IN THE MATTER OF

GABRIEL ABEL, INC., ET AL.

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

Docket C-1378. Complaint, July 16, 1968—Decision, July 16, 1968

Consent order requiring a New York City manufacturing furrier to cease misbranding and falsely invoicing its fur products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Gabriel Abel, Inc., a corporation, and Gabriel Abel, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Gabriel Abel, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

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

Respondents are manufacturers of fur products with their office and principal place of business located at 330 Seventh Avenue, New York, New York.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce," "fur" and "fur

product" are defined in the Fur Products Labeling Act.

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

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

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored when such was the fact.

PAR. 5. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth on labels in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

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

PAR. 6. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to disclose that the fur contained in the fur products was bleached, dyed or otherwise artificially colored, when such was the fact.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 8. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and

Regulations promulgated thereunder in the following respects:

(a) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth on invoices in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

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

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the 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 Fur Products Labeling Act; and

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

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

1. Respondent Gabriel Abel, Inc., is a corporation organized,

existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 330 Seventh Avenue, New York, New York.

Respondent Gabriel Abel is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

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

A. Misbranding any fur product by:

1. Failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

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

3. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form on a label affixed to such fur product.

4. Failing to set forth on a label the item number or mark assigned to such fur product.

B. Falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in

words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b) (1) of the Fur Products Labeling Act.

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

3. Setting forth information required under Section 5(b) (1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

4. Failing to set forth on an invoice the item number or mark assigned to such fur product.

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

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

IN THE MATTER OF

BALDWIN–LIMA–HAMILTON CORPORATION

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

Docket C–1379. Complaint, July 19, 1968—Decision, July 19, 1968

Consent order requiring a Chicago, Ill., railroad equipment manufacturer to cease paying secret or confidential rebates in the sale of its railroad specialty products.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated the provisions of subsection (a) (1) of Section 5 of the Federal Trade Commission Act (38 Stat. 719 (1914), as amended, 15 U.S.C. § 45 (1964)) hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Baldwin–Lima–Hamilton 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 401 North Wabash Avenue, Chicago, Illinois. Prior to June 24, 1965, respondent was a corporation organized, existing, and doing business as Baldwin–Lima–Hamilton Corporation under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 2232 Philadelphia National Bank Building, Philadelphia, Pennsylvania, and with personnel, assets, and operations essentially identical to its present personnel, assets, and operations. On or about July 2, 1965, one hundred percent (100%) of the voting stock in respondent corporation was acquired by Armour & Company, 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 401 North Wabash Avenue, Chicago, Illinois.

Standard Steel Division is, and has been at all times mentioned herein, an unincorporated operating division of respondent Baldwin–Lima–Hamilton Corporation, with its office, manufacturing facilities, and principal place of business located in the town of Burnham, Mifflin County, Commonwealth of Pennsylvania.

PAR. 2. Respondent, through its Standard Steel Division, has been, and is now engaged in the manufacture, sale and distribution of railroad car wheels and axles. Respondent, through its Standard Steel Division, has also been engaged in the manufacture, sale and distribution of railroad car coil springs, the manufacture, sale and distribution of such product being discontinued sometime during the year 1965. All of these products are built to standard specifications and requirements prescribed by the Association of American Railroads, are interchangeable with the corresponding component parts of other manufacturers, and, along with other such standardized component parts, are commonly referred to collectively as railroad specialty products. Respondent sells and distributes its railroad specialty products directly to a large number of customers located in various sections of the United States, who purchase such products for use or consumption in the construction, conversion, or repair of railroad cars. Respondent's domestic sales of its railroad specialty products are substantial, exceeding $11,000,000 during the calendar year 1962, and exceeding $12,000,000 during the calendar year 1963.

PAR. 3. Respondent sells and causes its railroad specialty products to be transported from its place of business in the Commonwealth of Pennsylvania to purchasers located in other States of the United States and in the District of Columbia. There has been at all times mentioned herein a continuous 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 its business in commerce, respondent is now, and has been at all times mentioned herein, in substantial competition with other corporations, partnerships, and firms engaged in the manufacture, sale and distribution of railroad wheels, axles, and springs.

PAR. 5. In the course and conduct of its business in commerce, and particularly during the period September 1961, through July 1963, respondent paid, granted, or allowed secret or confidential rebates or allowances to the Southern Railway System, Washington, D.C., on sales of its railroad specialty products to independent railroad car builders constructing, converting, or repairing railroad cars for that railroad. All such secret or confidential rebates or allowances were paid directly to the Southern Railway System, without disclosing the fact or existence of such rebates or allowances to said independent railroad car builders. All such secret or confidential rebates or allowances were paid, granted, or allowed to the Southern Railway System for the purpose of causing that railroad to influence independent railroad car builders to purchase respondent's railroad specialty products by specifying the use of said products in contracts with said independent railroad car builders.

PAR. 6. The foregoing acts and practices of respondent in paying, granting, or allowing secret or confidential rebates or allowances directly to a railroad in connection with the sale and distribution of its railroad specialty products, may have and have had the effect of hindering, lessening, restricting, restraining, suppressing, eliminating, and destroying competition in the sale and distribution of railroad car wheels, axles, and springs to railroad companies and railroad car building companies; and may have and have had a tendency to unduly lessen competition or to create and promote a monopoly in the sale and distribution of such products.

PAR. 7. The acts and practices of respondent, as alleged herein, constitute unfair methods of competition or unfair acts or practices in commerce within the intent and meaning of Section 5, of the Federal Trade Commission Act, and are in violation thereof.

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 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 Baldwin–Lima–Hamilton 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 401 North Wabash Avenue, in the city of Chicago, State of Illinois.

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 Baldwin–Lima–Hamilton Corporation, a corporation, and its officers, agents, representatives, or employees, directly or through any corporate or other device, in connection with the sale of railroad car wheels, axles, springs, or any other railroad specialty products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Paying, granting, or allowing, directly or indirectly, to any railroad, or to anyone acting for or in behalf of any

railroad, anything of value as a secret or confidential rebate, discount, or allowance in connection with the sale of said products to such railroad, or in connection with the sale of said products to any other buyer for use in the construction, conversion, or repair of railroad cars for such railroad.

(2) Paying, granting, or allowing, directly or indirectly, to any railroad, or to anyone acting for or in behalf of any railroad, anything of value as a refund, rebate, discount, or allowance, in order to induce such railroad to influence railroad car builders to purchase, or contract to purchase said products, unless such refunds, rebates, discounts, or allowances are defensible under subsections (a) or (b) of Section 2 of the Clayton Act, as amended.

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

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

IN THE MATTER OF

W. H. MINER, INC.

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

Docket C-1380. Complaint, July 19, 1968—Decision, July 19, 1968

Consent order requiring a Chicago, Ill., distributor of draft gears, handbrakes and other railroad equipment to cease paying secret or confidential rebates in the sale of its railroad specialty products.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated the provisions of subsection (a) (1) of Section 5 of the Federal Trade Commission Act (38 Stat. 719 (1914), as amended, 15 U.S.C. § 45 (1964)), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent W. H. Miner, 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 209 South LaSalle Street, Chicago, Illinois.

PAR. 2. Respondent has been, and is now, engaged in the sale and distribution of railroad car draft gears, handbrakes, and various other railroad car component parts, which are manufactured for respondent on a contract basis by other independent companies. All of these products, like many other railroad car component parts, are built to standard specifications and requirements prescribed by the Association of American Railroads, are interchangeable with the corresponding component parts of other manufacturers, and, along with such other standardized component parts, are commonly referred to collectively as railroad specialty products. Respondent sales and distributes its railroad specialty products directly to a large number of customers located in various sections of the United States, who purchase such products for use or consumption in the construction, conversion, or repair of railroad cars. Respondent's domestic sales of its railroad specialty products are substantial, exceeding $10,000,000 during the calendar year 1964.

PAR. 3. Respondent sells and causes its railroad specialty products to be transported from its place of business in the State of Illinois, or from other places than said State, to purchasers located in other States of the United States and in the District of Columbia. There has been at all times mentioned herein a continuous 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 its business in commerce, respondent is now, and has been at all times mentioned herein, in substantial competition with other corporations, partnerships, and firms engaged in the manufacture, sale and distribution of railroad car draft gears, handbrakes, and various other railroad specialty products.

PAR. 5. In the course and conduct of its business in commerce, and particularly during the five year period November 1959, through November 1964, respondent paid, granted, or allowed secret or confidential rebates or allowances to the Southern Railway System, Washington, D.C., on sales of respondent's draft gears and handbrakes to independent railroad car builders constructing, converting, or repairing railroad cars for that railroad. All such secret or confidential rebates or allowances were

paid directly to the Southern Railway System, without disclosing the fact or existence of such rebates or allowances to said independent railroad car builders, and were paid, granted, or allowed in the various forms of credit allowances, direct payments, and free merchandise. All such secret or confidential rebates or allowances were paid, granted, or allowed to the Southern Railway System for the purpose of causing that railroad to influence independent railroad car builders to purchase respondent's draft gears and handbrakes by specifying the use of said products in contracts with said independent railroad car builders.

PAR. 6. The foregoing acts and practices of respondent in paying, granting, or allowing secret or confidential rebates or allowances directly to a railroad in connection with the sale and distribution of its railroad specialty products, may have and have had the effect of hindering, lessening, restricting, restraining, suppressing, eliminating, and destroying competition in the sale and distribution of railroad car draft gears and handbrakes, and other railroad specialty products to railroad companies and railroad car building companies; and may have had a tendency to unduly lessen competition or to create and promote a monopoly in the sale and distribution of such products.

PAR. 7. The acts and practices of respondent, as alleged herein, constitute unfair methods of competition or unfair acts or practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, and are in violation thereof.

DECISION AND ORDER

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

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

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

1. Respondent W. H. Miner, 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 209 South LaSalle Street, in the city of Chicago, State of Illinois.

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 W. H. Miner, Inc., a corporation, and its officers, agents, representatives, or employees, directly or through any corporate or other device, in connection with the sale of railroad car draft gears, handbrakes, or any other railroad specialty products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Paying, granting, or allowing, directly or indirectly, to any railroad, or to anyone acting for or in behalf of any railroad, anything of value as a secret or confidential rebate, discount, or allowance in connection with the sale of said products to such railroad, or in connection with the sale of said products to any other buyer for use in the construction, conversion, or repair of railroad cars for such railroad.

(2) Paying, granting, or allowing, directly or indirectly, to any railroad, or to anyone acting for, or in behalf of, any railroad, anything of value as a refund, rebate, discount, or allowance, in order to induce such railroad to influence railroad car builders to purchase, or contract to purchase said products, unless such refunds, rebates, discounts, or allowances are defensible under subsections (a) or (b) of Section 2 of the Clayton Act, as amended.

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

divisions.

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

IN THE MATTER OF

MORTON MANUFACTURING COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECTION 2(c) OF CLAYTON ACT AND THE FEDERAL TRADE COMMISSION ACT

Docket C-1381. Complaint, July 19, 1968—Decision, July 19, 1968

Consent order requiring a Chicago, Ill., manufacturer of locomotive footboards, freight car running boards and other railroad equipment to cease paying illegal brokerage or secret rebates in the sale of its railroad specialty products.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (38 Stat. 730 (1914), as amended, 15 U.S.C. § 13 (c) (1964)), and subsection (a)(1) of Section 5 of the Federal Trade Commission Act (38 Stat. 719 (1914), as amended, 15 U.S.C. § 45 (1964)) hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent Morton Manufacturing Company is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Illinois, with its office and principal place of business located at 5125 West Lake Street, Chicago, Illinois.

PAR. 2. Respondent has been, and is now, engaged in the manufacture, sale, and distribution of fabricated steel and aluminum products, including various railroad products, such as locomotive footboards, freight car running boards, crossover steps and brakeman's steps, and passenger car doors and vestibule

diaphragms. All of these products are built to standard specifications and requirements prescribed by the Association of American Railroads, are interchangeable with corresponding parts of other manufacturers, and, along with many other such standardized railroad locomotive and car component parts, are commonly referred to as railroad specialty products. Respondent sells and distributes its railroad specialty products through its unincorporated Transportation Division to a large number of customers located in various sections of the United States, who purchase such products for use or consumption in the construction, conversion, or repair of railroad locomotives and cars. Respondent's sales of said products are substantial, exceeding one million dollars ($1,000,000) during each of the years 1963, and 1964, and exceeding two million dollars ($2,000,000) during the year 1965.

PAR. 3. Respondent sells and causes its railroad specialty products to be transported from its manufacturing facilities located in the State of Illinois to purchasers located in other States of the United States and in the District of Columbia. There has been at all times mentioned herein a continuous course of trade in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce, respondent is now, and has been at all times mentioned herein, in substantial competition with other corporations, partnerships, and firms engaged in the manufacture, sale, and distribution of fabricated steel and aluminum railroad specialty products, such as locomotive footboards, freight car running boards, crossover steps and brakeman's steps, and passenger car doors and vestibule diaphragms.

PAR. 5. In the course and conduct of its business in commerce, and particularly during the period July 1959, through October 1963, respondent paid commission fees, brokerage, or allowances in lieu thereof, to a certain purchaser, or agent of said purchaser, of its railroad specialty products.

For example, when respondent employs manufacturer's representatives in negotiating sales of its railroad specialty products, respondent ordinarily compensates such representatives with a commission fee computed at the rate of five percent (5%) of gross billings on sales of freight car running boards, crossover steps and brakeman's steps, and ten percent (10%) of gross billings on sales of all other railroad specialty products. During the period July 1959, through October 1963, respondent, in addi-

tion to said regular compensation, paid additional commission fees, brokerage, or allowances in lieu thereof, to one of its manufacturer's representatives located in Washington, D.C., in connection with said representative's services in soliciting sales of respondent's railroad specialty products to the Southern Railway System, Washington, D.C., and to independent railroad car builders constructing, converting, or repairing railroad cars for that railroad. Such additional commission fees, brokerage, or allowances in lieu thereof, were computed at the rate of one dollar and fifty cents ($1.50) per car set on all such sales of respondent's aluminum running boards, and seventy-five cents ($0.75) per car set on all such sales of respondent's steel running boards (a car set of running boards normally includes: a running board center section, two end sections, and two, or more, interior sections and latitudinal sections; two, or more, crossover steps; a brakeman's step; and miscellaneous attachment hardware such as bolt seats, washers, etc.). Following receipt from respondent, all such additional commission fees, brokerage, or allowances in lieu thereof, were paid by said manufacturer's representative directly to the Southern Railway System. The total amounts of such payments to said railroad have been substantial, exceeding three thousand five hundred dollars ($3,500) during the period July 1959, through October 1963. Respondent knew, or should have known, that said representative, in the course and conduct of his business for, and on behalf of, respondent, was paying said additional commission fees, brokerage, or allowances in lieu thereof, directly to the Southern Railway System.

PAR. 6. The acts and practices of respondent, as alleged herein, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

COUNT II

PAR. 7. Paragraphs One through Four of Count I hereof are hereby incorporated by reference, and made a part of this Count, as fully, and with the same effect, as if quoted herein verbatim, subject to the sole exception that the reference to the Clayton Act, as amended, in Paragraph Three of Count I is eliminated herein, and reference to the Federal Trade Commission Act is substituted therefor.

PAR. 8. In the course and conduct of its business in commerce, and particularly during the period July 1959, through October 1963, respondent paid commission fees, brokerage, or allowances

in lieu thereof, to a certain purchaser, or agent of said purchaser, of its railroad specialty products.

For example, when respondent employs manufacturer's representatives in negotiating sales of its railroad specialty products, respondent ordinarily compensates such representatives with a commission fee computed at the rate of five percent (5%) of gross billings on sales of freight car running boards, crossover steps and brakeman's steps, and ten percent (10%) of gross billings on sales of all other railroad specialty products. During the period July 1959, through October 1963, respondent, in addition to said regular compensation, paid additional commission fees, brokerage, or allowances in lieu thereof, to one of its manufacturer's representatives located in Washington, D.C., in connection with said representative's services in soliciting sales of respondent's railroad specialty products to the Southern Railway System, Washington, D.C., and to independent railroad car builders constructing, converting, or repairing railroad cars for that railroad. Such additional commission fees, brokerage, or allowances in lieu thereof, were computed at the rate of one dollar and fifty cents ($1.50) per car set on all such sales of respondent's aluminum running boards, and seventy-five cents ($0.75) per car set on all such sales of respondent's steel running boards (a car set of running boards normally includes: a running board center section, two end sections, and two, or more, interior sections and latitudinal sections; two, or more, crossover steps; a brake step; and miscellaneous attachment hardware such as bolt seats, washers, etc.). Following receipt from respondent, all such additional commission fees, brokerage, or allowances in lieu thereof, were paid by said manufacturer's representative directly to the Southern Railway System as secret or confidential rebates or allowances. The total amounts of such rebates or allowances have been substantial, exceeding three thousand five hundred dollars ($3,500) during the period July 1959, through October 1963. Respondent knew, or should have known, that said representative, in the course and conduct of his business for, and on behalf of, respondent, was paying said secret or confidential rebates or allowances directly to the Southern Railway System for the purpose of causing that railroad to purchase respondent's railroad specialty products directly, and/or to specify the purchase of respondent's railroad specialty products in contracts with independent railroad car builders.

PAR. 9. The foregoing acts and practices of respondent in

paying, granting, or allowing commission fees, brokerage, or allowances in lieu thereof, to the Southern Railway System as secret or confidential rebates or allowances in connection with the sale and distribution of its railroad specialty products, may have had, and have had, the effect of hindering, lessening, restricting, restraining, suppressing, eliminating, and destroying competition in the sale and distribution of such products to railroad companies and railroad car building companies; and may have had, and have had, a tendency to unduly lessen competition, or to create and promote a monopoly, in the sale and distribution of such products.

PAR. 10. The acts and practices of respondent, as alleged herein, constitute unfair methods of competition or unfair acts or practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, and are in violation thereof.

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 Section 2 of the Clayton Act, as amended, 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 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 Morton Manufacturing Company is a corporation organized, existing and doing business under and by virtue

of the laws of the State of Illinois, with its office and principal place of business located at 5125 West Lake Street, in the city of Chicago, State of Illinois.

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 Morton Manufacturing Company, a corporation, and its officers, agents, representatives, or employees, directly or through any corporate or other device, in connection with the sale of locomotive footboards, freight car running boards, crossover steps and brakeman's steps, passenger car doors and vestibule diaphragms, or any other railroad specialty products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

(1) Paying, granting, or allowing, directly or indirectly, to any buyer, or to anyone acting for or in behalf of, or who is subject to the direct or indirect control of, such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, in connection with the sale of said products to such buyer for his own account.

(2) Paying, granting, or allowing, directly or indirectly, to any railroad, or to anyone acting for or in behalf of, or who is subject to the direct or indirect control of, any railroad, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, in connection with the sale of said products to such railroad, or in connection with the sale of said products to any other buyer for use in the construction, conversion, or repair of railroad cars for such railroad.

It is further ordered, That respondent Morton Manufacturing Company, a corporation, and its officers, agents, representatives, or employees, directly or through any corporate or other device, in connection with the sale of locomotive footboards, freight car running boards, crossover steps and brakeman's steps, passenger car doors and vestibule diaphragms, or any other railroad specialty products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Paying, granting, or allowing, directly or indirectly,

to any railroad, or to anyone acting for, or in behalf of, any railroad, anything of value as a secret or confidential refund, rebate, discount, or allowance, in connection with the sale of said products to such railroad, or in connection with the sale of said products to any other buyer for use in the construction, conversion, or repair of railroad cars for such railroad.

(2) Paying, granting, or allowing, directly or indirectly, to any railroad, or to anyone acting for, or in behalf of, any railroad, anything of value as a refund, rebate, discount, or allowance in order to induce such railroad to influence railroad car builders to purchase, or contract to purchase, said products, unless such refunds, rebates, discounts, or allowances are defensible under subsections (a) or (b) of Section 2 of the Clayton Act, as amended.

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

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

IN THE MATTER OF

AMSTED INDUSTRIES INCORPORATED

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECTION 2(c) OF THE CLAYTON ACT AND THE FEDERAL TRADE COMMISSION ACT

Docket C-1382. Complaint, July 19, 1968—Decision, July 19, 1968

Consent order requiring a Chicago, Ill., manufacturer of railroad car side frames, couplers and other equipment to cease paying unlawful brokerage and secret rebates in the sale of its railroad specialty products.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (38 Stat. 730 (1914), as amended, 15 U.S.C.

§13(c) (1964)), and subsection (a)(1) of Section 5 of the Federal Trade Commission Act (38 Stat. 719 (1914), as amended, 15 U.S.C. § 45 (1964)) hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent, Amsted Industries Incorporated, 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 3700 Prudential Plaza, Chicago, Illinois. Respondent was originally incorporated in the State of New Jersey on June 26, 1902, under the name American Steel Foundries, changing to its present name effective January 25, 1962. Respondent continued to exist and do business under the laws of the State of New Jersey until January 31, 1968, when it was merged into its wholly owned corporate subsidiary of the same name organized, existing and doing business under, and by virtue of, the laws of the State of Delaware.

American Steel Foundries Division is an unincorporated operating division of respondent with its divisional office and principal place of business located at 1005 Prudential Plaza, Chicago, Illinois.

PAR. 2. Respondent has been and is now engaged in the manufacture, sale, and distribution of railroad car side frames, bolsters, couplers, and coupler yokes. All of these products, like many other railroad car component parts, are built to standard specifications and requirements prescribed by the Association of American Railroads, are interchangeable with the corresponding component parts of other manufacturers, and, along with such other standardized component parts, are commonly referred to collectively as railroad specialty products.

All of respondent's domestic sales of its railroad specialty products are now, and have been since September 30, 1965, transacted through its American Steel Foundries Division. Throughout the period August 3, 1961, through September 29, 1965, all sales of such products were transacted through a wholly owned corporate subsidiary of respondent doing business as American Steel Foundries, Incorporated, a Delaware corporation; and, prior to August 3, 1961, all sales of such products were transacted through the Transportation Equipment Division, an unincorporated operating division of respondent.

Respondent sells and distributes its railroad specialty products directly to a large number of customers located in various

sections of the United States, who purchase such products for use or consumption in the construction, conversion, or repair of railroad cars. Respondent's sales of its railroad specialty products are substantial, exceeding $47,000,000 during the fiscal year 1963 (ending September 30).

PAR. 3. Respondent sells and causes its railroad specialty products to be transported from its manufacturing facilities located in the States of Illinois, Indiana, and Ohio to purchasers located in other States of the United States and in the District of Columbia. There has been at all times mentioned herein a continuous course of trade in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce, respondent is now, and has been at all times mentioned herein, in substantial competition with other corporations, partnerships, and firms engaged in the manufacture, sale, and distribution of railroad car side frames, bolsters, couplers, and coupler yokes.

PAR. 5. In the course and conduct of its business in commerce, and particularly during the eight year period November 1955, through November 1963, respondent paid commissions, or allowances in lieu thereof, to a representative located in the Washington, D.C., area, for said representative's services in soliciting the sale of respondent's railroad specialty products to the Southern Railway System, Washington, D.C. All of these commissions or allowances were computed at the rate of five percent (5%) of the net billings on all sales of respondent's railroad specialty products made either directly to the Southern Railway System, or indirectly to the Southern Railway System through sales to independent railroad car builders constructing, converting, or repairing railroad cars for that railroad. Throughout the eight year period November 1955, through November 1963, respondent knew, or should have known, that its aforesaid representative, in the course and conduct of his business for respondent, was regularly paying eighty percent (80%) of his commissions or allowances received from respondent to the Southern Railway System as secret or confidential rebates.

PAR. 6. The acts and practices of respondent, as alleged herein, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

COUNT II

PAR. 7. Paragraphs One through Five of Count I hereof are hereby incorporated by reference, and made a part of this Count,

as fully, and with the same effect, as if quoted herein verbatim, subject to the sole exception that the reference to the Clayton Act, as amended, in Paragraph Three of Count I is eliminated herein, and reference to the Federal Trade Commission Act is substituted therefor.

PAR. 8. Respondent knew, or should have known, that all of those rebates paid by its representative to the Southern Railway System throughout the eight year period November 1955, through November 1963, were of a secret or confidential nature, and were paid for the purpose of inducing that railroad to purchase respondent's railroad specialty products, and/or inducing that railroad to cause independent railroad car builders to purchase respondent's railroad specialty products for use in the construction, conversion, or repair of railroad cars for that railroad.

PAR. 9. The foregoing acts and practices of respondent in paying, granting, or allowing commissions or allowances to the Southern Railway System as secret or confidential rebates or allowances in connection with the sale and distribution of its railroad specialty products, may have had and have had the effect of hindering, lessening, restricting, restraining, suppressing, eliminating, and destroying competition in the sale and distribution of railroad car side frames, bolsters, couplers, and coupler yokes to railroad companies and railroad car building companies; and may have had and have had a tendency to unduly lessen competition or to create and promote a monopoly in the sale and distribution of such products.

PAR. 10. The acts and practices of respondent, as alleged herein, constitute unfair methods of competition or unfair acts or practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, and are in violation thereof.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraint of Trade 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 Section 2 of the Clayton Act, as amended; and

The respondent and counsel for the Commission having there-

after 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 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 Amsted Industries Incorporated, 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 3700 Prudential Plaza, in the city of Chicago, State of Illinois.

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 Amsted Industries Incorporated, a corporation, and its officers, agents, representatives, or employees, directly or through any corporate or other device, in connection with the sale of railroad car side frames, bolsters, couplers, coupler yokes, or any other railroad specialty products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

(1) Paying, granting or allowing, directly or indirectly, to any buyer, or to anyone acting for or in behalf of, or who is subject to the direct or indirect control of, such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, in connection with the sale of said products to such buyer for its own account.

(2) Paying, granting, or allowing, directly or indirectly, to any railroad, or to anyone acting for or in behalf of, or

who is subject to the direct or indirect control of any railroad, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, in connection with the sale of said products to such railroad, or in connection with the sale of said products to any other buyer for use in the construction, conversion, or repair of railroad cars for such railroad.

It is further ordered, That respondent Amsted Industries Incorporated, a corporation, and its officers, agents, representatives, or employees, directly or through any corporate or other device, in connection with the sale of railroad car side frames, bolsters, couplers, coupler yokes, or any other railroad specialty products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Paying, granting, or allowing, directly or indirectly, to any railroad, or to anyone acting for or in behalf of any railroad, anything of value as a secret or confidential refund, rebate, discount, or allowance in connection with the sale of said products to such railroad, or in connection with the sale of said products to any other buyer for use in the construction, conversion, or repair of railroad cars for such railroad.

(2) Paying, granting, or allowing, directly or indirectly, to any railroad, or to anyone acting for or in behalf of any railroad, anything of value as a refund, rebate, discount, or allowance in order to induce such railroad to influence railroad car builders to purchase, or contract to purchase, said products, unless such refunds, rebates, discounts, or allowances are defensible under subsections (a) or (b) of Section 2 of the Clayton Act, as amended.

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

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

IN THE MATTER OF

STANDARD CAR TRUCK COMPANY

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

Docket C-1383. Complaint, July 19, 1968—Decision, July 19, 1968

Consent order requiring a Chicago, Ill., distributor of stabilizing and shock absorbing devices for railroad cars to cease paying secret or confidential rebates in the sale of its railroad specialty equipment.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated the provisions of subsection (a) (1) of Section 5 of the Federal Trade Commission Act (38 Stat. 719 (1914), as amended, 15 U.S.C. § 45 (1964)) hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Standard Car Truck Company 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 332 South Michigan Avenue, Chicago, Illinois.

PAR. 2. Respondent has been, and is now, engaged in the sale and distribution of railroad freight car and caboose stabilizing and shock cushioning devices, which are manufactured for respondent by other independent companies. All of these products, like many other railroad car component parts, are built to standard specifications and requirements prescribed by the Association of American Railroads, are interchangeable with the corresponding component parts of other manufacturers, and, along with other such standardized component parts, are commonly referred to collectively as railroad specialty products. Respondent sells and distributes its railroad specialty products directly to a large number of customers located in various sections of the United States, who purchase such products for use or consumption in the construction, conversion, or repair of railroad cars and cabooses. Respondent's sales of its railroad specialty products are substantial, exceeding $3,000,000 during the calendar year 1963, exceeding $3,500,000 during the calendar year 1964, and exceeding $4,000,000 during the calendar year 1965.

PAR. 3. Respondent sells and causes its railroad specialty products to be transported from its place of business in the State of Illinois, and from other places throughout the United States, to purchasers located in the several States of the United States and in the District of Columbia. There has been at all times mentioned herein a continuous 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 its business in commerce, respondent is now, and has been at all times mentioned herein, in substantial competition with other corporations, partnerships, and firms engaged in the manufacture, sale and distribution of railroad freight car and caboose stabilizing and shock cushioning devices.

PAR. 5. In the course and conduct of its business in commerce, and particularly during the period February 1956 through March 1965, respondent paid, granted, or allowed secret or confidential rebates or allowances to the Southern Railway System, Washington, D.C., on sales of its railroad specialty products to independent railroad car builders constructing, converting, or repairing railroad cars for that railroad. All such secret or confidential rebates or allowances were paid directly to the Southern Railway System, without disclosing the fact or existence of such rebates or allowances to said independent railroad car builders. All such secret or confidential rebates or allowances were paid, granted, or allowed to the Southern Railway System for the purpose of causing that railroad to influence independent railroad car builders to purchase respondent's railroad specialty products by specifying the use of said products in contracts with said independent railroad car builders.

PAR. 6. The foregoing acts and practices of respondent in paying, granting or allowing secret or confidential rebates or allowances directly to a railroad in connection with the sale and distribution of its railroad specialty products, may have and have had the effect of hindering, lessening, restricting, restraining, suppressing, eliminating, and destroying competition in the sale and distribution of railroad freight car and caboose stabilizing and shock cushioning devices to railroad companies and railroad car building companies; and may have and have had a tendency to unduly lessen competition or to create and promote a monopoly in the sale and distribution of such products.

PAR. 7. The acts and practices of respondent, as alleged herein, constitute unfair methods of competition or unfair acts or prac-

tices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, and are in violation thereof.

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 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 Standard Car Truck Company 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 332 South Michigan Avenue, in the city of Chicago, State of Illinois.

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 Standard Car Truck Company, a corporation, and its officers, agents, representatives, or employees, directly or through any corporate or other device, in connection with the sale of railroad freight car and caboose stabilizing and shock cushioning devices or any other railroad specialty products, in commerce, as "commerce" is defined in

the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Paying, granting, or allowing, directly or indirectly, to any railroad, or to anyone acting for or in behalf of any railroad, anything of value as a secret or confidential rebate, discount, or allowance in connection with the sale of said products to such railroad, or in connection with the sale of said products to any other buyer for use in the construction, conversion, or repair of railroad cars for such railroad.

(2) Paying, granting, or allowing, directly or indirectly, to any railroad, or to anyone acting for or in behalf of any railroad, anything of value as a refund, rebate, discount, or allowance, in order to induce such railroad to influence railroad car builders to purchase, or contract to purchase said products, unless such refunds, rebates, discounts, or allowances are defensible under subsections (a) or (b) of Section 2 of the Clayton Act, as amended.

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

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

IN THE MATTER OF

WILLIAM S. HANSEN DOING BUSINESS AS A. STUCKI COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECTION 2(c) OF THE CLAYTON ACT AND THE FEDERAL TRADE COMMISSION ACT

Docket C-1384. Complaint, July 19, 1968—Decision, July 19, 1968

Consent order requiring a Pittsburgh, Pa., distributor of roller side bearings and other items of railroad equipment to cease paying illegal brokerage or secret rebates in the sale of its railroad specialty products.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated

the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (38 Stat. 730 (1914), as amended, 15 U.S.C. § 13(c) (1964)), and subsection (a)(1) of Section 5 of the Federal Trade Commission Act (38 Stat. 719 (1914), as amended, 15 U.S.C. § 45 (1964)) hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent William S. Hansen is an individual, domiciled in the Commonwealth of Pennsylvania, and residing at 10 Wilson Drive, Ben Avon Heights, Pittsburgh, Pennsylvania. Respondent is the sole proprietor of the A. Stucki Company, an unincorporated business, having acquired complete ownership and control of said company from his father, William C. Hansen, during the year 1955. Respondent maintains his business offices, and his principal place of business, at 1619 Oliver Building, Pittsburgh, Pennsylvania; all manufacturing facilities are located on Chambers Street, in McKees Rocks, Pennsylvania.

PAR. 2. Respondent, through the A. Stucki Company, is now, and has been since 1955, engaged exclusively in the manufacture, sale and distribution of complete railroad car roller side bearings, the individual component parts of such side bearings, such as rollers and cages, and a few related products, such as side bearing wedges and wear plates. Respondent's side bearing product line consists of varied types of roller side bearings, including both body and truck side bearings and single and double roller side bearings.

Respondent sells and distributes his products both directly and through manufacturer's representatives to a large number of customers located throughout the United States, who purchase such products for use or consumption in the construction, conversion, or repair of railroad cars. Respondent's total yearly dollar volume of sales of said products is substantial, approximating one million dollars ($1,000,000) during the year 1963, and exceeding one million dolars ($1,000,000) during the year 1964. Respondent's total yearly sales of railroad car roller side bearings represents more than fifty percent (50%) of the total nationwide market in such products.

PAR. 3. Respondent sells and causes his products to be transported from his manufacturing facilities in the Commonwealth of Pennsylvania to purchasers located in other States of the United States and in the District of Columbia. There has been at all times mentioned herein a continuous course of trade

in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. In the course and conduct of his business in commerce, respondent is now, and has been at all times mentioned herein, in substantial competition with other corporations, partnerships, and firms engaged in the manufacture, sale, and distribution of railroad car roller side bearings, the individual component parts of such side bearings, side bearing wedges, and side bearing wear plates.

PAR. 5. In the course and conduct of his business in commerce, and particularly during the period 1960 through 1962, respondent paid commission fees, or allowances in lieu thereof, to certain purchasers, or agents of said purchasers, of his products.

For example, when respondent employs manufacturer's representatives in negotiating sales of his railroad car roller side bearings for new car construction, respondent ordinarily reimburses such representatives with a commission fee computed at the rate of $1.00 per car set (four side bearings) on single roller side bearings and $1.50 per car set on double roller side bearings. During the period 1960, through the end of 1962, respondent paid commissions computed at the rate of $1.00 per car set on both single and double roller side bearings to the Magor Car Export Corporation, 50 Church Street, New York, New York, on sales of such products to the Magor Car Corporation, Clifton, New Jersey. During the aforesaid period, the Magor Car Export Corporation was a wholly owned subsidiary of the Magor Car Corporation.

PAR. 6. The acts and practices of respondent, as alleged herein, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

COUNT II

PAR. 7. Paragraphs One through Four of Count I hereof are hereby incorporated by reference, and made a part of this Count, as fully, and with the same effect, as if quoted herein verbatim, subject to the sole exception that the reference to the Clayton Act, as amended, in Paragraph Three of Count I is eliminated herein, and reference to the Federal Trade Commission Act is substituted therefor.

PAR. 8. In the course and conduct of his business, in commerce, and particularly during the period 1955, through 1963, respondent made certain rebates, payments or allowances, referred to by respondent as "refunds," to a railroad who directly or indirectly

purchased respondent's products.

For example, throughout the nine year period 1955–1963, respondent paid such rebates or allowances directly to the Southern Railway System, Washington, D.C., on all sales of respondent's railroad car roller side bearings made either directly to that railroad, or indirectly to that railroad through sales to various independent railroad car builders constructing, converting, or repairing railroad cars for that railroad. These rebates or allowances were paid pursuant to an oral agreement negotiated with the Southern Railway System by respondent's predecessor, Mr. William C. Hansen, during the year 1952, and were continued by respondent when he assumed complete control of the A. Stucki Company in 1955. All such rebates or allowances paid pursuant to this agreement were computed at the rate of $0.25 per car set for single roller side bearings, and $0.50 per car set for double roller side bearings, and were paid directly to the Southern Railway System so as to render the existence of such rebates or allowances secret or confidential. The total amounts of such rebates or allowances have been substantial, approximating $1,800 during the period 1960–1963. All of these rebates or allowances were paid to the Southern Railway System for the purpose of inducing that railroad to purchase respondent's products directly, and/or to specify the purchase of respondent's products in contracts with independent railroad car builders.

PAR. 9. The foregoing acts and practices of respondent in paying, granting, or allowing payments or allowances directly to a railroad as secret or confidential refunds, rebates, or allowances in connection with the sale and distribution of his products to such railroad may have had, and have had the effect of hindering, lessening, restricting, restraining, suppressing, eliminating, and destroying competition in the sale and distribution of said products to railroad companies and railroad car building companies; and may have and have had a tendency to unduly lessen competition or to create and promote a monopoly in the sale and distribution of such products.

PAR. 10. The acts and practices of respondent, as alleged herein, constitute unfair methods of competition and/or unfair acts or practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, and are in violation thereof.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation

of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraint of Trade 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 Section 2 of the Clayton 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 § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent William S. Hansen is an individual domiciled in the Commonwealth of Pennsylvania, residing at 10 Wilson Drive, Ben Avon Heights, in the city of Pittsburgh, Commonwealth of Pennsylvania, and doing business as A. Stucki Company, with his office and principal place of business located at 1619 Oliver Building, in the city of Pittsburgh, Commonwealth of Pennsylvania.

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 William S. Hansen, an individual, doing business as A. Stucki Company, and his agents, representatives, or employees, directly or through any corporate or other device, in connection with the sale of railroad car roller side bearings, individual component parts of such side bearings, and side bearing wedges and wear plates in commerce, as "com-

merce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying, granting, or allowing, directly or indirectly, to any buyer, or to anyone acting for or in behalf of, or who is subject to the direct or indirect control of, such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, in connection with the sale of said products to such buyer for its own account.

It is further ordered, That respondent William S. Hansen, an individual, and his agents, representatives, or employees, directly or through any corporate or other device, in connection with the sale of railroad car roller side bearings, individual component parts of such side bearings, and side bearing wedges and wear plates in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Paying, granting, or allowing, directly or indirectly, to any railroad, or to anyone acting for, or in behalf of, any railroad, anything of value as a secret or confidential refund, rebate, discount, or allowance, in connection with the sale of said products to such railroad, or in connection with the sale of said products to any other buyer for use in the construction, conversion, or repair of railroad cars for such railroad.

(2) Paying, granting, or allowing, directly or indirectly, to any railroad, or to anyone acting for, or in behalf of, any railroad, anything of value as a refund, rebate, discount, or allowance, in order to induce such railroad to influence railroad car builders to purchase, or contract to purchase said products, unless such refunds, rebates, discounts, or allowances are defensible under subsections (a) or (b) of Section 2 of the Clayton Act, as amended.

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

CRUCIBLE STEEL COMPANY OF AMERICA

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECTION 2(c) OF THE CLAYTON ACT AND THE FEDERAL TRADE COMMISSION ACT

Docket C-1385. Complaint, July 19, 1968—Decision, July 19, 1968

Consent order requiring a Pittsburgh, Pa., manufacturer of railroad car springs to cease paying illegal brokerage or secret rebates in the sale of its railroad specialty equipment.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (38 Stat. 730 (1914), as amended, 15 U.S.C. § 13 (c) (1964)), and subsection (a)(1) of Section 5 of the Federal Trade Commission Act (38 Stat. 719 (1914), as amended, 15 U.S.C. § 45 (1964)) hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent Crucible Steel Company of America 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 4 Gateway Center, Pittsburgh, Pennsylvania.

PAR. 2. Respondent has been, and is now, engaged in the manufacture, sale, and distribution of railroad car springs, the majority of which are built to standard specifications and requirements prescribed by the Association of American Railroads, are interchangeable with corresponding springs of other manufacturers, and, along with many other such standardized railroad car component parts, are commonly referred to as railroad specialty products. Respondent sells and distributes its railroad car springs both directly and through a broker to a large number of customers located in various sections of the United States, who purchase such products for use or consumption in the construction, conversion, or repair of railroad cars. Respondent's sales of its railroad car springs are substantial, exceeding $4,000,000 during the calendar year 1964.

PAR. 3. Respondent sells and causes its railroad car springs to

be transported from its manufacturing facilities in the Commonwealth of Pennsylvania to purchasers located in other States of the United States and in the District of Columbia. There has been at all times mentioned herein a continuous course of trade in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce, respondent is now, and has been at all times mentioned herein, in substantial competition with other corporations, partnerships, and firms engaged in the manufacture, sale, and distribution of railroad car springs.

PAR. 5. In the course and conduct of its business in commerce, and particularly during the period April 1959, through December 1963, respondent paid commission fees, brokerage, or allowances in lieu thereof, to a broker located in Baltimore, Maryland, for that broker's services in soliciting sales of respondent's railroad car springs to the Southern Railway System, Washington, D.C., and to independent railroad car builders constructing, converting, or repairing railroad cars for that railroad. Throughout the period April 1959, through December 1963, respondent knew, or should have known, that its broker, in the course and conduct of his business for, and on behalf of, respondent, was paying fifty percent (50%), or more, of said commission fees, brokerage, or allowances in lieu thereof, received from respondent, directly to the Southern Railway System. Such payments or allowances granted by respondent's broker to the Southern Railway System have been substantial, usually equalling two and one-half percent (2½%), five percent (5%), or seven and one-half percent (7½%) of net billings, and approximating more than eleven thousand dollars ($11,000) during the calendar year 1963.

PAR. 6. The acts and practices of respondent, as alleged herein, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

COUNT II

PAR. 7. Paragraphs One through Four of Count I hereof are hereby incorporated by reference, and made a part of this Count, as fully, and with the same effect, as if quoted herein verbatim, subject to the sole exception that the reference to the Clayton Act, as amended, in Paragraph Three of Count I is eliminated herein, and reference to the Federal Trade Commission Act is substituted therefor.

PAR. 8. In the course and conduct of its business in commerce,

and particularly during the period April 1959, through December 1963, respondent paid commission fees, brokerage, or allowances in lieu thereof, to a broker located in Baltimore, Maryland, for that broker's services in soliciting sales of respondent's railroad car springs to the Southern Railway System, Washington, D.C., and to independent railroad car builders constructing, converting, or repairing railroad cars for that railroad. Throughout the period April 1959, through December 1963, respondent knew, or should have known, that its broker, in the course and conduct of his business for, and on behalf of, respondent, was paying fifty percent (50%), or more, of said commission fees, brokerage, or allowances in lieu thereof, received from respondent, directly to the Southern Railway System as secret or confidential rebates or allowances for the purpose of causing that railroad to purchase respondent's railroad car springs directly, and/or to specify the purchase of respondent's railroad car springs in contracts with independent railroad car builders. Such secret or confidential rebates or allowances granted by respondent's broker to the Southern Railway System have been substantial, usually equalling two and one-half percent (2½%), five percent (5%), or seven and one-half percent (7½%) of net billings, and approximating more than eleven thousand dollars ($11,000) during the calendar year 1963.

PAR. 9. The foregoing acts and practices of respondent in paying, granting, or allowing commission fees, brokerage, or allowances in lieu thereof, to a railroad as secret or confidential rebates or allowances in connection with the sale and distribution of its railroad car springs, may have and have had the effect of hindering, lessening, restraining, restricting, suppressing, eliminating, and destroying competition in the sale and distribution of railroad car springs to railroad companies and railroad car building companies; and may have had a tendency to unduly lessen competition or to create and promote a monopoly in the sale and distribution of said products.

PAR. 10. The acts and practices of respondent, as alleged herein, constitute unfair methods of competition or unfair acts or practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, and are in violation thereof.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter

with a copy of a draft of complaint which the Bureau of Restraint of Trade 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 Section 2 of the Clayton 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 § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Crucible Steel Company of America 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 4 Gateway Center, in the city of Pittsburgh, Commonwealth of Pennsylvania.

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 Crucible Steel Company of America, a corporation, and its officers, agents, representatives, or employees, directly or through any corporate or other device, in connection with the sale of railroad car springs, or any other railroad specialty products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

(1) Paying, granting, or allowing, directly or indirectly, to any buyer, or to anyone acting for or in behalf of, or who is subject to the direct or indirect control of, such

buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, in connection with the sale of said products to such buyer for its own account.

(2) Paying, granting, or allowing, directly or indirectly, to any railroad, or to anyone acting for or in behalf of, or who is subject to the direct or indirect control of, any railroad, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, in connection with the sale of said products to such railroad, or in connection with the sale of said products to any other buyer for use in the construction, conversion, or repair of railroad cars for such railroad.

It is further ordered, That respondent Crucible Steel Company of America, a corporation, and its officers, agents, representatives, or employees, directly or through any corporate or other device, in connection with the sale of railroad car springs, or any other railroad specialty products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Paying, granting, or allowing, directly or indirectly, to any railroad, or to anyone acting for or in behalf of any railroad, anything of value as a secret or confidential refund, rebate, discount or allowance in connection with the sale of said products to such railroad, or in connection with the sale of said products to any other buyer for use in the construction, conversion, or repair of railroad cars for such railroad.

(2) Paying, granting, or allowing, directly or indirectly, to any railroad, or to anyone acting for or in behalf of any railroad, anything of value as a refund, rebate, discount, or allowance, in order to induce such railroad to influence railroad car builders to purchase, or contract to purchase said products, unless such refunds, rebates, discounts, or allowances are defensible under subsections (a) or (b) of Section 2 of the Clayton Act, as amended.

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

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

IN THE MATTER OF

THE CROWN CORK & SEAL COMPANY, INC.

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

Docket 8687. Complaint, May 31, 1966—Decision, July 22, 1968

Order vacating an initial decision and dismissing the complaint which charged a Philadelphia, Pa., producer of metal caps for bottled beverages with violating the antimerger law by acquiring a competitor. The Commission held that the complaint should be dismissed because of the special circumstances surrounding the acquisition of Mundet Cork Corporation by respondent, and it is unnecessary to determine whether Mundet Cork Corporation was a failing company within the meaning of the precedents.

COMPLAINT

The Federal Trade Commission has reason to believe that the above named respondent has acquired stock and assets of The Mundet Cork Corporation, a corporation, in violation of Section 7 of the Clayton Act, as amended, (U.S.C., Title 15, Section 18); and therefore, pursuant to Section 11 of said Act, it issues this Complaint, stating its charges in that respect as follows:

I. Definition

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

"*Metal crowns*" are closures for glass and metal containers. A metal crown usually consists of a metal shell stamped from tin plate into which a cork or plastic gasket has been inserted. In this form metal crowns are crimped onto containers which have previously been filled with products usually intended for human consumption. In substantially all circumstances in which metal crowns are used the gas pressure within the closed container exceeds the atmospheric pressure outside thereof.

II. The Crown Cork & Seal Company, Inc.

2. Respondent, The Crown Cork & Seal Company, Inc. (also referred to herein as "Crown"), is, and at all times relevant herein has been, a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at 9300 Ashton Road, Philadelphia, Pennsylvania.

3. At thirteen plants within the United States, respondent is engaged in the manufacture and sale of steel and aluminum cans, metal crowns, tin mill and other metal closures, and aluminum closures for milk bottles. During 1963, metal crowns were manufactured by Crown at Philadelphia, Pennsylvania; Baltimore, Maryland; Atlanta, Georgia; Orlando, Florida; Chicago, Illinois; St. Louis, Missouri; Dallas, Texas; and San Francisco, California. For the fiscal year ending December 31, 1963, Crown's sales were approximately $205,396,000; its assets amounted to approximately $190,193,000; its net income was approximately $9,597,000.

4. The continental United States is the principal market for metal crowns manufactured at Crown's aforesaid domestic plants. From January 1, 1962, to the present time, metal crowns have been manufactured by Crown at the aforesaid plants and have been shipped from such plants across State boundaries to customers located in various States of the United States. In 1963 Crown was the largest domestic producer and seller of metal crowns.

5. Crown is engaged in commerce as "commerce" is defined in the Clayton Act, as amended, and has been continuously so engaged at least since 1961.

III. The Mundet Cork Corporation

6. Prior to February 10, 1966, The Mundet Cork Corporation (also referred to herein as "Mundet") was a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at 7101 Tonnell Avenue, North Bergen, New Jersey.

7. At Mundet's plant in North Bergen, New Jersey, Mundet was engaged in the manufacture and sale of metal crowns and other products. For the fiscal year ending December 31, 1963, Mundet's sales were approximately $22,876,000; its assets amounted to approximately $12,491,000.

8. The continental United States was the principal market for metal crowns manufactured at Mundet's aforesaid domestic plant. From January 1, 1962, until December 31, 1965, metal crowns manufactured by Mundet at the aforesaid plant were shipped from such plant across State boundaries to customers located in various States of the United States. In 1963, Mundet was the sixth largest domestic producer and seller of metal crowns.

9. Mundet was engaged in commerce as "commerce" is defined in the Clayton Act, as amended, at least from 1961 until December 31, 1965.

IV. The Acquisition

10. On or about November 13, 1963, Crown purchased approximately 18,892 shares of the issued and outstanding capital stock of Mundet, which had a total of approximately 23,780 shares issued and outstanding as of that date. As of December 1, 1964, Crown had obtained ownership of 83.5 percent of the issued and outstanding capital stock of Mundet. On December 2, 1965, Crown owned 23,645 shares or 99.4 percent of the issued and outstanding capital stock of Mundet.

11. As a result of Crown's acquisition and holding of the stock of Mundet, as hereinbefore set forth in paragraph 10, Crown obtained the power to control the corporate business and affairs of Mundet, including the power to control the use of the assets of Mundet. On December 2, 1965, the Board of Directors of Crown authorized and ordered the merger of Mundet into Crown. Subsequently, on or about February 10, 1966, the authorized merger was effectuated, and the assets formerly owned by Mundet became the assets of Crown.

V. The Nature of Trade and Commerce

12. The metal crown industry in the United States is substantial. During 1962, the total value of shipments of metal crowns by domestic producers amounted to approximately $83,685,000.

13. The metal crown industry has been marked by a high degree of concentration. In 1962, there were twelve companies in the United States producing and selling metal crowns from twenty-five plants. The four largest sellers accounted for approximately 77 percent of the total industry sales in that year.

14. Prior to respondent's acquisition of Mundet, Crown and Mundet actively competed with one another in the sale of metal crowns. Each was a substantial and effective competitor in the market.

VI. The Alleged Unlawful Adverse Competitive Effects

15. The effect of the acquisition of the stock and assets of The Mundet Cork Corporation by The Crown Cork & Seal Company, Inc., may be substantially to lessen competition, or to tend to create a monopoly, in the manufacture and sale of metal crowns in the continental United States, in the following ways, among others:

(a) Actual or potential competition between Crown and Mundet has been eliminated.

(b) Mundet has been eliminated as an independent competitive factor.

(c) The entry of new competitive entities has been, or may be, inhibited or prevented.

(d) The ability of competitors of Crown to compete effectively may be impaired.

(e) Crown has achieved, or may achieve, a decisive competitive advantage over its competitors.

(f) The level of horizontal concentration has been increased.

(g) An independent source of supply for users of metal crowns has been eliminated.

VII. The Violation Charged

16. Now, therefore, the acquisition of capital stock and assets of The Mundet Cork Corporation by The Crown Cork & Seal Company, Inc., as hereinbefore set forth, constitutes a violation of Section 7 of the Clayton Act (U.S.C., Title 15, Section 18), as amended.

Mr. Raymond L. Hays and *Mr. Paul Kane* supporting the complaint.

Mr. Victor H. Kramer, Mr. Melvin Spaeth, Arnold & Porter, Washington, D.C., for the respondent.

INITIAL DECISION BY ELDON P. SCHRUP, HEARING EXAMINER

FEBRUARY 5, 1968

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STATEMENT OF PROCEEDINGS

The Federal Trade Commission on May 31, 1966, issued its complaint charging respondent The Crown Cork & Seal Company, Inc., a corporation, with violation of Section 7 of the Clayton Act, as amended. Respondent filed answer to the complaint on

July 5, 1966.

The complaint, in brief, alleges that respondent Crown in 1963 was the largest manufacturer and seller of metal crowns within the United States and that on or about November 13, 1963, Crown purchased the controlling capital stock of The Mundet Cork Corporation, alleged to be a substantial and effective competitor and the sixth largest manufacturer and seller of metal crowns within the United States. The metal crown industry [1] in the United States is alleged to be substantial and highly concentrated with annual sales of approximately $83,685,000 accounted for by twelve companies, of which the four largest are allegedly responsible for 77 percent of the total industry sales in the United States.

The complaint charges the effect of the acquisition of Mundet by Crown may be substantially to lessen competition or tend to create a monopoly in the manufacture and sale of metal crowns within the United States and that such acquisition constitutes a violation of Section 7 of the Clayton Act, as amended. Respondent's answer admits, denies or states it is without sufficient knowledge to form a belief as to the truth of the complaint's various allegations and raises the affirmative defense that Mundet was a "failing company." Respondent's answer requests that the complaint be dismissed as unwarranted in law and contrary to the public interest.

Counsel supporting the complaint commenced the presentation of the case-in-chief on May 2, 1967, and concluded on May 5, 1967. Respondent opened its "failing company" defense on May 5, 1967, and concluded on June 5, 1967. On June 9, 1967, and June 13, 1967, counsel supporting the complaint presented rebuttal evidence to respondent's "failing company" defense. On October 2, 1967, respondent opened its "line of commerce" defense and concluded on October 25, 1967. On November 7 and 8, 1967, counsel supporting the complaint presented rebuttal evidence to respondent's "line of commerce" defense.[2]

[1] "Metal crowns" are used as caps or closures on bottles and cans marketed to the consumer by the Nation's beer and soft drink industries. This particular usage of metal crowns is of many years existence. See the Commission's Finding of Fact No. 6, *In the Matter of Crown Manufacturers Association of America, et al,* 45 F.T.C. Decisions, 89 at 105, *aff'd,* 176 F. 2d 974 (1949).

[2] The transcript of record details the various interlocutory matters before the hearing examiner and the Commission which were necessary of disposition prior to the commencement of the hearing on May 2, 1967. It also details the problems, due to certain third-party subpoenas duces tecum issued at the instance of the respondent, which arose before the hearing examiner, the Commission and the district court and gave cause to the noncontinuous hearing permitted by the Commission in this matter commencing May 2 and ending November 8, 1967. See in these particular connections Tr. 3171–3184.

The record for the reception of evidence was closed November 8, 1967. Proposed findings of fact, conclusions and briefs were filed by each counsel on December 22, 1967, and the replies thereto on January 5, 1968. A day-long oral argument was held on January 11, 1968, which included a discussion of the content of complaint counsel's proposed order to cease and desist if any order should issue. The transcript of the perhearing conference and of the hearing testimony and oral argument runs some 4400 pages. Approximately 270 documentary and physical exhibits were received in evidence.[3] The names and occupations of the witnesses testifying and the transcript location of their testimony are as follows:

Case-in-Chief

Dr. Samuel Epstein, vice president Kirsch Beverages Brooklyn, N.Y.	Tr. 1103–1155
James M. Sidie, vice president Boller Beverages Elizabeth, N.J.	Tr. 1156–1179
Fred A. Arndt, general manager Zapata Industries Frackville, Pa.	Tr. 1180–1229
Arthur L. Faubel, association executive Cork Institute of America New York, N.Y.	Tr. 1231–1244
Peter F. O'Sullivan, director of purchasing Piel Brothers Brewery Brooklyn, N.Y.	Tr. 1245–1303
Thomas Kallas, treasurer United States Crown Corp. Saddle Brook, N.J.	Tr. 1304–1317
John F. Connelly, president The Crown Cork & Seal Co., Inc.	Tr. 1318–1328
Walter Oberstbrink, vice president Rheingold Breweries Manhasset, N.Y.	Tr. 1336–1369; 1427–1447

[3] The transcript of the hearing record is hereinafter designated as "Tr."; exhibits of complaint counsel as "CX"; exhibits of counsel for respondent as "RX". Reference made to proposed findings of complaint counsel are designated "CPF" and those of counsel for respondent "RPF". Reference to the oral argument is designated "OA. Tr.".

William J. Cullen, purchasing manager Pepsi-Cola Co. Long Island City, N.Y.	Tr. 1369–1427
Williard F. Emden, manager of sales Crown & Cork Division Continental Can Co. New York, N.Y.	Tr. 1448–1503
Ralph K. Heyman, president Consolidated Cork Corp. Piscataway, N.J.	Tr. 1523–1549

Defense

Richard J. Hanwell, secretary and treasurer (former) The Mundet Cork Corp.	Tr. 1565–1603; 1608–1625
Melvin Spaeth, Esq. Trial Counsel for respondent	Tr. 1603–1608
Edward V. Mahone, C.P.A. Peat, Marwick, Mitchell & Co.	Tr. 1630–1672; 2953–3020
Bernard Knudson, vice president, treasurer (former) The Mundet Cork Corp.	Tr. 1674–2038
Thomas F. Boyle, attorney New York, N.Y. Co-executor, Joseph J. Mundet, Jr., estate, Former director, The Mundet Cork Corp.	Tr. 2055–2190
John J. Cooney (formerly with) Reynolds & Co. New York, N.Y.	Tr. 2215–2275
Curtis G. Callan, second vice president Fiduciary Investment Department, Chase Manhattan Bank New York, N.Y.	Tr. 2278–2315
James K. Campbell, official Bankers Trust Co. New York, N.Y.	Tr. 2323–2387
Jack W. Wyker, C.P.A. Price Warehouse & Co.	Tr. 2390–2464; 2468–2470; 2551–2699; 3023–3072

Proposed findings of fact and conclusions submitted by respective counsel and not adopted in substance or form as herein found and concluded are hereby rejected. After carefully reviewing the entire record in this proceeding as hereinbefore described, and based on such record and the observation of all witnesses on direct and cross-examination, the following Findings of Fact and Conclusions therefrom are made, and the following Order issued:

FINDINGS OF FACT

I. *The Crown Cork & Seal Company, Inc.*

1. The Crown Cork & Seal Company, Inc. (hereinafter sometimes referred to as "Crown") is and at all times relevant herein has been a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 9300 Ashton Road, Philadelphia, Pennsylvania. The Crown Cork & Seal Company, Inc., respondent herein, was incorporated as the successor to several companies in 1927. In 1961, Crown Cork International Corporation was merged into The Crown Cork & Seal Company, Inc. Crown Cork International Corporation was a holding company organized in 1928 to acquire and develop companies engaged in the metal crown business outside the United States, and at the time of the merger, Crown owned 50.2% of the total number of voting shares of Crown Cork International Corporation. As a result of the merger, the subsidiaries of Crown Cork International Corporation located in 13 countries outside the United States became direct subsidiaries of The Crown Cork & Seal Company, Inc.[4]

2. Crown has been engaged in the manufacture and sale of steel and aluminum cans, metal crowns, tin mill and other metal closures, and aluminum closures for milk bottles and packaging machinery at thirteen plants within the United States. Crown, prior to November 13, 1963, manufactured a variety of tinplate and aluminum cans for the food, citrus, brewing, soft drink, oil, paint, toiletries, drug, antifreeze, chemical and pet food industries. It also manufactured a variety of metal crowns, with either cork or plastic liners, for the brewing and soft drink industries, and closures for food and nonfood products, including bottle caps for the dairy industry and caps for the cosmetic industry. Crown

[4] Admitted Resp. Answer; CX 5 and see CX 25, the stipulation between counsel at item 5.

further designed and manufactured filling and crowning equipment for the brewing, soft drink, dairy and wine industries. Equipment was also designed and manufactured for the food, detergent and pharmaceutical industries. Crown has continued to maintain and operate the business activities in which it was engaged prior to November 13, 1963. Crown is engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, and has been continuously so engaged at least since 1961.[5]

3. In 1963, three-fourths of Crown's total dollar sales were produced by Crown in plants located within the United States. Of this total, the sale of cans accounted for approximately 65%, the sale of metal crowns and other closures accounted for approximately 25%, and the sales of machinery accounted for approximately 10%. One-fourth of the total sales of Crown were produced by subsidiaries and plants located outside the United States. Of the total sales by subsidiaries and plants located outside the United States, the sale of metal crowns accounted for approximately 90%. For the fiscal year ending December 31, 1963, Crown's sales were approximately $205,396,000; its assets amounted to approximately $190,193,000; its net income was approximately $9,597,000.[6]

4. In 1963, Crown was the largest domestic producer and seller of metal crowns. During 1963, metal crowns were manufactured by Crown at Philadelphia, Pennsylvania; Baltimore, Maryland; Atlanta, Georgia; Orlando, Florida; Chicago, Illinois; St. Louis, Missouri; Dallas, Texas; and San Francisco, California. At all times relevant herein, metal crowns have been manufactured by Crown at its domestic plants and have been shipped from such plants across state boundaries to customers located in each of the 49 continental States of the United States.[7]

5. The continental United States is the principal market for metal crowns manufactured at Crown's domestic plants. Crown sells metal crowns and its other products directly to customers through seven regional sales districts, which encompass the United States. Crown's sales of metal crowns, which were principally made to brewers and soft drink bottlers located within and without the continental United States, were during each of the calendar years 1960 through 1963, as follows:

[5] Admitted Resp. Answer as to "commerce"; witness Connelly at Tr. 1318–1328; CX 5.

[6] Admitted Resp. Answer as to 1963 fiscal year sales; CX 5.

[7] Admitted Resp. Answer as to industry rank and metal crown manufacturing plants; sales in commerce admitted by Resp.'s trial counsel at Tr. 9.

Year	Within continental United States gross	Without continental United States gross	Total
1960	95,238,653	1,921	95,240,574
1961	92,157,715	1,592	92,159,307
1962	93,546,867	1,017	93,547,808
1963	93,375,563	1,395	[1]93,376,958

[1] CX 21, 22.

6. On or about November 13, 1963, respondent Crown purchased approximately 18,892 shares of the issued and outstanding capital stock of Mundet, which had a total of approximately 23,780 shares issued and outstanding as of that date. As of December 1, 1964, Crown had obtained ownership of 83.5% of the issued and outstanding capital stock of Mundet. On December 2, 1965, Crown owned 23,645 shares or 99.4% of the issued and outstanding capital stock of Mundet. On or about February 10, 1966, respondent merged The Mundet Cork Corporation into The Crown Cork & Seal Company, Inc.[8]

II. *The Mundet Cork Corporation*

7. At all times relevant herein prior to February 10, 1966, The Mundet Cork Corporation (hereinafter sometimes referred to as "Mundet") was a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at 7101 Tonnell Avenue, North Bergen, New Jersey. At Mundet's plant in North Bergen, New Jersey, Mundet was engaged in the manufacture and sale of metal crowns and other products. Prior to November 13, 1963, Mundet sold its metal crowns and other products nationally through its company-employed sales force and through its sales representatives. For the fiscal year ending December 31, 1963, Mundet's sales were approximately $22,876,000; its assets amounted to approximately $12,491,000.[9]

8. Based upon its 1962 value of shipments, 30.7% of the business of Mundet resulted from shipments of metal crowns and closures, 52.6% from insultation and 16.6% from gaskets. The 1962 value of shipments of cork insulation and stoppers by Mundet was $1,210,000, which was 5.5% of its total value of shipments. The 1962 value of shipments of plastic insulation by Mundet was $367,000, which was 1.6% of its total value of ship-

[8] Admitted Resp. Answer.

[9] Admitted Resp. Answer; witness Knudson at Tr. 1678–1679.

ments. The 1962 value of shipments of magnesia packing insulation by Mundet was $559,000, which was 2.5% of its total value of shipments. The 1962 value of insulation installation service by Mundet was $7,993,000, which was 36.8% of its total value of shipments. The 1962 value of shipments of insulation materials bought and sold without further processing by Mundet was $1,283,000, which was 5.9% of its total value of shipments. The 1962 value of shipments of cork and rubber gaskets by Mundet was $3,598,000, which was 16.6% of its total value of shipments. The 1962 value of shipments of metal crowns by Mundet was $6,459,000, which was 29.8% of its total value of shipments during that year.[10]

9. The continental United States was the principal market for metal crowns manufactured at Mundet's domestic plant. In 1963, Mundet was the sixth largest domestic producer and seller of metal crowns. Mundet was engaged in commerce as "commerce" is defined in the Clayton Act, as amended. Prior to November 13, 1963, Mundet sold metal crowns to brewers of malt beverages and bottlers of soft drinks. Mundet's sales of metal crowns to customers located within and without the continental United States, during each of the calendar years 1960 through 1963, were as follows:

Calendar Year	Within continental United States (gross)	Without continental United States (gross)	Total
1960	23,084,000	910,000	23,994,000
1961	23,044,000	793,000	23,837,000
1962	23,393,000	289,000	23,682,000
1963	24,316,000	410,000	[1]24,726,000

[1] Admitted Resp. Answer as to "commerce"; CX 27 as to industry rank; CX 20, CX 27, item 11.

10. The sales, in dollars, of metal crowns by The Mundet Cork Corporation to customers located in the following identified States and the percentage of such sales to the total dollar sales of metal crowns to all customers located in the continental United States by The Mundet Cork Corporation, during the calendar year 1962 and during the first six months of 1963, were:

[10] Witness Knudson at Tr. 1675–1676; CX 25, item 14 and CX 14, pp. 5 and 6.

States	1962	Percent	1st 6 mos. of 1963	Percent
Alabama	$127,482	2.06	$62,577	1.84
Arizona	70,725	1.14	25,315	0.74
Arkansas	101,729	1.64	71,608	2.10
California	671,944	10.87	332,776	9.79
Colorado	173,530	2.81	246,938	7.26
Connecticut	188,927	3.06	127,310	3.74
Delaware	603	0.01	0	0
Flordia	61,240	0.99	65,183	1.92
Georgia	178,606	2.89	91,626	2.69
Idaho	0	0	0	0
Illinois	111,228	1.80	32,949	0.97
Indiana	3,026	0.05	4,406	0.13
Iowa	82,047	1.33	11,350	0.33
Kansas	3,985	0.06	0	0
Kentucky	5,569	0.09	407	0.01
Louisiana	165,550	2.68	63,466	1.87
Maine	16,364	0.26	0	0
Maryland	224,330	3.63	164,778	4.84
Massachusetts	129,307	2.09	50,664	1.49
Michigan	152,697	2.47	84,197	2.48
Minnesota	516,006	8.35	233,489	6.87
Mississippi	76,252	1.23	49,479	1.46
Missouri	7,380	0.12	3,805	0.11
Montana	0	0	0	0
Nebraska	4,769	0.08	0	0
Nevada	7,424	0.12	11,388	0.33
New Hampshire	39,927	0.64	41,498	1.22
New Jersey	242,062	3.92	123,308	3.63
New Mexico	2,544	0.04	687	0.02
New York	276,439	4.47	184,893	5.44
North Carolina	231,225	3.74	101,578	2.99
North Dakota	24,317	0.39	1,160	0.03
Ohio	305,402	4.94	151,152	4.44
Oklahoma	144,050	2.33	87,361	2.57
Oregon	0	0	0	0
Pennsylvania	170,489	2.76	122,833	3.61
Rhode Island	57,272	0.93	31,334	0.92
South Carolina	0	0	0	0
South Dakota	28,084	0.45	8,355	0.24
Tennessee	29,894	0.48	10,335	0.30
Texas	518,082	8.38	325,663	9.58
Utah	0	0	0	0
Vermont	0	0	65	0
Virginia	80,723	1.30	75,425	2.22
Washington	1,537	0.02	0	0
West Virginia	9,355	0.15	13,207	0.39
Wisconsin	939,482	15.20	387,790	11.40
Wyoming	0	0	0	0
Dist. of Columbia	0	0	0	0
Domestic total[1]	6,181,604	99.97	3,400,355	99.97

[1] CX 19, 23, 25, item 23.

11. Prior to respondent's acquisition of Mundet, Crown and Mundet actively engaged in substantial competition with one another in the sale of metal crowns in commerce. During 1962, 52.21% of Mundet's sales of metal crowns to customers within the continental United States were to customers located in the six States of Wisconsin, California, Texas, Minnesota, Ohio, and New York. During 1962, Mundet's five largest metal crown customers in the State of Wisconsin, together with the dollar sales to each such customer, were as follows:

Customer	Amount	Source
Joseph Schlitz Brewing Co., Milwaukee	$335,297	CX 23, p. 125.
Miller Brewing Co., Milwaukee	326,331	CX 23, p. 125.
Pabst Brewing Co., Milwaukee	70,071	CX 23, p. 125.
G. Heileman Brewing Co., La Crosse	41,447	CX 23, p. 124.
Jacob Lienenkugel Brewing Co., Chippewa Falls	20,590	CX 23, p. 122.

During 1962, Crown's dollar sales of metal crowns to the five largest metal crown customers of Mundet in the State of Wisconsin, were as follows:

Customer	Amount	Source
Joseph Schlitz Brewing Co., Milwaukee	$164,062	CX 21, p. 66.
Miller Brewing Co., Milwaukee	117,458	CX 21, p. 63.
Pabst Brewing Co., Milwaukee	421,907	CX 21, p. 64.
G. Heileman Brewing Co., Milwaukee	5,451	CX 21, p. 62.
Jacob Lienenkugel Brewing Co., Chippewa Falls	9,754	CX 21, p. 63.

12. During 1962, Mundet's five largest metal crown customers in the State of California, together with the dollar sales to each such customer, were as follows:

Customer	Amount	Source
Lucky Lager Brewing Co., San Francisco	$116,053	CX 23, p. 17.
Theo. Hamm Brewing Co., San Francisco and Los Angeles	63,304	CX 23, pp. 14 & 17.
Nehi Beverage Co., Los Angeles	56,217	CX 23, p. 13.
National Drinks Bottling Co., Gardena	41,956	CX 23, p. 13.
Pepsi-Cola Bottling Co., San Francisco	37,866	CX 23, p. 17.

During 1962, Crown's dollar sales of metal crowns to the five largest metal crown customers of Mundet in the State of California were as follows:

Customer	Amount	Source
Lucky Lager Brewing Co., San Francisco	None	CX 21, p. 153.
Theo. Hamm Brewing Co., San Francisco and Los Angeles	$132,719	CX 21, p. 62. CX 22, pp. 22 & 44.
Nehi Beverage Co., Los Angeles	23,774	CX 22, p. 45.
National Drinks Bottling Co., Gardena	13,300	CX 21, p. 142.
Pepsi-Cola Bottling Co., San Francisco	25	CX 21, p. 158.

13. During 1962, Mundet's five largest metal crown customers in the State of Texas, together with the dollar sales to each such customer, were as follows:

Customer	Amount	Source
Lone Star Brewing Co., San Antonio	$39,490	CX 23, p. 114.
Pearl Brewing Co., San Antonio	33,104	CX 23, p. 114.
Dr. Pepper Bottling Co., Abilene	20,017	CX 23, p. 104.
Dr. Pepper Bottling Co., Lubbock	16,889	CX 23, p. 112.
Seven-Up Bottling Co., Dallas	15,510	CX 23, p, 106.

During 1962, Crown's dollar sales of metal crowns to the five largest metal crown customers of Mundet in the State of Texas were as follows:

Customer	Amount	Source
Lone Star Brewing Co., San Antonio	$113,656	CX 21, p. 110.
Pearl Brewing Co., San Antonio	99,165	CX 21, p. 113.
Dr. Pepper Bottling Co., Abilene	None	CX 21.
Dr. Pepper Bottling Co., Lubbock	2,441	CX 21, p. 106.
Seven-Up Bottling Co., Dallas	15,510	CX 21, p. 118.

14. During 1962, Mundet's five largest metal crown customers in the State of Minnesota, together with the dollar sales to each such customer, were as follows:

Customer	Amount	Source
Theo. Hamm Brewing Co., St. Paul	$148,525	CX 23, p. 58.
Minneapolis Brewing Co., Minneapolis	133,416	CX 23, p. 56.
Pfeiffer Brewing Co., St. Paul	46,597	CX 23, p. 58.
Seven-Up Bottling Co., Minneapolis	19,261	CX 23, p. 56.
Gold Medal Beverage Co., St. Paul	17,369	CX 23, p. 58.

During 1962, Crown's dollar sales of metal crowns to the five largest metal crown customers of Mundet in the State of Minnesota, were as follows:

Customer	Amount	Source
Theo. Hamm Brewing Co., St. Paul	$263,301	CX 21, p. 62.
Minneapolis Brewing Co., Minneapolis	72,616	CX 21, p. 63.
Pfeiffer Brewing Co., St. Paul	None	CX 21.
Seven-Up Bottling Co., Minneapolis	None	CX 21.
Gold Medal Beverage Co., St. Paul	None	CX 21, p. 61.

15. During 1962, Mundet's three largest metal crown customers in the State of Ohio, together with the dollar sales to each such customer, were as follows:

Customer	Amount	Source
Carling Brewing Co., Cleveland	$247,860	CX 23, p. 91.
International Brewing Co., Findlay	42,127	CX 23, p. 91.
Hudepohl Brewing Co., Cincinnati	13,674	CX 23, p. 91.

During 1962, Crown's dollar sales of metal crowns to the three largest metal crown customers of Mundet in the State of Ohio were as follows:

Customer	Amount	Source
Carling Brewing Co., Cleveland	$98,827	CX 21, p. 39.
International Brewing Co., Findlay	19,356	CX 22, p. 19.
Hudepohl Brewing Co., Cincinnati	9,831	CX 22, p. 16.

16. During 1962, Mundet's five largest metal crown customers

in the State of New York, together with the dollar sales to each such customer, were as follows:

Customer	Amount	Source
Coca-Cola Bottling Co., New York	$45,165	CX 23, p, 88.
Piels Bros. Co., Brooklyn	39,356	CX 23, p. 84.
International Brewing Co., Buffalo	28,869	CX 23, p. 84.
Metropolitan Bottling Co., Astoria	16,936	CX 23, p. 82.
Seven-Up Bottling Co., New Rochelle	15,631	CX 23, p. 88.

During 1962, Crown's dollar sales of metal crowns to the five largest metal crown customers of Mundet in the State of New York were as follows:

Customer	Amount	Source
Coca-Cola Bottling Co.. New York	$125,673	CX 21, p. 2.
Piels Bros. Co., Brooklyn	54,569	CX 21, p. 14.
International Brewing Co.. Buffalo	None	CX 21.
Metropolitan Bottling Co., Astoria	None	CX 21.
Seven-Up Bottling Co., New Rochelle	10,658	CX 21, p. 7.

17. Subsequent to the acquisition of Mundet, respondent Crown exercised such control over the assets of Mundet that the function of selling metal crowns formerly exercised by Mundet was assumed by Crown.[11] Crown further exercised such control over the assets of Mundet that the machinery and equipment formerly used by Mundet for the manufacture of metal crowns was scrapped, stored, sold or dispersed to domestic and foreign plants of Crown. Respondent Crown stopped making metal crowns in the Mundet plant during the year 1965.[12]

III. *The Line of Commerce*

18. The complaint alleges the relevant product market in which to test the competitive effect of the acquisition of Mundet by respondent Crown to be the manufacture and sale of metal crowns. The record discloses that 99% of all metal crowns manufactured and sold within the United States are to producers in the brewing and soft drink industries.[13] Counsel for the parties

[11] Witness Knudson at Tr. 1965, 1967, 2017–2018.
[12] Witness Luviano at Tr. 2504–2510, 2513.
[13] Respondent's witness Pollitz at Tr. 3860–3861.
See also footnote 1, *supra*.

are agreed that the geographic area in which to test the competitive effect of the acquisition extends to the United States as a whole, but counsel for respondent dispute the existence of a relevant product market limited by the complaint to metal crowns. Counsel for respondent contend that any relevant product market must include both metal can and glass bottle containers and all types of closures made and sold in the United States to the beer and soft drink industries. This contended for extension of the relevant product market set forth in the complaint is rejected.

19. Prior to and since the acquisition of Mundet by respondent Crown, producers in the beer and soft drink industries have had the optional choice of marketing their products in either or both metal can and glass bottle containers. Where a metal can is chosen it can be marketed either with a lid requiring a tool to open it, or the lid may contain a so-called easy opening or "convenience" closure removable by hand. Where the glass bottle container is used, it can either be a returnable or a non-returnable bottle. A returnable bottle is reused by the beer or soft drink producer following its return from the consumer. A non-returnable bottle is disposed of by the consumer after its first use. Both the returnable and non-returnable bottle, at the option of the beer and soft drink producer, may use either a metal crown or another type closure. This other type closure is also called an easy opening or "convenience" closure removable by hand.[14]

20. Metal crowns are a unique type closure traditionally used to cap beer and soft drink bottles. They are stamped from tinplate into which a cork or plastic inlay is inserted and are attached to the neck of the bottle by a crimping process which gives the closure a fluted or crown-like appearance. Specialized machinery is required by both the manufacturers of metal crowns and by the bottlers in the beer and soft drink industries attaching metal crown closures to the container.[15]

21. Metal crowns are normally removed from the bottle by use of a tool. Other type closures described as "convenience" closures are removable without a tool and are generally made of aluminum and attached to the bottle by a non-crimping process. Specialized machinery and equipment are used both by the manu-

[14] Witnesses Epstein at Tr. 1105–1106, 1154–1155; Sidie at Tr. 1157, 1177; O'Sullivan at Tr. 1247–1248; Oberstbrink at Tr. 1341–1346; Cullen at Tr. 1374–1377.

[15] Witnesses Epstein at Tr. 1108–1110; Sidie at Tr. 1159–1163; Arndt at Tr. 1181, 1185; O'Sullivan at Tr. 1250–1257; Kallas at Tr. 1307–1310 (United States Crown Corporation manufactures both the conventional metal crown and a flip-top metal crown from tinplate. This latter crown is an exception to the general rule in that it can be removed by hand due to its flip-top tab.); Oberstbrink at Tr. 1356–1360; Heyman at Tr. 1524–1529, 1542–1544; Kennedy at Tr. 4126, 4128.

facturers of convenience closures and by the bottlers in the beer and soft drink industries attaching these closures to the containers. This introduces another cost factor for consideration by the bottler in addition to the substantially higher price paid for these closures over metal crowns.[16] The traditional metal crown is a much cheaper closure in price and constitutes the great bulk of sales to producers of beer and soft drinks, but sales of "convenience" closures, despite the added price, are made where a beer or soft drink producer finds their use necessary for competitive reasons.[17]

Illustrative of the foregoing is the following testimony in part of various of the manufacturer and bottler witnesses:

For example, witness Epstein testified at Tr. 1154:

HEARING EXAMINER SCHRUP: Well, what I was trying to figure out was the precentage of the cost of the crown to the total cost. It is a small portion; right?

THE WITNESS: It is a small portion, but it is important to us, because we deal in mills in our business. Let us say it costs a penny a case less, or let us say in this case it would cost us two cents a case more to use this screwtype cap, and you multiply that by a million cases and that amounts to a lot of money.

Witness Sidie testified in part as follows at Tr. 1174–1177:

Q. Why haven't you gone into the type of cap that is exemplified by Respondent's Exhibit 137 for identification?

A. Well, it is more expensive than the cap we are now using.

Q. How much more expensive?

A. I think the original cost that we were approached with was two-and-a-half to three times as much.

Q. What is the present cost?

A. I think it is down to about twice the cost.

Q. How much would it cost you—strike that. What type of machine would apply this type of cap?

A. Well, I understand it is a special machine. I don't know the exact cost. I think it is in the neighborhood of twenty-thousand dollars.

Q. Could you apply this type of cap with your present crowner?

A. No.

Q. What is the significance of the cost of this type of cap to your bottling operation, in comparison with the type of cost that a standard metal crown costs you?

A. Well, as I said before, we order two carloads of crowns a year,

[16] Witnesses Kennedy at Tr. 4116–4167; Wheaton at Tr. 4172–4202.

[17] See the testimony of witness Cullen of the Pepsi-Cola Company relative to the use percentage-wise by his company of soft drink metal cans, bottles and metal crowns at Tr. 1373–1377, 1401–1403. With reference to the economics of the use of returnable v. non-returnable bottles, see the testimony of witness Custer of the Washington Coca-Cola Bottling Company at Tr. 4030–4031, 4034–4036, 4046–4048, 4069–4070.

roughly. I think that the cost is in the neighborhood of—they are about twenty-seven cents a gross, so it would be eight to ten thousand dollars an order.

So if we spend twenty thousand dollars a year for crowns now, we would spend sixty thousand dollars a year for crowns if we ordered this screw type; forty to sixty thousand, I should say.

Q. What would be the significance of the doubling of your crowning cost on your company's operation?

A. That kind of cost would cut into the profit pretty substantially. We are different than most beverage companies. We operate on high volume and pretty tight cost control. We would feel it more than another fellow would. Someone might charge that off to advertising in another company, but we couldn't do that.

Q. What percentage of your production is put out in non-returnable glass as opposed to returnable glass?

A. Oh, ninety-eight or ninety-nine percent.

Witness O'Sullivan testified to the following at Tr. 1261:

HEARING EXAMINER SCHRUP: Is the inference from that, Mr. Witness, that in the absence of this competition you would use the regular metal crown?

THE WITNESS: That's right.

By Mr. Kane:

Q. Do you use these metal crowns on all other glass containers?

A. Yes.

Witness Oberstbrink testified as follows at Tr. 1443–1444:

Q. Is that particular closure a convenience feature?

A. Yes.

Q. Why didn't you offer it for sale on your containers of beer for the benefit of the consuming public?

A. Well, there are several reasons. First there is a question as to how well it would perform as a closure and then, secondly, there was a question as to whether we would be able to get back the premium amount of money that you have to pay for that closure from the consumer, or whether we would have to pass it on to him. And if we had to pass it on to him, it would increase our cost and cut our profit.

Witness Wheaton testified to the following at Tr. 4185:

HEARING EXAMINER SCHRUP: When you say "price," does that mean that they stopped using it because they were required to pay a higher price than another closure that they might use as an alternative?

THE WITNESS: Yes.

22. The metal crown industry in the United States is substantial. The value of shipments of metal crowns during 1962 amounted to $83,685,000. The Bureau of the Census of the United States Department of Commerce has continuously, since at least 1945, collected, compiled and disseminated data descriptive of

the shipments of metal crowns.[18] The Glass Container Manufacturers Institute, Inc., operates as a trade association of manufacturers of glass containers and closures. Its membership includes companies engaged in the manufacture and sale of metal crowns.[19] The Glass Container Manufacturers Institute, Inc., has advised, and recommended, and continues to advise and recommend that the Bureau of the Census of the United States Department of Commerce classify data descriptive of the shipments of metal crowns by the manufacturers thereof, in a separate and distinct manner from data descriptive of the shipments of all other closures, including all other closures used for beer and soft drink containers. The Bureau of the Census of the United States Department of Commerce has been, and continues to be, reimbursed by the Glass Container Manufacturers Institute, Inc., for the collection, compilation and dissemination of the data descriptive of the shipments of metal crowns.[20]

The August 1967 Bureau of the Census Current Industrial Report.[21] Closure for Containers, Shipments by Type, classifies metal closures as follows:

Description of product	Unit of measure	Quantity shipped
Metal closures for glass and metal pressure containers, total	M gross	32,644
Metal Crowns:		
Soft drink containers	do	21,640
Beer and all other	do	9,078
All other metal closures (roll-ons, snip, tear-off and flip caps)		
Except crowns:		
Soft drink containers	M gross	619
Beer and all other	do	1,307

23. Based on the testimony and evidence of record and the preceding findings of fact, the hearing examiner finds that the preponderance of the probative and substantial evidence in this

[18] CX 24, as was stipulated between the parties in CX 25, is the United States Bureau of Census Annual Survey of Manufacturers. CX 24 shows metal crowns to be separately classified from all other closure products and sets forth the dollar value of metal crown shipments for each year 1958–1962. See further, CX 53–CX 70 also issued by the United States Bureau of Census.

[19] Witness Fried at Tr. 3234. See also the testimony of witness Faubel relative to the Crown Manufacturers Division of the Cork Institute of America at Tr. 1231–1245.

[20] Witness Berard at Tr. 4086-4087, 4097, 4105, 4113–4114.

[21] CX 68 showing Bureau of the Census release data of October 17, 1967. It is noted that while the U.S. Crown Corp. flip-top closure (see footnote 18, *supra*) does not appear to be included in the above metal crown shipments, it has been included in the metal crown shipments of said company stipulated by the parties for the purposes of this proceeding.

proceeding shows the manufacture and sale of metal crowns, as alleged in the complaint, to be a commercially significant and recognized line of commerce and a meaningful relevant product market which extends throughout the United States.[22]

IV. *The Competitive Effect of the Acquisition and Respondent's Affirmative "failing company" Defense*

24. During the years 1960–1966, metal crowns were stipulated by the parties to have been manufactured and sold by the following companies:

1. The Crown Cork & Seal Company, Inc.
2. Continental Can Company, Inc.
3. W. H. Hutchinson & Son, Inc.
4. Armstrong Cork Company
5. Consolidated Cork Corporation
6. The Mundet Cork Corporation
7. Hoosier Crown Corporation
8. Penn Cork & Closures, Inc.
9. Sycamore Manufacturing Company, Inc.
10. Jeffco Manufacturing Company
11. United States Crown Corporation
12. Chicago Crown Corporation
13. Utica Cutlery Company
14. Desplaines Manufacturing Company
15. Ferdinand Gutmann & Company
16. Zapata Industries

With reference to the above manufacturers, it is to be noted that during 1963, The Mundet Cork Corporation was acquired by The Crown Cork & Seal Company, Inc. The Mundet Cork Corporation subsequently discontinued the manufacture and sale of metal crowns.

Sycamore Manufacturing Company, Inc., a wholly owned subsidiary of Associated Coca-Cola Bottling Plants, Inc., Daytona Beach, Florida, produced metal crowns only for Associated Coca-Cola Bottling Plants, Inc.[23]

During 1963, Ferdinand Gutmann & Company discontinued the manufacture and sale of metal crowns.[24]

25. Following is a tabulation which shows the total shipments measured in gross amounts by the metal crown industry for the years 1960–1965, together with the total shipments in gross

[22] Compare, among others, *United States of America* v. *Aluminum Company of America, et al.*, 233 F. Supp. 718, *aff'd* per curiam, October 11, 1965, 382 U.S. 12.

[23] Witnesses Emden at Tr. 1460; Heyman at Tr. 1532.

[24] CX 27.

amounts by each manufacturer member of the industry.[25] The tabulation depicts the relative ranking of each member manufacturer in the metal crown industry, together with their percentage share of the total industry metal crown shipments made during the said years: (Chart appears on page 274)

26. The metal crown industry has been characterized by a high degree of concentration. The first and second largest companies engaged in the manufacture and sale of metal crowns to customers located within the continental United States had the following market shares during each calendar year 1960–1965 as is shown by the preceding industry tabulation:

	Percent 1960	Percent 1961	Percent 1962	Percent 1963	Percent 1964	Percent 1965
Crown	33.42	31.01	31.03	30.37	35.03	33.76
Continental Can Co.	20.79	21.16	20.90	22.10	23.17	22.52
Total	54.21	52.17	51.93	52.47	58.20	56.28

In 1963, the industry tabulation shows there were thirteen companies in the United States producing and selling metal crowns. The four largest shipped 78.02% of all metal crowns manufactured and sold to customers located within the continental United States in 1963.

In 1964, the industry tabulation shows there were twelve companies in the United States producing and selling metal crowns. The four largest shipped 84.82% of all metal crowns manufactured and sold to customers located within the continental United States during 1964.

In 1965, the industry tabulation shows there were thirteen companies in the United States producing and selling metal crowns. The four largest shipped 83.03% of all metal crowns manufactured and sold to customers located within the continental United States in 1965.

27. Respondent has submitted various proposed findings not herein being adopted as to the substantial sales inroads metal

[25] This industry tabulation is derived from the stipulations of fact between the parties in evidence as CX 27 and RX 189. The industry totals do not reflect the metal crown shipments of the captive manufacturer Sycamore selling only to its parent as set forth in Finding No. 24 and as to which counsel are agreed that such omission is to be disregarded. Industry shipments for the first six months of the year 1966 are set forth in stipulated RX 195 received *in camera*. RX 195 does not reflect full year shipments and the data thereon would not materially change the industry picture. *In camera* treatment was accorded RX 195 under the provisions of the Order of August 10, 1967, by the United States District Court for the Southern District of New York requiring production of this metal crown data under a third-party Commission subpoena duces tecum issued at the instance of the respondent.

United States Metal Crown Sales By Gross Lots

	1960		1961		1962		1963		1964		1965	
	Gross	Percent	Gross	Percent	Gross	Percent	Gross	Percent	Gross	Percent	Gross	Percent
1. Crown Cork & Seal	95,238,653	33.42	92,157,715	31.01	93,546,867	31.03	93,375,563	30.37	111,039,663	35.03	114,688,599	33.76
2. Continental Can Co.	59,239,000	20.79	62,895,000	21.16	63,012,000	20.90	67,957,000	22.10	73,433,000	23.17	76,479,000	22.52
3. W. H. Hutchinson, Inc.	37,069,000	13.00	43,757,000	14.72	45,124,000	14.97	46,388,000	15.09	51,041,000	16.10	56,709,000	16.69
4. Armstrong Cork Co.	28,002,000	9.82	29,142,000	9.81	31,401,000	10.41	32,178,000	10.46	33,361,000	10.52	34,156,000	10.06
5. Consolidated Cork Corp.	26,584,274	9.33	29,663,723	9.98	27,737,214	9.20	26,028,736	8.46	26,821,213	8.46	31,859,194	9.38
6. Mundet Cork Corp.	23,084,000	8.10	23,044,000	7.75	23,393,000	7.76	24,316,000	7.91				
7. Hoosier Crown Corp.	7,984,000	2.80	7,919,000	2.66	9,261,000	3.07	8,532,000	2.77	10,580,000	3.34	12,582,000	3.70
8. Penn Cork & Closures	4,183,000	1.47	4,590,000	1.54	4,335,000	1.44	4,915,000	1.60	4,868,000	1.54	4,921,000	1.45
9. Jeffco Manufacturing Co.									1,953,000	0.62	3,043,000	0.90
10. U.S. Crown Corp.							186,000	0.06	1,373,000	0.43	2,668,627	0.79
11. Chicago Crown Corp.	1,819,000	0.64	2,669,000	0.90	2,668,000	0.88	2,632,000	0.86	1,692,000	0.53	1,752,000	0.52
12. Utica Cutlery Co.	818,000	0.29	699,000	0.24	724,000	0.24	809,000	0.26	672,000	0.21	670,000	0.20
13. Desplaines Manufacturing Co.	135,000	0.05	163,000	0.05	143,000	0.05	142,000	0.05	142,000	0.05	137,000	0.04
14. Ferdinand Gutmann Co.	838,000	0.29	529,000	0.18	167,000	0.05	33,000	0.01				
15. Zapata Industries											22,000	
U.S. Universe	284,993,927	100.00	297,228,438	100.00	301,512,081	100,00	307,492,299	100.00	316,975,876	100.00	339,687,420	100.00

cans are making on bottles and the so-called convenience closures on metal crowns, together with conclusionary forecasts by two proposed expert witnesses as to increased future sales inroads of the same to producers in the beer and soft drink industries.[26]

These sales inroads and forecasts of future increases do not negate the competitive effect within the metal crown industry of the acquisition of Mundet by respondent Crown. The optional choices open to producers in the beer and soft drink industries, for example, where cans are selected over bottles, would of course eliminate the purchase of all bottle closures including metal crowns. Where bottles are being selected instead of metal cans, however, competition between the manufacturers of the so-called convenience closures and manufacturers of the metal crowns will come into play and become all the more intense and critical to the manufacturers of metal crowns to obtain this optional metal crown business, and particularly, between each metal crown manufacturer to sell the products of its own manufacture.

For example, RX 163 the United States Crown Corporation Annual Report for 1967 states in part:

> The fiscal year 1966 proved one of disappointment and resulted in a loss of $416,447. The domestic demand for our Flip Top Crown has been somewhat diluted by the advent on the market of a number of competing convenience closures.

The most formidable barrier, among others, facing prospective entrants and a most serious problem to those already present in the metal crown industry, is the obtaining of the metal crown business of producers in the beer and soft drink industries in sufficient sales volume to insure a profit. For example, the witness Arndt, a development engineer and chemist from Zapata Industries and a former production manager of Mundet, testified in part at Tr. 1188–1191:

> Q. Can you give us an idea of the cost of construction of the plant which is located at Frackville, Pennsylvania?
> A. A million and a half to two million dollars.
> Q. Does this include all the machinery in the plant?
> A. Yes.
> HEARING EXAMINER SCHRUP: This plant manufactures nothing but crowns?
> THE WITNESS: That is all.
> Q. What is the most difficult part of starting a new company in the manufacture of metal crowns?
> A. Well, that is a pretty tough question, but I don't imagine it's any different from starting to manufacture anything. You have the total technology involved in the manufacturing and sales and the raising of the money to do it. You have to have the right machinery, the right people,

[26] Witnesses Fried and Pollitz listed at p. 258, *supra*) and RX Nos. 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49 and 50. See, OA. Tr. 4242–4250.

the right amount of money, and you have to develop some customers after you are all through.

Q. Have you developed customers?

A. Some.

Q. Have you developed enough customers to render your metal crown operations profitable?

A. Very nearly.

Q. And your company was started in 1964?

A. Right.

In conclusion at Tr. 1229 the witness testified to the following:

HEARING EXAMINER SCHRUP: Now, in obtaining this business, these two companies, did you generate entirely new business or did you take customers from competitor manufacturers of crowns?

THE WITNESS: Well, there is a different situation for U. S. Crown than for Zapata, because we do not manufacture anything like this flip-top crown. As far as the standard crowns are concerned, though, you have to get the business from people who are now buying crowns from someone else.

For another example, the testimony of the witness Kallas from United States Crown Corporation, a manufacturer of both flip-top crowns and conventional metal crowns, was in part as follows at Tr. 1311:

Q. Did your company's operation for the year ended March 31st, 1966 show a profit or a loss?

A. It showed a loss.

Q. To approximately what extent?

A. Five hundred-thousand dollars.

Q. Why did your company show a loss to that extent for that time period?

A. Why did it show a loss?

Yes, sir.

A. I think you would have to say we didn't have the sales to produce enough profit to offset our costs.

28. Respondent's counsel contend that Mundet was not a substantial and effective competitor in the market for the manufacture and sale of metal crowns as alleged in the complaint. This contention is allied to respondent's "failing company" defense but more particularly concerns a metal crown plastic liner production problem that had been encountered by Mundet. Respondent's contention that Mundet was not a substantial and effective competitor is made in the face of Mundet's substantial sales record over the years and its constant sixth place ranking in the metal crown industry as shown on the preceding industry tabulation at page 274, *supra*.

Witness Arndt, a former production manager at Mundet, testified in part as follows at Tr. 1226:

Q. Now, I want you to tell us whether or not you are absolutely certain that the plastic-lined crowns that Mundet was making in December of 1961, at the time you left, or in November of 1961, were of competitive

quality with other plastic-lined crowns then on the market.

A. Well, Mundet was only then starting to manufacture plastic-lined crowns by the Dewey and Almy process, and to the extent that they had manufactured and in the quantities they had manufactured the crowns, to my knowledge, they were commercially acceptable. By that, I mean, a crown is either right or wrong. If they are all right, then they are commercially acceptable.

The minutes of the Mundet Directors meeting of October 24, 1962, CX 35 at page 4, under the heading *Dewey & Almy,* states in part:

Mr. Hayward . . . recommended that the equipment be purchased since the sales volume was already in existence and would be maintained only if the Company were in a position to continue to produce this type of plastic crown. A resolution was thereupon introduced and approved authorizing the purchase of the equipment at a cost of $46,730. See also RX 36, p. 2, under heading, *Dewey & Almy.*

Mundet's plastic liner production problem was in process of being corrected and it is logical to infer that its resolution could only but make Mundet a still more substantial and effective industry competitor. In these regards the transcript of the oral argument at OA. Tr. 4321–4322 shows the following colloquy between the hearing examiner and counsel for respondent:

[Mr. Kramer] Now, Cullen testified in a passage we failed, through inadvertence, to quote in our brief—Tr. 1397–8:

Question: Do you know anything about the research and development activities of Mundet?

Answer: Yes. They would not have been comparable to some of their competitors. For example, Bond, Crown Cork & Seal, Hutchinson, and Consolidated.

HEARING EXAMINER SCHRUP: Did you continue to purchase from them—meaning Mundet.

THE WITNESS: If Mundet had no research and development, we would still do business with them, but chances are we would do less than if they had research and development.

[Mr. Kramer] Yet Cullen was cited for proof of the fact that Mundet met its competition.

HEARING EXAMINER SCHRUP: Well, your point—all I am asking is this.

Doesn't this show, only show that if Mundet had improved—if there was some lack of progress in research and development, and some lack of progress in utilizing the latest type plastics, et cetera, et cetera, that only shows that it was not a substantial and competitive a factor as it might have been if it had done so.

MR. KRAMER: That is right, Your Honor. I am correcting errors in their brief, Judge.

The testimony of witness Sidie from Boller Beverages, a substantial producer of bottled soft drinks and a purchaser of metal

crowns, was in part as follows at Tr. 1168–1169:

Q. Is it possible for you to give us a comparison of the quality of the metal crowns sold to your company by the Mundet Cork Corporation during 1963 to the quality of metal crowns sold by other companies?

A. They were all very satisfactory.

Q. You mean all the Mundet's crowns, or all of the companies selling metal crowns?

A. Any company that we ever bought from gave us a satisfactory product.

Q. Is it possible for you to give us a comparison of the prices of metal crowns sold your company by the Mundet Cork Corporation in 1963 to the prices at which metal crowns were offered for sale by other companies?

A. They were always the same.

HEARING EXAMINER SCHRUP: If the prices were the same, why would you go from company to company?

THE WITNESS: You don't, generally. I think that buying crowns is one of the most lasting buyer-seller relationships in our industry.

Respondent Crown also recognized this customer loyalty in connection with its acquisition of Mundet and the retention and use of Mundet's sales force. The testimony of witness Cullen at Tr. 1384–1385 was in part:

Q. How long has he been representing himself as being a Mundet salesman?

A. I would say that Mr. Begley has been a Mundet salesman, at least to my knowledge, for at least seven or eight years.

Q. On the metal crowns that Mr. Begley sold to your company during the past seven or eight years, have they always been manufactured by Crown Cork & Seal Company?

A. No, sir.

Q. By what company had they been manufactured?

A. They were, up until the acquisition of Mundet by Crown Cork & Seal—they were manufactured by Mundet in North Bergen, New Jersey, and carried the Mundet identification.

HEARING EXAMINER SCHRUP: The Hearing Examiner—

THE WITNESS: I would say that they carried the Mundet identification for a period after the acquisition, too; I don't know how long, sir.

29. The preceding industry tabulation at page 274 shows a very substantial increase in metal crown shipments for the years 1964 and 1965 by respondent Crown following the November 13, 1963 purchase of the controlling stock of Mundet. Respondent Crown's shipments went from 93,375,563 gross in 1963 to 111,039,663 gross in 1964, and in 1965 to 114,688,599 gross, which was by far the highest total reached by any manufacturer in the metal crown industry. Further, respondent Crown's total metal crown shipments for 1964 reflected 14,463,000 gross produced by the Mundet facilities. Total shipments by Crown in 1965 also included 13,617,000 gross still being produced at the Mundet

facilities.[27] It was admitted by respondent's counsel at the oral argument that Crown's increased total metal crown shipments for 1964 and 1965 included substantial sales to former Mundet customers.[28] The oral argument at Tr. 4317–4318 discloses the following as regards Crown's increased percentage share of the total metal crown market shown on the above industry tabulation:

HEARING EXAMINER SCHRUP: Now, what I understand from you is this. When we go to Crown Cork and Seal on this percentage figure, on page 45 of Commission counsel's findings, Crown Cork and Seal in 1963 had a showing of 30.37, and in 1964 a showing of 35.3. Now, as I understand it, you agree that the difference between 30.37 and 35.03 is accounted for at least in substantial part by sales to former customers of Mundet.

MR. KRAMER: Yes, Your Honor.

30. Mundet prior to its acquisition by respondent Crown operated through three different divisions, namely, the insulation, industrial and closure divisions. The shipments of Mundet by each division, the value and the percentage of overall sales for each division is set forth in preceding Finding No. 8, at pp. 261, 262. While Mundet prior to its acquisition in certain years had shown a profit loss in the overall operation of these combined divisions, it is important to note that prior to its acquisition Mundet was an active going concern and that respondent Crown did not purchase Mundet for the purpose of an overall liquidation which would have included the metal crown business.[29]

The real value to respondent Crown in the purchase of Mundet was its North Bergen, New Jersey, plant and Mundet's established metal crown business. The affidavit of Mr. Connelly, the president of respondent Crown under date of June 24, 1964, in evidence as CX 30, discloses that respondent was definitely interested in purchasing Mundet as early as 1960 but that Mundet's management decided not to sell and that again on April 21, 1961, Mr. Connelly was informed by Mr. Mundet that the controlling stock of The Mundet Corporation was not for sale. The witness Knudson, a former vice president and treasurer of Mundet, testified as follows at Tr. 1968:

HEARING EXAMINER SCHRUP: Let me ask you this, and then I will permit counsel to go forward.

Directing your attention particularly to that part of the Closure Division which manufactured and sold metal crowns, during your tenure with the company was that always a profitable business?

THE WITNESS: It had been a profitable business.

[27] CX 27 and RX 189 as stipulated between counsel.

[28] OA. Tr. 4310–4311; 4313–4314.

[29] See RX 132.

31. The 1963 Annual Report of respondent Crown (CX 3) at page 3, over the signature of its president, witness Connelly, dated March 24, 1964, states in part as follows:

In November we purchased for cash 82% of the capital stock of Mundet Cork Corporation at a cost of $5,442,000. Mundet operated three plants at North Bergen and Hillside, New Jersey and Danville, Illinois for the production of building insulation materials, cork and rubber gaskets and crowns. Mundet also maintained a nationwide organization which contracted to apply insulating materials in new buildings.

We were primarily interested in the North Bergen plant, which is ideally located to become our metropolitan can and crown manufacturing plant. We are modernizing this building, installing five new can lines, and expect to be producing cans by May 1st, 1964. We are also replacing obsolete crown manufacturing machinery.

By transferring can business for the New York market from Philadelphia to North Bergen we will save trucking costs of approximately $300,000 a year, and by this move we will add additional profits to our Philadelphia plant which has been oversold.

We have reorganized Mundet's sales, manufacturing and administrative functions and have achieved substantial savings. We have moved our New York sales office into the North Bergen plant. This will save more than $200,000 per year.

Since the first of the year we have sold Mundet's contract installation business as well as the unneeded building at Hillside, both at favorable prices. We have discontinued the unprofitable manufacture of insulating materials.

As a result of these changes, we are now operating Mundet on a profitable basis.

The 1964 Annual Report (CX 4) at page 2 over Mr. Connelly's signature dated March 22, 1965, continues in the same vein and states:

Our North Bergen, N.J. plant, which was one of the principal reasons for acquiring Mundet Cork Corporation, is now in full operation producing cans and crowns and operating profitably. New can lines have been installed along with high speed lithography equipment. All of the old and antiquated crown equipment has been replaced with modern cork and plastic crown production equipment, with a substantial increase in capacity.

Witness Stier, a director of Mundet, testified concerning CX 13, the minutes of the special Mundet directors meeting of November 26, 1963 (incorrectly reported in the transcript as 58), at Tr. 3127–3128 and 3130:

Q. Mr. Stier, I direct your attention to Commission Exhibit 58, page 2, the paragraph starting "A general discussion followed on plans."

A. Yes.

Q. And I ask you if you were concerned that Mundet's business was to be so radically changed by Crown Cork and Seal Company?

A. No.

Q. Why not?

A. Our thinking was that this was the type of action that would have to be taken at Mundet in order to make a profit.

Q. I direct your attention, Mr. Stier, to Commission Exhibit 18—I am sorry, Commission Exhibit 13, page 3, and ask if you knew that by letter dated November 14, 1963, Crown Cork and Seal Company had offered Nopco Chemical Company $277.544 cents per share for Mundet's stock owned by Nopco?

A. That is correct.

Q. Did Nopco accept this offer of Crown Cork and Seal of November 14, 1963?

A. No.

Q. Why not?

A. Our cost was approximately $100 per share more and we thought that Crown would make this operation profitable, and at some later date, we would be able to either sell or have an equity that was closer to our cost.

Q. What price per share did Nopco ultimately receive from Crown Cork and Seal for its Mundet shares?

A. Well, in round numbers, it is $377 or $378 per share.

32. In considering the validity of respondent Crown's affirmative "failing company" defense to the 1963 corporate acquisition of Mundet, it is to be pointed out that until his death on August 3, 1962, Joseph J. Mundet, Jr., owned about 70% of the capital stock of The Mundet Cork Corporation. From his death until November 13, 1963, when respondent Crown purchased his stock, Mr. Mundet's executors controlled the 70% stock interest in The Mundet Cork Corporation. Prior to June 1960, Mr. Mundet owned the controlling stock interest, but did not control the corporation's management. The corporation's affairs during this period were managed by its then principal officers. Their control of the corporation's affairs was pursuant to an agreement between Mr. Mundet and the United States Trust Company under which the trust company voted Mr. Mundet's stock pursuant to instructions from a voting trustee.

Mr. Mundet came into control of The Mundet Cork Corporation as a result of a consent decree entered June 17, 1960, by the New York State Supreme Court in a suit filed by Mr. Mundet against The Mundet Cork Corporation to dissolve the voting trust. Pursuant to that consent judgment, the court appointed two directors, Mr. Mundet appointed three, and the former management appointed two. The consent judgment was not a final judgment and the litigation continued until mid-1962 when the right to elect the directors was returned to the stockholders by entry of a Final Judgment.

Immediately upon his becoming chief executive officer of The Mundet Cork Corporation, Mr. Mundet was confronted with a refusal by the old management to cooperate with him in running

the affairs of the company. Responsible officials left the company and there were several resignations of key personnel. After Mr. Mundet became head of The Mundet Cork Corporation, an extensive and costly investigation was instituted to determine whether or not former management had misappropriated funds or business of The Mundet Cork Corporation. In mid-1961, The Mundet Cork Corporation filed suit against the former officers of the company. The suit was still pending on the acquisition date of November 13, 1963, by respondent Crown. The investigation prior to filing the suit and the conduct of the litigation were very expensive to The Mundet Cork Corporation and took a great deal of time of the officers and directors and interfered with the normal conduct of the business affairs of the corporation.

Immediately following the death of Mr. Mundet on August 3, 1962, his widow, Paula Mundet, became chairman of the board of The Mundet Cork Corporation. Mrs. Mundet was without previous business experience and the board of directors then commenced a search for a competent chief operating officer and made several selections but without resulting success. Finally, on or about April 1, 1963, Mr. Willis Windle was obtained as president at a salary of $35,000 per annum with a bonus based on profits. His previous experience had been as financial officer for Mohasco Industries.[30]

33. At a stenographically reported Mundet stockholders meeting (RX 161) held on May 7, 1963, the following statements in part were attributed to Mr. Hanwell, a former treasurer of Mundet, and to Mr. Windle:

MR. HANWELL: Well, I just wanted to point out that as I remember the crown department, that was the big profit maker in my day, and I remember several years where it made over a million dollars in pretax profit.

PRESIDENT WINDLE: I think you could quite well say that the Company was milked profitwise, and inadequately maintained. (p. 12)

PRESIDENT WINDLE: . . .

I do feel, and I will say this, that in my judgment the rehabilitation of this Company is possible and is attainable.

It is not going to be easy. We need new facilities—modern, efficient facilities—which will reduce the costs. (pp. 19, 20)

MR. HANWELL: Well, I think in that lies your biggest answer to where the profits lie. I think you will find that the crown industry, except for the period when the gaskets were flying high, was most profitable.

PRESIDENT WINDLE: I agree with you and I still say that the crown industry is the most profitable, and I did say that we did earn a profit.

MR. HANWELL: No question about it. (p. 23)

[30] RPF Nos. 51, 52, 56, 57, 58, 59, 60, 72, 75 and 76 adopted to the extent hereinbefore set forth.

34. The witness Stier, a Mundet Director attending the foregoing Mundet stockholders meeting of May 7, 1963, testified to a possible rehabilitation and reorganization of Mundet at Tr. 3116–3117 in part as follows:

Q. Mr. Stier, I direct your attention to Commission Exhibit 42, page 1, at the paragraph starting, "The financial statement for August of 1963," and ask if I correctly understand this paragraph to mean that Mundet's cash on or about September 25, 1963, was over $1 million?

A. That would be my understanding.

Q. In your opinion, was Mr. Windle capable of making such changes in the operations of Mundet as would have permitted it to function properly had he been given time to do so?

MR. KRAMER: Objection, Your Honor.

May I have the question read back?

MR. KRAMER: I am willing to hear the answer without objection.

HEARING EXAMINER SCHRUP: You may answer.

Do you wish the question read back?

THE WITNESS: Yes.

HEARING EXAMINER SCHRUP: In short, it is as to the capabilities of Mr. Windle.

MR. KANE: Mr. Examiner, may I change the question to read "profitably" instead of "properly"?

HEARING EXAMINER SCHRUP: Yes, you may do so.

By Mr. Kane:

Q. Mr. Stier, do you have the question, sir?

A. Yes.

I think this is a very difficult thing to answer in terms of—I do believe Mr. Windle's background was such that he understood the financial picture. I think he was enough of an operational man to do what had to be done. It certainly would have taken much longer and required much more money than we anticipated at the time, and it might have come out a completely different company in terms of its operations.

Q. In your opinion, what was the greatest problem that Mr. Windle faced in running Mundet Cork Corporation?

A. I think the estate problem and everything that went with it.[31]

Mr. Stier's testimony that Mundet might come out a completely different company in terms of its operation, in view of his attendance at the Mundet stockholders meeting wherein Mr. Hanwell and Mr. Windle expressed their views, can only mean a revamped and reorganized Mundet operating an established metal crown business with a large sales volume and many valuable customers of long standing. This, as the record in this proceeding shows, was one of the main if not the controlling purpose of the acquisition of Mundet by respondent Crown.

With reference to Mr. Stier's comment of the Mundet estate problem confronting Mr. Windle, it is noted that the principal assets in the estate of Joseph J. Mundet, Jr., were The Mundet

[31] Further, see Mr. Stier's testimony at Tr. 3131–3132, 3136–3137.

Cork Corporation stock and the stocks of Mundet Y Cia, a Portuguese Company, and Mundet Cork and Insulation, a Canadian Company. The principal beneficiary of the estate was Mrs. Paula Mundet, Mr. Mundet's widow.

Mrs. Mundet, a Portuguese citizen, wanted to live abroad. She and Mr. Boyle were coexecutors of the estate. Mr. Boyle estimated that the estate owed $1,750,000 in estate and inheritance taxes to the United States, New York State, New Jersey, Portugal and Canada, and over $1 million of other debts, including bank loans. The estate had no funds.[32]

35. The witness Campbell from the Bankers Trust Company, New York City, testified in part as follows at Tr. 2340–2341, 2343–2344, 2348, 2351–2352, 2369–2370:

Q. The question is, what were the activities of Mrs. Mundet that concerned you in or about the early summer of 1963?

A. Well, we in our relationship with the company, and more particularly in the meetings in which Mrs. Mundet was present realized that she was a disturbing influence as far as our efforts to put this thing on a proper basis, this company. We found that she was talking with some of the key people in the company such as the production man, salesman and so forth and telling one one thing and something else to another and these were functions which we felt were those of the men that were really running the company, at least endeavoring to run it, Mr. Windle.

We also felt that she was primarily interested in solving her own personal problems, rather than being concerned about the company as a viable, going concern. And we just didn't feel that we wanted our money or control of our money, which in effect she was affecting, adversely affecting; we didn't want that to exist.

Q. Did there come a time when Bankers Trust was seriously considering making a new loan to Mundet Cork Corporation, that is to say, a loan subsequent to that represented by Respondent's Exhibit 50?

A. Yes, we did.

Q. What were the reasons why you were considering making the new loan, and here of course you must tell His Honor everything you remember that you think is pertinent in answer to my question?

A. Again, we were faced with the problem of trying to let the company operate freely and to perhaps eliminate Mrs. Mundet from the picture by solving her estate problems, if not permanently, at least on a temporary basis, but at this point we were so disenchanted with this whole thing that we felt that we had to put ourselves in a secured position, which we did not feel was possible under the existing agreement, that we would much rather have the whole deal re-negotiated so there could be no question as to our taking a preferential position under the old agreement, so therefore we were going to take a mortgage on the property and assignment of the receivables and buttoning the thing up. We were at that time the only creditor. There were some other——

Q. The only creditor?

[32] RPF 110 adopted to the extent hereinbefore set forth.

A. The only principal creditor, and we felt that we had to get control of the situation because of the way it was going.

Q. Approximately, what was the amount of the original loan outstanding in October, '63, at the time you considered the new loan?

A. I will have to guess it was in the area of $2,200,000.

Q. What was the total amount of the new loan that you were considering?

A. $4.5 million.

Q. If you had lost faith as you just testified you had in the ability of the company to be returned to a profitable basis and if you favored sale, why were you willing to recommend a new Bankers Trust loan to Mundet?

A. Because I wanted to convert the loan into a security position. I wanted to convert my position into a secured position by taking collateral which I couldn't do under the existing agreement and were I to accelerate the old loan they couldn't have paid me anyway.

HEARING EXAMINER SCHRUP: What would have been your viewpoint from the standpoint of Bankers Trust if a new management had been brought in that you might have believed would have been successful?

THE WITNESS: I would have been inclined to continue on, Your Honor, because we feel a responsibility in these situations.

By Mr. Kramer:

Q. Do I understand that it was the recommendation of Bankers Trust that brought in Mr. Windle to the Presidency of Mundet?

A. It was.

Q. Did you have anyone else in the offing in 1963 to head the company?

A. We had suggested a Mr. Philip Dinkens who had been President of the chemical company and I believe was one of the top executives of General Aniline & Film which was owned by the Alien Custodian and he was well known to us and we had done business with him and he was available but Mr. Boyle and Mrs. Mundet refused to consider him.

HEARING EXAMINER SCHRUP: It appears Mrs. Mundet was the fly in the ointment.

THE WITNESS: That's accurate.

Q. In October, 1963, Mundet was a debtor of Bankers Trust Company. Was Mundet delinquent in any of its accounts with Bankers Trust Company?

A. No, sir.

Q. Sir?

A. No.

Q. Was Mundet ever delinquent in maintaining interest or principal due the Bankers Trust Company?

A. No.

Q. Do you know if Mundet was prompt in its payments of its trade accounts in the middle of 1963?

A. I am reasonably sure they were.

Q. In the beginning of 1963?

A. I am reasonably sure they were.

Q. And in October, 1963?

A. Probably were.[33]

36. The testimony of the witness Lewis, executive vice president of Franklin National Bank, was in part as follows at Tr. 3077, 3079–3080, 3084, 3087–3092:

[33] CX 31, CX 43; RX 110D, RX 116; the witness Stier at Tr. 3120–3122.

Q. Did you send the original of this document to the board of directors of Mundet Cork Corporation at the address thereon indicated?

A. Yes.[34]

Q. Was Franklin National Bank ever requested to make a loan to the Executors of the Estate of Joseph J. Mundet?

A. Yes.

Q. Was Franklin National Bank willing to loan to the estate all of the funds requested by the estate?

A. Yes.[35]

Q. What position did Mr. Prosswimmer hold with Franklin National Bank in September of 1963?

A. President of the bank.

Q. Is he still president of the bank, sir?

A. Yes.

Q. Did you obtain his approval and authorization to pay the loans which were intended or committed by CX 33 and 34?

A. Yes.

Q. Did Mr. Steingart, during September of 1963, ask Franklin National Bank to consider a loan to Mundet Cork Corporation in order for Mundet Cork Corporation to purchase its own shares of capital stock?

A. I believe he did.

Q. Do you know if Bankers Trust Company was willing to loan funds to Mundet Cork Corporation for this purpose?

A. No.[36]

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[34] CX 33 is a letter from Franklin National Bank dated October 11, 1963, signed by the witness and directed to the board of directors of Mundet Cork Corporation. The pertinent part reads as follows:

"We are agreeable to extending loans to Mundet Cork Corporation of which $2,250,000 will be on a term basis and $1,000,000 on a revolving credit basis on substantially the same terms as set forth in a Credit Agreement with the Bankers Trust Company dated May 15, 1962."

[35] CX 34 is a letter from Franklin National Bank dated October 14, 1963, signed by the witness and directed to Mrs. Paula Mundet and Mr. Thomas F. Boyle, executors of the estate of Joseph J. Mundet. The pertinent part reads as follows:

"We are agreeable to extending a loan to the Estate of Joseph J. Mundet in the sum of $1,000,000 secured by an assignment of 16,689 shares of Mundet Cork Corporation. Our loan will be for a maximum period of twelve months and may be prepaid without penalty.

"The executors of the estate will agree to use their best efforts to effect the sale of the 16,689 shares of Mundet Cork Corporation stock during the twelve month period, at a price not less than $260.00 per share. It is understood that the proceeds of our loan will be used to pay in full existing bank loans of the estate of approximately $384,000 and also to pay current obligations of Federal and New York State estate and inheritance taxes as well as other existing obligations. It is further understood that the estate will not incur any new obligations for borrowed money nor will it pledge any assets or create any liens against its assets while our loan is outstanding. The bank will be furnished with periodic financial statements of the estate as requested."

[36] CX 31 is the written agreement by Bankers Trust allowing The Mundet Corporation to purchase from its various stockholders not in excess of 6,000 shares at $260 per share under CX 50, the Bankers Trust existing 1962 loan agreement with The Mundet Corporation.

CX 43 contains the minutes of the special Mundet directors meeting on October 8, 1963. The minutes show the resolution of the directors to make an offer to the corporation's controlling and minority stockholders, whereby the corporation would purchase 6,000 shares at $260 per share on a proportionate basis according to their respective holdings. The Mundet estate was limited to making a commitment in writing to the corporation of an offer by the estate to sell to the corporation no more than 5,000 shares. The Mundet minutes contain this statement: "For the record, it was pointed out that Mrs. Mundet's vote was taken after all of the other Directors had voted in favor of the resolutions."

The record in this proceeding does not disclose the Mundet estate to have made such written commitment to The Mundet Corporation.

Q. Do you know if Franklin National Bank was willing to consider a loan to Mundet Cork Corporation in order for it to purchase the shares of capital stock?

A. I don't recall.

Q. Would reference to a memorandum dated September 24, 1963 refresh your recollection on this point, sir?

A. Yes, I indicated a willingness to consider it.

Q. Mr. Lewis, what investigation, if any, did Franklin National Bank make of the Estate of Joseph J. Mundet and Mundet Cork Corporation prior to the dispatch by you of the letters marked here as Commission Exhibits 34 and 33?

A. We made a complete review and analysis of the financial statements of both the Corporation and the Estate. And we visited the plant, and we had discussions with management.

By Mr. Kramer:

Q. Now, would the loan which Franklin National Bank offered to extend to Mundet Cork Corporation have provided funds to Mundet Cork Corporation in addition to the $2¼ million loan by Bankers Trust theretofore and the $1 million revolving credit by Bankers Trust?

A. It was to be in place of that loan.[37]

Q. In place of it.

Q. So that means that had the loan ever been made, a portion of it would have gone to pay the outstanding indebtedness to Bankers Trust, is that not right?

A. That is correct.

Q. Now, I would like you to turn to your memorandum of September 23, 1963.

"The writer discussed the request for loans today with Mr. Prosswimmer. It is our feeling that this would represent a reasonable loan situation, as it would appear that there should be no great difficulty in disposing of the stock of the company within the next 12 months. In fact, we had mentioned this to Harry Foreman, who had been in touch with Mr. Harrison, and is very much interested in putting together financing to acquire the company.

"We have indicated to Mr. Harrison that we are willing to loan the Estate $1,000,000 secured by the Mundet Cork Corporation stock representing 71 per cent and 100 per cent of the stock of the Portuguese Company. In addition to this, we will arrange to take over the terminal and revolving credit to the company. Mr. Harrison has discussed this with the principals, and his staff will arrange to send us a copy of the will so that it may be reviewed by"——

By Mr. Kramer:

Q. And I think the initials are in your handwriting, is that correct?

A. That is correct.

Q. Was the willingness of Franklin National Bank to make the loan

[37] RX 50, the Bankers Trust 1962 unsecured type of loan. This 1962 loan agreement is not to be confused with the new Bankers Trust loan agreement hereinbefore described at pp. 284, 285. See testimony of witness Campbell at Tr. 2357, 2383–2384.

commitments to the Estate of J. Mundet and to Mundet Cork Corporation based on an assumption by the bank that the Estate stock would be sold and the company merged within one year?

A. Yes.

By Mr. Kane:

Q. Mr. Lewis, was the prospective sale of the Estate shares of Mundet Cork Corporation premised on a sale to any particular person, partnership or corporation?

A. No specific company, no.

37. Counsel for respondent have admitted that Mundet was not in an insolvent or bankrupt condition at the time of the acquisition of its controlling stock by respondent Crown and that Mundet was able to meet his current liabilities.[38] RX 132 is a summary of Mundet's divisional profits from 1958 to November 15, 1963, as prepared by Price Waterhouse & Co. Under the divisional column on this exhibit entitled Closures, a profit is shown for all times. Under the divisional column entitled Insulation, substantial profit losses are shown commencing in 1961 and continuing until November 15, 1963. Substantial profit losses are also shown under the divisional column entitled Industrial starting in 1960 and continuing to November 15, 1963. Notwithstanding these profit losses, the record in this proceeding shows Mundet to have been a commercially active and going concern not acquired by respondent Crown for the purpose of an overall liquidation. The financial situation of Mundet hereinafter shown [39] was not such that absent the acquisition it would have been precluded from discarding its profit losing divisional operations. In the face of such possible event, it would be conjectural to conclude that Mundet would not have accomplished this and was therefore on an inescapable "failing company" course to a predictable future liquidation.[40]

Based on the source exhibits as designated, Mundet's corporate net sales for each of the years 1958 through 1962, and for the 10 and a half months ended November 15, 1963, were as follows:

[38] Tr. 2696–2697.

[39] CPF Nos. 166–176 herein adopted. During the oral argument, counsel for respondent stated that subject to a check, the accuracy of the statistical data in various of the proposed findings by complaint counsel would not be challenged unless the hearing examiner was otherwise notified. See OA. Tr. 4255–4259, 4344–4346. A letter to such effect from respondent's counsel dated January 17, 1968, was received by the hearing examiner and forwarded for inclusion in the official docket file of this proceeding.

[40] Witness Callan at Tr. 2291. Witness Griffiths at Tr. 2813–2814 testified that he believed within one to two years after 1963 Mundet would have been in a financial position that would have made it impossible to continue operations.

[000 omitted]

1958	1959	1960	1961	1962	10½ mos. 1963
$23,203	$22,798	$20,363	$20,855	$21,339	$17,417
Source: RX 157C	RX 155F	RX 156F	RX 22D	RX 23D	RX 134C

Mundet's net sales of metal crowns for each of the years 1958 through 1963, were as follows:

[000 omitted]

1958	1959	1960	1961	1962	1963
$7,207	$7,779	$6,120	$6,107	$6,199	$6,444
Source: RX 25B	RX 25B	RX 25B	CX 27 CX 19	CX 27 CX 19	CX 27 CX 19

Mundet's total assets for each of the years ending December 31, 1958, 1959, 1960, 1961, 1962 and as of November 15, 1963, were as follows:

[000 omitted]

1958	1959	1960	1961	1962	Nov. 15, 1963
$15,201	$17,197	$16,336	$15,690	$15,179	$13,476
Source: RX 157B	RX 155D	RX 156D	RX 22B	RX 23B	RX 134B

Mundet's retained earnings for each of the years 1958 through 1963, were as follows:

[000 omitted]

1958	1959	1960	1961	1962	Nov. 15, 1963
$8,893	$9,650	$9,613	$9,036	$8,040	$6,568
Source: RX 157B	RX 155G	RX 156G	RX 22D	RX 23D	RX 134D

Mundet's total net assets for each of the years 1958 through 1962, and as of November 15, 1963 were as follows:

[000 omitted]

1958	1959	1960	1961	1962	Nov. 15, 1963
$11,393	$11,720	$11,683	$11,106	$10,110	$8,763
Source: RX 157B	RX 155E	RX 156E	RX 22C	RX 23C	RX 134B

Mundet's retained earnings exceeded its liabilities for each of the years 1958 through 1962, and as of November 15, 1963, were as follows:

[000 omitted]

1958	1959	1960	1961	1962	Nov. 15, 1963
$5,085	$4,172	$4,960	$4,452	$2,972	$1,854
Source: RX 157B	RX 155E	RX 156E	RX 22C	RX 23C	RX 134B

Mundet's current assets and current liabilities for each of the years ended December 31, 1958, 1959, 1960, 1961, 1962 and as of November 15, 1963, were as follows:

[000 omitted]

	1958	1959	1960	1961	1962	Nov. 15, 1963
Current assets	$10,410	$11,593	$10,428	$10,052	$9,730	$8,165
Source	RX 157B	RX 155D	RX 156D	RX 22B	RX 23B	RX 134B
Current liabilities	$3,322	$3,231	$2,914	$3,245	$3,068	$2,900
Source	RX 157B	RX 155E	RX 156E	RX 22C	RX 23C	RX 134B

Mundet's current assets exceeded its current liabilities (working capital) for each of the years ending December 31, 1958, 1959, 1960, 1961, 1962 and as of November 15, 1963 as follows:

[000 omitted]

1958	1959	1960	1961	1962	Nov. 15, 1963
$7,088	$8,362	$7,514	$6,807	$6,662	$5,265
Source: RX 157B	RX 155D and E	RX 156D and E	RX 22B and C	RX 23B and C	RX 134B

Mundet's current ratio for each of the years ending December 31, 1958, 1959, 1960, 1961, 1962 and as of November 15, 1963, were as follows:

1958 ---------- 3.13 to 1
1959 ---------- 3.59 to 1
1960 ---------- 1.97 to 1
1961 ---------- 3.10 to 1
1962 ---------- 3.17 to 1
Nov. 15, 1963 ---------- 2.82 to 1

Mundet's quick assets for each of the years 1958 through 1962 and as of November 15, 1963, were as follows:

[000 omitted]

1958	1959	1960	1961	1962	Nov. 15, 1963
$6,053	$7,723	$5,754	$5,270	$5,128	$3,901
Source: RX 157B	RX 155D	RX 156D	RX 22B	RX 23B	RX 134B

Mundet's quick ratio for each of the years 1958, through 1962 and as of November 15, 1963, were as follows:

1958 ---------- 1.82 to 1
1959 ---------- 2.39 to 1
1960 ---------- 1.97 to 1
1961 ---------- 1.62 to 1
1962 ---------- 1.67 to 1
Nov. 15, 1963 ---------- [1] 1.35 to 1

[1] See, OA. Tr. 4350–4366.

The foregoing tabulations show that Mundet was not on the verge of going out of business, nor was it facing involuntary liquidation or necessarily on a "failing company" course to its eventual demise as respondent Crown would contend. The tabula-

tions establish: (1) Mundet's net sales had been substantially constant since 1960. (2) Mundet's net sales of metal crowns had been substantially constant since 1960. (3) Mundet's total assets had been substantially constant since 1960. (4) Mundet's retained earnings had continued as substantial sums since 1960. (5) Mundet's total net assets had continued as substantial sums since 1960. (6) Mundet's retained earnings exceeded its liabilities in each period since 1960. (7) Mundet's current assets exceeded its current liabilities in each period since 1960. (8) Mundet's current ratio exceeded commonly accepted standards in each period since 1960. (9) Mundet's quick ratio exceeded commonly accepted standards in each period since 1960.

38. The "failing company" doctrine stems from the majority Court opinion in *International Shoe Company* v. *Federal Trade Commission*, 280 U.S. 291 (1930). The Court opinion relates that the bulk of the trade as to each of the two companies concerned was in different sections of the country. The products of the two companies were found to be not alike in quality and buyer appeal and as to 95 percent of their respective trade, the Court found there was no substantial competition between the two companies. Further, new purchase orders were not coming in to the acquired company, its plants were operating well under capacity, and the company could not pay its debts as they became due.

In the face of no substantial pre–existing competition between the acquired company and its only available prospective purchaser, and with the prospect of a rehabilitation of the acquired company being so remote in an era of a national economic depression, the Court found the acquisition had the effect of mitigating seriously injurious consequences otherwise probable to the stockholders of the acquired company and to the communities wherein its plants operated. It was accordingly held that the acquisition was not in contemplation of law prejudicial to the public and did not substantially lessen competition or restrain commerce within the intent of the Clayton Act.

The Court found that the acquisition could not produce the forbidden competitive result if there was no pre-existing substantial competition to be affected; for the public interest is not concerned, said the Court, with the lessening of competition which to begin with was without real substance. With reference to the fact that the acquired company could no longer pay its debts as they became due, the Court found that its annual financial statement required to be filed would disclose a condition of insolvency as defined by Massachusetts law and would show that the com-

pany had reached the point of involuntary liquidation. The Court found that the controlling purpose of making the purchase of the acquired company was not to lessen competition, but to secure additional factories by the acquiring company which it could not itself build with sufficient speed to meet the pressing requirements of its business.

Counsel for respondent in this proceeding would contend that there being no prospective ready purchaser available other than Crown [41] at the time of the precipitous sale by the Mundet estate on November 13, 1963, of the controlling corporate stock of Mundet, that respondent Crown for such reason must be exonerated under the "failing company" doctrine as set forth in the majority Court opinion in *International Shoe*. Respondent's reliance on the failing company doctrine to such extent appears to be misplaced.

A reading of the majority Court opinion shows that while it was noted that no other prospective purchaser was available, it was also found that no pre-existing substantial competition in fact existed between the acquired company and its purchaser, and it followed that the prohibited probable competitive effect of Section 7 of the Clayton Act was therefore absent. While the acquired company was found to be in an imminent failing condition to the point of involuntary liquidation, this would appear to only further subtract from the probability of any prohibited competitive effect due to the acquisition. It is to be observed that the dissenting Court opinion in *International Shoe* did not agree that pre-existing substantial competition was absent between the two companies and stated, that in view of the large market value of the corporate stock of the acquired company it could not say that the acquired company was in such financial straits as to preclude the reasonable inference by the Commission, that its business conducted either through a receivership or a reorganized company would probably still have continued to compete with that of the acquiring company.

The record in this proceeding is to the contrary of that detailed in the majority Court opinion in *International Shoe* and shows the existence of constant and substantial product and sales competition throughout the United States between Mundet, ranking sixth in industry sales, and its purchaser respondent Crown the sales leader in the highly concentrated metal crown industry. The probable competitive effect of the acquisition found

[41] See testimony of witness Cooney as to seeking purchasers for the Mundet estate stock at Tr. 2215–2275.

absent in the *International Shoe* case is present here and clearly prohibited by Section 7 of the Clayton Act.[42] If this acquisition in the presence of its probable competitive effect were to be allowed respondent Crown for the reason it was the only available prospective purchaser on the scene, it would serve as a precedent toward possible acquisitions of other competitors in the metal crown industry where again respondent Crown the sales leader might be the only available prospective purchaser.[43]

39. The "failing company" doctrine as applied by the majority Court opinion in the *International Shoe* case under the circumstances there found prevailing, in the opinion of the hearing examiner, must be further considered under the entirely different facts presented in this proceeding.

Pre-existing substantial competition on a nationwide basis prevailed between the buyer-accepted metal crowns manufactured and sold by respondent Crown and the acquired Mundet. While one motivation of the purchase of the Mundet controlling stock from the Mundet estate was to obtain the North Bergen, New Jersey, plant site of Mundet, it is reasonable to infer that the controlling purpose of the purchase by respondent Crown was to secure the substantial and established nationwide metal crown business of Mundet. The prohibited competitive effect absent in *International Shoe* is here present to a substantial degree at the time of the acquisition of Mundet by respondent Crown. What might have happened in the future to the metal crown business of Mundet absent the acquisition by respondent Crown is both controversial and speculative. Mundet was not facing an involuntary liquidation and further, a reconstituted Mundet would not necessarily be foreclosed to continued business success in its established metal crown field as respondent would conjecture.

Respondent Crown's affirmative defense that the acquisition of Mundet comes within the "failing company" doctrine defined by the majority Court opinion in *International Shoe* is rejected.[44] Respondent has failed to carry the burden of proof of its affirma-

[42] See preceding Findings Nos. 24, 25 and 26 in this proceeding, and further, the slip opinion of the Court filed January 8, 1968 by the United States Court of Appeals for the Third Circuit in *Luria Brothers and Company, Inc., et al.* v. *Federal Trade Commission*, pp. 25–28.

[43] *Brown Shoe Co.* v. *United States*, 372 U.S. 294. At pages 343–340 of the opinion, the Court states that the market share which companies may control by merging is one of the most important factors to be considered when determining the probable effects of the combination on effective competition in the relevant market. The Court further adds, that if a merger achieving but 5% control were to be approved in the acquisition there concerned, the Court might be required to approve future mergers by competitors seeking similar market shares. The Court points out the oligopoly Congress sought to avoid would then be furthered and it would be difficult to dissolve the combinations previously approved.

[44] See pp. 1282–1288, opinion of the Commission under date of November 14, 1966, Docket No. 8674, *In the Matter of Dean Foods Company, et al* [70 F.T.C. 1146].

tive defense especially in the light of the pre-existent substantial nationwide competition in the manufacture and sale of metal crowns between Mundet and respondent Crown, and the clear presence of the resulting probable and prohibited competitive effect at the time of the acquisition found wanting under the majority Court opinion in *International Shoe*.

40. Based on the testimony and the evidence of record and the preceding findings of fact, the hearing examiner finds that the preponderance of the probative and substantial credible evidence in this proceeding shows, that in the line of commerce comprising the relevant product market of the manufacture and nationwide sale of metal crowns, the effect of the acquisition of Mundet by respondent Crown may be substantially to lessen competition, or tend to create a monopoly throughout the United States in the said line of commerce and relevant product market.

CONCLUSIONS

1. The effect of the acquisition of the capital stock and assets of The Mundet Cork Corporation by The Crown Cork & Seal Company, Inc., may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of metal crowns within the United States.

2. The acquisition of the capital stock and assets of The Mundet Cork Corporation by The Crown Cork & Seal Company, Inc., constitutes a violation of Section 7 of the Clayton Act, as amended (U.S.C., Title 15, Section 18).

3. The substantial, actual and potential competition existing in the manufacture and sale of metal crowns within the United States and removed by the acquisition of The Mundet Corporation by The Crown Cork & Seal Company, Inc., should be restored and an appropriate order herein to such effect should issue.[45]

ORDER

I

It is ordered, That respondent, The Crown Cork & Seal Company, Inc., within one (1) year from the date of service of this Order, through its officers, directors, agents, representatives and employees, shall restore and divest itself absolutely in good faith

[45] See, OA. Tr. 4385–4403 as to the terms of any order that might issue. The letter dated January 17, 1968, from counsel for respondent Crown to the hearing examiner, which is referred to in foregoing footnote 42, also comments on the terms of the proposed order to divest by complaint counsel.

Also see, the October 2, 1967, opinion of the Commission in Docket No. 8572, *In the Matter of Diamond Alkali Company*, and pp. 25–28, 28–29 of the *Luria* Court opinion, cited in preceding footnote 42.

of all right, title and interest in and to all assets, properties, rights and privileges, tangible and intangible, including without limitation all manufacturing plants, equipment and operating facilities, lands, leases and the warehousing facilities, machinery, inventory, trade names, trademark and good will acquired from The Mundet Corporation and used by said corporation in the manufacture and sale of metal crowns and required to operate a going concern in the metal crown industry. The divestiture shall include the furnishing in good faith of a listing of all preacquisition customers of The Mundet Cork Corporation showing the annual dollar amount of metal crowns purchased by each from The Mundet Cork Corporation during the years 1962 and 1963. The listing shall also show the name of each preacquisition customer and the annual dollar amount of metal crowns purchased by each from The Crown Cork & Seal Company, Inc., since The Mundet Cork Corporation acquisition to the date of the service of this Order.

II

In lieu of and as an alternative to Paragraph I above and subject to the approval of the Federal Trade Commission.

It is ordered, That respondent, The Crown Cork & Seal Company, Inc., within one (1) year from the date of service of this Order may in good faith substitute a metal crown manufacturing plant of its own and divest it as a going concern to a purchaser or purchasers approved by the Federal Trade Commission. The divestiture shall be the equivalent of all assets, properties, rights and privileges, tangible and intangible, including without limitation all manufacturing plants, equipment and operating facilities, lands, leases and the warehousing facilities, machinery, inventory, trade names, trademark and good will acquired from The Mundet Corporation and used by said corporation in the manufacture and sale of metal crowns and required to operate a going concern in the metal crown industry. The divestiture shall include the furnishing in good faith of a listing of all preacquisition customers of The Mundet Cork Corporation showing the annual dollar amount of metal crowns purchased by each from The Mundet Cork Corporation during the years 1962 and 1963. The listing shall also show the name of each preacquisition customer and the annual dollar amount of metal crowns purchased by each from The Crown Cork & Seal Company, Inc., since The Mundet Cork Corporation acquisition to the date of the service of this Order.

III

It is further ordered, That, in accomplishing the aforesaid Order or alternate Order of divestiture, no part of the divestiture shall be sold or transferred, directly or indirectly, to any person who is, at the time of such divestiture, an officer, director, employee, or agent of, or under the control or direction of The Crown Cork & Seal Company, Inc., or to any subsidiary of affiliated corporation of The Crown Cork & Seal Company, Inc., or to any purchaser who is not approved in advance by the Federal Trade Commission.

IV

It is further ordered, That respondent shall cease and desist from entering into any arrangement with another party by which respondent obtains the market share, in whole or in part, of such other party, and from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Federal Trade Commission, any part of the share capital or assets, of any concern, corporate or noncorporate which is engaged in the manufacture and sale of metal crowns in the United States.

V

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this Order, and every sixty (60) days thereafter until respondent has fully complied with the provisions of this Order, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which respondent intends to comply, is complying, or has complied with this Order. All compliance reports shall include, among other things that are from time to time required, a summary of all contacts and negotiations with potential purchasers of the specified stock, assets, and plant, or plants, the identity of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

FINAL ORDER

This matter having come on to be heard upon the appeal of respondent Crown Cork & Seal Company from the initial decision of the hearing examiner and upon briefs and oral argument in support of such appeal and in opposition thereto; and

The Commission being of the opinion that the complaint should be dismissed because of the special circumstances surrounding the acquisition of Mundet Cork Corporation by respondent and

that it is therefore unnecessary to determine whether Mundet Cork Corporation was a failing company within the meaning of the precedents:

It is ordered, That the initial decision be, and it hereby is, vacated and set aside.

It is further ordered, That the complaint be, and it hereby is, dismissed.

IN THE MATTER OF

LABELLE FUR COMPANY, INC., ET AL.

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

Docket C-1386. Complaint, July 22, 1968—Decision, July 22, 1968

Consent order requiring a retail furrier of Orlando, Fla., to cease misbranding, falsely invoicing and deceptively advertising its fur products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that LaBelle Fur Company, Inc., a corporation, and Morris LaBellman, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent LaBelle Fur Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida.

Morris LaBellman is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are retailers of fur products with their office and principal place of business located at 351 North Orange Avenue, Orlando, Florida.

PAR. 2. Respondents are now, and for some time last past

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

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled or otherwise falsely or deceptively identified with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 4(1) of the Fur Products Labeling Act.

Among such misbranded fur products, but not limited thereto, were fur products labeled as "Broadtail" thereby implying that the furs contained therein were entitled to the designation "Broadtail Lamb" when in truth and in fact the furs contained therein were not entitled to such designation.

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

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed:

1. To show the true animal name of the fur used in any such fur product.

2. To disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

3. To show the name, or other identification issued and registered by the Commission, of one or more of the persons who manufactured any such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale, in commerce, or transported or distributed it in commerce.

4. To show the country of origin of the imported furs contained in the fur products.

PAR. 5. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth on labels in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

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

(c) The term "Dyed Broadtail-processed Lamb" was not set forth on labels in the manner required by law, in violation of Rule 10 of said Rules and Regulations.

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

(e) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

(f) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth in the required sequence, in violation of Rule 30 of said Rules and Regulations.

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

PAR. 6. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to show the true animal name of the fur used in any such fur product.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth on invoices in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) The term "natural" was not used on invoices to describe

fur products which were not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Rule 19(g) of said Rules and Regulations.

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

PAR. 8. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that certain advertisements intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of such fur products were not in accordance with the provisions of Section 5(a) of the said Act.

Among and included in the aforesaid advertisements but not limited thereto, were advertisements of respondents which appeared in issues of the Orlando Sentinel, a newspaper published in the city of Orlando, State of Florida and having a wide circulation in Florida and other States of the United States.

Among such false and deceptive advertisements, but not limited thereto, were advertisements which failed:

1. To show that the fur contained in such products was bleached, dyed, or otherwise artificially colored, when such was the fact.

2. To show the country of origin of imported furs contained in any such fur product.

PAR. 9. By means of the aforesaid advertisements and other advertisements of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products, in violation of Section 5(a)(5) of the Fur Products Labeling Act by representing, directly or by implication, through such statements as "LaBelle's factory makes its furs, you save the middleman's profit," that respondents manufacture all the fur products marketed at retail by them, and therefore, purchasers of respondents' fur products are afforded savings on such fur products not obtainable in the usual retail channels of trade.

In truth and in fact, respondents procure their completed fur products from outside sources or purchase the skins and contract with outside manufacturers to produce the completed fur products. Respondents do not manufacture the fur products marketed at retail by them and savings are not thereby afforded to purchasers of such products as represented.

PAR. 10. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur

products in that said advertisements represented, directly or by implication, that fur products were guaranteed without disclosing the nature and extent of the guarantee and the manner and form in which the guarantor would perform thereunder, in violation of Section 5(a) (5) of the Fur Products Labeling Act.

PAR. 11. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act in that the said fur products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects.

(a) The term "Dyed Broadtail-processed Lamb" was not set forth in the manner required, in violation of Rule 10 of the said Rules and Regulations.

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

PAR. 12. In advertising fur products for sale, as aforesaid, respondents made pricing claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Regulations under the Fur Products Labeling Act. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based, in violation of Rule 44(e) of said Rules and Regulations.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the 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 Fur Products Labeling

Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the 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 LaBelle Fur Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 351 North Orange Avenue, Orlando, Florida.

Respondent Morris LaBellman is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents LaBelle Fur Company, Inc., a corporation, and its officers, and Morris LaBellman, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products

Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Falsely or deceptively labeling or otherwise falsely or deceptively identifying such fur product as to the name or designation of the animal or animals that produced the fur contained in the fur product.

2. Failing to affix a label to such fur product showing in words and in figures plainly legible all the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

3. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form on a label affixed to such fur product.

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

5. Failing to set forth the term "Dyed Broadtail-processed Lamb" on a label in the manner required where an election is made to use that term in lieu of the term "Dyed Lamb."

6. Failing to set forth the term "natural" as part of the information required to be disclosed on a label under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe such fur product which is not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

7. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting on a label affixed to such fur product.

8. Failing to set forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on a label in the sequence required by Rule 30 of the aforesaid Rules and Regulations.

9. Failing to set forth on a label the item number or mark assigned to such fur product.

B. Falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of

Section 5(b)(1) of the Fur Products Labeling Act.

2. Setting forth information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

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

4. Failing to set forth on an invoice the item number or mark assigned to such fur product.

C. Falsely or deceptively advertising any fur product through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote or assist, directly or indirectly, in the sale, or offering for sale of any such fur product, and which:

1. Fails to set forth in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(a) of the Fur Products Labeling Act.

2. Represents, directly or by implication, through such words and phrases as "LaBelle's factory makes its furs, you save the middleman's profit" or words and phrases of similar import and meaning, or in any other manner, that respondents perform the functions of a factory or otherwise process or manufacture fur products sold or offered for sale by them, unless and until respondents own and operate or directly and absolutely control the factory or other establishment wherein such fur products thus represented are manufactured.

3. Falsely or deceptively represents, that savings are afforded to the purchaser of any such fur product or misrepresents in any manner the amount of savings afforded to the purchaser of such fur product.

4. Represents, directly or by implication, that such fur product is guaranteed without clearly and conspicuously disclosing the nature and extent of the guarantee and the manner and form in which the guarantor would perform thereunder.

5. Fails to set forth the term "Dyed Broadtail-

processed Lamb" in the manner required where an election is made to use that term instead of the words "Dyed Lamb."

6. Fails to set forth the term "natural" as part of the information required to be disclosed in advertisements under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe such fur product which is not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

D. Failing to maintain full and adequate records disclosing the facts upon which pricing claims and representations of the types described in subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act, are based.

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

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

IN THE MATTER OF

WILLIAM M. LIBMAN DOING BUSINESS AS BETTER BUSINESS SERVICE

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

Docket C-1387. Complaint, July 22, 1968—Decision, July 22, 1968

Consent order requiring a Moline, Ill., debt collection agent to cease using skip-tracing forms that imply something of value will be sent upon receipt of requested information, simulating the appearance of an official document on his "Final Demand" form, and using any form which does not clearly indicate that it is a request for debtor information.

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 William M. Libman, an individual trading and doing business as Better Business Service, hereinafter referred to as respondent, has

violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph 1. Respondent William M. Libman is an individual trading and doing business under the name of Better Business Service, with his principal office and place of business located at 1852 16th Street, city of Moline, State of Illinois.

Respondent William M. Libman is the sole owner and proprietor of the business. He formulates, directs and controls the acts and practices of the business, including the acts and practices hereinafter set forth.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the collection of debts alleged to be due and owing others upon a commission basis, contingent upon collection.

PAR. 3. In the course and conduct of his business, respondent now causes, and for some time last past has caused, printed forms and other communications to be mailed from his place of business in the State of Illinois to alleged debtors located in various other States of the United States, and has been, and is now, receiving accounts for collection from persons, firms and corporations and has been collecting accounts alleged to be due by persons, firms and corporations located in States other than the State of Illinois, and receives, and has received, by means of the United States mails, letters and other communications and forms of remittance to and from States other than the State of Illinois, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said collection business in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his business, respondent frequently desires to obtain information as to the current addresses, places of employment and other pertinent information as to persons whose delinquent accounts the respondent is seeking to collect, for this purpose he uses, and has used, certain printed forms.

Typical and illustrative but not all inclusive of statements and representations made in said forms are the following:

A matter that concerns you directly has come to my attention and I need verification of the following information, from you, before the matter can be pursued further.

I recently came across something I would like to send him.

On the enclosed post card, would you please indicate whether you would be able to deliver a package to Mr. ——.

I have been advised that you may be able to help me reach Mr. ——. I would like very much to consult him concerning a matter of importance.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning but not expressly set out therein, respondent represented, and now represents, directly or by implication, that:

1. The respondent has in his possession important information for, and which will be sent to, the alleged delinquent debtors upon the receipt of the information requested.

2. The respondent has in possession a package or some other thing of value which will be forwarded to the alleged delinquent debtor upon the receipt of the information requested.

PAR. 6. In truth and in fact:

1. The respondent does not have in his possession any important information for any alleged delinquent debtor as represented.

2. The respondent does not have in his possession a package or something of value belonging to the alleged delinquent debtor as represented.

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

PAR. 7. In the course and conduct of his collection business, and for the purpose of inducing the payment of alleged delinquent accounts, respondent transmits and mails, and causes to be transmitted and mailed, to alleged delinquent debtors, various form letters, demands for payment, requests for information and other printed material.

Typical and illustrative of respondent's forms, but not all inclusive thereof, is the following:

FINAL DEMAND FOR PAYMENT OF DEBT

---------- CREDITOR

---------- DEBTOR

To the above named Debtor:

FIRST: You will please take notice that the above named Creditor claims that you are indebted to----------in the sum of---------- ----------Dollars, for ---------- ----------

SECOND: Although duly demanded, the same has not been paid, nor any part thereof, save and except the sum of ---------- Dollars.

THIRD: This is your final notice, that, unless you remit or call at the office of the BETTER BUSINESS SERVICE, 1852 16th Street, Moline, Ill. on or before ---------- A.D. ---------- at five o'clock p.m., of said day, for payment of said claim, or make provision for adjustment thereof, suit may forthwith be brought for the amount, together with interest and costs of the action.

Dated at ---------- this ----------day of ----------, 19------.

(Signed) ---------- Assignee

BETTER BUSINESS SERVICE
1852 16th Street, Moline, Ill.
Phone 762-7422

_____Date
_____Inquisitor
Investigation Department (for office use only)

Debtor's full name_____
Street and Number_____
City or Town_____
County of_____State of_____
Age_____Married or Single_____
Debtor's Occupation _____
By whom employed_____
Street_____ City_____
Pay received _____ Per_____
Has Debtor any other income? _____
From what source? ____Amt._____
Does employer speak well of him or her? _____
Former Employer _____
Does he speak well of him or her?_____
Was Debtor ever discharged?_____
For what reason? _____
Do neighbors speak well of him or her? _____
Character: Good, Fair, Bad? _____
Value of Real Estate_____
Value of Personal Property_____
Value of Live Stock_____
Any liens on property?_____
Real or Personal? _____
Any home debts to banks or friends?____

BETTER BUSINESS SERVICE
1852 16th Street, Moline, Ill.
Phone 762-7422

_____Creditor

_____Debtor

To be transferred to our Attorney in

_____County

in the City of_____

on _____

in the year_____A.D.

REMARKS: for investigator

Any suits or judgments? _____
Getting ahead?_____Falling behind? _____
Has Debtor ever been bankrupt?_____
When? _____
Voluntary or Involuntary?_____
Has Debtor ever been through Poor Debtor's Court?_____When?_____
Where?_____
Has Debtor ever been arrested?_____
For what? _____
Where does he or she spend his or her evenings? _____
_____
What union does he or she belong to?
_____

SUMMARY

Claim Received _____
Date Letter One _____
Date Letter Two _____
Date Letter Three _____
Answer Received _____
Amount Claimed _____
Estimated Costs _____
Interest _____

Causes of Delinquency

Incompetency _____ Spendthrift_____
Intoxicants _____ Extravagant _____
Mismanagement _____ Lazy _____
Sickness _____ Other Troubles_____

Does the Debtor's

Husband	Know he or she does not pay this bill?	Yes___ No___
Wife		Yes___ No___
Children		Yes___ No___
Relatives		Yes___ No___
Doctor		Yes___ No___
Grocer		Yes___ No___

TO DEBTOR: To settle this matter out of Court remit the full amount of this claim within five days.

We urge confidential settlements as preferable to publicity and expense of a law suit.

PAR. 8. By and through the use of said form and the statements and representations set forth therein and others of similar import and meaning, but not expressly set out herein, the respondent represented, and now represents, directly or by implication, that said "Final Demand" document in form and content is an official document duly issued or approved by a court of law.

PAR. 9. In truth and in fact, said "Final Demand" form is not an official document duly issued or approved by a court of law, but on the contrary is wholly private in its origin.

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

PAR. 10. The use, as hereinbefore set forth, of said statements and representations and said forms has had, and now has, the tendency and capacity to deceive and mislead persons into the erroneous and mistaken belief that said statements and representations are true, and induce the recipients thereof to supply information which they otherwise would not have supplied and into the payment of accounts to respondent, by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondent, as herein alleged, were and are, all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices in commerce, 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 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 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 William M. Libman is an individual trading and doing business under the name of Better Business Service, with his principal office and place of business located at 1852 16th Street, in the city of Moline, State of Illinois.

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 William M. Libman, an individual, trading as Better Business Service, or under any other trade name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the collection of, or the attempt to collect, alleged delinquent 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:

(a) Respondent has in his possession information, important or otherwise, which will be sent to the person or persons of whom he is making inquiry, upon the receipt of the requested information from the one to whom the inquiry is addressed.

(b) Respondent has in his possession a package, or any other thing of value, which will be forwarded to the person or persons of whom he is making inquiry, upon the receipt of the requested information from the one to whom the inquiry is addressed.

2. Using any unofficial or unauthorized document which simulates or is represented to be a document authorized, issued or approved by a court of law or any other official or legally constituted or authorized authority; or misrepresenting, in any manner, the source, authorization or approval of any form or document.

3. Using any forms, letters or other materials, printed or written, which do not clearly and conspicuously reveal thereon that the purpose thereof is to obtain information regarding alleged delinquent debtors.

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

REGENCY NECKWEAR, INC., ET AL.

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

Docket C-1388. Complaint, July 23, 1968—Decision, July 23, 1968

Consent order requiring a Miami, Fla., wholesaler of men's ties to cease misbranding the fiber content of its textile fiber products and misrepresenting itself as a manufacturer.

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 Act, the Federal Trade Commission having reason to believe that Regency Neckware, Inc., a corporation, and Julio Carity, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Regency Neckwear, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida.

Individual respondent Julio Carity is president of the corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporate respondent, including the acts, practices and policies hereinafter referred to.

Respondents are engaged in the wholesaling of men's ties, with their office and principal place of business located at 611 NE. First Avenue, Miami, Florida.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and

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

PAR. 3. Certain of said textile fiber products were misbranded 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 amount of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products which were labeled to show the contents as "All Silk," whereas in truth and in fact, said products contained substantially different fibers and amounts of fibers than as represented.

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

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products with labels which failed:

1. To disclose the true generic names of the fibers present;

2. To disclose the percentage of such fibers by weight; and

3. To disclose the name or other identification issued and registered by the Commission of the manufacturer of the product or one or more persons subject to Section 3 with respect to such product.

PAR. 5. 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 thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

PAR. 6. In the course and conduct of their business, respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, and distribution of textile fiber products in commerce, and now cause, and for some time last past have caused their products, including textile fiber products, when sold, to be shipped from their place of business in the State of Florida to purchasers thereof in various other States of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. In the course and conduct of their business in the sale of and in selling textile fiber products, the respondents use the word "manufacturers" in such phrases as "Manufacturers of Hand Made Neckwear," on invoices, thereby representing that respondents manufacture or process the textile fiber products sold by them.

PAR. 8. In truth and in fact respondents do not manufacture or process the textile fiber products sold by them.

PAR. 9. There is a preference on the part of many dealers to buy products, including textile fiber products, directly from manufacturers, believing that by doing so lower prices and other advantages thereby accrue to them.

PAR. 10. In the conduct of their business, at all time mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of textile fiber products of the same general kind and nature of those sold by respondents.

PAR. 11. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead dealers and other purchasers into the erroneous and mistaken belief that said statements and representations were, and are, true, and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents as alleged in Paragraphs 7 through 10 were, and are, to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of Section 5(a)(1) 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 Textile Fiber Products Identification Act; and

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

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

1. Respondent Regency Neckwear, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 611 NE. First Avenue, Miami, Florida.

Respondent Julio Carity is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Regency Neckwear, Inc., a corporation, and its officers, and Julio Carity, 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 the introduction, delivery 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:

1. Which are falsely or deceptively stamped, tagged, labeled, or otherwise identified as to the character or amount of the constituent fibers contained therein.

2. Unless each such product has affixed thereto a label showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

It is further ordered, That respondents Regency Neckwear, Inc., a corporation, and its officers, and Julio Carity, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of textile fiber products or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly, using the word "manufacturers," or any other words or term of similar import or meaning in statements, purporting to be descriptive of respondents' type operations, appearing on invoices, or representing in any other manner that respondents manufacture or process the textile fiber products sold by them, unless and until respondents' operations are such that respondents do in fact manufacture or process the textile fiber products sold by them.

It is further ordered, That the respondents shall forthwith distribute a copy of this order to all operating divisions of the corporate respondent.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with

the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

E. T. JRS., INC., ET AL.

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

Docket C–1389. Complaint, July 25, 1968—Decision, July 25, 1968

Consent order requiring two affiliated Los Angeles, Calif., manufacturers of women's apparel to cease misbranding the fiber content of its textile fiber products and failing to maintain required records.

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 E. T. Jrs., Inc., a corporation, S. Howard Hirsh, Inc., a corporation, and Stanley H. Hirsh, individually and as an officer of said corporations, 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 charges in that respect as follows:

PARAGRAPH 1. Respondent E. T. Jrs., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its executive office and place of business located at 732 South Los Angeles Street, Los Angeles, California.

Respondent S. Howard Hirsh, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its executive office and place of business located at 732 South Los Angeles Street, Los Angeles, California.

Individual respondent Stanley H. Hirsh is an officer of said corporate respondents. He formulates, directs and controls the acts, practices and policies of said corporations, including the acts and practices hereinafter referred to. The office and principal

place of business of said individual respondent is the same as the corporate respondents.

Respondents are engaged in the manufacture of dresses and ensembles for both young and mature women.

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

PAR. 3. Certain of such textile fiber products were misbranded by 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 fiber products, but not limited thereto, were textile fiber products (dresses) with labels which failed:

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

2. To disclose the name, or other identification issued and registered by the Commission, of the manufacturer of the product or one or more persons subject to Section 3 of the said Act, with respect to such product.

PAR. 4. 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 the following respects:

1. Textile fiber products were not labeled so that the generic names and percentages by weight of the constituent fibers present therein, exclusive of permissive ornamentation in amounts of 5 per centum or more and fibers disclosed in accordance with Paragraph (b) of Rule 3 of the aforementioned Rules and Regulations, appear in order of predominance by weight.

2. Fiber trademarks used in conjunction with required information on labels affixed to such fiber products appeared without the generic name of the fiber being set out in immediate conjunction therewith and in type or lettering of equal size and conspicuousness, in violation of Rule 17(a) of the aforesaid Rules and Regulations.

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

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

PAR. 6. The acts and practices of 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 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 Textile Fiber Products Identification Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should

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

1. Respondent E. T. Jrs., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its executive office and principal place of business located at 732 South Los Angeles Street, Los Angeles, California.

Respondent S. Howard Hirsh, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its executive office and principal place of business located at 732 South Los Angeles Street, Los Angeles, California.

Respondent Stanley H. Hirsh is an officer of said corporations and his address is the same as that of said corporations.

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 E. T. Jrs., Inc., a corporation, and its officers, S. Howard Hirsh, Inc., a corporation, and its officers, and Stanley H. Hirsh, individually and as an officer of said corporations, 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 importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product, which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding such products by:

1. 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.

2. Failing to label textile fiber products so that the generic names and percentages by weight of the constituent fibers present therein exclusive of ornamentation in amounts of 5 per centum or more and fibers disclosed in accordance with Paragraph (b) of Rule 3 of the aforementioned Rules and Regulations, appear in the order of their predominance by weight.

3. Using a fiber trademark on labels affixed to textile fiber products without the generic name of the fiber appearing on the said label in immediate conjunction therewith, and in type or lettering of equal size and conspicuousness.

4. Failing to separately set forth the required information as to fiber content on the required label in such a manner as to separately show the fiber content of the separate sections of textile fiber products containing two or more sections where such form of marking is necessary to avoid deception.

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

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 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.