages 15, 16 and 17 of the document, describes the business of the company. At page 15 the following statement appears:

With the merger of Amerock Corporation, the Company entered the field of die cast hardware. Amerock adds to the Company's products a complete line of cabinet hardware, including handles, pulls, knobs, backplates, catches, drawer slides, latches and a variety of hinges. Amerock manufactures lines of window, appliance, furniture and general household hardware products. Product styling is an important competitive factor in cabinet hardware, and the Company now believes it is a leader in product styling and in the manufacture of cabinet hardware.<sup>35</sup>

It is not only reasonably probable but realistic to expect that in response to the demands of the marketplace, absent the Stanley-Amerock "marriage" announced in CX30, that Stanley sooner or later would have taken the necessary steps on its own to become a leader in product styling and in the manufacture of cabinet hardware in the stipulated United States relevant product market.<sup>36</sup> Instead and to more readily achieve such end, Stanley chose a \$32,000-000 transaction by way of the acquisition and merger of Amerock. Stanley's contention that it had made a prior irrevocable decision not to enter on its own the decorative residential cabinet hardware segment of the said market is rejected.

31. The Stanley-Amerock marriage takes on more competitive significance than reflected solely by the combined market shares of each shown on the tabulation in preceding Finding No. 10 herein. The tabulation on its face does not show, aside from the fact that

<sup>35</sup> CX 24 Q.

<sup>36</sup> For example, see the proposed Sales Strategy for the Stanley Hardware Division at CX 87 Z-12, 13 and 14.

two suppliers are importers and not domestic manufacturers of cabinet hardware, the principal types of cabinet hardware products sold by the various leading suppliers and the actual and potential sales and entry barriers which may be present or raised in the sales areas for such products in the stipulated United States relevant product market of cabinet hardware.<sup>37</sup>

For example, Stanley was able to establish itself as a significant domestic manufacturer and substantial supplier in the sales area occupied by purchasers of architectural cabinet hardware. With strong financial resources, a well-known, good reputation and industrywide acceptance of its many other hardware products plus an established nationwide sales force, Stanley chose acquisition rather than internal expansion in order to more readily establish itself as a significant substantial manufacturer and supplier in the sales area of major importance in the stipulated United States cabinet hardware market, that occupied by purchasers of residential cabinet hardware.<sup>38</sup>

Further, Stanley on the basis of the returns on subpoenas *duces tecum* issued at its instance, prepared and introduced into evidence RX 5 which shows the year of entry and the sales progress of six suppliers in the stipulated United States cabinet hardware market. This tabulation discloses Cardinal of Adrian to have entered the market in 1963 and to have reached annual sales of \$901,079 in 1967. The record testimony discloses Cardinal of Adrian to be both a manufacturer and importer of cabinet hardware for resale in the United States market. Cardinal of Adrian sells primarily in the OEM market, and introduced a self-closing cabinet hardware hinge, an innovation and recognized factor in the cabinet hardware market. It is to be noted that die-cast manufacturing facilities are not necessary for the production of residential or architectural type cabinet hardware hinges.<sup>39</sup> Advanced Affiliates entered the market in 1965 and shown on RX 5 to be an importer with cabinet hardware sales in the United States market of but \$383,008 in 1967.

Florenta of California is shown on RX 5 to have entered the market in 1963 and to have reached cabinet hardware sales of only \$180,837 by 1966. Leslie Metal Arts is shown on RX 5 to have entered the market in 1966 with cabinet hardware sales of but \$134,015 in 1967. Faultless Caster, a division of Bliss & Laughlin Industries Inc., is shown on RX 5 to have entered the market in 1966 with sales

<sup>37</sup> See footnote 23, *supra*. See also, Tr. 1089, 1157-1163, from the testimony of the general sales manager of Amerock. See further, Tr. 2055-2059, 2065-2067, from the testimony of the vice president of National Lock, ranked No. 2 on the tabulation in preceding Finding No. 10 herein.

<sup>38</sup> Tr. 2265-2266.

<sup>39</sup> Tr. 1090, 1178, 1186.

of only \$31,151 and \$55,451 for 1966 and 1967, respectively. Finally, Bassick-Sack, a division of Stewart-Warner Corporation, is shown on the tabulation to have entered the market way back in 1954 and to have had an annual top sales accomplishment in cabinet hardware amounting to only \$216,491 in 1967. Both Faultless Caster and Bassick-Sack had die-cast facilities.<sup>40</sup> The record also reflects testimony as to other manufacturers and suppliers of cabinet hardware in the stipulated United States cabinet hardware market but the sales figures testified to by the various witnesses were merely estimates or approximations inadequate to provide a basis for findings of actual fact thereon.

Finally, it will be recognized that the possession or obtaining of die-cast manufacturing facilities and acceptance design features, without more, does not necessarily promote or provide easy entry into the decorative residential United States cabinet hardware market, and insure that the necessary distribution channels to would-be-purchasers will be secured, and that significant substantial and profitable sales will result.<sup>41</sup>

32. The tabulation in preceding Finding No. 10 discloses that there are but few significant substantial suppliers of cabinet hardware in the stipulated United States cabinet hardware market as a whole. The acquisition and merger of Amerock the leading independent domestic manufacturer and seller by Stanley increased this high level of concentration and may result in a substantial lessening of competition in the said cabinet hardware market because of the elimination of Stanley as a reasonably probable, potentially capable and significant domestic manufacturer and seller in the residential cabinet hardware segment of the said market, and particularly in the decorative residential cabinet hardware sales area of the said market. The removal of Amerock the leading independent domestic manufacturer and seller of cabinet hardware in the United States from the aforesaid cabinet hardware market may have the cumulative effect of encouraging tendencies toward acquisition, combination and merger by actual and potential competitors in the said market, and further, may raise barriers to dissuade significant potential entrants and act to discourage and stifle the sales progress of actual manufacturers and sellers competitively engaged in the said United States cabinet hardware market.

<sup>40</sup> See Tr. 991-993, 1185-1192, 2263.

<sup>41</sup> Tr. 1173-1192, 1203-1209, 2263, 2269, 2273, 2374-2375.

## V. Conclusions

1. The effect of the acquisition and merger of Amerock by Stanley may be substantially to lessen competition or tend to create a monopoly in the manufacture and sale of cabinet hardware throughout the United States.

2. The said acquisition and merger of Amerock by Stanley constitutes a violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act.

3. The prior substantial, actual and potential competition in the manufacture and sale of cabinet hardware throughout the United States should be restored and an appropriate order to such effect should issue.

## VI. Foreword to Order

33. The Stipulation of Issues and Facts entered into by the parties to this proceeding states in Paragraph 1, subparagraph (3), the following:

(3) if said contract, combination and merger constituted a violation of the aforesaid Section 7 of the Clayton Act or Section 5 of the Federal Trade Commission Act or both, whether Stanley should be compelled to divest itself of Amerock and/or whether and to what extent the Commission should order any other relief, including possible restraint for a stated period of time of any future acquisitions by Stanley, without the prior approval of the Commission, of any firm engaged in the manufacture of hardware products (as defined in the complaint) within the United States.

According to the record, Amerock following the acquisition and merger by Stanley has not undergone any substantial physical integration with the plant and manufacturing facilities of Stanley. Under the merger agreement, Amerock stockholders exchanged their shares of Amerock stock for shares of Stanley stock, with the result that former Amerock stockholders became the holders of 27% of the total outstanding Stanley stock. Members of the Aldeen family alone became the owners or beneficial owners of approximately 10% of the outstanding Stanley stock and the family thus became the largest individual stockholder in Stanley. The holders of the other 17% are small in number and are close to and influenced by the Aldeen family. Three former Amerock shareholders, Norris Aldeen, Reuben Aldeen and Roy Liljedahl, became members of the Stanley board of directors.<sup>42</sup>

<sup>42</sup> RPF 13.

Amerock after the acquisition and merger by Stanley continued to operate under Amerock's prior management. Mr. Aldeen, president and chief executive officer of Amerock and largest stockholder now of Stanley, in response to questions concerning possible divestiture of Amerock by Stanley testified:

Q. If the Amerock-Stanley merger were undone, what would happen to Amerock's position in cabinet hardware?

A. There would be no change. We were the leaders before the merger, we would be leaders if we have to divest.<sup>43</sup>

The order in the proposed Findings of Fact, Conclusions and order submitted by complaint counsel contains a provision in Paragraph II of the proposed order not included in the order set forth in the Notice of the Complaint as issued and served upon respondent Stanley. This proposed provision by complaint counsel reads:

In accomplishing divestiture ordered in Paragraph I of this Order Stanley shall require a provision to be contained in an agreement of divestiture, providing that prior approval of the Commission would be required for a period of ten (10) years in any transaction whereby the divested company is either divested, transferred, combined, or merged into, or with, or in any way becomes part of, any other company.<sup>44</sup>

Amerock is not named as a respondent in the complaint and the above provision of the proposed order by complaint counsel would seek to and is intended to bind Stanley in divesting and Amerock after it is divorced by Stanley and again becomes a strictly independent corporate entity. Complaint counsel would argue that the Commission's remedy should not be limited to types of orders entered in prior antitrust cases and state that there is need of the "extraordinary relief requested" in their proposed order. This is doubtful legal procedure at best and is not being followed herein.

The Notice of the Complaint as issued and served upon respondent Stanley recites the form of order which the notice states the Commission has reason to believe should issue if the facts are found to be as alleged in the complaint. Paragraph II of this order provides:

The divestiture ordered in Paragraph I of this Order shall not be effected, directly or indirectly, to any person who at the time of the divestiture is an officer, director, employee or agent of, or otherwise under the control or influence of, Stanley or any of Stanley's subsidiary or affiliate companies, or who owns or controls, directly or indirectly more than one (1) percent of the outstanding stock of Stanley.

The above provision of the order in the Notice of the Complaint might preclude various former officers, directors and stockholders of

<sup>43</sup> CPF 101. See further, Tr. 1005A-1010.

<sup>44</sup> Page 46, Proposed Findings of Fact, Conclusions of Law and Order submitted by complaint counsel.



Amerock now officers, directors and stockholders of Stanley from again becoming officers, directors and stockholders of Amerock upon divesture by Stanley. Under the circumstances of record herein and in the effort of avoiding the raising of possible undue or unforeseen hardship questions, and not to act so as to prevent a return to the status quo existing in the stipulated United States cabinet hardware market prior to the acquisition and merger of Amerock by Stanley, Paragraph II of the order set forth in the Notice of the Complaint is being eliminated in the order hereinafter entered.

Based upon the entire record in this matter, the proposed findings, conclusions, legal briefs and replies thereto by the parties, and the preceding findings of fact and conclusions thereon, the following order is being entered.

## ORDER

## I

*It is ordered*, That respondent, the Stanley Works (hereinafter referred to as "Stanley"), through its officers, directors, agents, representatives and employees, shall divest within two (2) years from the effective date of this order, absolutely, and in good faith, of all right, title and interest and all assets, properties, rights and privileges, tangible and intangible, including without limitation, all manufacturing plants, equipment and operating facilities, machinery, inventory, customer lists, trade names, trademarks and good will obtained by Stanley as a result of its merger with Amerock Corporation, together with all additions and improvements thereto of whatever description and all earnings therefrom (hereafter "assets") to a purchaser approved by the Federal Trade Commission.

## II

In effectuating Paragraph I of this order, respondent Stanley shall complete divesture in the following manner and subject to the following conditions:

A. Beginning promptly on the effective date of this order, and for a period of six (6) months thereafter, Stanley shall make diligent efforts in good faith to effectuate the divestiture required by Paragraph I of this order.

B. If Stanley fails to effectuate such divestiture within that period, Stanley shall, within thirty (30) days thereafter, submit a plan in form and substance acceptable to the Commission, for the formation of a new and separate corporation (hereinafter "New Amerock"), to enable the restoration of Amerock Corporation as a viable competitive factor in the hard-

ware and cabinet hardware industries in substantially the manner and form it would have attained had it not been merged with Stanley. Such plan shall contain provision for:

1. Transfer to New Amerock of all assets required to be divested by Section I of this order;
2. Distribution of the capital stock of New Amerock to the public or to the stockholders of Stanley;
3. A provision that any direct or indirect holder of more than one (1) percent of the outstanding capital stock of Stanley shall divest all stock interest in New Amerock within six (6) months from the date of incorporation of New Amerock; and
4. Distribution of the capital stock of New Amerock within not more than two (2) years from the effective date of this order.

### III

Within thirty (30) days from the effective date of this order, and every thirty (30) days thereafter until it has fully complied with this order, Stanley shall submit in writing, to the Federal Trade Commission, a verified report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with this order. All compliance reports shall include without limitation a specification of the steps taken by Stanley to make public its desire to divest the assets or stock required to be divested pursuant to Paragraphs I and II of this order, including, without limitation, a list of all persons, partnerships or corporations, and brokers, bankers and management consultants to whom this notice of sale has been given; a summary of all discussions and negotiations, together with the identity of all such potential purchasers or intermediaries, and copies of all recommendations, reports, offers and counteroffers and communications concerning divestiture.

### IV

Stanley shall forthwith cease and desist from acquiring, directly or indirectly, by any device or through subsidiaries or otherwise, the whole or any part of the stock, share capital or assets of any firm engaged in the manufacture or sale of cabinet hardware products or other hardware products as defined in the complaint in this matter without the prior approval of the Federal Trade Commission. Within thirty (30) days following the effective date of this order, and annually thereafter, Stanley shall furnish a verified written report setting forth the manner and form in which it intends to comply, is complying, or has complied with this paragraph.

## Opinion

## OPINION OF THE COMMISSION

MAY 17, 1971

BY JONES, *Commissioner*:

## I

This case is before the Commission on appeal from the initial decision of the hearing examiner in which he found that the acquisition of Amerock Corporation by respondent, the Stanley Works, violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18 (1964) and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (1964).<sup>1</sup>

The complaint in this case issued on April 30, 1968. It charged that the merger between the respondent and Amerock Corporation tended to "lessen competition or to tend to create a monopoly in the manufacture and sale of hardware, generally, and cabinet hardware, in particular, throughout the United States and in sections thereof, in violation of Section 7 of the Clayton Act . . .; and to create an unreasonable restraint of trade in commerce, or to hinder or have a dangerous tendency to hinder competition unduly in the manufacture and sale of hardware, generally, and cabinet hardware, in particular, in violation of Section 5 of the Federal Trade Commission Act." The complaint further alleged that the merger had these proscribed effects by reason of the fact that:

- (a) Substantial actual and potential competition has been, or may be, eliminated;
- (b) The substitution of Stanley, with its multi-divisional manufacturing and marketing strengths, tends unduly to increase barriers to the entry of new competition and to deprive smaller limited-line rivals of an equal opportunity to compete; cumulatively entrenching Stanley in its acquired dominant and monopolistic position;
- (c) Members of the purchasing public and the ultimate consumer have been, or may be, denied the benefits of free and open competition; and
- (d) The cumulative effect of the merger charged has been, or may be, to accelerate an increasing level of concentration by encouraging tendencies toward combination and merger by actual and potential competitors.

The hearing examiner found that Stanley was engaged in the business of the manufacture and sale of hand and power tools, hardware products, steel and steel strapping, and component parts. (4) He also

<sup>1</sup>The following abbreviations will be used for citations: Transcript of proceedings, "Tr."; complaint counsel's exhibits, "CX"; respondent's exhibits, "RX"; complaint counsel's proposed findings, "CPF"; respondent's proposed findings, "RPF"; Examiner's Initial Decision, "I.D." In the text, the examiner's findings will be cited by parenthesized numbers. Briefs of either the respondent (Res.) or complaint counsel (C.C.) will be cited as follows: Brief on appeal, "App. Br."; answering brief, "Ans. Br."; and reply brief, "Rep. Br."

found that Amerock at the time of its acquisition by Stanley was engaged in the manufacture and sale of certain hardware products, consisting principally of a broad line of cabinet hardware products for use primarily in kitchens, as well as certain window, appliance, furniture and general household hardware products.<sup>2</sup>

The parties stipulated that the relevant product market was cabinet hardware, and that the geographic market was nationwide. (I.D., p. 1030.)<sup>3</sup> The hearing examiner found that Amerock was the largest manufacturer of cabinet hardware with 22% to 24% of the industry's sales (10); that the four leading firms in this market, including Amerock, accounted for approximately 49% to 51% of total industry sales (10);<sup>4</sup> and that the balance of the sales in the market was accounted for by at least 50 companies, many of which were either importers or small companies that produced only a limited line or only a single product in the cabinet hardware field. (CX 87 n; CX 85 Z-34.) Stanley's sales of cabinet hardware in 1965 were approximately \$814,000, representing 1% of the total cabinet hardware market of \$76,000,000 to \$80,000,000. (9)

The examiner found that the cabinet hardware market was concentrated, and that significant barriers to entry existed. (32) He also found that the merger between Stanley and Amerock led to increased concentration in the already concentrated cabinet hardware market, as well as eliminating Amerock as the leading independent producer of cabinet hardware and eliminating Stanley as a reasonably probable entrant into the market. Thus, the examiner found that respondent's acquisition of Amerock lessened competition be-

<sup>2</sup> Cabinet hardware includes pulls, knobs, hinges, latches, and related products, including drawer slides, and shelving hardware. (7)

<sup>3</sup> Although the parties stipulated that there were no relevant submarkets, and that the "facts stipulated . . . shall prevail over any conflicting evidence" (I.D. 1030), there has been a considerable amount of argument on appeal dealing with alleged product differences. Specifically, respondent urges that there are significant distinctions between residential cabinet hardware, a highly stylized product that is made primarily by die casting processes and is offered in a variety of styles, and architectural cabinet hardware, which is more durable and is produced from solid steel, aluminum, or brass. (Res. App. Br. at 25-26).

It may well be true that, absent the stipulation, respondent could have demonstrated that residential and architectural cabinet hardware are definable economic submarkets. However, we need not reach this question because, as indicated below, the record in the present case convincingly demonstrates that the merger of Stanley and Amerock had sufficient anticompetitive effects in the stipulated cabinet hardware market, taking account of the product differences urged by respondent, to invoke the statutory sanction.

<sup>4</sup> The respondent has argued, we think correctly, that "the percentages in Finding 10 disregard Footnote 1 to the table in that finding, which states that the sales figure given for National Lock Company includes an 'estimated two or three million dollars of furniture trim hardware.'" (Res. App. Br. at 13.) If the two or three million dollars are not included, the 1965 market shares for the four largest companies would represent 52%-53% of the \$76 million figure and 49%-51% of the \$80 million figure. We have used these latter market share figures.

cause (1) absent the merger Stanley would probably have entered the cabinet hardware market on its own (31, 32); (2) the elimination of Stanley as a potential competitor had the effect of increasing the barriers to entry (31, 32); and (3) Stanley, as a potential competitor, had an influence on the performance of the cabinet hardware market. (32)

On the basis of these findings, the hearing examiner concluded that the effect of the merger may be to substantially lessen competition in the cabinet hardware market in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. (I.D. Conclusions of Law 1 and 2.)

In this appeal respondent challenges the examiner's conclusion that the 50% market share of the four leading companies amounts to concentration, and disputes the examiner's further findings respecting the entry barriers created in this industry by product differentiation and the difficulties of procuring adequate distribution channels. (Res. App. Br. at 11-13, 20-21; Res. Ans. Br. at 13-15, 10-12.) Respondent also denies that it was a likely entrant into the residential segment of the cabinet hardware market, contending instead that it did not have adequate resources or know-how to enter on its own and that after study and deliberation it had made a firm decision not to enter the residential segment of the cabinet hardware market. (Res. App. Br. at 34-43; Res. Ans. Br. at 19-22.) Finally, respondent asserts that even if it were a potential entrant, its acquisition of Amerock did not lessen competition because of the continued existence of other potential entrants into this market. (Res. App. Br. at 18; Res. Ans. Br. at 10.)

We have carefully considered all of respondent's arguments in the light of the record and the initial decision and have concluded, for the reasons stated below, that the examiner's findings and conclusions are fully supported by the evidence and by the applicable case law and, except to the extent noted, are hereby adopted by us. We also adopt the order prepared by the examiner, with several modifications noted below.

## II

### The Stanley-Amerock Merger

Stanley was a long-time, well-established participant in the cabinet hardware market with sales in 1965 of \$814,000, which accounted for 1% of the United States market. (9) Of Stanley's \$814,000 sales, \$616,000 were concentrated in architectural cabinet hardware. Architectural cabinet hardware comprises approximately 5% to 10% of

the total cabinet hardware market. [(15); Res. App. Br. at 29.] Its remaining \$200,000 cabinet hardware sales consisted of residential cabinet hardware. (15)

In the mid 1940's and '50's, Stanley had sought unsuccessfully to expand its cabinet hardware line in residential cabinet hardware. [(24); Res. App. Br. at 40-42.] In 1963, Stanley's management undertook a comprehensive review of the respondent's position in the cabinet hardware and related builders' hardware markets, with a view toward substantially improving the company's performance.<sup>5</sup> The first of a series of management reports, dated February 8, 1963, strongly urged that Stanley should be a major participant in the cabinet hardware market, setting forth the following reasons:

1. Cabinet hardware is a basic part of the hardware industry and represents over 15% of the total builders hardware potential.
2. Cabinet hardware is a basic element in the home building market and represents up to 1/4 of the total hardware dollars in the house.
3. Cabinet hardware is a natural adjunct to other products Stanley has under development.
4. Stanley can effectively reach the major portions of the market. (CX 85 E-F.)

Other factors noted in this report which supported Stanley's ability to expand its position in the cabinet hardware market included Stanley's existing orientation to the building market; Stanley's resources in being able to offer a variety of products and services which the competition would be unable to match; and finally, the overall profitability of the cabinet hardware business "as evidenced by the D&B [Dun & Bradstreet] reports of other cabinet hardware manufacturers." (CX 85 Z-9.)

The report also enumerated some of Stanley's past difficulties and described some of the problems which would confront the company if it attempted to expand its own participation in the market. The report then concluded:

Considering all that will be necessary in order for Stanley to achieve its proper status in the kitchen [i.e. cabinet hardware] market suggests the possibility of acquisition as a bold first step \* \* \*

Amerock is the major factor in this as well as the other markets and therefore is the logical first choice. There are, however, two other manufacturers[,] Ajax and Jaybee, that do a large volume of business with the [Retailing Cabinet] Shops. (Tassell is another manufacturer worth considering from a manufacturing standpoint, but their distribution is practically all direct to hardware and building supply retailers.) [CX 85 Z-14 to Z-15.]

<sup>5</sup> Builders' hardware is the larger product market which includes both cabinet hardware and such related items as hinges, latches, and door and closet hardware. See generally CX 78.

A subsequent management memorandum, dated March 12, 1963 (CX 41A), reaffirmed the conclusion that Stanley should remain in the cabinet hardware market, and briefly canvassed the alternatives which were available to expand the company's cabinet hardware sales. Three principal choices were evaluated: expansion of Stanley's present line, purchase of cabinet hardware from other manufacturers for resale under the Stanley name, and acquisition of a successful smaller company. The memorandum concluded that the latter alternative was preferable because of the following specific advantages to Stanley:

- a) Would provide immediate additional sales, distribution and profit.
- b) Would provide manufacturing, marketing and sales and engineering know-how (especially stylists).
- \* \* \* \* \*
- d) Would provide immediate trade acceptance and contacts.
- e) Would be a dramatic step which could be used to sell Stanley as a progressive corporation.
- f) *Would knock out a competitor.* [CX 41-C (emphasis added).]

The firms under consideration for a possible acquisition were still Amerock, Ajax, Jaybee, and Tassell.

A more detailed comparison of the attributes of these four companies was made in a Stanley management report dated April 29, 1963. (CX 85 Z-21.) This report concluded that Amerock should be deemed the prime candidate for acquisition, reasoning that "[e]ven though its size is slightly larger than what might normally be considered for purchase, there is good reason in this instance to recommend that consideration be given to *the dominant industry position* this acquisition would provide." (CX 85 Z-21 to Z-22; emphasis added.) In support of this conclusion the report enumerated fifteen factors which favored the acquisition of Amerock; in addition to reiterating the five factors quoted in the preceding paragraph, this report pointed out that acquiring Amerock would enable Stanley:

- 1) To add profitable sales of over 13 million \* \* \*
- 2) To strengthen our position in the home-building market.
- 3) *To obtain a dominant role in the cabinet hardware market.*
- 4) To obtain the major position of trade distribution (U.S. and Canada).
- 5) To obtain the large Cabinet Mfg. market \* \* \*
- \* \* \* \* \*
- 9) To avoid the slow course (likely unprofitable) of creating our own line.
- \* \* \* \* \*
- 11) To obtain a modern strategically located plant. [CX 85 Z-29; emphasis added.]

Two management memoranda dated June 20, 1963, endorsed this conclusion, and elaborated the Stanley management's thinking about

expansion in the cabinet hardware market. The first memorandum stated:

Although our present line of cabinet hardware has not proven profitable, *Stanley should remain in the cabinet hardware business* since cabinet hardware is an important segment of the basic hardware and homebuilding industries which we serve. . . .

*Acquisition* of an existing successful cabinet hardware manufacturer *provides the quickest, most certain course* of action to obtain profitable cabinet hardware sales." [CX 39A: emphasis in original.]

The second memorandum pointed out that merger with Amerock should be given priority over acquisition of either Ajax or Jaybee because "[b]rand acceptance for Amerock would make this [acquisition of a smaller company] a long, uphill road. It is possible but requires much added time and sales effort. We would be fighting the 'leader' all the way." (CX 40 C.)

On September 25, 1963, Stanley's management formed a Cabinet Hardware Task Force containing representatives from various departments of the Stanley Works to give more thorough consideration to the question of respondent's future in the cabinet hardware market. (CX 83 C.) On December 9, 1963, the Task Force issued a status report which carefully surveyed Stanley's current capabilities and posited both short- and long-range company goals in the cabinet hardware market. As a long-range objective, the report concluded, Stanley should "[o]btain 10% of the total cabinet hardware, business at a pre-tax profit of 10% on Net Sales by 1969." (CX 83 J.) Two general methods of achieving this goal were deemed practicable by the Task Force at this time: either acquisition of an established cabinet hardware manufacturer, or internal expansion through procurement of die-casting facilities "supported with appropriate engineering, design and marketing staff, with a complete product and market development program." (CX 83 K.) The Task Force resolved to evaluate these alternatives and report by June of 1964. (*Id.*)

Another interim management report dealing with the possibility of acquiring a cabinet hardware manufacturer was issued on March 25, 1964. (CX 86.) The investigation underlying this report had been limited in scope to full line cabinet hardware manufacturers, but the authors recommended that a separate project be undertaken to evaluate the possibility of acquiring a smaller "short line producer" of cabinet hardware. (CX 86 C.) The report further asserted that acquisition was preferable to internal expansion:

\* \* \* Stanley can trace its faltering position in the cabinet hardware business to several definable weaknesses. *Undoubtedly these weaknesses could be over-*



*come internally.* However, such an internal development program involves time, money and considerable risk. [CX 86B; emphasis added.]

Once again, the prime candidates for acquisition were Amerock, Ajax, and Jaybee; other full-line cabinet hardware manufacturers, such as National Lock and Washington, were rejected out of hand "because they are both subsidiaries of other companies and assumed not to be for sale." (CX 86 C.)

Finally, on June 10, 1964, the Cabinet Hardware Task Force issued its report. (CX 87.) In this report the Task Force recommended that the company not expand internally by procuring die-cast facilities:

[This alternative could require a \$600,000 investment to attain our \$2,500,000 sales goal. The predicted spread between selling price and standard product cost would, however, be 20-25% of sales, which is not sufficient to cover full overhead and recover our initial investment, let alone achieve the 10% pre-tax profit which we seek.

\* \* \* \* \*

*Finally, it is felt that a strong Stanley entry via product development could be expected to accentuate industry-wide declines in prices and profits. A strong properly oriented Stanley entry into the market via acquisition could, on the other hand, be designed to contribute to a reversal in the downward trend in prices and profits.* [CX 87 G, 87 L; emphasis added.]

In dealing with the possibility of acquisition, the Task Force encountered problems with respect to each of the three leading contenders. Preliminary contacts had apparently been made with Amerock, and the Task Force reported that "we understand they indicated no interest." Similarly, "Ajax appears to be a successful going concern, with little reason to entertain ideas of merger. Jaybee, we have reason to suspect, is tied up with estate problems due to its owner's death \* \* \*" (CX 87 G.) Nevertheless, the Task Force recommended that further efforts be made to effect a merger with Amerock, Ajax or Jaybee, and, failing this, that the company investigate other methods of expanding its cabinet hardware operations, such as acquiring a short line cabinet and specialty hardware manufacturer, procuring injection molded plastic manufacturing equipment for internal expansion in the market, continuing with its current "modest" product development program, or, finally, discontinuing the manufacture of cabinet hardware altogether. (CX 87 H-I; see also CX 42.) On June 18, 1964, there was issued a supplemental management memorandum, documenting the conclusion of the Cabinet Hardware Report that prices in the market had been declining over recent years. (CX 43 A.)

After discussing the Task Force Report, Stanley's Hardware Di-

vision Management Committee made recommendations to Donald W. Davis, the company's executive vice president and acting division manager (Tr. 1929). According to the testimony of Stanley's corporate controller:

We recommended that we not go ahead with the acquisition route, and also recommended that we do nothing as far as die casting facilities because the return was just not there. And that we hold that open for another look at some later and indefinite date. (*Id.*; see also Tr. 1430.)

Later, in December of 1964, the Hardware Division received a report which had been prepared by an independent management consulting firm that had been retained to investigate growth opportunities in the hardware field (CX 72). This report "could not find any really new product areas that the hardware division had not already considered and turned down" (Tr. 1430), and so another meeting was held on January 8, 1965, again chaired by Mr. Davis. At this meeting, according to the testimony of Francis Hummel, who was then general marketing manager of the Hardware Division (Tr. 1313), Stanley's management decided "that we would not go into styled diecast decorative cabinet hardware. We would instead concentrate solely by internal development on our line of architectural cabinet hardware" (Tr. 1431). Hummel also testified that the strategy adopted at this meeting was to "concentrate on our existing product lines to build strength in them, to build new products and to increase our profits in this manner" (Tr. 1496).<sup>6</sup>

After the January 1965, meeting, the Hardware Division was required to prepare a long range plan for all of its product lines, and this plan was submitted in June of 1965 (Tr. 1510). The general "marketing strategy" set forth in this plan stated that "[p]rimary attention will be given to strengthening profitable market opportunities outside of traditional lines" (CX 69-W). The marketing plan developed in conjunction with the long-range plan (see CX 69-A) gave more detail on projections for the cabinet hardware line. In part, it stated:

2. *New Product Development*—The greatly expanded efforts aimed at the contract [architectural] market will be continued and stepped-up. \* \* \*

\* \* \* \* \*

4. *Acquisition*—Explorations will continue in the direction of acquiring a short line cabinet and specialty hardware manufacturer oriented to the contract market.

<sup>6</sup> Mr. Davis corroborated this account, testifying that it was decided at the January 8, 1965, meeting that Stanley would focus its growth efforts in the cabinet hardware market around existing product lines. See Tr. 1822.

5. *Long Range Plan*—The development of manpower and programs designed to increase substantially Stanley's share of the cabinet hardware market.<sup>7</sup>

Shortly thereafter, in the fall of 1965, Stanley's top level management learned that the Amerock Company had reversed its earlier position, and was then interested in undertaking negotiations looking toward a possible merger (Tr. 1802). Negotiations began soon after this contact, and were concluded by the summer of 1966.<sup>8</sup>

## III

## The Competitive Effects of the Amerock Acquisition

Because of Stanley's long but low-level participation in the cabinet hardware market, the instant controversy does not fit neatly within the established categories of "horizontal" or "product extension" mergers,<sup>9</sup> and the concomitant analytical constructs of actual and potential competition.

This case presents instead a mingling of the effects which are traditionally cognizable under the discrete categories of actual and potential competition. Stanley's contemplated expansion in cabinet hardware would have dramatically changed its competitive status from the level of possessing a minor market share to the rank of being a major competitor. Yet, at the same time, there is no doubt that the resources and expertise of Stanley and Amerock reflected some degree of overlap. Within the broad cabinet hardware market, Amerock was already a strong full-line producer of cabinet hardware, whereas Stanley was a leading manufacturer of architectural cabinet hardware and a minor producer of residential products. At the same time, however, a repeated theme of Stanley's management reports on the cabinet hardware market was the necessity of developing a full line of cabinet hardware products in order to reach

<sup>7</sup> CX 70F-3. Of similar effect is CX 68, which was described (Tr. 1515) as working papers from which the long-range plan was formulated.

"Cabinet hardware can be considered to serve two different end markets: residential and non-residential. Of the two, the residential market requires more frequent styling changes. It also relies heavily on die casting.

Our initial plan is to improve and expand our offering for non-residential construction. During the latter part of the period [1965-70], we will give increasing attention to the residential market. [CX 68P.]

\* \* \* \* \*  
 . . . Substantial growth will require a broad attack on the Residential, Consumer and OEM market." (CX 68R.)

<sup>8</sup> Donald W. Davis, Stanley's Executive Vice President, described his actions after learning of Amerock's change of heart in the following terms:

[A]fter I . . . returned to New Britain, I naturally discussed this with the then president of the company, Mr. John Cairns, and we decided that we should in the best interests of Stanley proceed with these negotiations.

Q. When were these negotiations with Amerock concluded?

A. They were concluded in May of 1966.

<sup>9</sup> Cf. *FTC v. Procter & Gamble Co.*, 386 U.S. 568, 577-78 (1967).

the desired level of competitive effectiveness;<sup>10</sup> and it is clear that Santley's determination to move significantly into the complete spectrum of products constituting the cabinet hardware market would have put it into the position of challenging the leading industry members on their own ground as a full-line producer. In this sense, therefore, Stanley can be regarded both as an actual and potential competitor in the stipulated market. The precise label attached to its status is of little importance. What is significant for the purposes of this case is that irrespective of whether Stanley should be considered a "new" entrant in the cabinet hardware market, there is little doubt that its intention was to become a major competitive factor in the industry on a scale not previously attained. Viewing the case in this light, and within the general confines of the established analytical framework relating to actual and potential competition, we are convinced from the present record that the examiner was correct in concluding that the merger of Stanley and Amerock had significant anticompetitive consequences proscribed by Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

Respondent denies that the cabinet hardware industry is concentrated or that major barriers to entry exist and argues that the one percent increase in market shares of the four leading firms resulting from the merger could have only minimal impact on the ability of the more than fifty other cabinet hardware companies to compete or on the ability of companies outside the market to enter, and that therefore the instant merger escapes the statutory prohibition. (Res. App. Br. at 14-16; 20-23; 23-25; Res. Ans. Br. at 13-15; 10-12.)<sup>11</sup> It further maintains that it neither could nor would have expanded internally in this market and that its eventual acquisition of Amerock, therefore, could not be regarded as the elimination of any potential competition in this industry. (Res. App. Br. 34-42; Res. Ans. Br. at 19-22.)

<sup>10</sup> This factor was succinctly summarized in the Final Report of Stanley's Cabinet Hardware Task Force:

It is generally agreed that in order for Stanley to become a profitable and growth factor in this market we must do two things:—

1. We must have a complete, balanced and competitive line [of products] \* \* \* CX 87K; see also CX 87 Z11; CX 68Q; CX 40A; CX 41B; CX 85 G, O-P, Z-9.

<sup>11</sup> Respondent argues that the market shares involved in the present case are smaller than those which formed the basis for finding violations of Section 7 in several important cases, and that the precedents are otherwise factually distinguishable. See, e.g., *FTC v. Procter & Gamble Co.*, 386 U.S. 568 (1967); *United States v. Aluminum Co. of America*, 377 U.S. 271, 278 (1964); *United States v. Philadelphia National Bank*, 374 U.S. 321 (1963); *General Foods v. FTC*, 386 F. 2d 936 (3d Cir. 1967); Merger Guidelines of the Department of Justice, 1 *CCH Trade Reg. Rep.* ¶4430 at 6683-6684. However, the cases make it clear that there is no single, simple test for determining whether a market is concentrated for purposes of Section 7, and there is strong economic authority supporting the conclusion that the cabinet hardware market is concentrated. See note 12, *infra*.

Our analysis of the record compels us to disagree.

Economic analysis supports the examiner's conclusion that the cabinet hardware market is concentrated.<sup>12</sup> We also agree substantially with the examiner's findings as to the entry barriers presented in the industry. In discussing barriers to entry, the examiner stated:

The Stanley-Amerock marriage takes on more competitive significance than [is] reflected solely by the combined market shares of each shown . . . [in] Finding No. 10 herein. The tabulation in its face does not show \* \* \* the principal types of cabinet hardware products sold by the various leading suppliers and the actual and potential sales and entry barriers which may be present or raised in the sales area for such products \* \* \*

For example, Stanley was able to establish itself as a significant domestic manufacturer and substantial supplier in the sales area occupied by purchasers of architectural cabinet hardware. With strong financial resources, a well-known, good reputation and industry-wide acceptance of its many other hardware products plus an established nationwide sales force, Stanley chose acquisition. . . .

\* \* \* \* \*

Finally, it will be recognized that the possession or obtaining of die-cast manufacturing facilities and acceptable design features, without more, does not necessarily promote or provide easy entry into the decorative residential United States cabinet hardware market, and insure that the necessary distribution channels to would-be purchasers will be secured, and that significant substantial and profitable sales will result. (31)

The examiner found that "[i]n order to compete successfully for sales of decorative residential cabinet hardware, a company must offer die-cast knobs and pulls \* \* \* The reason is that it is not possible to produce stamped knobs and pulls of the highly stylized nature which today's market demands at prices which are competitive with the prices of die-cast knobs and pulls." (17)

He also observed that, according to Stanley's own estimates, entering the die-cast line of cabinet hardware products by internal expansion would have required an investment of \$600,000 to attain the company's long-range sales goal. (21) This \$600,000 estimate is broken down as follows: \$400,000 incremental costs for acquiring die-casting machinery and other capital equipment, which would be added to Stanley's substantial existing facilities; \$100,000 for in-

<sup>12</sup> See, e.g., K. Kaysen & D. Turner, *Antitrust Policy: An Economic and Legal Analysis* 72 (1959) ("tight oligopoly" defined as a market in which eight firms share at least 50% of the market and the largest firm has at least 20%); J. Bain, *Industrial Organization* 14-41 (2d ed. 1968) ("Type III oligopoly" is one which has "high-moderate concentration," where the top four firms control roughly 50-65% of the market and the total number of firms is large). Bain states that this level of concentration "is still certainly enough to produce a substantial degree of interdependence among the few largest firms . . ." Similarly, several commentators have urged that any horizontal acquisition involving a firm with more than 20% of the relevant market should be deemed illegal. See K. Kaysen & D. Turner, *supra*, at 133; Stigler, *Mergers and Preventive Antitrust*, 104 U. Pa. L. Rev. 176, 182 (1955).

vestment in design and engineering; and \$100,000 for advertising and sales promotion.<sup>13</sup>

Respondent argues that product differentiation is not a significant barrier to entry in the cabinet hardware market, because advertising at the consumer level is unimportant and consumers exhibit little brand preference. (Res. App. Br. at 20-21.) While advertising at the consumer level may be small, however, there is a considerable amount of promotional effort devoted to trade publications. For example, the examiner found that when Stanley introduced a new architectural cabinet hardware line to the trade in 1966, it spent between fifty and sixty thousand dollars for trade advertisements and promotions (28); also, the record indicates that respondent spent about \$70,000 in hardware promotions during 1965 (Tr. 1373-74; Res. Rep. Br. at 3). Stanley also estimated that if it were to enter the residential cabinet hardware field by internal expansion, an additional \$100,000 of advertising and promotional expenditures would be required. (CX 87 Z-27.) Moreover, as noted above, Stanley's management recommended that a possible merger with Ajax or Jaybee be given secondary priority because "[b]rand acceptance for Amerock would make this a long, uphill road." (CX 40 C.)

In addition, there are other forms of product differentiation which are important in the cabinet hardware market. For example, firms can differentiate their products by offering a fuller line of product styles than their competitors, by changing styles periodically, and by providing services with the product such as continuity of delivery. Stanley considered these capabilities a requirement for successful entry (CX 40b), and also recognized that in order to sell to the large companies that produce finished cabinets for sale to builders, a "heavy investment" in these forms of product differentiation is required. (CX 85-o.) As the examiner put it, "residential cabinet hardware has become an extremely fashion-oriented business, with rapidly changing styles and designs and a trend toward increasingly more ornate styles and designs. In order to be successful, a manufacturer of decorative residential cabinet hardware must therefore have or hire a competent staff of designers to keep abreast of and lead the changing trends in style." (16)

The quotation from Finding 31, set forth previously, reflects the

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<sup>13</sup> It should also be noted that Stanley considered it necessary to procure high-level management talent familiar with die-casting in order to expand internally in the cabinet hardware market in a significant fashion, and that the only qualified candidate they could find for the position of marketing manager for cabinet hardware, Escalette, demanded a salary that was \$1,500 per year more than Hummel, the marketing manager for the entire Hardware Division, was then making. (Tr. 1479; *see also* Tr. 1471.)

examiner's conclusion that another barrier to entry is the difficulty of securing adequate channels of distribution. (*See also* Finding 14.) While there is evidence supporting this finding, however, the record indicates that this barrier is not particularly troublesome to surmount. (*See, e.g.*, Tr. 2123-2136, 2323-2324.)

Moreover, the record demonstrates—we believe conclusively—that Stanley itself was fully aware that its acquisition of Amerock would have important competitive repercussions in the market. These repercussions become significant because of the concentration already existing in this industry and Amerock's position as one of the leading four producers. The evidence is clear that the very reasons leading Stanley to acquire Amerock are the same reasons which support the charge in this case that the merger will have significant anticompetitive effects. Stanley acquired Amerock precisely because it *was* the dominant company in the market (CX 85 G and Z-23), and because it believed that the acquisition would further entrench Amerock's already dominant position,<sup>14</sup> while any other course designed to achieve Stanley's goals in the cabinet hardware market—internal expansion by Stanley or acquisition of a smaller company in the industry—would only stir up competition.

The record reveals that Stanley's management was fully aware of these market conditions. An official of the Hardware Division studied price trends in the cabinet hardware market and returned the following report to his superiors in June of 1964:

I have reviewed the price lists of Amerock, Ajax, National Lock and McKinney. Though Ajax's prices have not changed in the past four years, it should be noted that their prices were considerably low to begin with relative to the other three which have had reductions in price for their major cabinet items during this period.

Of the 114 cabinet items that Amerock designates as \* \* \* "most popular" in its 1957 price list \* \* \* 40 of them were reduced in price from the previous price list, while only 4 items were increased \* \* \* [I]n their 1960 price list \* \* \*, of their 109 most popular items listed, 63 were reduced in price, while only 15 were increased.

\* \* \* \* \*

*I think it is safe to conclude from the above that the impact of low-priced competition over the past seven years is being reflected in the downward price adjustment of Amerock and other well established cabinet hardware manufacturers. The general price level has unquestionably moved downward. [CX 43 A-B (emphasis added).]*

<sup>14</sup> *See e.g.*, statements in Stanley management reports quoted earlier to the effect that "there is good reason to expect that the Amerock line, if joined to ours, would more than maintain its present share of the cabinet hardware market" (CX 85 Z-24) and that the acquisition of Amerock could "contribute to the reversal of the downward trend in prices and profits" which the cabinet hardware industry was experiencing. (CX 87 1.)

In graphic contrast to this description of industry conditions is the following marketing strategy developed in mid-1965 as part of Stanley's long-range plan for the Hardware Division :

As the largest firm in the industry, the Hardware Division must continue to show leadership in the important area of pricing policy. *As conditions warrant, we must continue to take the initiative and corresponding risks of being the first within the industry to raise prices and attempt to keep them at such higher levels.* Also, since our pricing policy establishes industry levels (with competitors generally selling under Stanley Hardware prices) we must offer sufficient customer benefits to justify a higher price structure. On many products, in order to be competitive, negotiations must be conducted as a way of business life. [CX 69 W-69 X (emphasis added).]

Stanley's tendency to act as this kind of a "price leader" for every hardware product line in which its market strength permitted it to do so<sup>15</sup> was certainly enhanced by its acquisition of the dominant producer of residential cabinet hardware.

We also cannot ignore the fact that even though an industry is concentrated, the possibility always exists that market forces may so operate as to maintain some degree of competition and to contribute to some degree of deconcentration. Thus, it is not the 1% increase in market share brought about by the Stanley-Amerock merger by itself which posits the anticompetitive aspect of this merger. It is, in our view, the fact, as the hearing examiner pointed out, that the acquisition solidified Amerock's already entrenched industry position and rendered any deconcentration in this industry even less likely. In our judgment, any artificial manipulation of market forces or any action which interferes with these forces—as Stanley's merger designedly did—can be of even more crucial anticompetitive significance in a market already characterized by concentration than in a less concentrated market. *United States v. Philadelphia National Bank*, 374 U.S. 321, 365 n. 42 (1963).

Given the condition in this industry of some degree of price instability, the degree of concentration which existed, and Stanley's own estimate of the impact of this merger, we agree with the examiner's findings and his conclusion that Stanley's acquisition did or could contribute to the degree of lessening of competition prohibited by the statute.

There are other aspects of this case which also support the ex-

<sup>15</sup> It should also be noted that before the merger Stanley had significant market strength in the architectural segment of the cabinet hardware market (*see* text accompanying note 24, *infra*); at the same time, according to respondent's own studies of the market, Stanley's "prices are set at about the highest levels possible in relation to the industry" (CX 85 Z-8), and "[i]t is well known that Stanley's prices for cabinet hinges are the highest in the industry . . ." (CX 43 B.) *See also* CX 68 n.



aminer's conclusions on the likely anticompetitive impact of this merger which relate to the competition which Stanley itself might have had added to this industry had it not chosen the merger route as its method to achieve the expansion which its management had determined on.

Respondent argues that this aspect of the merger is of significance only if it could have expanded internally, and since in respondent's view it did not have this capability and its management had made a firm decision not to use this method of expansion, it did not and could not ever have become a competitive factor in its own right. Therefore, respondent concludes that its acquisition of Amerock is a neutral competitive factor in this sense. Specifically, respondent asserts that whatever thought it had given to internal expansion in the cabinet hardware field became irrelevant in January of 1965 when the Stanley management made a decision not to expand their cabinet hardware line into residential cabinet hardware but rather elected to concentrate on their existing architectural lines. (Res. App. Br. at 36-39, Res. Ans. Br. at 20.) Respondent also points to Stanley's poor record and allegedly bad reputation in cabinet hardware resulting from the company's failure to expand its market share in the mid 1940's and 1950's,<sup>16</sup> as well as to certain internal weaknesses in the Stanley organization. (Res. App. Br. at 39-42, Res. Ans. Br. at 20-21.)

At the outset, it should be noted that Stanley's 1965 determination to base its primary growth efforts on existing product lines and on new products closely related to its traditional lines was, in fact, a decision to try to expand internally in the cabinet hardware market. The circumstances preceding and following this decision demonstrate that Stanley elected to concentrate its growth efforts around existing product lines because the more attractive alternatives of acquiring a leading manufacturer of die cast cabinet hardware or procuring die casting facilities and expertise did not appear to be available in the short run: Stanley's preferred merger candidates had expressed no interest in serious negotiations, and efforts to recruit high-level management personnel with experience in die casting had proved unavailing (Tr. 1464-65, 1471-72, 1480, 1820). There is no persuasive indication in the record that respondent irrevocably abandoned either of these alternatives in January of 1965, and, indeed, Stanley's top-level management responded with alacrity a few months later

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<sup>16</sup> It should be noted that Stanley's marketing manager for the Hardware Division testified emphatically that Stanley's "poor track record" in cabinet hardware applied only to residential products, and did not extend to Stanley's architectural product lines (Tr. 1414-1415).

when it became apparent that one of the leading merger candidates might be available.

In addition, the record of Stanley's own statements and activities refutes respondent's contentions that internal expansion into the production of residential cabinet hardware was not a practicable alternative. The record demonstrates convincingly that Stanley had the strength to expand in this industry. It had adequate financial resources, a strong marketing department, a strong sales force, effective merchandising, adequate research and development capability, and the available manufacturing capacity and skill. (FX 85g.) Moreover, the entire series of management reports detailed in the preceding section compels the conclusion that Stanley was firmly committed to increasing its sales position in the cabinet hardware market on a large scale, and that the likely segment of the market in which to achieve this expanded position was in residential cabinet hardware.

Stanley's own management consistently discounted the significance of the weaknesses in the Stanley organization enumerated by respondent and maintained that they could in fact be overcome internally, even though this would involve time and some risk. (CX 86 d, 87y and Z-22.) Moreover, it is also significant that Stanley's careful, and repeated consideration of all of the factors—pro and con—bearing on whether it should expand its cabinet hardware position by various methods including internal expansion took place against the background of its own prior unsuccessful attempt to expand in this market. Clearly, if this experience had been regarded by Stanley as irrevocably ruling out internal expansion in the future, the company's management would not have devoted such detailed and continuing study to the possibility of future internal expansion; instead, it would have confined its analysis to the possibility of expansion through acquisition alone. This it did not do. Indeed, the evidence is suggestive that Stanley elected not to expand internally not because of any inability to do so, but because a large-scale Stanley entry through internal expansion would have had the "undesirable" result of shaking up the market by adding a spur to price competition.<sup>17</sup>

We also have another difficulty with this aspect of respondent's argument as to weight to be given to the Stanley decision to move

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<sup>17</sup> As Stanley's task force put it, internal expansion "could be expected to accentuate industrywide decline in prices and profits." (CX 87 1; emphasis added.) By contrast, a "strong properly oriented" Stanley entry through acquisition could "be designed to contribute to a reversal in the downward trend in prices and profits." (CX 87 1.)

by acquisition rather than by internal expansion. To accept such an internal management decision as conclusive proof that the company would not expand internally would confer upon companies a virtually complete defense to any merger challenge, a defense which would be based solely on management's subjective thinking as to what was possible. Evaluating such a subjective defense becomes especially troublesome when management knows that the record of such a decision in their files would have the effect of immunizing their subsequent entry by acquisition. Given the objective factors indicating such a strong ability on the part of Stanley to expand internally, it would be manifestly unrealistic to treat these factors as irrelevant because of management's decision to adopt some other mode of market entry or expansion. Weighing both the objective factors of Stanley's ability and interest in internal expansion as well as its decision in 1965 not to pursue the internal route to an expanded market position, we do not believe that it is possible to conclude that Stanley would never have expanded internally in the cabinet hardware market if other entry routes were blocked to it. Accordingly, we conclude that the fact of its entry by acquisition eliminated the substantial possibility that Stanley itself would become a significant competitor in the cabinet hardware market, with all of the increase in competitive vitality which Stanley's presence would have implied.<sup>18</sup>

Even if respondent's argument that Stanley would not have internally expanded its position in the cabinet hardware market were supported by the evidence, it does not deny the fact that Stanley could have entered the market by a toehold acquisition—the acquir-

<sup>18</sup> The respondent further contends that even if it is deemed a potential entrant, its removal as a potential entrant did not significantly affect competition because there were a number of potential entrants into the cabinet hardware market from the furniture trim hardware market, and consequently the elimination of Stanley from this group will not substantially lessen competition. (Res. App. Br. at 18, 43.) In support of this theory, respondent asserts that furniture trim companies have the die-casting facilities, the experience, and the know-how to produce for a style-oriented business. They also sell through the same channels of distribution. (Res. App. Br. at 18.)

While the evidence establishes that manufacturers of decorative furniture trim can generally be considered potential entrants (Tr. 1262-43, 1098-1102, 1106-08, 2032, 1721, 1723, 1726, 2297, 2116-17), it is also clear that there are only a few furniture hardware manufacturers who can be considered potential entrants into the residential line of cabinet hardware. A report by Stanley's market research department indicated that during the time period presently relevant, there were only *three* furniture hardware manufacturers who possessed sufficient die-cast equipment and know-how to enter the cabinet hardware market (CX 82 G-1)—a requirement the respondent considered important in classifying the furniture trim manufacturers as potential entrants. (Res. App. Br. at 18). Thus, as of the time of the merger, Stanley must be considered one of a small group of companies which were highly likely to enter (and several of which subsequently *did* enter) [(31) and Res. App. Br.] the relevant market.

ing of a small non-dominant company in the cabinet hardware market. Although the hearing examiner did not address himself specifically to the possibility of a toehold acquisition,<sup>19</sup> it is a factor which clearly cannot be ignored in the instant case.

The evidence on the likelihood of Stanley expanding its position in the cabinet hardware market by toehold acquisition absent the Amerock merger is strong and persuasive. [See, e.g., (21, n. 24); CX 86; CX 87; CX 41; Tr. 1428, 1442, 1454.] Stanley's prime acquisition candidates after Amerock were Ajax and Jaybee, and the evidence clearly demonstrates that Stanley would have provided these companies with the working capital, distribution channels, and merchandising outlets that they needed. (E.g., CX 86N-M, 87 Z-8.) Stanley recognized the competitive significance of its acquisition of either of these two companies, however, and rejected this expansion route for precisely these reasons—that bolstering either of these companies' competitive potential through its acquisition would have stirred up competition in the industry. Yet this is the precise reason—the strengthening of the capabilities of smaller companies in order to erode existing dominance—for channeling a potential entrant, such as Stanley, into toehold acquisitions.

As we recently stated in *Bendix Corp.*, FTC Docket No. 8739 (June 18, 1970) (slip op. at 16) [77 F.T.C. 731, 807]:

We think it clear that Congress was concerned in Section 7 with the preservation of new and potential competition in any form: that new entry, if beneficial and procompetitive, is to be encouraged regardless of its form, and that a merger with a leading firm, especially in a concentrated industry, which eliminates the likelihood of such desirable entry through a toehold acquisition is embraced within the prohibitions of the statute.

The particular acquisition route chosen by respondent is competitively important because Stanley itself recognized barriers to entry which argue heavily in favor of either (1) maintaining at the edge of this concentrated market the disciplining effect of a likely potential entrant either by internal expansion or by toehold acquisition, or (2) encouraging actual entry through internal expansion or small company acquisition by a large firm like Stanley.

For all of these reasons and those enunciated by the examiner in his initial decision, we conclude that respondent's acquisition of Amerock may have the effect of substantially lessening competition in the cabinet hardware market.

<sup>19</sup> The hearing examiner did not develop this point. He merely pointed out that Stanley had expressed an intent to acquire Ajax or Jaybee if the merger with Amerock fell through. (21, n. 24)

## Opinion

## IV

## Procedural Objections

Respondent argues that the hearing examiner erred by refusing to strike the testimony of complaint counsel's only two witnesses, Hager and Escalette, because respondent was required to conduct its cross-examination of these witnesses before it had completed its discovery.

The record indicates that the problem of discontinuity in the hearings arose primarily because of "[s]tipulation negotiations between trial counsel both as to the specific issues to be resolved and the allowable introduction into evidence of the numerous proposed exhibits, plus the many third-party discovery subpoenas and the accompanying *in camera* problems raised on the materials being returned" (I.D. at 1029 n. 1); in addition, the examiner encountered difficulty in finding hearing dates which were consistent both with expeditious disposition of the case and with other commitments of busy trial counsel (*see, e.g.*, Tr. 271-282). As a result, respondent had not received all of the subpoena returns by the time that Hager, the first witness, was called to testify.

At the conclusion of complaint counsel's direct examination of Hager, respondent requested permission to have the witness recalled at a later time, after the completion of discovery (Tr. 464-465). Respondent's counsel then described the documents which he believed were necessary for cross-examination; the examiner expressed serious doubt that the described documents could furnish a basis for cross-examination which would be encompassed within the scope of the direct examination, and concluded: "If you make a showing to me [that] it is necessary to call this witness [for cross-examination at a later time] on the basis of the returns [from the subpoenas], the witness will be recalled." (Tr. 467.) Respondent declined the opportunity to conduct cross-examination following Hager's direct testimony (Tr. 470).

A similar exchange took place with respect to the testimony of Escalette, the only other witness called by complaint counsel. The examiner again ruled that respondent would be entitled to recall the witness for cross-examination later if relevant information emerged from discovery, remarking that "[m]ost of the direct examination was confined to documents now in evidence and general industry practice." (Tr. 569.) Respondent then proceeded to conduct extensive cross-examination of Escalette (Tr. 569-709, 716-723).

On March 12, 1969, respondent filed alternative motions with the hearing examiner to strike all testimony by the witnesses Escalette

and Hager, to recall these witnesses for further cross-examination, and to strike all testimony relating to a particular management survey prepared for the Ajax Company. On March 20, 1969, the examiner entered an order denying the first two motions, granting the third, and setting forth the reasons for this action. Among other factors affecting his denial of the first two motions, the hearing examiner pointed out:

Practically all of the documentary exhibits admitted into evidence during the case-in-chief were those identified in the first stipulation of September 4, 1968, and the need of the preparation of any intended defense thereto by counsel for respondent became apparent at such time \* \* \* [T]he testimony of Messrs. Hager and Escalette [was] identified on the record by complaint counsel as far back as the prehearing conference of July 29, 1968 \* \* \*

\* \* \* Counsel for respondent at the time of the cross-examination of the witness Escalette had the sales figures of respondent Stanley and the acquired Amerock already at hand. The absence of the sales figures now shown \* \* \* [for] Ajax and National Lock \* \* \* did not preclude the respondent from appropriate full cross-examination in the light of the disclaimers of knowledge by the witness of the sales figures of competitors and the fact that he was testifying only as to his opinion based on marketing sales experience alone.

We have determined that it is unnecessary to reach the question of whether this ruling was within the permissible scope of the examiner's discretion. Compare *Loesch v. FTC*, 257 F. 2d 882, 885 (4th Cir.), cert. denied, 385 U.S. 883 (1958) with *Pacific Molasses Co. v. FTC*, 356 F. 2d 386 (5th Cir. 1966); see also *Koppers Company, Inc.*, Docket No. 8755 (Order and Opinion Remanding Proceedings to Hearing Examiner, Dec. 18, 1970) [77 F.T.C. 1675]. As will be developed more fully below, we conclude that the testimony of the two witnesses in question constitutes only a minor portion of complaint counsel's case, which rested almost exclusively on documentary exhibits, and that if this testimony is treated as stricken and all direct and indirect reliance on it avoided, there still remains ample probative evidence in the record as a whole to support the findings and conclusions set forth above.

The record indicates that the parties themselves placed scant reliance on the testimony of Hager and Escalette; of the 346 proposed findings presented to the hearing examiner, only about thirty contain any reference to the relevant transcript pages,<sup>20</sup> and in the vast

<sup>20</sup> See CPF 52, 59, 65, 70-76, 82-87; RPF 39, 40, 44, 46, 53, 55, 58, 59, 61, 72, 129, 132, 161, 180, 201, 206, 242.

In addition, five exhibits were introduced into evidence during the testimony of Hager and Escalette (CX 121, 122; RX 1, 2, 3). None of these exhibits was directly relied upon by the examiner, or by us. These exhibits were cited in only nine proposed findings (RPF 34, 39, 44, 46, 55, 58, 59, 122, 129), and of these proposed findings, only the first two were cited by the examiner (see I.D. at 1037, n. 16, 1040, n. 20). Both of those proposed findings are fully supported by the independent evidence cited in them.

majority of these proposed findings there is substantial independent evidence cited in support of the proposition urged. Moreover, only five of the 32 findings contained in the Initial Decision contain any reference to the affected testimony, either directly or through citation of proposed findings which rely upon these witnesses' testimony. Pursuant to Rule 3.54 of the Rules of Practice,<sup>21</sup> we shall examine each of these findings in turn.

Finding 20 quotes from Stanley's 1963 preliminary task force report to the effect that the principal alternatives for action in the cabinet hardware market then being considered by the Stanley management were acquisition of an existing cabinet hardware manufacturer or procurement of die casting facilities. In an explanatory footnote to this quotation, the examiner points out that "there are substantial sales areas in the stipulated \* \* \* market for cabinet hardware not requiring die-cast facilities." As an example of this proposition, the examiner cites two companies which had previously been found to rank among the top ten firms in cabinet hardware sales and which "produce and sell drawer slides which are cabinet hardware products used extensively in household cabinets." In support of this latter finding, the examiner cites four separate portions of the record, the first two of which are taken from the testimony of Escalette; however, it is clear that the remaining two citations offer sufficient support for the proposition quoted, which is in any event not crucial of the examiner's analysis of the case, or ours.

Finding 23 of the Initial Decision, which is to the effect that in the latter part of 1964 Stanley decided to concentrate its growth efforts in the cabinet hardware market around its existing architectural cabinet hardware lines, is based upon "RPF 180 in part." (I. D. p. 1042 n. 25.) Respondent's proposed finding No. 180 is subdivided into three parts, and it appears likely that the examiner in Finding 23 was relying upon subsections A and B, neither of which cites the testimony in question.<sup>22</sup> In any event, as Part II of this

<sup>21</sup>(a) Upon appeal from or review of an Initial Decision, the Commission will consider such parts of the record as are cited, or as may be necessary to resolve the issues presented and, in addition, will, to the extent necessary or desirable, exercise all the powers which it could have exercised if it had made the Initial Decision.

(b) In rendering its decision, the Commission will adopt, modify, or set aside the findings, conclusions, and rule or order contained in the Initial Decision \* \* \*

<sup>22</sup>The only citation of the affected testimony occurs in subsection C of RPF 180, which reads as follows:

C. The marketing manager of the division, Mr. Hummel, began looking for and interviewing candidates for the job of cabinet hardware marketing manager. However, he found only one man with the qualifications he was looking for—Mr. Ross Escalette, the marketing manager of Ajax and a former Stanley employee with whom he discussed the job at the Los Angeles contract hardware show in October of 1964.

Since Ajax did a substantial amount of business with contract hardware distributors

opinion indicates, the essential facts regarding Stanley's cabinet hardware decisions in 1964 and early 1965 are amply documented in other portions of the record; moreover, to the extent that there is any dispute regarding the decisions made by Stanley's management during this period, it concerns the inferences to be drawn from the facts, and not the facts themselves. Finally, it is clear that Escalette's testimony has only the most indirect bearing upon either the facts or inferences concerning Stanley's decisions during the relevant time period, and thus it is clear that Finding 23 of the Initial Decision retains its validity wholly apart from the affected testimony.

Finding 25 relies more extensively on the testimony of Hager and Escalette. It begins by noting that Stanley's press release describing the merger asserted that Stanley and Amerock had compatible products and means of distribution, and that the merger would allow the two companies to "complement and reinforce each other." The finding then quotes the testimony of Amerock's president to the effect that since the merger Stanley and Amerock have exchanged customer lists. Next, the finding quotes portions of Hager's testimony where it is asserted that Amerock was the industry leader in the production of residential cabinet hardware, and that Stanley was "the leading distributor of architectural cabinet hardware at that time." Clearly, Amerock's dominant position in residential cabinet hardware is beyond dispute; among other things, it was a repeated theme of the Stanley management reports detailed above in Part II. However, Stanley's position in architectural cabinet hardware is not so clearly demonstrated, and it seems that, on the basis of the record as a whole, the assertion that Stanley was "the leader" would not be supported by substantial evidence. For example, Stanley's strengths and weaknesses are canvassed in a 1964 management report, where it is stated:

Stanley's distribution of cabinet hardware is extremely limited. The report of the task force states that 43% of sales of \* \* \* (cabinet hinges, pulls, knobs, catches, latches and ornamental hardware) are made to contract [architectural<sup>23</sup>] hardware distributors. Sales of this line to wholesalers, lumber yards,

and also offered an extensive line of die-cast cabinet hardware, Escalette had the necessary experience not only in architectural cabinet hardware but also in residential die-cast hardware, in case Stanley should reverse its initial decision not to move into this field. However, Escalette wanted a larger salary than Stanley was prepared to offer and he accordingly was not offered the job. (Hummel, 1470-1480, 1743-1744; *Escalette*, 492, 521-523, 531, 573-576, 634; CX 90 A-E; RX 3.) [Emphasis added.]

<sup>23</sup> See Tr. 1330 (testimony of Francis Hummel):

Q. Are the terms "contract hardware" and "architectural hardware" used interchangeably in the trade?

A. Yes, they are. And we use them interchangeably in the Stanley Works.

Q. Do they mean the same thing?

A. They mean the same thing. And "contract hardware" is the old-fashioned term and "architectural hardware" is the more modern terminology.

See also RPF 90.



building materials distributors and hardware retailers amount to 41% of the total \* \* \*.

J. F. Moseley's 1963 Cabinet Hardware Report indicates that 15% of all cabinet hardware is sold through contract hardware distributors \* \* \*.

It is obvious that Stanley is strongest in cabinet hardware in the smallest portion of the market.<sup>24</sup>

This report and other evidence<sup>25</sup> indicate that while it is established that Stanley was a strong force in architectural products, the record falls short of demonstrating dominance in this market segment. In any event, as the foregoing sections of this opinion make clear, a finding that Stanley "dominated" the industry in architectural cabinet hardware is in no way essential to the conclusion that this merger had a proscribed anticompetitive effect since, *inter alia*, residential products comprised from 90-95% of the stipulated cabinet hardware market. (*See, e.g.*, Res. App. Br. 29.)

The next portion of Finding 25 consists of three more brief quotations from the testimony of the witness Hager, all of which support the proposition that it is beneficial for a producer of cabinet hardware to be a producer of general hardware as well because of advantages rising from having an existing system of distribution. As indicated earlier in this opinion, we have concluded that the examiner overestimated the difficulty of securing adequate channels of distribution, and that "this barrier is not particularly troublesome [for a new entrant] to surmount." (*Cf.* Res. Rep. Br. 11-12.)

The final reference to the affected parts of the record in this finding occurs in footnote 28, where a portion of Hager's testimony is cited, together with other evidence, for the proposition that the Hager Hinge Company manufactures hinges comparable to those made by Stanley "for competitive resale on a nationwide basis." Two Hager catalogs which were introduced into evidence<sup>26</sup> amply demonstrate that this company, like Stanley, manufactures a wide variety

<sup>24</sup> CX 86 D-E. The same report summarized Stanley's marketing position in cabinet hardware by saying that it was a "[r]elatively strong factor in distribution through contract accounts, and to a lesser extent through retailers \* \* \*" (*Id.*)

<sup>25</sup> *See, e.g.*, CX 85 Z-6 (Cabinet Hardware Rept., Feb. 8, 1963), where there are listed 13 companies "in the contract market." The report further states that "Stanley is listed with this group because of the predominance of sales to contract accounts. Of the others listed, only Hager, McKinney and Soss make hinges." Similarly, in CX 68 P (working papers for Stanley Hardware Division's 1965-70 Long Range Plan) it is stated that Stanley is a "[r]elatively strong factor in distribution [of cabinet hardware] through Contract Accounts and Residential Hardware Distributors \* \* \*" *See also* Tr. 1369-70, where respondent's witness Hummel testified that Stanley was in substantial competition with several other firms in architectural cabinet hardware, and CX 72 Z-52, where an independent market study commissioned by respondent found that Stanley was a distant second to Amerock in percentage of cabinet hardware brands carried by the wholesalers and retailers interviewed.

<sup>26</sup> RX 51, CX 119; *Cf.* CX 61 (Stanley catalog).

of hinges, ranging from ornamental cabinet hinges to heavy-duty ball bearing hinges for large doors in public buildings. (*Cf.* Tr. 1324.) Similarly, the respondent's witness Hummel testified that Hager Hinge was Stanley's "major competitor" in architectural cabinet hardware. (Tr. 1369-1370; *see also* CX 85 Z-34.) Thus, it can fairly be concluded that this portion of the examiner's finding also retains its essential validity, apart from the challenged testimony.

Finding 26, which relies extensively upon Escallette's testimony, generally concerns competitive relationships among firms in the cabinet hardware market. The finding begins with a brief excerpt from the testimony of Amerock's general sales manager, where it is stated that the "key competitors" in the industry are the first ten or twenty large firms. The remainder of the finding consists of quotations from Escallette's testimony, in which it is stated that (1) the list of some 55 cabinet hardware manufacturers in the trade publication *Kitchen Business Magazine* contains a number of firms which make only one product in the market; (2) the *Kitchen Business* list also contained the names of importers as well as domestic manufacturers; and (3) the primary competitive forces in the industry are Amerock, National Lock, Jaybee, Hyer, David Allison, Tassell, Liberty Hardware, and Stanley.

The *Kitchen Business* listing referred to in this testimony is incorporated in the record as CX 18; on its face, it clearly breaks down the companies by the product lines they manufacture, and designates which ones were importers. With respect to the categorization of "major competitors," the record indicates, as might be expected, that although the names of several companies are regularly given as leading competitors in the field, the number and ranking of major competitors depends upon the judgment and opinion of the individual who is making the listing.<sup>27</sup> In any event, Finding 10 of the Initial Decision sets forth the market shares of the leading firms in the cabinet hardware market, and this is of much more importance for present analytical purposes than the subjective ranking which the witnesses accorded their competitors.

<sup>27</sup> For example, Amerock replied to a Commission letter by listing 16 "major competitors for hinges and cabinet hardware combined:" Ajax, Engineered Products, Hager, Hyer, H. B. Ives, Jaybee, Knappe & Vogt, Lawrence Bros., McKinney, National Lock, National Mfg. Co., Shelby Metal Products, Tassell, Washington, Westlock, and Yoder. (CX 13E.) Later, Amerock's general sales manager, Bosworth, testified that Amerock's principal pre-merger competitors in cabinet hardware were National Lock, Jaybee, Hyer, Knappe & Vogt, Tassell, Cardinal, David Allison, Grant Pulley, Robin Hardware, Penn-Akron, Hardware Designers, Harris and Liberty (Tr. 1072-1073). For Stanley's evaluations of its major competitors in the relevant market, *see* CX 49 E-F, CX 49 I; CX 68 N; CX 85 F-4 to F-8; CX 85 F-34.

The only other finding to rely on the questioned testimony in any way is Number 29, which describes Stanley's efforts to recruit Escalette in order to obtain the benefit of his experience in dealing with die cast cabinet hardware.<sup>28</sup> The essential facts of this negotiation are by no means in dispute, and are amply described by independent testimony<sup>29</sup> and documentary evidence:<sup>30</sup> in sum, Stanley was unable to lure Escalette away from his current job because respondent's management was not willing to pay as much as he asked.

Therefore, we conclude that even if the respondent's due process objection to the testimony of Hager and Escalette is well founded, this evidence is of minimal probative value in the context of the record as a whole, and that those findings in the Initial Decision which purport to rely upon it, as herein modified, are amply supported by independent evidence. Clearly, this claim by the respondents provides no basis for reversing the Initial Decision, or for remanding for any further proceedings.

Respondent further contends that the examiner made insufficiently detailed finding of fact and provided inadequate precedential support for his conclusions. As indicated in the preceding sections of this opinion, we conclude that the examiner's findings, as herein modified, are sufficient and adequately supported by the record, and that the conclusions of law herein adopted are consistent with governing authority.<sup>31</sup>

#### v

#### Scope of the Order

Respondent urges that the cease and desist order entered by the hearing examiner is defective or unjustified in several respects. First, respondent asserts that the provisions of the order requiring Stanley to make a six-month effort to divest Amerock to a purchaser approved by the Commission before attempting other divestiture plans are unduly restrictive, insofar as they preclude respondent

<sup>28</sup> Footnote 34 to Finding 29 cites "RPF 180 in part," which in turn relies in part upon the testimony of Escalette (*see* note 22, *supra*); in addition, the Finding contains a rather lengthy quotation from Escalette's testimony, to the effect that he was interested in the offer from Stanley because he thought that the company could become a major factor in cabinet hardware. (I.D pp. 1047-48.)

<sup>29</sup> *See* Tr. 1470-1480.

<sup>30</sup> CX A-E.

<sup>31</sup> We think that the examiner was amply justified in concluding that the instant merger violated Section 5 of the Federal Trade Commission Act, as well as Section 7 of the Clayton Act. *See, e.g., Dean Foods Co., OCH Trade Reg. Rep. 1965-1967 Transfer Binder*, ¶17,765 (1966) [70 F.T.C. 1146]; *The Bendix Corp., Docket No. 8739* (Opinion of the Commission, June 18, 1970. [77 F.T.C. 807])

from exploring alternative means of divestiture during this initial six-month period. We conclude that the record in this proceeding does not indicate that this limitation on the means of divestiture is required, so long as the respondent obtains prior Commission approval for any proposed divestiture, and we have modified Section I of the order accordingly.

Respondent's second exception to the examiner's order is that the phrase in Section I requiring Stanley to divest "all earnings" of the acquired Amerock is either vague or punitive. We have revised the language in Section I to make more explicit the kinds of assets that Stanley is required to divest, and have eliminated the phrase to which the respondent objected.

We have also accepted the respondent's contention that the record in this proceeding does not establish the need for extending the ban on future acquisitions without Commission approval from the cabinet hardware market to hardware products in general; thus, the scope of Section IV of the order has been narrowed in this respect. Finally, we agree with respondent's assertion that the unlimited duration of the ban against acquisitions without prior approval of the Commission goes beyond the reasonable demands of the public interest, and accordingly Paragraph IV of the order has been modified to incorporate the ten-year ban proposed by complaint counsel. (CPF at 51.) In all other respects, the order entered by the hearing examiner is adopted by the Commission.

#### FINAL ORDER

This matter having been heard by the Commission upon respondent's appeal from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and

The Commission, having rendered its decision determining that the initial decisions issued by the examiner should be modified in accordance with the views and for the reasons expressed in the accompanying opinion and, as modified, adopted as the decision of the Commission;

*It is ordered*, That the initial decision by the examiner be modified by striking footnotes 23 and 25, and findings 25, 26 and 29, and substituting therefore the following:

"<sup>23</sup> RPF, 159. With reference to 'Alternate 2' quoted above, it should be noted that there are substantial sales areas in the stipulated

United States market for cabinet hardware not requiring die-cast facilities. For example, Knape & Vogt and Grant Pulley and Hardware Company ranked No. 4 and No. 6 in the industry on the tabulation in Finding 10, produce and sell drawer slides which are cabinet hardware products that are not produced by die-casting. (Tr. 1723-1724, 1901-1902.)”

\* \* \* \* \*

“<sup>25</sup> See, e.g., RPF 180A, 180B.”

\* \* \* \* \*

“25. Commission Exhibit 30, a Stanley press release, states the merger ‘brings together two companies whose products and means of distribution are compatible. Amerock and Stanley see the move as two companies joining together to complement and reinforce each other and to better serve the trade and the ultimate consumer.’<sup>26</sup>

“Under cross-examination at Tr. 1037, Norris A. Aldeen, president and chief executive of Amerock and a director of Stanley, testified to the following:

Q. Is it true that Stanley uses Amerock customer lists and Amerock uses Stanley customer lists?

A. We have knowledge in the trade of our various customer lists, yes.

HEARING EXAMINER SCHRUP: That answer isn't quite clear to me as I gather the import of the question. Are you implying or asking whether there is an exchange of customer lists between Amerock and Stanley?

MR. REFFKIN: Since the merger, yes.

HEARING EXAMINER SCHRUP: Would you answer that question?

THE WITNESS: Yes. We have knowledge of their customers and they have knowledge of our customers in certain markets.

“Amerock was clearly the dominant firm in the cabinet hardware market, with 22 and 24% of the industry's sales. (See, e.g., Finding 10.) At the same time, Stanley was a strong competitive factor in the production and sale of architectural cabinet hardware. (See CX 86 D-E; CX 85 Z-6; CX 68 P; Tr. 1369-1370.)

“As shown on the tabulation in preceding Finding No. 10, the Stanley Hardware Division had sales of \$23,100,000 in 1965 and \$25,300,000 in 1966. The principal product line which the Stanley Hardware Division manufactures is hinges, primarily architectural and residential door hinges, as well as general form and utility hinges and a variety of other hinges including those suitable for use

<sup>26</sup> CPF 34. At Tr. 1843 the President of Stanley testified:

‘We would see no advantage in transferring the architectural cabinet hardware business to Amerock because they would add nothing to that. This is the area in which Stanley has strength and Amerock doesn't.’

as cabinet hardware.<sup>27</sup> The Hager Hinge Company also manufactures such hinges for competitive resale on a nationwide scale.<sup>28</sup>

\* \* \* \* \*

"26. John C. Bosworth, General Sales Manager of Amerock, testified to the following at Tr. 1140-1141:

Q. You said "key competitor." What did you mean by that?

A. I think in Kitchen Business, which is one of the trade magazines in our industry, this past March or April or February, they listed, I think, 97 competitors in kitchen cabinet hardware. So, when I say "key competitors", it is staying down with the first 10 or 20.

The 'Kitchen Business' listing referred to by the witness was introduced into evidence as CX 18, it indicates that many of the companies in the industry produce a relatively limited line of products, and that a few companies are importers. Although the record reflects a variety of opinion on the issue of which firms in the industry may be deemed 'major' or 'leading' competitors, it appears that the companies with the largest market shares, as set forth in Finding 10, are most frequently perceived by the industry as 'leading competitors.' See generally CX 13E; Tr. 1072-1073; CX 49 E-F; CX 49 I; CX 68 N; CX 85 F-4 to F-8; CX 85 F-34."

\* \* \* \* \*

"29. In 1964 the Stanley Hardware Division management conveyed certain conclusions with reference to its cabinet hardware situation to Donald W. Davis, then executive vice-president of Stanley and acting general manager of the Hardware Division. The report stated in part:

The Division should hire a new marketing manager for cabinet hardware who had experience in both the field of architectural cabinet hardware products and in residential die-cast cabinet hardware products, in case it should be decided to move into the die-cast field at a later date. It was also recommended that the Division hire an industrial designer to help the engineering department develop the proposed new cabinet hardware items.<sup>29</sup>

"Stanley sought to employ Escalette, the vice-president for marketing of Ajax, a manufacturer and seller of both architectural and residential cabinet hardware on a nationwide basis. As shown in the tabulation in Finding 10, Ajax was the third ranking supplier of cabinet hardware in the United States, with sales for 1965 of \$6,798,000 and for 1966 of \$7,560,000. Although Escalette expressed

<sup>27</sup> CPF 5, 6, 7 and RPF 86.

<sup>28</sup> See generally RX 51; CX 119; CX 61; CX 85 Z-6, Z-34; Tr. 1369-1370. RX 6 shows Hager overall hardware sales in the United States to have been \$10,648,364 in 1965 and \$11,561,108 in 1966. See further, Tr. 1067-1068."

<sup>29</sup> RPF 176 subpart B. See RPF 235 as to the ability of the Stanley Hardware Division to accomplish significant internal development of new products and to achieve substantial new product sales."

1023

## Final Order

interest in the possibility of coming to work for Stanley, respondent did not meet the salary figure which Escalette demanded as a condition of employment. Tr. 1470-1480; CX 90 A-E.

*It is further ordered*, That Sections I and IV of the order to cease and desist issued by the hearing examiner be, and they hereby are, modified to read in full as follows:

## I

*“It is ordered*, That Respondent, The Stanley Works (hereinafter referred to as ‘Stanley’), through its officers, directors, agents, representatives, employees, successors and assigns, within two (2) years from the date this order becomes final, shall divest absolutely and in good faith, all stock, assets, properties, rights and privileges, tangible or intangible, including but not limited to all properties, plants, machinery, equipment, trade names, contract rights, patents, trademarks, and good will, obtained by Stanley as a result of its merger with the Amerock Corporation, together with all plants, machinery, buildings, land, improvements, equipment and other property of whatever description that has been added to or placed on the premises of the former Amerock Corporation, so as to restore Amerock Corporation as a going concern and effective competitor in the manufacture and sale of cabinet hardware.

*It is further ordered*, That pending divestiture, respondent shall not make any changes in any of the plants, machinery, buildings, equipment or other property of whatever description of the former Amerock Corporation which shall impair its present capacity for the production, sale and distribution of cabinet hardware, or its market value.

*It is further ordered*, That by such divestiture, none of the assets, properties, rights or privileges described in the first paragraph of this order, shall be sold or transferred, directly or indirectly, to any person or persons who are not approved in advance by the Federal Trade Commission.”

\* \* \* \* \*

## IV

“For the period beginning on the date this order becomes final and ending ten (10) years after the date of divestiture of Amerock is effectuated, Stanley shall cease and desist from acquiring, directly

## Complaint

78 F.T.C.

or indirectly, by any devise or through subsidiaries or otherwise, the whole or any part of the stock, share capital or assets of any firm engaged in the manufacture or sale of cabinet hardware products without the prior approval of the Federal Trade Commission. Within thirty (30) days following the effective date of this order, and annually thereafter, Stanley shall furnish a verified written report setting forth the manner and form in which it intends to comply, is complying, or has complied with this paragraph."

\* \* \* \* \*

*It is further ordered,* That the hearing examiner's initial decision and order to cease and desist, as above modified and as modified by the accompanying opinion, be and they hereby are, adopted as the decision and order of the Commission.

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 IN THE MATTER OF

## CASCADE HAT &amp; CAP CO., ET AL.

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

*Docket C-1921. Complaint, May 18, 1971—Decision, May 18, 1971*

Consent order requiring a Portland, Ore., marketer of textile fiber products, including scarves, to cease violating the Flammable Fabrics Act by importing and 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 Cascade Hat & Cap Co., a corporation, and Hyman Stein, 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 Cascade Hat & Cap Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon. Respondent Hyman Stein is an officer