

Complaint

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IN THE MATTER OF

VANITY FAIR MILLS, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket C-1390. Complaint, July 25, 1968—Decision, July 25, 1968*

Consent order requiring a Reading, Pa., manufacturer of women's lingerie to cease conspiring with its retail outlets to fix the resale prices of its merchandise and utilizing other anticompetitive practices.

COMPLAINT

The Federal Trade Commission, having reason to believe that the corporation named as respondent in the caption hereof, and more particularly designated and described hereinafter, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. Sec. 45), 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 with respect thereto as follows:

PARAGRAPH 1. Respondent, Vanity Fair Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 1047 North Park Road, Wyomissing, Reading, Pennsylvania.

PAR. 2. Respondent has been and is now engaged in the business of manufacture, sale and distribution of women's lingerie and foundation garments with net sales in 1965 in excess of \$52,000,000.

Respondent manufactures its products in seven plants located in the State of Alabama. It sells directly to approximately 2,000 retail department stores and specialty shops representing about 3,300 store locations throughout the United States and the District of Columbia through its own salesmen operating out of four main sales showrooms in New York, New York; Dallas, Texas; Los Angeles, California, and San Francisco, California.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaging in commerce as "commerce" is defined in the Federal Trade Commission Act. Respondent has caused and now causes its various products to be shipped and transported from the State of manufacture to purchasers located in States other than the State wherein said shipments originate.

PAR. 4. Except to the extent that competition has been hin-

dered, frustrated, lessened and eliminated as set forth in this complaint, respondent has been and is now in competition with other persons, firms and corporations likewise engaged in the manufacture, sale and distribution in commerce of women's lingerie and foundation garments.

PAR. 5. Respondent, in combination, agreement, understanding, and conspiracy with its retail accounts, or some of them with the cooperation or acquiescence of others, is now and for the last several years has been establishing, maintaining and pursuing a planned course of action to fix and maintain certain specified uniform prices at which respondent's products are resold. In furtherance of said combination, agreement, understanding and conspiracy, respondent is now and for the past several years has been engaging in the following acts and practices, among others:

- (a) Establishing regular resale prices.
- (b) Preticketing its products with the established regular resale prices imprinted thereon.
- (c) Regularly furnishing all retail accounts with lists and necessary supplements containing the established regular resale prices.
- (d) Agreeing with its retail accounts to contribute 50% toward their costs for regular newspaper advertising for respondent's products on the condition that said retailers advertise and sell at respondent's established resale prices.
- (e) Agreeing with its retail accounts to contribute 50% toward their costs for certain promotional newspaper advertising for respondent's products on the condition that said retailers not begin advertising said promotions before the date announced by respondent.
- (f) Restricting the number of times annually during which respondent's special and regular stock merchandise may be offered on sale by its retail accounts.
- (g) Establishing specific dates for the advertising, commencement and conclusion of certain special sales on respondent's merchandise.
- (h) Agreeing with its retail accounts that said accounts should not use its name in newspaper advertising for discontinued merchandise being offered for sale at reduced prices.
- (i) Actively seeking or securing, through the use of salesmen or others, the cooperation, participation or agreement of retail accounts in the practices described herein.
- (j) Using suggested resale prices in its own national advertising.

PAR. 6 By means of all the aforesaid acts and practices, and more, respondent in combination, agreement, understanding and conspiracy with certain of its retail accounts and with the acquiescence of others, establishes, maintains and pursues a planned course of action to fix and maintain certain specified uniform prices at which respondent's products will be resold.

PAR. 7. The acts and practices of respondent by and through combining, agreeing, understanding, and conspiring with its retail accounts, as hereinabove described, for the last several years have been and are now having the effect of hindering, lessening, restricting, restraining and eliminating competition in the sale of respondent's lingerie and foundation garments; and constitute unfair methods of competition in commerce, all in derogation of the public interest and in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Vanity Fair Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1047 North Park Road, Wyomissing, Read-

ing, 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, Vanity Fair Mills, Inc., a corporation, its officers, and representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of women's lingerie or foundation garments in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Entering into any form of combination, agreement, understanding or conspiracy with its retail accounts which fixes or tampers with the resale prices of respondent's merchandise: *Provided, however,* That nothing in this order shall prohibit respondent from suggesting resale prices.
2. Preticketing its products with a resale price imprinted thereon without stating on said ticket that the price is suggested or approximate.
3. Distributing resale price lists without stating on said lists that the prices are suggested or approximate.
4. Conditioning payments of any advertising allowance to its retail accounts on advertising only respondent's suggested regular or reduced resale prices.
5. Conditioning payments of any advertising allowance to its retail accounts on advertising reduced resale price sales on specified dates only.
6. Restricting the number of times during which respondent's special or regular stock merchandise may be offered at reduced resale prices by its retail accounts.
7. Announcing dates other than suggested dates for the advertising, commencement or conclusion of any reduced resale price sale of respondent's merchandise.
8. Refusing to permit its retail accounts to use its name in newspaper advertising for discontinued merchandise being offered for sale at reduced resale prices.
9. Seeking or securing, through the use of salesmen or others, the cooperation, participation or agreement of retail accounts, in any violation of any of the provisions of this order.
10. Using resale prices in its own local or national ad-

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vertising without stating that said prices are suggested or approximate.

Nothing in the order shall be interpreted to prohibit respondent from entering into, establishing, maintaining, and enforcing in any lawful manner any price agreement excepted from the provisions of the Federal Trade Commission Act by virtue of the McGuire Act amendments to said Act or any other applicable statutes, whether now in effect or hereafter enacted.

It is further ordered, That respondent, within sixty (60) days after the effective date of this order notify each of its retail accounts of this cease and desist order by mailing them a copy thereof together with a copy of the attached letter.

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

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.

DEAR CUSTOMER: Vanity Fair Mills, Inc., has entered into an agreement with the Federal Trade Commission relating to the Company's distributional activities. A copy of the consent order entered into pursuant to that agreement is hereto annexed.

Vanity Fair has entered into this agreement solely for the purpose of settling a dispute with the Commission, and the agreement is not to be construed as an admission by the Company that it has violated any of the laws administered by the Commission. Instead, the order merely relates to the activities of Vanity Fair in the future.

In order that you may most readily understand the terms of the order, we have set forth below the essentials of the agreement with the Commission, although you must realize that the order itself is controlling rather than the following explanation of its provisions:

While Vanity Fair may announce in advance its merchandising policies and deal only with those customers it chooses, Vanity Fair may not conspire or seek agreements with its customers to follow Vanity Fair's announced policies.

Specifically, this means that Vanity Fair is permitted to suggest the resale price at which it believes its merchandise was manufactured to sell, distribute suggested resale price lists, and preticket with suggested prices. Vanity Fair may not, however, solicit the agreement of its customers to adhere to those sug-

gested prices since they are not binding, or restrict the number of times when a customer may offer special or regular merchandise at reduced resale prices. Furthermore, Vanity Fair may not condition the payment of advertising allowances on a customer's adherence to the Vanity Fair suggested resale price.

Additionally, Vanity Fair is permitted to suggest the commencement or conclusion date of reduced resale price sales, such as the Pechglo and foundation sales. But Vanity Fair may not solicit the agreement of its customers to adhere to those suggested dates since they are not binding. Nor may Vanity Fair condition the payment of advertising allowances on a customer's adherence to suggested reduced resale price dates.

Finally, Vanity Fair will not object to the use of the Vanity Fair name in the advertising of discontinued merchandise, but care must be taken that such advertising is not misleading.

IN THE MATTER OF

DIAMOND NOVELTIES, INC., DOING BUSINESS AS
FABULOUS DIAMOND'S ET AL.

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

Docket C-1391. Complaint, July 25, 1968—Decision, July 25, 1968

Consent order requiring a Miami, Fla., retailer and wholesaler of novelties, party decorations, and fabrics to cease marketing dangerously flammable fabrics.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Diamond Novelties, Inc., a corporation, doing business under its own name and as Fabulous Diamonds, and Sidney Diamond, individually and as an officer of said Corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Flammable Fabrics Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Diamond Novelties 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 655 N.W. 57th Avenue, Miami, Florida.

Respondent Sidney Diamond is an officer of the aforesaid corporation. He formulates, directs and controls the acts, practices and policies of said corporation. His address is the same as that of the corporate respondent.

Respondents are retailers and wholesalers of novelties, party decorations, fabrics and artificial flowers.

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

Among such fabrics mentioned hereinabove were wood fiber chips.

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

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and

does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

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

1. Respondent Diamond Novelties, 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 655 N.W. 57th Avenue, Miami, Florida.

Respondent Sidney Diamond 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 Diamond Novelties, Inc., a corporation, doing business under its own name and as Fabulous Diamond's, or any other name, and its officers, and Sidney Diamond, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any fabric as "commerce" and "fabric" are defined in the Flammable Fabrics Act as amended, which fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this Order, file with the Commission an interim special report in writing setting forth the respondents' intention as to compliance with this Order. This

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interim special report shall also advise the Commission fully and specifically concerning the identity of the fabric which gave rise to the complaint, (1) the amount of such fabric in inventory, (2) any action taken to notify customers of the flammability of such fabric and the results thereof and (3) any disposition of such fabric since February 21, 1968. Such report shall further inform the Commission whether respondents have in inventory any fabric, product or related material having a plain surface and made of silk, rayon or cotton or combinations thereof in a weight of two ounces or less per square yard or fabric with a raised fiber surface made of cotton or rayon or combinations thereof. Respondents will submit samples of any such fabric, product or related material with this report. Samples of the fabric, product or related material shall be of no less than one square yard of material.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of the 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 of their compliance with this order.

IN THE MATTER OF

ANTOINETTE T. SEARLES TRADING AS
PROFILS DU MONDE

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

Docket C-1392. Complaint, July 26, 1968—Decision, July 26, 1968

Consent order requiring a Beverly Hills, Calif., retailer of wearing apparel to cease marketing dangerously flammable products and misbranding its textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Flammable Fabrics Act, as amended, 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 Antoinette T. Searles, an individual trading as Profils Du Monde, hereinafter referred to as respondent,

has violated the provisions of said Acts and the Rules and Regulations promulgated under the Flammable Fabrics Act, as amended, and 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 Antoinette T. Searles is an individual trading as Profils Du Monde. She is engaged in the sale and distribution of wearing apparel, including, but not limited to, ladies' scarves. The business address of the respondent is 9567 Wilshire Boulevard, Beverly Hills, California.

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

Among such products mentioned hereinabove were ladies' scarves.

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

PAR. 4. Respondent is now and for some time last past has 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 has sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and has sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 5. Certain of the textile fiber products were misbranded by respondent 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 scarves with labels which failed:

- (a) To disclose the generic names of the fibers present; and
- (b) To disclose the true percentage of the fibers present by weight.

PAR. 6. Respondent, in violation of Section 5(a) of the Textile Fiber Products Identification Act has caused and participated in the removal or mutilation of, prior to the time textile fiber products subject to the provisions of the Textile Fiber Products Identification Act were sold and delivered to the ultimate consumer, labels required by the Textile Fiber Products Identification Act to be affixed to such products, without substituting therefor labels conforming to Section 4 of said Act and in the manner prescribed by Section 5(b) of said Act.

PAR. 7. The acts and practices of respondent, as set forth above in Paragraphs Five and Six were, and are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISIONS 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 Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act, the Textile Fiber Products Identification Act and the Flammable Fabrics Act, as amended; and

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

provisions as required by the Commission's Rules; and

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

1. Respondent Antoinette T. Searles is an individual trading as Profils Du Monde under and by virtue of the laws of the State of California, with her office and principal place of business located at 9567 Wilshire Boulevard, Beverly Hills, California.
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 Antoinette T. Searles, an individual trading as Profils Du Monde, or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product as "commerce" and "product" are defined in the Flammable Fabrics Act, as amended, which fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondent herein shall, within ten (10) days after service upon her of this Order, file with the Commission an interim special report in writing setting forth the respondent's intention as to compliance with this Order. This interim special report shall also advise the Commission fully and specifically concerning identity of the product which gave rise to the complaint, (1) the amount of such product in inventory, (2) any action taken to notify customers of the flammability of such product and the results thereof and (3) any disposition of such product since August 29, 1967. Such report shall further inform

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the Commission whether respondent has in inventory any fabric, product or related material having a plain surface and made of silk, rayon or cotton or combinations thereof in a weight of two ounces or less per square yard or with a raised surface made of cotton or rayon or combinations thereof. Respondent will submit samples of any such fabric, product or related material with this report. Samples of the fabric, product or related material shall be of no less than one square yard of material.

It is further ordered, That respondent Antoinette T. Searles, an individual trading as Profils Du Monde, or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from 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.

It is further ordered, That respondent Antoinette T. Searles, an individual trading as Profils Du Monde, or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from removing or mutilating, or causing or participating in the removal or mutilation of, the stamp, tag, label or other identification required by the Textile Fiber Products Identification Act to be affixed to any textile fiber product, after such textile fiber product has been shipped in commerce and prior to the time such textile fiber product is sold and delivered to the ultimate consumer, without substituting therefor labels conforming to Section 4 of said Act and the Rules and Regulations promulgated thereunder and in the manner prescribed by Section

5(b) of said Act.

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

IN THE MATTER OF

HOME YARDAGE, INC., ET AL. TRADING AS
HOME YARDAGE REMNANT SHOP

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

Docket C-1393. Complaint, July 26, 1968—Decision, July 26, 1968

Consent order requiring two affiliated fabric stores in California to cease misbranding their wool and textile fiber products and falsely advertising their textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Home Yardage, Inc., a corporation, and Theodore A. Corn, individually and as an officer of said corporation, and Home Yardage Remnant Shop, a partnership, and Theodore A. Corn and Stanley Zimmerman, individually and as copartners trading as Home Yardage Remnant Shop, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939 and 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 Home Yardage, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Its office and principal place of business is located at 3301 Geary Boulevard in the city of San Francisco, State of California. Said corporate respondent operates a branch retail outlet at 2323 Broadway, Oakland, California.

Respondent Theodore A. Corn is an officer of said corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporation. His address is the same as that of said corporation.

Respondent Home Yardage Remnant Shop is a partnership. Theodore A. Corn and Stanley Zimmerman are individuals and copartners trading as Home Yardage Remnant Shop. Their address as copartners and the address of the partnership is 2818 East 14th Street, Oakland, California.

Respondents are retailers of textile fiber products and wool products.

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

Among such misbranded textile fiber products, but not limited thereto were textile fiber products, namely fabrics, with labels on or affixed thereto on which the generic names of fibers appeared in such a manner as to falsely and deceptively imply the presence of such fibers.

PAR. 4. Certain of the 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 fabrics with labels which failed:

(1) To disclose the true percentage of the fibers present by weight; and

(2) To disclose the true generic name of the fibers present.

PAR. 5. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Generic names and fiber trademarks were used on labels without a full and complete fiber content disclosure appearing on such labels, in violation of Rule 17(b) of the aforesaid Rules and Regulations.

(b) Generic names of fibers were used in non-required information on labels in such a manner as to be false, deceptive or misleading as to fiber content, and to indicate, directly or indirectly, that such textile fiber products were composed wholly or in part of a particular fiber, when such was not the case, in violation of Rule 17(d) of the aforesaid Rules and Regulations.

(c) Words, symbols or depictions constituting or implying the name or designation of a fiber which was not present in the said products appeared on labels in violation of Rule 18 of the aforesaid Rules and Regulations.

(d) Samples, swatches or specimens of textile fiber products subject to the aforesaid Act, which were used to promote or effect sales of such textile fiber products, were not labeled to show their respective fiber content and other information required by Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in violation of Rule 21(a) of the aforesaid Rules and Regulations.

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

Among the aforesaid advertisements, but not limited thereto, were advertisements of respondents which appeared in issues of the "San Francisco Examiner & Chronicle" a newspaper having interstate circulation, wherein terms, such as, corduroy, denim, and taffeta, among others, were used which are descriptive of a

method of manufacture, construction or weave or which are indicative of a textile fiber or fibers and imply fiber content under Section 4(c) of the Act without setting forth the true generic name of the fiber or fibers present in said products.

PAR. 7. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the Rules and Regulations thereunder in the following respects:

(a) Fiber trademarks were used in advertising textile fiber products, namely fabrics, without a full disclosure of the fiber content information required by Section 4(c) of the Act and the Rules and Regulations thereunder, in at least one instance in said advertisement, in violation of Rule 41(a) of the aforesaid Rules and Regulations.

(b) Fiber trademarks were used in advertising textile fiber products, namely fabric, containing more than one fiber and such fiber trademarks did not appear in the required fiber content information in immediate proximity and conjunction with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness in violation of Rule 41(b) of the aforesaid Rules and Regulations.

(c) Fiber trademarks were used in advertising textile fiber products, namely fabric, containing only one fiber and such fiber trademarks did not appear, at least once in the said advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type, in violation of Rule 41(c) of the aforesaid Rules and Regulations.

PAR. 8. 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.

PAR. 9. Respondents, now and for some time last past, have introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in said Act, wool products as "wool product" is defined therein.

PAR. 10. Certain of said wool products were misbranded within the intent and meaning of Section 4(a)(1) of the Wool Products

Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were certain wool products, namely fabrics, with labels on or affixed thereto on which the generic names of fibers appeared in such a manner as to falsely and deceptively imply the presence of such fibers.

PAR. 11. Certain of said wool products were further misbranded in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

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

PAR. 12. The acts and practices of the respondents as set forth in Paragraphs Ten and Eleven were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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 Fur proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an ad-

mission 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 Home Yardage, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 3301 Geary Boulevard in the city of San Francisco, State of California.

Respondent Theodore A. Corn is an officer of said corporation and his address is the same as that of said corporation.

Respondent Home Yardage Remnant Shop is a partnership. Theodore A. Corn and Stanley Zimmerman are individuals and copartners trading as Home Yardage Remnant Shop. Their address is 2818 East 14th Street, Oakland, California.

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 Home Yardage, Inc., a corporation, and its officers, and Theodore A. Corn, individually and as an officer of said corporation, and Home Yardage Remnant Shop, a partnership, and Theodore A. Corn and Stanley Zimmerman, individually and as copartners trading as Home Yardage Remnant Shop, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with 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,

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

A. Misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying any textile fiber product as to the name or amount of constituent fibers contained therein.

2. Failing to affix labels to textile fiber products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

3. Using fiber trademarks on labels affixed to such textile fiber products without the generic name of the fiber appearing on the said label.

4. Using generic names on fiber trademarks on any labels whether required or non-required, without making a full and complete fiber content disclosure in accordance with the Act and Regulations the first time such generic name or fiber trademark appears on the label.

5. Setting forth on labels affixed to textile fiber products words, symbols or depictions which constitute or imply the name or designation of a fiber, which fiber is not present in said products.

6. Failing to affix labels to samples, swatches or specimens of textile fiber products used to promote or effect the sale of such textile fiber products showing in words and figures plainly legible all the information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Falsely or deceptively advertising textile fiber products by:

1. Making any representations, by disclosure or by implication, as to the fiber contents of any textile fiber product in any written advertisement which is used to aid, promote, or assist, directly or indirectly, in the sale

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or offering for sale of such textile fiber product, unless the same information required to be shown on the stamp, tag, label or other means of identification under Sections 4(b)(1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

2. Using fiber trademarks in advertisements without a full disclosure of the required content information in at least one instance in the said advertisement.

3. Using fiber trademarks in advertising textile fiber products containing more than one fiber without such fiber trademarks appearing in the required fiber content information in immediate proximity and conjunction with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness.

4. Using fiber trademarks in advertising textile fiber products containing only one fiber without such fiber trademarks appearing at least once in the advertisement, in immediate proximity and conjunction with the generic name of the fiber in plainly legible and conspicuous type.

It is further ordered, That respondents Home Yardage, Inc., a corporation, and its officers, and Theodore A. Corn, individually and as an officer of said corporation, and Home Yardage Remnant Shop, a partnership, and Theodore A. Corn and Stanley Zimmerman, individually and as copartners trading as Home Yardage Remnant Shop, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification correctly showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

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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

L. G. BALFOUR COMPANY ET AL.

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

Docket 8435. Complaint, June 16, 1961—Decision, July 29, 1968

Order requiring the Nation's largest manufacturer of college fraternity jewelry to divest itself of a subsidiary corporation, to stop harassing competitors and enticing away their employees, to terminate contracts with high schools and college fraternities in excess of one year, to stop contributing to organizations of fraternities, and not to acquire any competitor for a period of 10 years without the permission of the Federal Trade Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents named in the caption hereof and more particularly described hereinafter, have violated the provisions of said Act, and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in respect thereto as follows:

PARAGRAPH 1. Respondent L. G. Balfour Company is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office and place of business located at 25 County Street, Attleboro, Massachusetts.

Respondent Lloyd G. Balfour is president, treasurer, and a director of the respondent L. G. Balfour Company and is named herein as a respondent, both individually and as an officer of said corporation. His principal office and place of business is 25 County Street, Attleboro, Massachusetts.

Respondent Burr, Patterson & Auld Company is a corporation organized and existing under the laws of the State of Michigan,

with its principal office and place of business located at 2301 16th Street—1 block South of Michigan Avenue, Detroit, Michigan.

The conduct of the affairs of both of the aforementioned corporate respondents with respect to their business practices and policies including those alleged herein are now, and have been for more than twenty years last past, under the control, direction, domination and supervision of the individual respondent Lloyd G. Balfour.

PAR. 2. The corporate respondents are now and for many years last past have been engaged in the business of manufacturing, processing, distributing and selling insignia jewelry, college and class rings, commercial jewelry, medals and trophies used by fraternal, sorority, college, school, professional and business organizations. In addition, respondent L. G. Balfour Company is now and for many years last past has been processing, distributing, and selling especially to the national Greek-letter social fraternity and sorority trade miscellaneous equipment bearing "official" markings and insignia, including but not limited to the following: women's jewelry boxes, men's stud boxes, fraternity paddles, fraternity and sorority beer mugs, fraternity and sorority processed knitwear, party and dance favors, stationery, pennants, and other novelty-like items. Such category of items is referred to hereinafter as "official" miscellaneous equipment. Respondent L. G. Balfour Company maintains sales offices in forty-nine States and operates branch stores in at least forty-three States. Respondent Burr, Patterson & Auld Company operates sales outlets in Michigan, Illinois, Indiana and Ohio.

PAR. 3. The corporate respondents, in the course and conduct of the aforesaid business, distribute and sell their respective products to customers in States other than the State in which each corporate respondent respectively maintains production or processing facilities. There has been and is now a pattern and course of interstate commerce in said products by the corporate respondents within the intent and meaning of the Federal Trade Commission Act. The volume of trade of such products in commerce is substantial.

PAR. 4. Except to the extent that competition has been hindered, lessened, restrained, foreclosed, and eliminated, or potential competition among the corporate respondents, and with others, has been forestalled, prevented, hindered, and suppressed by unfair methods of competition and unfair acts and practices hereinafter set forth: (a) each of the corporate respondents is in

direct and substantial competition with each other and with other members of the insignia jewelry, college and class ring, and commercial jewelry industry in the manufacture, processing, distribution, and sale of said categories of products in interstate commerce, and (b) respondent L. G. Balfour Company is in direct and substantial competition with other members of the trade which process, distribute, and sell in interstate commerce the "official" miscellaneous equipment hereinbefore set forth in Paragraph Two.

PAR. 5. Respondent Lloyd G. Balfour organized L. G. Balfour & Company in 1913, which subsequently was incorporated in Massachusetts in 1914 as L. G. Balfour Company. During the period 1927 through 1952 respondents Lloyd G. Balfour and L. G. Balfour Company acquired full control and domination of two competitors in the insignia jewelry field, namely: J. F. Newman, Inc., of New York, New York, and Edwards, Haldeman & Co. of Detroit, Michigan, Neither of these acquired companies now operates as a competitor of the respondents. Respondent Burr, Patterson & Auld Company during the same aforesaid period became and now is a "de facto" wholly owned subsidiary of respondent L. G. Balfour Company. Respondent Lloyd G. Balfour owns substantially all of the capital stock in respondent L. G. Balfour Company and all of the stock in respondent Burr, Patterson & Auld Company.

Respondents collectively maintain a volume of trade in all products in excess of \$18,000,000 per year in aggregate sales. Respondent L. G. Balfour Company is the largest manufacturer and distributor of insignia jewelry, college and class rings, and commercial jewelry in the United States. Together the respondents control the manufacture and distribution of up to 99% of all "official" fraternity insignia jewelry sold to members of national Greek-letter social fraternities and sororities, and members of national honor societies; and maintain a volume of trade in such insignia jewelry in excess of \$4,500,000 per year in aggregate sales.

From 1946 until 1954, respondent Lloyd G. Balfour was chairman of an organization known as the Interfraternity Research and Advisory Council (IRAC), and thereafter for some years served as its administrative secretary-treasurer. The IRAC, organized in April 1946, consists of representatives of many national social and professional fraternal organizations and conferences, and among other things purports to operate as a public relations agency for its member organizations; as a lobbying agent

to protect its member organizations against unfavorable legislation; as an advisory agent to its member organizations against unfavorable legislation; as an advisory agency to its member organizations to assist in the solution of fraternity problems in general; and as an agency to advise its members with respect to protecting their fraternal names and insignia, including assistance in the handling of law suits for that purpose.

PAR. 6. Respondent L. G. Balfour Company, sometimes in conjunction and cooperation with respondent Burr, Patterson & Auld Company, has in the past and is now engaging in unfair methods of competition and unfair acts and practices in commerce in connection with the manufacture, processing, distribution and sale of fraternity insignia, college and class rings, and commercial jewelry, and in connection with the processing, distribution, and sale of the aforesaid "official" miscellaneous equipment, especially characteristic of the national Greek-letter social fraternity and sorority trade, has in the past and is now engaging in unfair methods of competition and unfair acts and practices in commerce. Such unfair methods of competition and unfair acts and practices, include but not limited to the following:

1. Unreasonably foreclosed competitors and potential competitors from access to substantial markets;
2. Denied to competitors and potential competitors a reasonable opportunity to compete;
3. Monopolized the sale and distribution of fraternity insignia jewelry;
4. Attempted to monopolize and has monopolized the sale and distribution of college and class rings;
5. Attempted to monopolize and has monopolized the sale and distribution of commercial jewelry, including industrial emblematic jewelry;
6. Attempted to monopolize and has monopolized the sale and distribution of "official" miscellaneous equipment, especially characteristic of the national Greek-letter social fraternity and sorority category of the market;
7. Attempted to monopolize and has monopolized the sale and distribution of a full-line of fraternity insignia-bearing products, particularly in the insignia jewelry and "official" miscellaneous equipment characteristic of the national Greek-letter social fraternity and sorority category of the market;
8. Entered into and adhered to "sole official jeweler" exclusive dealing contracts, agreements, and understandings with practically all of the national Greek-letter social and professional fra-

ternities and sororities, and national honor societies in the United States;

9. Entered into and adhered to contracts, agreements and understandings with practically all of the national Greek-letter social fraternities and sororities in the United States which provide that the Balfour Company will allow a certain percent "commission" or "royalty" (as much as 20%) to be paid to the fraternity or sorority upon all articles, including, but not limited to, standard badges, jeweled badges, pledge buttons and recognition pins, purchased from the company by the fraternity or sorority's individual members (except those articles sold only to the fraternity or sorority at net prices);

10. Entered into and adhered to exclusive supply contracts, agreements and understandings with various suppliers of miscellaneous equipment intended to bear "official" fraternity or sorority markings and insignia under terms of which suppliers agreed to sell such equipment only to respondent L. G. Balfour Company, not to sell to competitors of respondents, nor to the fraternity trade;

11. Policed and controlled the entry of competition in the sale and distribution of fraternity insignia jewelry and "official" miscellaneous equipment in conjunction with the Interfraternity Research and Advisory Council (IRAC) and some of the national Greek-letter social fraternities and sororities, including the financing and preparation of lawsuits purporting to protect fraternal insignia;

12. Disparaged competitors and their products by sending to the fraternity trade, in general, certain correspondence and bulletins containing charges that particular competitors and potential competitors sold and distributed, or attempted to sell and distribute fraternity insignia jewelry without authority from the fraternal organizations involved, and other merchandise bearing fraternity insignia without authority to carry such insignia from the fraternal organizations involved;

13. Entered into and adhered to exclusive dealing contracts, agreements, and understandings for the sale of insignia rings with authorized representatives of high school classes and colleges, over 25 of which agreements operate for an indefinite period and about 2,000 of which operate for periods of three to five years; and in the case of high school classes the terms of the agreements often require that all insignia pins, other class jewelry, diplomas, commencement announcements, invitations, and personal cards also be purchased from respondent L. G. Bal-

four Company;

14. During the period 1927 through 1952, acquired full control and domination of three competitors in the fraternity insignia jewelry field and attempted to acquire full control and domination of another;

15. Enticed and attempted to entice key personnel, such as salesmen, die-cutters, artists, and managers, away from competitors to work for respondents or companies under their control;

16. Sold or bid below cost to drive competitors or potential competitors from substantial markets.

PAR. 7. The acts and practices, as hereinbefore alleged, have had and now have, among other things, the tendency and capacity unlawfully to restrain, lessen, and eliminate competition and to create a monopoly in the manufacture, sale, and distribution of college and class rings and commercial jewelry, in commerce; unlawfully to restrain, lessen, and eliminate competition and to create a monopoly in the sale and distribution of "official" miscellaneous equipment bought by members of the national Greek-letter social fraternities and sororities, in commerce; have resulted in and continue to result in the monopolization of the manufacture, sale, and distribution of fraternity insignia jewelry, and the monopolization of the sale and distribution of a full-line of insignia-bearing products, particularly the jewelry and "official" miscellaneous equipment purchased by members of the national Greek-letter social fraternities and sororities, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

PAR. 8. The acts and practices of the respondents as hereinabove alleged are to the prejudice and injury of the public and constitute unfair methods of competition and unfair acts and practices, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Mr. Ernest G. Barnes, Mr. Jerome A. Tintle and Mr. Harold Brandt for the Commission.

Howrey, Simon, Baker & Murchison, Washington, D.C., by *Mr. Edward F. Howrey; Mr. A. Duncan Whitaker; Mr. Gerald Kadish and Mr. Daniel P. Oppenheim* for the respondents.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER
AUGUST 7, 1967

STATEMENT OF PROCEEDINGS

The complaint herein issued on June 16, 1961, charging re-

spondents L. G. Balfour Company, Lloyd G. Balfour, president, treasurer and a director of L. G. Balfour Company and Burr, Patterson & Auld Company with engaging in unfair methods of competition and unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Sec. 45) in connection with the manufacture, distribution and sale of fraternity insignia jewelry, college and class rings and commercial jewelry, and in connection with the processing, distribution and sale of official miscellaneous equipment especially characteristic of the national Greek-letter social fraternity and sorority trade.

Respondents, by answer filed October 12, 1961, admitted some allegations of the complaint, but denied engaging in any of the unlawful acts and practices specifically alleged in the complaint, denied engaging in any acts or practices in violation of Section 5 of the Federal Trade Commission Act and prayed for dismissal of the complaint.

Administrative hearings herein commenced in Boston, Massachusetts, on October 16, 1961. Thereafter, additional hearings were held in Chicago, Illinois, Washington, D.C., Los Angeles and San Francisco, California, and again in Boston, Massachusetts. The case-in-chief was closed on September 17, 1962, thirty-nine witnesses having testified and more than 700 exhibits, many of them multi-paged, having been received in evidence. On that same date respondents began their case-in-defense. Just prior thereto, on August 27, 1962, respondents moved for the production of documents from the files of the Commission and were subsequently granted a continuance of their case-in-defense pending final decision on respondents' motion, which was made the basis of an interlocutory appeal to the Commission. By order of May 10, 1963, the Commission directed the production of a substantial number of documents to respondents. Thereafter production was made pursuant to the Commission's order; however, respondents filed another motion, which was denied by the hearing examiner, requesting further production of documents. On October 22, 1963, the Commission denied respondents' request for appeal from the hearing examiner's denial.

On November 14, 1963, respondents sued the Federal Trade Commission, the Commissioners and certain Commission personnel in the United States District Court for the Eastern District of Virginia, Alexandria Division, seeking to limit the allegations of the Commission's complaint herein to the ten-year period immediately preceding its issuance, or, in the alternative, to enjoin

any further action in the Commission's administrative proceeding. (Civil Action File No. 3132 [7 S.&D. 889].) This district court civil action was terminated by consent agreement of March 27, 1964, requiring, among other things, the physical excision of all pre-June 1951 evidence of record in the administrative proceeding except insofar as it might otherwise be agreed by counsel.

Thereafter, during the months of April and May 1964, counsel negotiated for a possible consent settlement of this matter; such negotiations, however, proved fruitless. Accordingly, the hearing examiner, on June 18, 1964, directed counsel to proceed with the excision of the record herein in accordance with the district court consent agreement.

Pursuant to the agreement, portions of the testimony of twenty-seven (27) Commission witnesses and fourteen (14) respondents' witnesses were excised from the record herein. Nearly 900 pages of the Commission's case-in-chief and 100 pages of respondents' case-in-defense were completely excised; partial excisions were made on approximately 100 pages of both the Commission's case-in-chief and respondents' case-in-defense. In addition, 284 of the approximately 700 Commission exhibits and 51 of the approximately 300 respondents' exhibits were removed from the record; a few Commission and respondents' exhibits were partially excised.

Upon completion of the physical excision of the record, made a part of the record herein by the hearing examiner's order of November 23, 1964, complaint counsel, on December 29, 1964, moved to reopen the case-in-chief to clarify the un-excised portion of the record. By order of March 17, 1965, the hearing examiner denied the motion but granted complaint counsel the right to renew the motion upon completion of respondents' case-in-defense.

After additional hearings on May 10 and 11, respondents were given additional time in which to secure certain tabulations of sales from a defense witness. Such tabulations were secured and offered into evidence by respondents on August 17, 1965. The defense rested. Upon renewal of complaint counsel's motion to reopen, the hearing examiner, on September 9, 1965, received into the record a stipulation of counsel in lieu of reopening the case-in-chief. On that same date rebuttal hearings were commenced, with additional rebuttal hearings being held on September 10 and 13, 1965, during which five Commission witnesses testified and forty-eight (48) additional Commission exhibits were received in evidence. Thereafter respondents filed several motions, *inter alia*, a motion to strike the testimony of certain

Commission witnesses on the grounds of failure to produce alleged written statements for use in cross-examination of these witnesses. After oral argument on said motion, the hearing examiner, on September 29, 1965, directed production of certain Commission field reports of interviews. Upon appeal by counsel supporting the complaint, the Commission by order of April 22, 1966, vacated the hearing examiner's order and remanded the proceeding for further action consistent with the Commission's accompanying opinion.

On May 31, 1966, the hearing examiner directed the production of the aforementioned field reports, certain portions thereof having been excised, and granted respondents time to determine whether they desired to recall for further cross-examination at Commission expense any of the witnesses concerned with the field reports.

The record herein was finally closed on June 21, 1966, respondents having offered in evidence, in lieu of recalling certain witnesses for further cross-examination, a Stipulation of Counsel as to the testimony that said witnesses would give if recalled.

Thereafter, counsel supporting the complaint and respondents requested, and were granted, additional time in which to negotiate a consent settlement of this matter. A proposed consent agreement was arrived at by the parties hereto and was duly certified to the Commission by the hearing examiner on November 2, 1966. The consent agreement was rejected by the Commission on February 9, 1967. Subsequently, respondents requested the Commission to reconsider the proposed consent settlement, which request was denied on April 3, 1967, the Commission directing that proposed findings be filed.

Consideration has been given to the proposed findings of fact, conclusions of law and arguments presented by the parties. All proposed findings of fact and conclusions of law not hereinafter specifically found or concluded are rejected. The hearing examiner, having considered the entire record, makes the following findings of fact, conclusions drawn therefrom and issues the following order.

FINDINGS OF FACT

1. Respondent L. G. Balfour Company is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office and place of business located at 25 County Street, Attleboro, Massachusetts.

Respondent Lloyd G. Balfour (hereinafter sometimes referred

to as Mr. Balfour) is president, treasurer, and a director of the respondent L. G. Balfour Company and is named herein as a respondent, both individually and as an officer of said corporation. His principal office and place of business is 25 County Street, Attleboro, Massachusetts.

Respondent Burr, Patterson & Auld Company (hereinafter sometimes referred to as BPA) is a corporation organized and existing under the laws of the State of Michigan, with its principal office and place of business located at 2301 16th Street—1 block South of Michigan Avenue, Detroit, Michigan.

The conduct of the affairs of both of the corporate respondents with respect to their business practices and policies, including those found herein, are now, and have been for more than ten years, under the control, direction, domination and supervision of the individual respondent Lloyd G. Balfour.

2. The corporate respondents are now and for many years last past have been engaged in the business of manufacturing, processing, distributing and selling insignia jewelry, college and class rings, commercial jewelry, medals and trophies used by fraternal, sorority, college, school, professional and business organizations. In addition, respondent L. G. Balfour Company is now and for many years last past has been processing, distributing, and selling especially to the national Greek-letter social fraternity and sorority trade miscellaneous equipment bearing "official" markings and insignia, including but not limited to the following: women's jewelry boxes, men's stud boxes, fraternity paddles, fraternity and sorority beer mugs, fraternity and sorority processed knitwear, party and dance favors, stationery, pennants and other novelty-like items. Such category of items is referred to hereinafter as "official" miscellaneous equipment. Respondent L. G. Balfour Company maintains sales offices in forty-nine (49) States and operates branch stores in at least forty-three (43) States. Respondent Burr, Patterson & Auld Company operates sales outlets in Michigan, Illinois, Indiana and Ohio.

3. The corporate respondents in the course and conduct of the aforesaid business, distribute and sell their respective products to customers in States other than the State in which each corporate respondent respectively maintains production or processing facilities. There has been and is now a pattern and course of interstate commerce in said products by the corporate respondents within the intent and meaning of the Federal Trade Commission Act. The volume of trade of such products in commerce is substantial.

4. Except to the extent that competition has been hindered, lessened, restrained, foreclosed and eliminated, or potential competition among the corporate respondents, and with others, has been forestalled, prevented, hindered and suppressed by unfair methods of competition and unfair acts and practices hereinafter set forth: (a) each of the corporate respondents is in direct and substantial competition with each other and with other members of the insignia jewelry, college and class ring and commercial jewelry industry in the manufacture, processing, distribution and sale of said categories of products in interstate commerce, and (b) respondent L. G. Balfour Company is in direct and substantial competition with other members of the trade which process, distribute and sell in interstate commerce the "official" miscellaneous equipment hereinbefore set forth.

5. Respondent Lloyd G. Balfour organized L. G. Balfour & Company in 1913, which subsequently was incorporated in Massachusetts in 1914 as L. G. Balfour Company. During the period 1951-1961 respondents Lloyd G. Balfour and L. G. Balfour Company acquired full control and domination of two competitors in the insignia jewelry field, namely: Edwards, Haldeman & Co. of Detroit, Michigan, and Burr, Patterson & Auld Company of Detroit, Michigan. Burr, Patterson & Auld Company is now a wholly owned subsidiary of respondent L. G. Balfour Company. Respondent Lloyd G. Balfour owns all of the stock in respondent L. G. Balfour Company and all of the stock in respondent Burr, Patterson & Auld Company.

6. Respondents collectively maintain a volume of trade in all products in excess of \$18,000,000 per year in aggregate sales. Respondent L. G. Balfour Company is the largest manufacturer and distributor of insignia jewelry, college and class rings and commercial jewelry in the United States. Together the respondents control the manufacture and distribution of up to 99 percent of all "official" fraternity insignia jewelry sold to members of national Greek-letter social fraternities and sororities, and members of national honor societies; and maintain a volume of trade in such insignia jewelry in excess of \$4,500,000 per year in aggregate sales.

7. Mr. Balfour has been the *sole owner* of Balfour throughout the period pertinent to this proceeding (Tr. 2836-37). Mr. Balfour has controlled, directed and dominated the business practices and policies of Balfour throughout the period pertinent to

this proceeding.¹ Mr. Balfour has been the sole owner of BPA throughout the aforesaid period.² Mr. Balfour also has controlled, directed and dominated the business practices and policies of BPA throughout the same period.

Sales of Balfour products are made by Balfour salesmen who sell directly to purchasers; as of 1960 Balfour had approximately 250 salesmen (Tr. 727). Balfour's total sales have continuously increased each year of the period pertaining to this proceeding; in 1950 Balfour's total sales were \$10,706,169; in 1960 Balfour's total sales were \$22,076,503 (CX 686A-W).

8. Respondent Burr, Patterson & Auld is a small manufacturer (Tr. 733-34) of insignia jewelry specializing predominantly in the manufacture of college fraternity insignia jewelry; BPA also manufactures a small amount of organizational and commercial insignia jewelry and rings (Tr. 2978-79). Balfour manufactures the majority of the college fraternity insignia jewelry sold and distributed by BPA (Tr. 732-34, 2980-81). Balfour also manufactures class rings, awards, trophies and commercial insignia jewelry and processes some insignia decorated products sold and distributed by BPA (Tr. 732-33). BPA's total sales in 1950 were \$928,409 and in 1960, \$1,370,245 (CX 669).

9. Respondent Balfour has its manufacturing and processing facilities in Attleboro, Massachusetts. Balfour's jewelry manufacturing and processing facilities include two plants, known as the "old plant" and the "new plant." The "old plant" is used for manufacturing and processing products produced in small volume, short-run production schedules. The "new plant" is used for manufacturing and processing products produced in large volume, long-run production schedules. Most college fraternity insignia jewelry and decorated jewelry products, as well as college and high school class rings, are manufactured or processed

¹ Mr. Balfour admitted being the "controlling factor" while Joseph Brooks was secretary of the Balfour Company (Tr. 2837-38). Joseph Brooks served as secretary of the company at least during the period 1951-55 (CX 750, 751). It was Mr. Balfour who made the decision to close Balfour's subsidiary, Edwards, Haldeman & Co., in the early 1950's (Tr. 734-35).

In May 1958 Mr. Balfour released a bulletin in which he reviewed the basic policies and progress of Balfour as well as overall plans for future production and distribution of Balfour and he made no mention of Mr. Yeager who allegedly was the chief executive officer of Balfour at that time (CX 315; Tr. 702, 2906).

It was Mr. Balfour, not Mr. Yeager, who issued the May 12, 1959, announcement concerning the acquisition of Burr, Patterson & Auld, and Mr. Balfour made the announcement over Mr. Yeager's "strenuous objection" (Tr. 812, 822, 467; CX 370). Mr. Balfour's testimony regarding the May 12, 1959, announcement makes it clear that as of 1959 he was still in complete control of the affairs of Balfour (Tr. 2853-54).

² In Paragraph Five of their answer respondents admit that Mr. Balfour and/or the Balfour Company acquired the stock and assets of Burr, Patterson & Auld sometime between 1950 and 1952. Since Mr. Balfour is the sole owner of Balfour, it follows that he is the sole owner of Burr, Patterson & Auld.

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in the "old plant." Most organizational and commercial insignia jewelry and decorated jewelry products are manufactured or processed in the "new plant" (Tr. 2957, 3073-77).

10. Balfour's facilities also include an engraving and printing plant which produces the Balfour line of paper products, a leather division producing the Balfour line of leather products and a ceramics and specialty division which produces the Balfour line of knitwear, glassware and ceramic products (CX 366, The Balfour Blue Book 1951 [inside front cover] ; Tr. 432).

11. Respondent BPA has a very small manufacturing plant located in Detroit, Michigan, that manufactures mainly college fraternity insignia jewelry and a small amount of organizational and commercial insignia jewelry and rings. Most of the insignia jewelry products sold through BPA are manufactured at respondents' Attleboro facilities. Some of the insignia decorated products sold by BPA are also processed at respondents' Attleboro facilities (Tr. 732-34, 2978-81).

Respondents' Sales Organizations

Balfour has three sales divisions: (1) Fraternity Division; (2) College, School and Class Ring Division; and (3) Commercial Division (CX 686A-W).

Fraternity Division

12. In 1961 the general manager of the Fraternity Division was Samuel G. Sargeant. Mr. Sargeant's entire experience has been in the fraternity sales field. He joined the Balfour Company in 1928 as an employee in the sales office of the Fraternity Division. In 1940 he became sales manager of the Fraternity Division, and in February 1961 he assumed the position of general manager of the Fraternity Division (Tr. 427-30).

Total sales of the Fraternity Division ranged from \$4,589,423 (CX 686L) in 1950 to \$6,987,137 in 1960 (CX 686B).³

The Division as of 1961 employed 66 salesmen (Tr. 727) called "Fraternity Representatives" (CX 689), whose territories covered the entire United States (CX 740). Since respondents have the official contracts with practically all the national college fraternities which require respondents' salesmen to call on all chapter houses of the national college fraternities with a full line of badges and novelties, the college campuses which have chapters of national college fraternities (hereinafter called "national col-

³ Respondents refused to furnish total sales figures of national college fraternity insignia products. They claim total sales of such products in 1961 to be \$4 million, of which \$2.5 million constituted jewelry sales (Tr. 2943-44).

lege fraternity colleges or campuses") are the focal points or bases of operations of the Fraternity Division's salesmen. As Licher testified:

There are three spheres of influence. The fraternity department . . . the class ring and then . . . commercial. . . . The division is this, so that we don't tangle hair with other divisions. . . . There would be no conflict between a fraternity salesman and other Balfour representatives . . . on every campus [where] there are national Greek letter fraternities, all groups on that campus became the territory of the fraternity department. (Tr. 587-89.) (Emphasis supplied.)

The principal products sold by the Fraternity Division salesmen on these national college fraternity campuses are the national college fraternity insignia products. While a salesman is on campus he also tries, where he can, to sell other Balfour products such as military insignia to a campus ROTC group or trophies or awards to the athletic department of such a college and possibly college seal encrusted items to the college bookstore of such a college. As Licher testified concerning the Fraternity Division salesmen's additional duties:

. . . He doesn't know [where] to go and when to go to find out when they need the thing, even though we guide him. So he also sells to the college bookstore, if he can . . . and he goes to the coach at the athletic department and he sells the awards. (Tr. 588.)

In addition to the fact that Balfour's Fraternity Division salesmen concentrate their sales efforts on national college fraternity campuses as Licher's previously quoted testimony (Tr. 587-89) shows, most of the Fraternity Division salesmen's sales volume is derived from sales of national college fraternity insignia products as the following Fraternity Division sales bulletin shows:

Our championship sales team . . . hit our full stride. The final result was a *record breaking* sales total from 179 salesmen's reports. It bettered a previous high sales total set back on March 16, 1959, which had in turn erased the old mark set back on March 11, 1957. *There were no large outstanding military or trophy orders involved. The record was set strictly from the sale of fraternity orders in all departments.* (CX 468A.) (Emphasis supplied.)

Furthermore, an examination of the contents of every Fraternity Division sales bulletin, called the "Balfour Bulletin Representatives Edition" (Tr. 498, 527), shows that the predominant emphasis is on sales to national college fraternities (CX 462 *et seq.*, 766, 767). Although the Fraternity Division salesmen concentrate their sales effort on national college fraternity campuses, they do not sell college rings and related paper products such as diplomas, certificates, etc., to such colleges. These products are sold by Balfour's Class Ring Division salesmen (Tr. 3088, 3096-97).

Fraternity representatives are paid on a commission basis at rates fixed by Balfour (Tr. 756-57, 2010-11). In some instances, fraternity representatives operate Balfour-owned stores. These stores are located in college towns or near college campuses and cater to the college student trade (Tr. 2056, 2173; CX 366 [Balfour Blue Book 1951] inside front cover, CX 393 [Balfour Blue Book 1961] inside front cover.

College, School and Class Ring Division (CSC)

13. The College, School and Class Ring Division (CS&C Division) or Class Ring Division is the largest sales division of the L. G. Balfour Company in terms of dollar volume of sales and also in number of salesmen employed. In 1960 total sales of this division amounted to \$10,953,832, having increased from \$4,684,917 as of 1950 (CX 686M, P). During 1960 the Balfour Company reported sales of high school class rings alone of \$7,721,842 (CX 686M; Tr. 3096).

The general manager of the Class Ring Division in 1961 was Ben S. Fuller, and he supervised 185 ring salesmen located throughout the entire United States (Tr. 3087-88). These ring salesmen are supervised by regional managers who are ultimately responsible to Mr. Fuller (Tr. 3091-92).

The Class Ring Division sells class rings to colleges and to public and nonpublic high schools. The division also sells club pins, hospital rings and pins and paper products such as diplomas, certificates, invitations, announcements, personal cards and thank-you notes, items usually associated with a graduation program (Tr. 3096-97).

The Balfour ring division salesmen sell directly to the high schools involved, usually through the top high school administrator present in the building, normally the high school principal (Tr. 3094). The Balfour company bills the salesmen a "net" price which is the Balfour price to the salesmen. The salesmen determine the selling price to the schools, the difference realized is the salesman's profit, or commission (Tr. 3089-90). From this profit, or commission, the ring salesman must pay his own cost of doing business, such as his office expenses, advertising, travel, including also certain costs of dies, tools and repair (Tr. 3110-11).

The Balfour Class Ring Division issues a sales bulletin to the salesmen of the division called the "Balfour Blast" (Tr. 3092, 3756; CX 603). The "Balfour Blast" contains instructions and other items of general interest to the salesmen of that division (CX 596 *et seq.*).

Commercial Division

14. The general manager of the Commercial Division in 1961 was William Bell. Mr. Bell supervised 25 Commercial Division salesmen located throughout the United States (Tr. 731, 3940, 3972, 4020). Commercial Division salesmen sell commercial insignia jewelry to business or commercial firms and organizational insignia jewelry to professional, social, business and other types of organizations (Tr. 3904-07, 3933-36, 3943, 3972, 4021-24). Commercial Division salesmen do not sell college fraternity insignia jewelry or college fraternity insignia decorated products (Tr. 3907, 3936-38, 4021).

The Commercial Division salesmen sell commercial insignia jewelry to industrial or business firms through such firm's purchasing agent, public relations director, advertising director or some other official of the firm. They sell organizational insignia jewelry to organizations through an official of the organization (Tr. 3935-36). In soliciting business, the Commercial Division salesman determines the requirements of a prospective commercial or organizational customer and forwards this information to Balfour. On the basis of such requirements, Balfour quotes the Commercial Division salesman a net price to which the salesman adds his commission. The prospective customer usually secures quotations from other commercial or organizational insignia jewelry suppliers and makes his selection of supplier on the basis of price, quality and service. If the customer selects Balfour, the customer issues a "purchase order" on the basis of which Balfour produces the merchandise, ships it to the customer and bills the customer for it (Tr. 3904-07). Some customers frequently switch from one supplier to another (Tr. 3959-60).

The Commercial Division salesman determines his own commission taking into account the competitive situation, the amount of time and effort that will be required to service the account and the volume of the order on the assumption that on a large volume order, competitive opposition will be considerable. The Commercial Division salesman tries to make a 20 percent commission on commercial and organizational insignia jewelry orders, but is not always successful in doing so; his commission usually ranges between 15 and 20 percent (Tr. 3904-07, 3942, 4023-24, 4031). On some sales, the Commercial Divisions salesman's commission is less than 15 percent (Tr. 3942). Gwilliam, for example, a Balfour Commercial Division salesman in the New York-New

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Jersey area (Tr. 3903-04), has one account on which he makes only a 5 percent commission (Tr. 3786-87, 3943, 4669).

Total sales of the Commercial Division ranged from \$1,431,828 in 1950 (CX 686S) to \$4,135,533 in 1960 (CX 686Q).

Balfour issues a sales bulletin which is directed strictly to the Commercial Division salesmen. It is called the "Balfour Comet" (Tr. 3755). The "Balfour Comet" contains instructions and items of general interest to the Commercial Division salesmen (CX 476, 477).

Burr, Patterson & Auld Company

15. Respondents' wholly owned subsidiary Burr, Patterson & Auld Company has been headed by Mr. David Nelson since 1951 (Tr. 2975). BPA's sales are made direct to chapters of the various national college fraternities and the individual members thereof through BPA salesmen (Tr. 2048-50, 2052-53, 2063-64, 2213-14). BPA had 15 salesmen in November 1959 and in January 1961 (CX 759B, 763B).⁴ BPA's salesmen are paid on a commission basis at rates fixed by the respondents (Tr. 2053, 2185-86). In 1952 some BPA salesmen operated BPA stores in the college towns of Ann Arbor, Michigan; Columbus, Ohio; Champaign, Illinois, and West Lafayette, Indiana (CX 368, p. 1), which were adjacent to or near Balfour stores and sales headquarters (CX 366, inside front cover; Tr. 2056).

BPA's total sales in 1950 were \$928,409 of which \$792,837 was derived from the sale of national college fraternity insignia jewelry and decorated products (CX 669). BPA's total sales in 1960 were \$1,370,245 of which \$1,275,115 constituted sales of national college fraternity insignia jewelry and decorated products (CX 669).

16. BPA issues a sales bulletin to its salesmen, called the "Burr-Patter" which contains instructions and other items of general interest which relate almost exclusively to the national college fraternity field (CX 471 *et seq.*, 757 *et seq.*).

17. BPA is engaged almost exclusively in the sale of insignia jewelry and decorated products to the national college fraternities. This is established by the fact that BPA is not regarded as a competitor in the college or high school class ring field, as is established by testimony of Charles R. Fultz, vice president of Herff Jones, one of the leading companies in the high school class ring field and which also sells college rings (Tr. 3148, 4336-37, 5327-28):

⁴ Although when Nelson testified, he claimed that BPA had only 12 salesmen in 1962 and approximately the same number in 1951 (Tr. 2973).

Q. Is Burr Patterson your competitor?

A. I don't think they are a competitor of ours. To my knowledge they don't make rings, and if you don't make rings, you are not a competitor, as far as I know. (Tr. 5346.)

* * * * *

Q. Mr. Fultz, did Herff Jones Company ever make a national college fraternity ring?

A. Not to my knowledge.

Q. If the Burr, Patterson & Auld Company confined their ring sales to national college fraternities, would they be your competitor?

A. No, because we are not after that particular type of sales. (Tr. 5354-55.) Similarly, Gilbert Morgan, president of Morgan's, a company that derives two-thirds of its sales from sales of high school class rings (Tr. 4304), testified that BPA is not a competitor (Tr. 4330-31).

18. BPA's nearly exclusive confinement to national college fraternity sales is further established by the fact that BPA is not regarded as a competitor in the organizational and commercial insignia jewelry field, as William Higgins, an official of Robbins, a nationwide seller of organizational and commercial insignia jewelry (Tr. 5359-60) testified:

Q. Does the Burr, Patterson & Auld Company compete in the sale of industrial emblematic jewelry?

A. Not to my knowledge. (Tr. 5363.)

* * * * *

Q. Who are your principal competitors in the sale of organizational insignia jewelry?

A. The Balfour Company would be a main competitor. Leavens, Tanner—the same people that we compete with in other fields in most cases.

Q. Does the Burr, Patterson & Auld Company compete with you in the sale of emblematic jewelry to such organizations?

A. No to my knowledge. (Tr. 5365-66.)

19. The extent of BPA's sales in the commercial emblematic field is further reflected by the testimony of Mr. Morgan of Morgan's. Approximately one-third of Morgan's sales is derived from the sale of commercial insignia jewelry, organizational insignia jewelry and awards (Tr. 4305). In 1961 Morgan's bought a die shop which had had BPA as one of its customers. This die shop makes steel dies for commercial insignia jewelry and Morgan's has continued to make such commercial insignia dies for BPA. Morgan's makes them only "occasionally" for BPA, perhaps "one a month" (Tr. 4331-32). In commenting on the few dies that Morgan's makes for BPA, Mr. Morgan stated:

. . . you can be assured if we were competing very often we wouldn't want to be cutting any dies for them. (Tr. 4332)

20. Further evidence that BPA is not an active competitor in

the organizational and commercial insignia fields is BPA's own sales figures which show that in the year 1960 BPA's sales of "commercial" insignia jewelry were \$95,130 or approximately 7 percent of the company's total sales (CX 669).

21. BPA is a leading firm in the national college fraternity field, second only to its parent company, Balfour. As Gerald Pollack, vice president of J. O. Pollack, a small⁵ firm in the national college fraternity field stated:

Q. Can you tell me who your competitors are in the fraternity and sorority field?

A. Primarily it is the Balfour Company with the Burr, Patterson & Auld Company as the second competitor. (Tr. 1701.)

Ross Dallas, president of College Crafter Co., a small⁶ firm engaged in selling encrusted knitwear primarily to national college fraternity members (Tr. 1799, 1825-26) was asked:

Q. Who are your competitors?

A. Balfour and Burr, Patterson. (Tr. 1838.)

Leonard Friedman, an official of L & L Party Favors, Inc., whose Fraternity Sales Division⁷ is engaged exclusively in the nationwide mail-order sale of decorated favors to national college fraternity members (Tr. 2082, 2120) stated:

Q. . . . who are your competitors in this field?

A. I only have two real competitors, which are Balfour and Burr, Patt—

Q. Burr, Patterson & Auld?

A. Yes, We have other competitors, but most of them, we don't even think of as competitors . . . real competition comes from Balfour and Burr, Patt. (Tr. 2086.)

Mr. Charles Gazdzik, who owns Gazdzik Sales Company which sold decorated favors nationwide by mail until 1959 to national college fraternity members (Tr. 2361-62), stated as follows:

Q. Mr. Gazdzik, apparently I asked you who your competitors were. Did you say that the L. G. Balfour Company and the Burr, Patterson Company were your competitors?

A. They are a competitor of ours, yes.

* * * * *

Q. Well, in terms of size. Who are your most active competitors?

A. Oh, they are the two big ones there. (Tr. 2401.)

Testimony of other small competitors is to the same effect (Tr. 1475-77, 1495, 1509-14, 1849-52); as is the testimony of a former Balfour salesman (Tr. 2030).

22. BPA's sales catalogue called "The Fraternity Gift Parade

⁵ Total 1961 fraternity sales of the J. O. Pollack Company and its subsidiaries were \$89,631 (CX 404, 421; Tr. 1753-54).

⁶ Total sales of College Crafter Co. in 1960 were \$23,299 (CX 405; Tr. 1825-27).

⁷ Total sales of fraternity decorated favors of L & L Party Favors, Inc., in 1961 were \$104,000 (Tr. 2119).

for 1952" describes BPA as "Makers of the world's finest fraternity jewelry" . . . "America's Oldest and Most Progressive Fraternity Jewelers" . . . "Official Jewelers to over one hundred of the leading national College fraternities" (CX 368, inside front cover and page 1, emphasis supplied). Pages 2-6 of the BPA catalogue contain displays of "National Fraternity and Sorority Badges" (emphasis supplied), followed by three pages displaying fraternity rings decorated with national college fraternity insignia (CX 368, pp. 13-15). The remaining pages of the catalogue contain illustrations of numerous gift items suitable for use as favors, all decorated with national college fraternity crests, coat-of-arms or Greek letters (CX 368, pp. 16-32).

23. Mr. Balfour in his May 12, 1959, announcement of the acquisition of Burr, Patterson & Auld Company referred to maintaining BPA's "traditional role in the fraternity field" (CX 307A, emphasis supplied).

24. BPA has been an acquisition of the respondents during the entire period pertinent to this proceeding (Respondents' Answer, Par. 5, pp. 4-5). Respondents kept this acquisition secret until Mr. Balfour's announcement of May 12, 1959. Respondents' reasons for keeping secret the acquisition of BPA relate to the national college fraternity field.

Edwards Haldeman

25. While Edwards Haldeman apparently is no longer in existence (Tr. 704), brief mention is made of the respondents' acquisition of this company because of its significance respecting certain acts and practices engaged in by the company.

26. The evidence indicates that Edwards Haldeman continued in existence at least until late 1954 (CX 32; Tr. 2030-31, 2213). While respondents represented Edwards Haldeman as a "manufacturer"⁸ (CX 376 [The Book of Treasures, 1951] bottom of inside front cover and page 1), the firm was actually a "distributor" or "jobber" for Balfour (Tr. 734, 2964). However, Balfour products sold by Edwards Haldeman were boxed only in "Edwards Haldeman" boxes (Tr. 3029).

27. Edwards Haldeman engaged in sales of national college fraternity insignia products exclusively or nearly exclusively.

⁸ Clearly, the term "manufacturer" suggests an independent operation, especially in light of the fact that The Edwards Haldeman Book of Treasures (CX 367) makes no disclosure of ownership by another company.

At least as late as the early 1950's, some national college fraternities required three official jewelers (Tr. 766, 2185, 4293-94; CX 17), and Edwards Haldeman was operated mainly to service those fraternities, as Yeager testified:

. . . [Edwards Haldeman] *mainly* operated for the fraternities that wanted two or three official jewelers. . . . (Tr. 766, emphasis supplied.)

As a former BPA salesman of 20 years until 1953 (Tr. 2171-72) testified regarding "competitive" contracts:

Competitive would be the two or three companies which would be in connection with contracts with L. G. Balfour Company and Edwards Haldeman Company of Detroit, along with Burr Patterson, sometimes two, sometimes three companies.

Q. It would have been more than one company, an official jeweler?

A. Yes sir, on a few contracts.

* * * * *

Q. Are these large social organizations?

A. Yes, sir; they are national fraternities. (Tr. 2185.)

28. An official of one small firm engaged in selling decorated novelties primarily to national college fraternity members, when asked which companies had the official contracts with all the national college fraternities, testified:

With the exception of one . . . it would be one of the three organizations, either Burr, Patterson & Auld, the Balfour Company or the Edwards, Haldeman Company, and all of them, if they have Burr, Patterson & Auld and the Edwards Haldeman, well, they also have the Balfour Company, too. (Tr. 1476-77.)

* * * * *

Q. Mr. Rader, I think you said your competitors on the sales of favors and novelties were the Burr, Patterson Company, the Edwards Haldeman Company and the Balfour Company?

A. That's right, and have been over the years. (Tr. 1481-82.)

29. Edwards Haldeman, like BPA, was used by Balfour to create competition for Balfour's Fraternity Division salesmen who, of course, were engaged, and are now engaged, primarily in sales to national college fraternities.

As a former Balfour salesman for 21 years until 1953 testified:

Q. Mr. Dooling, can you state for me who your competitors were in the fraternity and sorority field in 1951?

HEARING EXAMINER LYNCH: In the area in which you served.

THE WITNESS: Yes. Well, there was Edwards, Haldeman, and Burr-Patterson, and you mean in active competition. . . .

Q. I mean in active competition with you.

A. I would say those two are the ones.

Q. And if we go to the year of 1952, who were your competitors then?

A. Those were the only two competitors that I had, as far as fraternity jewelry was concerned, to the best of my knowledge. (Tr. 2030-31, emphasis supplied.)

As former BPA salesman Herbert Michaelis testified:

Q. . . . Who were your competitors in the period 1945 through 1954 when you left Burr Patterson?

A. . . . *my main competition then would still just be Balfour and Edwards Haldeman up until 1953.* (Tr. 2212-13, emphasis supplied.)

30. The Edwards Haldeman 1951 Book of Treasures (CX 367) has a complete display of national college fraternity badges, pins, encrested jewelry and novelties.

Respondents secretly owned and operated both BPA and Edwards Haldeman as competitors for the purposes of: (1) guaranteeing respondents practically all of the business of nearly all the national college fraternities; (2) creating competition among the sales forces of the three respondent firms since no real competition existed and (3) avoiding the payment of royalties to fraternities.

College Fraternities

31. College fraternities began as organizations of college men on individual college campuses organized for social, scholastic or professional purposes. Along with the development of college men's organizations, similar organizations for women, generally called "sororities," began to appear (CX 727 [Baird's Manual], pp. 1-7, 47-48).

32. The name of a fraternity usually is composed of two or three Greek letters, as "Sigma Chi," "Phi Delta Theta," "Phi Beta Kappa," "Alpha Phi Omega" and hence are also referred to as "Greek-letter fraternities" (CX 727 [Baird's Manual], p. 7).

33. College fraternal organizations are grouped into two principal types according to their primary function. Those organizations whose principal objective is to organize the social life of their members are called "fraternities"; those which function mainly to give recognition to vocational or scholastic pursuits or achievements are termed "societies." Fraternities are of two types "social" and "professional." Societies are also of two types—"honor" and "recognition" (CX 727 [Baird's Manual], p. 47).

National College Fraternities vs.

Local College Fraternities

34. Some college fraternal organizations have never expanded beyond the college campus where they were founded, or have only one or a few chapters. These are referred to as "local" college fraternities or societies (CX 727 [Baird's Manual], pp. 939-47; Tr. 1008-09, 1475, 2521). Other organizations have experienced considerable expansion, establishing additional chap-

ters on other college campuses located either in a broad region or section of the country or throughout the United States. These are called "national" college fraternities or societies (Tr. 437, 1008-09, 1475, 2521).

35. While complete figures are not available, comparatively few local college fraternities and societies remain in existence for any substantial length of time. They either discontinue altogether, or are merged with existing national college fraternities or societies.

36. At least ninety percent of the college fraternities are national college fraternities⁹ (Tr. 1009, 1475, 1511-12, 1848, 2034, 2070, 2085, 2209, 2459, 2521).

*National College Social and Professional
Fraternities, Honor and Recognition Societies*

37. National college fraternities are of two types, "social" and "professional." National college societies are also of two types "honor" and "recognition" (CX 727 [Baird's Manual], pp. 47-49).

38. All national college social and professional fraternities, honor and recognition societies (hereinafter sometimes referred to collectively as "fraternity" or "fraternities") are organized and structured in a basically similar manner. Ultimate authority is vested with a fraternity's "convention" which includes delegates from each chapter of the fraternity. A fraternity's "convention," however, meets at the most once a year and sometimes as seldom as once every three years (Tr. 4122, 4530). Most fraternities hold their "conventions" every two years (CX 727). During the interim between conventions, executive authority and control of the fraternity is vested in the fraternity's executive body variously called, among other titles, "Executive Committee," "National Chapter," "National Council," "Supreme Council," "Grand Lodge," "Executive Board" (Tr. 4123, 4166-67, 4256-58, 4483-84, 4487-92, 4522-23, 4586, 5576; CX 727). (For purposes of convenience this executive body shall hereinafter be referred to simply as the "Executive Committee.")

39. The Executive Committee of a fraternity is a small group of individuals, usually ranging from five to nine in number (Tr. 4123, 4166-67, 4257, 4522, 4586, 5576; CX 727). Undergraduate

⁹ On page 1074 of Baird's Manual (CX 727) there appears a tabulation showing the number of chapters of national college fraternities and local college fraternities which, as of 1957, were located at the 475 educational institutions which had national college fraternities and societies. This tabulation shows that approximately 11,129 chapters at these institutions were national college fraternity and society chapters and 865 chapters were local college fraternity chapters.

fraternity members are normally not represented on the Executive Committee; where undergraduates are on the Executive Committee they are in the minority (Tr. 4166-67, 4179, 4483-85, 4586, 4522-23; CX 727). A fraternity Executive Committee member may remain in office for many years.¹⁰

40. For purposes of this proceeding, it is important to note that the Executive Committee of a fraternity negotiates contracts on behalf of the fraternity and specifically the official jeweler contracts with which this proceeding is concerned (Tr. 4167-68, 4261-64, 4483-84, 4487-92, 4529-30, 4550, 4587; RX 208).

41. The administrative affairs of the Executive Committee are usually handled through a "Central Office" which is staffed by an "Executive Secretary" or "Executive Director" and sometimes a staff which are usually salaried employees of the fraternity (Tr. 4255-58, 5574-75; CX 727).

42. Membership in a national college fraternity is limited to qualifying undergraduate or professional college students (CX 727). Each fraternity has undergraduate or college chapters located on college and university campuses throughout the United States (Tr. 437, 4257; CX 727). Most social and professional fraternities and some honor and recognition societies have alumni groups composed of collegiate chapter alumni members located throughout the country (Tr. 4524, 4559-60, 5575; CX 727).

43. College chapters of most social fraternities and some professional fraternities have chapter houses or lodges where undergraduate members may live while at college (Tr. 2867; CX 727, pp. 8-9).

44. Membership in a social fraternity is mutually exclusive; however, a social fraternity member may also belong to a professional fraternity and to an honor or recognition society; social fraternity members frequently become members of a professional fraternity (Tr. 4559; CX 727, pp. 47-49).

45. In the United States Baird's Manual (CX 727) shows that there are: (1) 100 national college social fraternities consisting of 68 men's social fraternities and 32 women's social fraternities

¹⁰ E.g., Mary Burt Nash, as of the date she testified, had been a member of Alpha Xi Delta's "National Council" (i.e., "Executive Committee") since 1951 (Tr. 4523). Judge J. Will Pless has held all of the national offices of Phi Delta Phi over a thirty-year period beginning in 1933 as president (Tr. 4560). Robert Lynn was executive secretary of Pi Kappa Alpha for fourteen years (Tr. 4255-56). Judge Stanley N. Barnes was grand trustee of Sigma Chi from 1950 to 1952, and president from 1952 to 1955 (Tr. 4464). Ernestine Grigsby has been in some phase of national work for forty years and served as president of Delta, Delta Delta for four years (Tr. 4582).

(also called sororities); (2) 93 national college professional fraternities including 64 men's professional fraternities and 29 women's professional fraternities; (3) 44 national college honor societies; and (4) 35 national college recognition societies. Leland's 1961 Annual Fraternity Sorority Directory (CX 728) lists an additional 16 national fraternities not shown in Baird's Manual.

*Growth of National College Fraternities
In Recent Years*

46. The period since 1951 has witnessed a phenomenal growth in college enrollments. In 1951 approximately 2.1 million students were enrolled in degree-credit colleges and junior colleges throughout the continental United States. By 1956 enrollment had increased to approximately 2.9 million students. As of 1960 nearly 3.6 million students were enrolled in degree-credit institutions of higher education. And it is estimated that by 1970 more than 6 million students will be enrolled in degree-credit colleges and junior colleges in the continental United States (CX 4D, p. 12, Table 8).

47. Concurrent with increasing college enrollment, has been the growth and expansion of national college fraternities. "The past two decades have seen the greatest material development of Greek-letter organizations in history; more campuses opened to national fraternities; more chapters installed than in any previous period; more members initiated; more chapter houses built and remodeled; more foundations and endowment funds established." (CX 727, p. 37.)¹¹

¹¹ In a letter dated May 12, 1959, Mr. Nelson, president of Burr, Patterson & Auld Co., refers to the "tremendous growth of fraternities in the past decade" (CX 667). An IRAC Bulletin dated November 2, 1953, cites reports from various colleges and universities showing increases in fraternity membership enrollment (CX 317).

Examples of fraternity growth are:

(1) *Pi Kappa Alpha*, a men's social fraternity, as of 1947 had approximately 14,500 to 15,000 living members; by 1962 *Pi Kappa Alpha* had 45,000 living members (Tr. 4296);

(2) *Sigma Chi*, a men's social fraternity, as of 1954 had 123 college chapters and a total membership of 77,513; as of 1965, *Sigma Chi* had 140 college chapters and a total membership of 108,500 (CX 787, p. 33; Tr. 5577-79);

(3) *Phi Delta Phi*, a men's professional fraternity, as of 1954 had 74 college chapters and 49,242 members; as of 1962 *Phi Delta Phi* had 80 chapters and 75,000 members (CX 787, p. 38; Tr. 4559-60);

(4) *Phi Beta Kappa*, a national honor society, as of 1954 had 120,000 members and as of 1962 had 150,000 members (CX 787, p. 43; Tr. 4116).

A comparison of the membership and chapter statistics of each national college social and professional fraternity, honor and recognition society, appearing in the February 1954 edition of "Fraternity Month" (CX 787) with the membership and chapter statistics of each respective organization appearing in the "1961 Fraternity Sorority Directory" (CX 728), shows a significant increase in the membership of each organization during the seven-year period.

Significant growth in membership and number of chapters of the various national college fraternities and societies belonging to interfraternity organizations is reflected in the next following proposed finding entitled "The Interfraternities."

The "Interfraternities"

48. An Interfraternity Conference (hereinafter referred to as an "Interfraternity") is an organization composed of a number of national college fraternities or societies. There are five such interfraternities: two are composed of national college social fraternities, (1) the National Interfraternity Conference (hereinafter NIC) composed of men's national college social fraternities, and (2) the National Panhellenic Conference (hereinafter NPC) composed of women's national college social fraternities; two are composed of national college professional fraternities, (1) the Professional Interfraternity Conference (hereinafter PIC) composed of men's national college professional fraternities, and (2) the Professional Panhellenic Association (hereinafter PPA) composed of women's national college professional fraternities; the fifth interfraternity is composed of national college honor societies and is called the Association of College Honor Societies (hereinafter ACHS) (CX 727, pp. 53-115).

49. The organization of each of the five interfraternities is basically similar to the organization of a national college fraternity as described previously. That is, ultimate authority is vested with the interfraternity's "Conference" or "House of Delegates" which includes representation from each member fraternity. Each interfraternity's "Conference" or "House of Delegates" regularly meets annually or biennially and during the interim between such meetings executive authority and control of the interfraternity is vested in the interfraternity's "Executive Committee," composed of the interfraternity's current officers and, in some instances, additional members-at-large (CX 727, p. 63, 70-71 [NIC Constitution, Article IV]; 78, 80-81 [NPC Constitution, Articles IV, V and VI]; 93-94 [PIC Constitution, Part II, Articles II, III and VI]; 101-02 [PPA Constitution, Articles IV, V and VI]; 112-13 [ACHS Constitution, Articles IV and V]).

50. Only national college fraternities are eligible for membership in one of the five interfraternities. Other fraternal-type organizations such as local college fraternities, secondary fraternities, non-academic fraternities, Masons, Knights of Columbus, Rotary Club, Kiwanis, Future Farmers of America, Boy Scouts of America, etc., are not eligible for membership in any of the five interfraternities. (See, generally the interfraternity membership requirements which appear in the Constitution or By-Laws of NIC, NPC, PIC, PPA and ACHS in CX 727 on pages 72, 81-82, 92, 99-101 and 114 respectively.)

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51. To be eligible for interfraternity membership a national college fraternity must meet certain requirements. Among these requirements are:

1. It must have been national in scope for a minimum number of years, ranging from five years for PPA membership (PPA Constitution, Article III, Section 2(b), CX 727, p. 100) to fifteen years for NIC membership (NIC By-Laws, Section 1(d), CX 727, p. 72).

2. It must have a minimum number of chapters, ranging from five chapters for PIC membership (PIC Constitution, Part I, Article II, Section 1(e), CX 727, p. 92) to fourteen chapters for NPC membership (NPC By-Laws, Section 1(a) (6), CX 727, p. 81).

52. The interfraternity system also exists at the college campus level where chapters of men's national college fraternities are organized into "Interfraternity Councils" and women's national college fraternities are organized into "Panhellenic Councils" (CX 399A, 741, 742 and 760C).

A brief description of each of the five interfraternities follows:

National Interfraternity Conference (NIC)

53. NIC is an interfraternity composed of the 60 largest men's national college social fraternities (Tr. 2867-69, 4182, 4835; CX 717A-B, 727, pp. 118-383, 728, pp. 27-36). NIC speaks for all of its member fraternities.¹²

The growth of NIC member fraternities is evident from the following statistics showing the number of chapters and total membership of NIC member fraternities in the years 1953 and 1960:

Year	Chapters represented in NIC	Total membership in NIC	Source
Dec. 1, 1953.....	3,195	1,472,978	CX 787, p. 6.
Dec. 1, 1960.....	3,526	1,810,646	CX 728, p. 7.

54. It is important to note that the NIC "Executive Committee" administers the affairs of NIC between annual meetings of the

¹² On September 22, 1962, the NIC Executive Committee passed a resolution authorizing Charles Pledger to testify in this proceeding as a "representative of NIC" on behalf of each of the men's national college social fraternities that belonged to NIC (Tr. 4182-87).

NIC House of Delegates inasmuch as both Mr. Balfour and Mr. Yeager (hereinafter sometimes referred to as Yeager), current president of the Balfour Company, and past-NIC chairmen (Tr. 776, 2868), are members of a NIC "Advisory Committee" attached to the NIC Executive Committee and are privileged to attend all NIC Executive Committee Meetings (CX 727, p. 55). As past-NIC chairmen, both Mr. Balfour and Yeager are also non-voting members of the NIC House of Delegates (CX 727, p. 70 [NIC Constitution, Article IV]).

55. The regular summer quarterly meeting of the NIC Executive Committee is held in or near Attleboro, Massachusetts (Tr. 778, 781, 4225; CX 478). Mr. Balfour or L. G. Balfour Company each year pays the expenses of the summer NIC Executive Committee meeting and entertains the NIC Executive Committee members (CX 546) who are the guests of Mr. Balfour (CX 478, 568B, 705).

56. Mr. Balfour also attends NIC Executive Committee quarterly meetings held in places other than Attleboro, Massachusetts (CX 397B, 582A, 728). Mr. Balfour has considerable influence in NIC (Tr. 4223-24, 4226-27; CX 478, 523, 548, 568, 571, 728) and performs services for NIC (CX 318A: "Additional copies [of NIC autonomy resolution] are available from the office of L. G. Balfour, Attleboro, Massachusetts").

57. Balfour and BPA are the "official jewelers" to all the NIC fraternities (Tr. 1844; CX 717).

National Panhellenic Conference (NPC)

58. NPC is an interfraternity composed of all the women's national college social fraternities (Tr. 4583; CX 717C).

59. The growth of NPC member fraternities in recent years is evident from the following statistics showing, by date indicated, the number of chapter houses and total membership in NPC fraternities:

Year	Chapters represented in NPC	Total membership in NPC	Source
Dec. 1, 1953.....	1,948	758,231	CX 787, p. 8.
Dec. 1, 1960.....	1,978	980,080	CX 728, p. 8.

60. The NPC Executive Committee is composed of NPC's three officials, NPC chairman, secretary and treasurer. These three officials control the affairs of NPC between biennial meetings of

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the NPC Conference (CX 727, p. 78). These are the officials whom Mr. Balfour entertains (Tr. 4582, 4589; CX 523, 547, 713A-D).

61. Balfour and BPA are the "official jewelers" to all NPC fraternities, except Chi Omega (Respondents' Stipulation, Tr. 1844).

Professional Interfraternity Conference (PIC)

62. PIC is an interfraternity of men's national college professional fraternities (CX 727, p. 87). As of 1961, PIC had 31 fraternity members (CX 728, p. 12).

PIC's fraternity membership and chapter growth is evident from the following statistics:

Year	Chapters represented in PIC	Total membership in PIC	Source
Dec. 1, 1953.....	1,155	606,044	CX 787, p. 6.
Dec. 1, 1960.....	1,357	684,891	CX 728, p. 12.

63. Balfour and BPA are the "official jewelers" to all PIC member fraternities (CX 717).

Professional Panhellenic Association (PPA)

64. PPA is an interfraternity of 17 women's national college professional fraternities (CX 727, p. 96).

The growth of chapters and fraternity membership represented in PPA is apparent:

Year	Chapters represented in PPA	Total membership in PPA	Source
Dec. 1, 1953.....	566	110,485	CX 787, p. 10.
Dec. 1, 1960.....	672	149,539	CX 728, p. 8.

Balfour and BPA are the "official jewelers" to all PPA member fraternities (CX 717).

Association of College Honor Societies (ACHS)

65. ACHS is an interfraternity of 30 national college honor societies (CX 727, pp. 109-111).

The growth in membership and chapters of the fraternities represented in ACHS is evident from the following:

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Year	Chapters represented in ACHS	Total membership in ACHS	Source
Dec. 1, 1953.....	1,600	557,886	CX 787, p. 8.
Dec. 1, 1960.....	2,119	808,563	CX 728, p. 12.

Balfour and BPA are "official jewelers" to all but two ACHS member societies (CX 717).

"The Inter-Interfraternity," or "IRAC"

66. The Interfraternity Research and Advisory Council (hereinafter referred to as IRAC) is an organization composed of representatives of each of the four social and professional Interfraternities, NIC, NPC, PIC and PPA, and the fifth Interfraternity ACHS, has honorary membership (Tr. 2869, 4190-91, 4783). IRAC is, therefore, a sort of "Inter-Interfraternity" or "Super-Interfraternity," a "top of the pyramid."

67. The current organization and structure of IRAC is akin to the organization and structure of the various national college fraternities as well as of the five interfraternities previously described. The IRAC Council (equivalent to a fraternity's "convention" and an interfraternity's "conference") is composed of three delegates from each of the four interfraternities, NIC, NPC, PIC and PPA (RX 175-II [IRAC Constitution, Article II]). The IRAC Council (like the fraternity's "convention" and the interfraternity's "conference") meets once a year (RX 175-II [IRAC Constitution, Article V]). IRAC's "Board of Trustees" is equivalent to the "Executive Committee" of a fraternity or interfraternity (RX 175-JJ [IRAC By-Laws, Section 3]). The Board of Trustees is composed of five members, one from each of the four interfraternity conferences and one Trustee-at-large, and it is the "governing body" of IRAC.

68. As of December 1, 1960, the 140 national college social and professional fraternities represented in the four social and professional interfraternities, NIC, NPC, PIC and PPA, which in turn are represented in the "inter-interfraternity" or "super-interfraternity" of IRAC, comprised a total of 7,533 fraternity chapters, and 3,625,156 members¹³ (CX 728, pp. 7, 8, 12) and constitute the majority of the largest college Greek-letter organizations (Tr. 2869). As the IRAC resolution of June 3, 1961, which was "unanimously adopted by the delegates" and sent to

¹³ If the chapters and membership of ACHS, which has honorary membership in IRAC, are included, IRAC then includes 9,652 chapters and 4,433,719 members.

the Federal Trade Commission, states:

WHEREAS, the Interfraternity Research and Advisory Council, the membership of which consists of delegates from: (1) the National Interfraternity Conference; (2) the National Panhellenic Conference; (3) the Professional Interfraternity Conference, and (4) the Professional Panhellenic Association, representing over three million members. . . . (Respondents' Motion to Produce, Exhibit D, dated September 13, 1965).

69. And as Mr. Balfour stated in a letter, dated May 12, 1959, to Mr. Harry Babcock of the Federal Trade Commission:

. . . [IRAC] represents all of the Fraternity Conferences which in turn represent all of the recognized Greek letter College Fraternities and Sororities. (RX 40A.)

The subject of IRAC is further discussed hereinafter.

*The National College Fraternity System is
Unique and Distinct*

70. The national college fraternities are a distinct group of organizations. The membership of each national college fraternity is derived exclusively from undergraduate or professional college students. Membership in a national college social fraternity is mutually exclusive; however, a member of a social fraternity may also be a member of a professional fraternity and an honor or recognition society.

71. The structure and organization of all national college fraternities are basically similar. Each fraternity is national in scope, as opposed to local, and has chapters located on college and university campuses throughout the country. Most of the national college fraternities have alumni groups, composed of collegiate chapter alumni members located throughout the country. The fraternity's "Convention," composed of delegates of each of the chapters, meets on the average biennially to vote on matters affecting the fraternity. The executive authority of a fraternity is vested in the fraternity's "Executive Committee," usually composed exclusively of alumni members. The "Executive Committee" handles the administrative affairs of the fraternity through a "Central Office" staffed by an "Executive Secretary."

72. Most of the larger national college fraternities are organized into five "interfraternities" whose memberships are limited exclusively to the national college fraternities. The interfraternity structure of the national college fraternity system is organized down to the college campus level, where chapters of men's national college fraternities on a campus are organized into "Interfraternity Councils" and women's national college fraterni-

ties are organized into "Panhellenic Councils."

73. The highest echelon of the interfraternity system is the "super-interfraternity" of IRAC, composed of representatives of the four social and professional interfraternities, NIC, NPC, PIC and PPA, with the fifth interfraternity, ACHS, having honorary membership. The membership of IRAC is limited exclusively to the interfraternities whose membership, in turn, is limited exclusively to national college fraternities.

74. Since there is no evidence of interfraternal organizations outside of the national college fraternity system, *a fortiori*, there is no evidence of a "super-interfraternal" organization similar to IRAC. IRAC is a super-interfraternal-type organization peculiar to and characteristic of the national college fraternity system.

75. Therefore, the national college fraternity system is *unique and distinct* from any other type of fraternal organization, including local college fraternities, high school fraternities, nonacademic fraternities, as well as all other types of social, philanthropic, civic or business organizations. The national college fraternity system's distinctive characteristics identify that system as a separate and distinct market.

*Testimony of Other Insignia Jewelry Manufacturers
Establishes that National College Fraternity
Insignia Products Constitute a
Separate and Distinct Product Market*

76. Officials of thirteen firms engaged in the manufacture, distribution and sale of one or more product lines in competition with respondent Balfour testified in this proceeding. Twelve such officials testified for the Commission, one testified for the respondents. In addition, respondents recalled one Commission witness in respondents' case-in-defense (Tr. 5158, *et seq.*). Their testimony is that while each of the firms competes with Balfour in one or more product lines, such as high school class rings, college rings, organizational insignia jewelry or commercial insignia jewelry, only two of the firms compete with Balfour in the manufacture, sale or distribution of national college fraternity insignia jewelry; even these two firms, by comparison with Balfour, are insignificant in this field, as is hereinafter demonstrated.

These thirteen firms are grouped into three categories:

Category A—Firms which manufacture and sell high school class rings, college rings, commercial insignia jewelry or organi-

zational insignia jewelry in competition with Balfour, but which have not entered, or made any substantial effort to enter, the national college fraternity insignia jewelry field. There are four firms in this category: (1) Morgan's, Inc. (hereinafter Morgan's; Tr. 4299, *et seq.*); (2) Herff Jones Company (hereinafter Herff Jones; Tr. 5326, *et seq.*); (3) The Robbins Company (hereinafter Robbins; Tr. 5358, *et seq.*); and (4) Josten's Incorporated (hereinafter Josten's; Tr. 5472, *et seq.*).

Category B—Firms which manufacture and sell high school class rings, college rings, commercial insignia jewelry or organizational insignia jewelry in competition with Balfour, and which in the past were also in the national college fraternity insignia jewelry field, but which have withdrawn from that field completely or virtually completely and are now concentrating on one or more of the other markets. There are seven firms in this category: (1) Spies Bros., Inc. (hereinafter Spies Brothers; Tr. 1884, *et seq.*); (2) Erffmeyer & Son Co., Inc. (hereinafter Erffmeyer; Tr. 1913, *et seq.*); (3) J. A. Meyers & Co., Inc. (hereinafter Meyers; Tr. 2486, *et seq.*); (4) Dieges & Clust, Inc. (hereinafter Dieges & Clust; Tr. 3260, *et seq.*); (5) The Metal Arts Company, Inc. (hereinafter Metal Arts; Tr. 3279, *et seq.*); (6) O. C. Tanner Co. (hereinafter Tanner; Tr. 907, *et seq.*); and (7) Charles B. Dyer Co. (hereinafter Dyer; Tr. 1146, *et seq.*).

Category C—Small firms which are attempting to engage in the manufacture and sale of national college fraternity insignia jewelry. There are two firms in this category: (1) J. A. Buchroeder & Co., Inc. (hereinafter Buchroeder; Tr. 1241, *et seq.*, 5158, *et seq.*); and (2) J. O. Pollack & Co. (hereinafter Pollack; Tr. 1694, *et seq.*).

Each of these three categories is hereinafter treated seriatim.

77. *Category A*.—Firms in the high school class ring, college ring, organizational or commercial insignia jewelry fields, but not in the national college fraternity insignia jewelry field:

Morgan's.—The only official of an insignia jewelry manufacturer called by respondents (aside from officials and employees of Balfour, and the recall of Commission witness Buchroeder) was Mr. Gilbert Morgan, President of Morgan's (Tr. 4299). Morgan's is a small insignia jewelry manufacturer. The company sells in a seven-State area, Puerto Rico and Nicaragua. Morgan's total sales in fiscal 1961-62 were in excess of \$1 million (Tr. 4304). The company derives approximately two-thirds of its sales volume from the sale of class rings; the remaining one-third

of its sales are in commercial insignia jewelry, organizational insignia jewelry, local fraternity pins and special design awards (Tr. 4304-05; RX 191, 192, 193). Morgan's, however, does not manufacture or sell national college fraternity jewelry and has not made any effort to sell to national college fraternities (Tr. 4332). When asked why Morgan's has not tried to do so, Mr. Morgan stated: "My interest has always been *along other lines. . .*" (Tr. 4332; emphasis supplied.)

Mr. Morgan further explained that it takes "a special type of distribution" to service national college fraternities (Tr. 4310). Since Morgan's is able to service high schools, colleges, commercial accounts and organizational accounts, it is important to note that Morgan's recognizes that national college fraternity accounts require a special type of distribution.¹⁴ The "method of distribution" to national college fraternities is another distinguishing characteristic of the national college fraternity market and is hereinafter discussed in detail.

Herff Jones.—Herff Jones is a comparatively large manufacturer and seller of insignia jewelry, paper products, trophies and awards; it sells nationwide and has a sales force of approximately 185 salesmen. The company's 1961 total sales were about \$11.5 million. The company has four sales divisions: a jewelry division, a paper products division, a medal and trophy division and a yearbook division. The company's jewelry division accounts for most of the company's sales volume, and in 1961 this division's sales were about \$9.25 million. The majority of the jewelry division's sales is derived from the sale of high school class rings; this division also sells high school class pins, college rings, commercial insignia jewelry and pins and organizational insignia jewelry, including high school fraternity-type organizations and off-campus college fraternities. Herff Jones, however, does not sell any national college fraternity jewelry (Tr. 5327-34).

Q. Do you sell any national college fraternity jewelry?

A. No, sir, we don't. (Tr. 5332.)

The company sold to one national college fraternity under a three-year contract for the period 1957-59 (Tr. 5332), but has made no concerted effort to sell to national college fraternities, despite the fact that it has the necessary facilities and personnel for doing so (Tr. 5335-36). In explaining why Herff Jones has not entered this field, Mr. Charles Fultz, vice president of Herff

¹⁴ Balfour has this "special type of distribution," namely, 66 salesmen who concentrate their efforts on the national college fraternity campuses.

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Jones, clearly delineates the national college fraternity market as a distinct market:

A. Well, we have been pretty well confined in the high school market. We have never attempted to train our sales organizations to call on fraternities or sororities, or have actually made any attempt to sell this particular market.¹⁵ We know very little about it, and have never had any interest in it as such.

Q. You do know that such a jewelry market exists?

A. Yes. (Tr. 5336.)

* * * * *

Q. Mr. Fultz, did Herff Jones Company ever make a national college fraternity ring?

A. Not to my knowledge.

Q. If the Burr, Patterson & Auld Company confined their ring sales to national college fraternities, would they be your competitor?

A. No, because we are not after that particular type of sales. (Tr. 5354-55.)

Robbins.—Robbins sells nationwide and has a sales force of approximately 18 men (Tr. 5359). The company's total sales in 1961 were approximately \$3 million, of which 40 percent was derived from organizational insignia jewelry, 25 percent from sales promotional (commercial insignia) jewelry, 25 percent from award jewelry and 10 percent from religious insignia jewelry (Tr. 5359-60; RX 317, 318, 319). Robbins manufactures no national college fraternity jewelry and has made no effort to sell to national college fraternities (Tr. 5368-69). When asked why, Robbins' Product Manager stated:

A. Because we have a sales force that is geared to contacting industry and organizations, and we don't feel that they could contact another type of trade effectively. We are doing very well in what we are concentrating on.

Q. So you would consider the fraternities, national college fraternities to be another type of trade?

A. I think it would require a different type of sales force to develop the business. (Tr. 5369.)¹⁶

Josten's.—Josten's is a large manufacturer and seller of insignia jewelry and paper products; it sells nationwide and has a sales force of approximately 425 salesmen, which are divided into three basic groups: the scholastic sales force which sells class rings, pins, medals and trophies to high schools primarily; the yearbook sales force which sells yearbooks and other paper products to high schools and colleges; and a commercial sales force which sells to industrial firms and organizations (Tr. 5476-78, 5481; RX 320, 321, 322). Josten's total sales in 1961 were \$24,500,000, of which approximately 40 to 45 percent was

¹⁵ Again, it should be noted that Fultz, like Morgan, points out the need for a special type of sales force. Balfour's Fraternity Division salesmen are and have been geared to this field.

¹⁶ Again, Higgins, like Morgan and Fultz, points out the need for a special type of sales force to sell to the national college fraternities.

derived from the sale of insignia jewelry, primarily high school and college rings and pins (Tr. 5475). The company, however, manufactures and sells insignia jewelry to only one or possibly two national college fraternities and has made no concerted effort to sell to national college fraternities (Tr. 5484-87, 5499-5500, 5548). From the following colloquy between the hearing examiner and Mr. Charles Oswald, executive vice president of Josten's, it is clear that Josten's considers national college fraternity insignia jewelry to be a separate product market:

HEARING EXAMINER LYNCH: By the same token, you say you have one fraternity that you supply with their requirements with respect to fraternity insignia jewelry. Would you consider this a product market?

THE WITNESS: Not in the same sense of the yearbook.

HEARING EXAMINER LYNCH: Supposing you have 200 fraternities, would that make any difference?

THE WITNESS: If we had 200 fraternities, I am sure we would tend to set up a plant to service that volume of business, and we would tend to have a special sales force,¹⁷ I presume, servicing that kind of business. (Tr. 5545-46.)

* * * * *

[By Hearing Examiner Lynch]

Now, you manufacture fraternity insignia jewelry?

THE WITNESS: To a very limited extent.

HEARING EXAMINER LYNCH: Yes. You manufacture it to the extent that you have one contract.

THE WITNESS: Right.

HEARING EXAMINER LYNCH: Now supposing you had 500 contracts to manufacture that. Would you consider that a market the same as you would consider the year book a market? That is the context of the question.

THE WITNESS: Yes. We would consider that a market; in order to get 500 we would have to organize to attack the market. (Tr. 5548.)

78. *Category B.*—Firms in the class ring, college ring, organizational or commercial insignia jewelry fields which were formerly in the national college fraternity insignia jewelry field but have withdrawn from that field completely or virtually completely:

Spies Brothers.—Spies Brothers is a small insignia jewelry manufacturer whose total sales in fiscal 1960-61 were \$582,434 (Tr. 1886). Spies Brothers manufactures and sells college and high school class rings, school pins, commercial insignia jewelry, local college fraternity jewelry and medals. The company also sells trophies and diamonds and does jewelry repair work (Tr. 1884-85). The company operates a retail jewelry store in Chicago, has three salesmen soliciting business in parts of Illinois and Indiana, and also sells by mail (Tr. 1886-87, 1896-99).

¹⁷ Oswald, like Morgan, Fultz and Higgins, points out the need for a special type of sales force for selling to the national college fraternities.

Of the company's total fiscal 1960-61 sales, about 41 percent was derived from high school and college rings and pins, 29 percent from commercial insignia jewelry, 26 percent from medals, trophies, diamonds and repairs (Tr. 1893), and 4 percent (\$22,000) from local college fraternity insignia jewelry (Tr. 1886). At one time Spies Brothers actively solicited the business of national college fraternities, but concluded some 15 or 20 years ago that it was useless to continue doing so. Thereafter, Spies Brothers switched from the fraternity insignia field to the commercial insignia field in which the company's sales have grown over the years (Tr. 1889-90, 1895-97).

Mr. Ward Cookman, vice president and treasurer of Spies Brothers, was asked why he did not solicit national college fraternity business:

A. Well, our feeling was that we were bucking our head against a stone wall. We decided we would go into other fields rather than the fraternity field, and, therefore, we went into the service emblem recognition business in a much larger way. (Tr. 1890.)¹⁸

Erffmeyer.—Erffmeyer is a small firm that manufactures and sells commercial insignia jewelry, trophies and awards, high school and college rings and some national college and local fraternity insignia jewelry. The firm also sells some fraternity insignia novelties (Tr. 1914, 1930-32). Although Erffmeyer has dies for use in manufacturing national college fraternity insignia, most of the dies are no longer in use today and the company is virtually out of the national college fraternity field, except for sales to two such fraternities (Tr. 1915-16, 1930-31). In 1958 a third national college fraternity which Erffmeyer had had under contract was lost to respondent Balfour (Tr. 1916-30; CX 415-419). The company's total sales for the year 1960 were \$163,000, of which only \$5,000 was derived from the sale of fraternity insignia jewelry and novelties of both national and local college fraternities (Tr. 1933-34). The company, however, has experienced a steady growth in the field of commercial insignia jewelry, and its 1960 sales of such products approximated \$75,000, nearly half the company's total sales volume (Tr. 1934, 1956).

Meyers.—Meyers is a small firm whose sales approximate \$275,000 annually; 60 percent of its sales volume is derived from commercial and organizational insignia, 30 percent from school club pins and 10 percent from trophies and awards (Tr. 2522-25; RX 35). The firm also has one or two local college fraternities under contract. The company's total sales of local college fraternity

¹⁸ The "stone wall" to which Cookman refers is, of course, the fact that respondents have virtually all the national college fraternities under exclusive contract.

insignia and novelties for the fiscal year ending June 1961 were less than \$3,000 (Tr. 2495-96). Meyers no longer has any national college fraternities under contract (Tr. 2495).

Prior to World War II Meyers manufactured and sold on a wholesale basis national college fraternity insignia jewelry and novelties throughout the eleven Western States (Tr. 2488, 2494). During the 1950's the company continued to make a few isolated sales of national college fraternity insignia (Tr. 2496-97). Around 1960 the company also attempted to market for sale at college campuses in the Los Angeles, California, area, a line of national college fraternity insignia jewelry items. This venture was abandoned, however, because of the company's inability to gain access to fraternity chapter houses due to respondents' official jeweler contracts with the national college fraternities (Tr. 2505-14). While the company still has dies for producing national college fraternity insignia, a complete set as of 1939, the company no longer manufactures or sells such insignia (Tr. 2500-01, 2495-97).

Mr. Francis Meyers, president of Meyers, with 16 years full-time experience and more than 30 years total experience in the insignia jewelry business (Tr. 2486-87), considers the college fraternity market to be a completely distinct market from both the commercial and organizational insignia jewelry markets (Tr. 2524-27, 2585-86).

Dieges & Clust.—Dieges & Clust manufactures and sells principally high school and college rings and pins, commercial insignia jewelry, medals and trophies and some high school and local college fraternity insignia (Tr. 3261, 3277). The company is one of Balfour's principal competitors in class ring sales in the area of the Eastern Seaboard and part of the Midwest (Tr. 3095-96). In the 1930's the firm sold national college fraternity jewelry but is no longer in that field. When asked why the company is not attempting to sell to national college fraternities, Mr. Robert Packer, executive vice president of the company, stated that Dieges & Clust has expanded its operations "in the area which our sales were in" (Tr. 3262-63). Mr. Packer, who has been with Dieges & Clust since 1946 and executive vice president since 1954 (Tr. 3260), expressed his opinion that national college fraternity insignia, class rings and commercial insignia are all separate markets (Tr. 3263).

Metal Arts.—Metal Arts manufactures and sells principally high school and college rings and commercial insignia jewelry (Tr. 3280). Metal Arts also manufactures and sells a small

amount of organizational insignia jewelry (Tr. 3296), and local college and secondary fraternity insignia jewelry (Tr. 3282, 3295-96). The company's sales are, however, nearly evenly divided between rings and commercial insignia (Tr. 3280). The company's total sales of class rings in 1961 were in the neighborhood of \$750,000 (Tr. 3288). During the 1940's and 1950's Metal Arts also sold insignia jewelry to three national college fraternities under contract, and grossed between \$5,000 and \$10,000 annually from sales to each fraternity (Tr. 3281-83). Between 1951 and 1961 Metal Arts lost all three contracts to Balfour (Tr. 3282; CX 717), and is no longer in the national college fraternity field (Tr. 3281).

Tanner.—Tanner is engaged in the manufacture and sale primarily of commercial insignia jewelry which constitutes almost the entire product manufactured by the company (Tr. 914). Tanner also manufactures and sells a small amount of club pins and insignia jewelry of a few college fraternities (Tr. 912).

Tanner sells commercial insignia jewelry direct to industrial and business firms through salesmen located in major metropolitan areas of the country (Tr. 975-76). The firm also serves as selling agent for the Herff Jones line of class rings in the States of Utah, Idaho and Nevada and also operates a retail jewelry store in Salt Lake City, Utah (Tr. 1013, 1108). The total sales of Tanner in 1960 were \$2,659,149 (CX 383A), of which \$13,803, or approximately one-half of 1 percent, was derived from the sale of college fraternity insignia (Tr. 951).

Tanner first began manufacturing and selling fraternity jewelry in approximately 1937 (Tr. 914), but as of 1961, 90 percent or more of Tanner's fraternity dies were no longer in use (Tr. 1012).¹⁹ During the 1950's the company attempted to expand its sales of national college fraternity insignia jewelry by contacting the major national college fraternities offering to bid on their insignia jewelry requirements. The company, however, was not successful (Tr. 947-950; CX 374, 375). Consequently Tanner has withdrawn from the national college fraternity field and abandoned its efforts to sell to national college fraternities (Tr. 1097-98). Tanner's primary concern in the fraternity field is to "try to keep those we have" (Tr. 1098).

Dyer.—Dyer is a small manufacturing, wholesaling and retailing firm that is engaged in selling mainly within a 75-mile radius of Indianapolis, Indiana (Tr. 1148-1150, 1226-27). The

¹⁹ During the entire period 1951-1961 respondents had practically all of the national college fraternities under exclusive contract.

company manufactures and sells commercial insignia jewelry, some insignia jewelry of local college fraternities and non-academic fraternities, a small amount of national college fraternity jewelry (Tr. 1173-74), and some high school class rings, special design mountings and medals (Tr. 1149). Dyer also sells trophies (Tr. 1228), and a line of insignia decorated novelties to chapters of local and national college fraternities primarily in Indiana, although some out-of-State sales are made (Tr. 1200). Dyer also operates a retail jewelry store in Indianapolis, Indiana (Tr. 1148). Dyer has contracts with two local college fraternities and two non-academic fraternities (Tr. 1219-1221). Dyer's total sales for the fiscal year 1961 were \$196,038 (CX 384). Dyer's total sales of fraternity insignia jewelry and novelties for fiscal 1961 were \$23,088 which includes sales of insignia jewelry and novelties to the two local fraternities under contract and insignia jewelry to the two non-academic fraternities under contract (Tr. 1179-1180, 1189, 1192, 1219-1222).

In the early 1950's the company attempted to expand its sales of national college fraternity jewelry. The company, however, was not successful because its campus sales representatives "were instructed by the various [fraternity chapter] houses that they had to purchase from the L. G. Balfour Company because of existing contracts." Therefore the company determined to concentrate its sales efforts on "the industrial field and trophies, and things of that type"; "we turned to other fields . . . when we saw the limitations" (Tr. 1159-1160, 1187-88).

79. *Category C.*—Firms that are attempting to engage in the manufacture and sale of national college fraternity insignia jewelry and which have developed a program for selling such jewelry, but which have been hindered and prevented from becoming a substantial competitive threat to respondents:

Buchroeder.—Buchroeder manufactures and sells national and local college fraternity insignia jewelry, diamond mountings and commercial insignia jewelry (Tr. 1243; RX 13, 14). Buchroeder sells college fraternity insignia jewelry nationwide to retail jewelers located in college towns and to college bookstores (Tr. 1243, 1312-13, 1389). The company also operates a retail jewelry store located near the University of Missouri campus (Tr. 1242). Buchroeder has taken steps to develop a sales program for selling college fraternity jewelry; in 1954 the firm undertook to expand its wholesale sales to retail jewelry stores in college towns (Tr. 1312). Many of the retailers to whom Buchroeder has sold college fraternity insignia cancelled their orders

(Tr. 1347-48).

During the period 1950-1960, Buchroeder wrote to approximately 100 national college fraternities requesting an opportunity to submit bids on their insignia jewelry. Few fraternities replied and none requested bids (Tr. 1332-33).

Buchroeder's total sales in 1960, including its wholesale and retail sales and jewelry repairs, were \$196,925 (Tr. 1318-19). The company's wholesale sales of college fraternity insignia jewelry amounted to \$25,000 to \$30,000 (Tr. 1329) and its retail sales of fraternity jewelry were \$5,000 to \$6,000 (Tr. 1315-16, 1328; CX 737). Buchroeder has no official jeweler contracts with national college fraternities, but at times has had salesmen calling on national college fraternities and attempting to make sales (Tr. 1330, 1334). Buchroeder's sales of national college fraternity jewelry are indeed small compared to respondents' admitted sales of such products. Because of the attempts to sell national college fraternity jewelry, Buchroeder has been subjected to harassment, disparagement and ultimately litigation (RX 81A).

Pollack.—Pollack manufactures and sells college fraternity insignia jewelry (Tr. 1759), and insignia novelties (Tr. 1760-61), commercial insignia jewelry (Tr. 1756-57), and awards (Tr. 1760). The company also distributes trophies and fraternity insignia novelties and knitwear manufactured by others (Tr. 1760-61). The Brochon Company, a wholly owned subsidiary (Tr. 1695), also manufactures and sells college fraternity insignia jewelry and novelties (Tr. 1698, 1759-1761), and distributes college fraternity insignia novelties and knitwear manufactured by others (Tr. 1760-61). The combined sales of J. O. Pollack & Company and its subsidiary Brochon for the fiscal year 1961 were \$283,487; and their combined sales of all fraternity products for the same period were \$89,631 (CX 404, 421; Tr. 1751-55, 2001-2002).

During cross-examination, Mr. Gerald L. Pollack, vice president of J. O. Pollack Company (Tr. 1694), clearly distinguished fraternity insignia jewelry from other types of organizational insignia jewelry:

Q. Is it true, then, Mr. Pollack, that your company is interested in selling all types of insignia-bearing products?

A. No.

Q. Will you tell me which types of insignia-bearing products you are not interested in selling?

A. Those particular areas which would require entirely new investment and retooling as opposed to those which we already have our capital investment in and our organization established to manufacture.

Q. Could you give me some examples in terms of products?

A. Take your Elk buttons, this is a very extensive line which we are not in now. It would require an extensive number of tools, a great capital outlay, an entirely different form of distribution than anything we have been accustomed to. It would require new outlets and entirely different sales technique. It is as removed from our business as shoes would be, conceivably. (Tr. 1776-77.)

Pollack has one Negro fraternity under contract, and has from time to time employed salesmen to call on national college fraternity chapter houses (CX 401). Its efforts to establish a sales force have been unsuccessful (Tr. 1696-97). At the time of this proceeding, the company had only two salesmen, Gerald L. Pollack, vice president of J. O. Pollack Company, and his brother (Tr. 1773). The company accordingly sought other avenues of making fraternity sales (Tr. 1696). One such avenue was an attempt to sell through retail jewelers located near college campuses. This avenue was also unsuccessful (Tr. 1718-1720; CX 290, 291, 399, 400).

Pollack finally established a mail order division, National Fraternity Supply, in an attempt to compete (Tr. 1696, 1755).

Because of its attempts to sell national college fraternity jewelry, this company has been harassed, disparaged and threatened with litigation (CX 278, 280, 307, 308).

That National College Fraternity Insignia Products Constitute a Separate Product Market is Further Demonstrated By the Fact That There are a Number of Small Firms Engaged Exclusively or That Devote the Most Substantial Part of Their Sales Effort to Sales to National College Fraternities

80. In addition to the 13 manufacturers of insignia jewelry who testified in this proceeding, officials of nine small firms engaged exclusively or nearly so, in sales to national college fraternities also testified. The fact that these firms direct all or the most substantial part of their sales effort to national college fraternities demonstrates that they consider national college fraternity insignia products to be a separate product market. All of these firms have several common characteristics: (1) In relation to the size of respondents in the national college fraternity field all nine firms are small; (2) seven of these firms sell no college fraternity insignia jewelry, and insignia jewelry sales of the other two firms are comparatively few; (3) none of the firms have official contracts with the national college fraternities; (4) all of them have been subject to harassment, disparagement and threats of litigation.

81. The nine firms are grouped into two types—"one-man" operations and small firms.

A brief description of each such competitor follows:

"One-man Operations"

82. *Gadzik Sales Company.*—Gadzik Sales Company (hereinafter Gadzik) is owned and operated by Charles Gazdzik. Gazdzik formed the company in 1950 to engage in the sale and distribution of national college fraternity novelties primarily by mail order (Tr. 2362).²⁰ By 1956 the company's sales volume had reached \$19,895 (CX 450). Because of respondents' official jeweler contracts, Gadzik's sales declined sharply (Tr. 2371-72; CX 450). In 1959 Gadzik discontinued attempting to sell by mail order (Tr. 2362, 2371-72). Since then the company has confined its sales of national college fraternity novelties to college campuses located in the area of Philadelphia, Pennsylvania (Tr. 2361-62, 2371-72). Gadzik's total sales of such novelties in 1960 were \$4,379 (CX 450). Gadzik sought permission from the fraternities to sell products bearing their insignia, but was not successful in gaining permission (Tr. 2391).

83. *Old Hickory Paddle Company.*—The Old Hickory Paddle Company (hereinafter Old Hickory) was owned and operated by Mr. John C. Rader who engaged (Tr. 1448, 1480) in selling almost entirely in the national college fraternity field (Tr. 1449, 1473). The firm sells and distributes national college fraternity knitwear and novelties such as paddles, beer mugs, dance programs and assorted favors (Tr. 1449). The firm, however, does not sell insignia jewelry (Tr. 1478-79) and has no official jeweler contracts (Tr. 1480). At the time Mr. Rader testified in this proceeding, he advised that he had recently sold Old Hickory and quit the college fraternity novelties field because of the pressures he had experienced in the field. Among the pressures he described was the fact that his salesmen were increasingly foreclosed from making displays in chapter houses and his salesmen's orders were cancelled (Tr. 1457-58). Consequently the business "simply wasn't profitable" (Tr. 1474). During several of the later years, Old Hickory had no salesmen (Tr. 1472). Old Hickory's total sales of college fraternity insignia knitwear and novelties in 1960, Rader's last year in the business, were about \$3,500 (Tr. 1481).

84. *College Crafter Company.*—Mr. Ross Dallas owns and operates the College Crafter Company, Springfield, Ohio (hereinafter

²⁰ Gadzik does engage in sales of some totally unrelated lines such as wedding invitations and banquet supplies in the Philadelphia, Pennsylvania, area (Tr. 2362).

College Crafter) (Tr. 1796). College Crafter sells and distributes on a direct basis decorated knitwear primarily to members of national college fraternities on college campuses in a five-State area and makes some sales by mail (Tr. 1829-1830). The firm also sells decorated knitwear to high schools. The company's high school business is now larger than its college fraternity business (Tr. 1832). Dallas is the only full-time salesman and as of 1961 he employed four part-time salesmen (Tr. 1830). College Crafter originally obtained its processed knitwear requirements from the Champion Knitwear Company but was cut off by Champion in 1954 because of respondents' exclusive contract with Champion. The firm has no official contracts with national college fraternities (Tr. 1841). College Crafter's total sales of college fraternity decorated knitwear in 1960 were \$23,299 (CX 405).

85. *Fraternity Sales Company*.—Mr. Herbert Michaelis owns and operates the Fraternity Sales Company (hereinafter Fraternity Sales) (Tr. 2170). Mr. Michaelis is the only salesman of Fraternity Sales, together with some part-time student representatives (Tr. 2207-2208). Fraternity Sales sells and distributes on a direct basis primarily national college fraternity insignia knitwear and novelties and a small amount of national college fraternity insignia jewelry (Tr. 2171, 2200, 2205-2207). Company sales approximate \$30,000 annually of which less than \$3,000 is derived from the sale of college fraternity insignia jewelry (Tr. 2207). Mr. Michaelis was expelled from his fraternity, Pi Kappa Alpha, because of his sales of national college fraternity products (Tr. 2203-2204).

86. *Western Collegiate Supply Company*.—Mr. Harold Pennington, a former salesman for Columbus Stationery Company, formed the Western Collegiate Supply Company in California in 1956 (Tr. 1500). When Mr. Pennington first went to California, he took with him four salesmen to serve as his sales force. Mr. Pennington had intended that he and his salesmen cover the West Coast area of California, Oregon and Washington and make sales primarily of national college fraternity insignia jewelry and novelties by calling on the chapter houses at the various college campuses in that area. Mr. Pennington's firm met with such opposition stemming from respondents' official jeweler contracts that the sale of insignia jewelry was virtually abandoned and within six months Mr. Pennington had lost his entire sales force (Tr. 1508-1509, 1529-1530). Mr. Pennington finally abandoned the West Coast area and moved to Arizona (Tr. 1554-55). Mr. Pennington is now the only salesman of Western Collegiate Supply

Company with the aid of some part-time help (Tr. 1530). The firm has not attempted to sell to local college fraternities in many years (Tr. 1512); but now concentrates virtually exclusively on selling national college fraternity insignia knitwear and novelties (Tr. 1509). Such products constitute more than $\frac{3}{4}$ ths of the firm's sales (Tr. 1498-99); the balance is derived from jobber sales to college bookstores and other retail stores during the non-school summer season (Tr. 1576). The firm has no official jeweler contracts with national college fraternities (Tr. 1564) and its total sales of national college fraternity insignia knitwear and novelties in 1960 were approximately \$30,000 of which about \$100 was in sales of insignia jewelry (Tr. 1555-56).

87. *Nassau China Company*.—The Nassau China Company (hereinafter Nassau) is owned and operated by Mr. James Murray and his wife (Tr. 2261). Nassau manufactures, sells and distributes nationwide college fraternity insignia decorated beer mugs, primarily by mail (Tr. 2291, 2300). Nassau has had orders cancelled because fraternities were instructed that Nassau's beer mugs were "pirate manufactured" (Tr. 2295). Nassau's total sales of college fraternity insignia decorated beer mugs in fiscal 1959-1960 were approximately \$45,630 (Tr. 2297-98; CX 448). His sales volume has not increased in recent years, and he has no hopes for future growth. The company does not produce a living income for him (Tr. 2300-2301).

88. *National Collegiate Specialty Company*.—Mr. Robert Conley, a former BPA salesman, is the owner and manager of the National Collegiate Specialty Company (hereinafter National Collegiate). National Collegiate specializes in the processing and direct sale and distribution of college fraternity insignia decorated knitwear primarily to members of national college fraternities (Tr. 2043, 2066, 2072-73). As of 1961 the company employed five salesmen who sold through chapter visitations on college campuses in the midwestern and southern states (Tr. 2070-71). The company's total sales for the school year 1960-1961 were about \$57,000 of which approximately \$50,000 was derived from sales of national college fraternity decorated knitwear (Tr. 2070-72). The company sells no college fraternity insignia jewelry and has no official contracts with national college fraternities (Tr. 2065-67).

"Small Firms"

89. *L & L Party Favors, Inc.*—L & L Party Favors, Inc. (hereinafter L & L), Wilkes Barre, Pennsylvania, engages in

the nationwide sale and distribution of college fraternity insignia decorated products by mail primarily to chapters of national college fraternities (Tr. 2083-85). As of 1961 L & L also had 15 student representatives located on college campuses (Tr. 2083). As Mr. Friedman, Sales Manager of L & L's Fraternity Sales Division, testified:

Our line was made and our business was built around the college fraternity field. . . . We had to concentrate on one area or group and that was the group we picked. (Tr. 2129.)

L & L does not sell college fraternity insignia jewelry and has no official contracts with national college fraternities (Tr. 2087, 2132). The company's total sales in fiscal 1960-1961 were \$104,000 (Tr. 2119).

90. *Columbus Stationery Company*.—Columbus Stationery Company (hereinafter Columbus) is engaged in the sale and distribution of national college fraternity insignia stationery, knitwear and novelties (Tr. 1845-48). As of October 1961, the start of the school year, Columbus had approximately 55 salesmen who sold direct to college fraternity members through chapter visitations (Tr. 1852). By January the number of salesmen was down to about 20 to 25 (Tr. 1853). Salesmen turnover is very high. The company does not sell college fraternity jewelry, and has no official contracts with national college fraternities (Tr. 1862, 1881).

Mr. Jack Grace, sales manager of the Columbus Division which sells insignia knitwear and novelties, testified that respondents' official jeweler contracts are a substantial hindrance to making sales especially to members of the national college sororities, the majority of which will not allow Columbus salesmen to display their products because of respondents' exclusive contracts (Tr. 1850-51, 1856). The company's total sales in 1960 were \$392,295 (CX 414A).

*Respondents In Their Business Operations Treat
The National College Fraternity Insignia
Products Market As a Distinct And Separate Market*

91. The record abounds with evidence which establishes that the respondents themselves consider and deal with national college fraternity insignia products as a distinct and separate market. The Balfour Company began in the college fraternity insignia jewelry field (Tr. 2835, 3771).

92. Balfour sells and distributes national college fraternity products through a separate division of the company called the

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Fraternity Division. The Fraternity Division salesmen concentrate their efforts on those college campuses that have national college fraternity chapters. Balfour's Ring Division does not sell or distribute national college fraternity products. The Ring Division salesmen concentrate their sales effort primarily on the sale of high school rings (CX 686M; Tr. 3088, 3096-98). Balfour's Commercial Division does not sell or distribute national college fraternity products. Commercial Division salesmen are located in major metropolitan areas throughout the country and concentrate their sales efforts on business firms and the headquarters of social, civic, professional and philanthropic organizations. (Tr. 3904-07, 3933-39, 3957-60, 3972, 4020-24).²¹ The Commercial Division, for example, sells and distributes to Greek-letter non-academic fraternity organizations such as Beta Sigma Phi, a Greek-letter fraternal organization for working girls (Tr. 710-11). Standord Gwilliam, a Balfour Commercial Division salesman, expressed his view of selling college fraternity jewelry:

Quite frankly I have not been interested in selling college fraternity jewelry. . . . It's about half a cut above selling items house to house. You just have to make too many calls for what you get out of it. (Tr. 3907.)

* * * * *

I don't go in for it. I keep out of it. Among the people who have had any experience in commercial selling, fraternity selling or any other kind of individual selling in the jewelry business just do not care to sell fraternity jewelry. (Tr. 3937-38.)

93. Commercial and organizational accounts do not purchase such products as sweat shirts, beer mugs, paddles and decorated novelties and party favors (Tr. 3760, 3939, 5363, 5366).

94. BPA is engaged almost exclusively in the sale and distribution of national college fraternity products. BPA is used by respondents, among other reasons, to create competition for Balfour's Fraternity Division salesmen in sales to national college fraternities. Respondents do not have two separate groups of high school ring salesmen or two separate groups of commercial and organizational insignia salesmen, to stimulate competition for each other. This is because Balfour has competition in the high school ring market and in the commercial and organizational insignia market. However, Balfour has no competi-

²¹ Other firms that engage in nationwide sales of commercial and organizational insignia jewelry follow a similar procedure of stationing their salesmen in major cities. For example, Tanner has salesmen in New York, Chicago and Minneapolis among other places (Tr. 975, 985, 3944-45). Robbins has 18 salesmen which "on the map" cover the entire United States and sell to industrial firms and the headquarters of various types of organizations (Tr. 5359-60, 5364). Balfour's Commercial Division salesmen, of course, compete with both Tanner and Robbins in the commercial and organizational fields (Tr. 1097-1100, 3722, 5363, 5365).

tion in the national college fraternity insignia products market. Balfour must, therefore, create competition.

95. Balfour's Fraternity Division salesmen take individual orders from fraternity chapter members (Tr. 755, 2031-32). Organizational and commercial insignia is sold by Balfour on a volume basis to an organization or business firm; such purchases are made by a purchasing agent or other official of the organization or firm and are usually purchased on the basis of a year's requirements at a time (Tr. 3934).

96. National college fraternity products are sold only directly to college fraternity members, chapters or national offices (Tr. 755, 2869-71, 3782). Such products are never sold to college bookstores or other retail stores (Tr. 608, 755, 2881, 5395-96; CX 739A, 740; RX 76). Other Balfour products are sold to college bookstores and retail stores; such sales are handled in a separate department of Balfour (Tr. 608; 5391; CX 739A; RX 76).

97. Commercial and organizational insignia purchasers require competitive bids (Tr. 801, 807, 2563, 3761, 3906-07, 4001, 4024, 4111-12, 4429, 5333, 5360) and frequently switch from one insignia jewelry supplier to another (Tr. 3728, 4031). Practically no national college fraternities request competitive bids (Tr. 1122, 1332, 1889, 4139-44, 4155, 4265, 4505-06, 4547, 4550, 4594, 5368, 5640), and most national college fraternities have been under contract with Balfour and/or BPA during the entire period pertinent to this proceeding. When asked what national fraternity contracts Balfour had lost since 1948, Yeager's reply was: "I don't know of one" (Tr. 819).

Mr. Balfour stated in a letter of January 11, 1960, to a sorority: "Never in the history of the L. G. Balfour Company have we ever had a contract cancelled . . ." (CX 684.)

Miss O'Leary wrote to the same sorority 13 months later and stated: "This is the first time in our history that a jewelry contract, once awarded to the L. G. Balfour Company, has been cancelled." (CX 685.)

98. "Sole Official Jeweler" contracts are seldom used in the sale of commercial or organizational insignia jewelry. Gwilliam, Balfour's Commercial Division salesman, has never heard of a "sole official jeweler contract" in the commercial and organizational field (Tr. 3966). Balfour has never had a "sole official jeweler contract" with firms or organizations to which Balfour has supplied insignia jewelry, such as Gulf Oil Company (Tr. 3762), the America Legion, Future Farmers of America, Furrman & Company, Haig Aircraft (Tr. 3765) or Monsanto Chemical Com-

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panty (Tr. 4023). By contrast, Balfour and BPA have "sole official jeweler contracts" or "co-official jeweler contracts" with practically every national college fraternity.

99. Balfour has a number of employees who have dedicated their entire working lives to the college fraternity field. Mr. Adin Sargeant's entire working experience since 1928 has been in the fraternity sales field (Tr. 427-30). When he first joined Balfour in 1928, Sargeant worked under Mark Hanna, then Sales Manager of the Fraternity Division (Tr. 428).

100. Miss O'Leary's entire working experience with Balfour since 1926 has been centered around college fraternities, as she testified:

... I work exclusively for the fraternity department. (Tr. 238.)

We work for fraternity officials . . . And sorority officials, or regular customers involved, members of the various fraternities and sororities. (Tr. 243.)

In describing her duties, every example Miss O'Leary gives relates to college fraternities and sororities (Tr. 244-45).

101. Mr. Frank Licher began working for Balfour in 1931 and his entire career has been in the college fraternity field (Tr. 581-84).

102. The Fraternity Division has approximately 66 salesmen who concentrate their sales effort on those college campuses which have national college fraternity chapters. This is further evidenced by the testimony of Frank Dooling, a former Balfour salesman (Tr. 2013-14, 2027-30, 2039-40), and by the content of Balfour's Fraternity Division sales bulletin called the "Balfour Bulletin Representative Edition" which is issued to the salesmen of the Fraternity Division. Several of these sales bulletins are in evidence (CX 462, 470, 766-67). Almost every article in each of these bulletins relates to the national college fraternity market. The following are examples:

Apparently a false rumor has been spread by competition to the effect that the L. G. Balfour Company has lost the Delta Sigma Phi (a men's national college social fraternity; CX 727) contract. For your information, there has been no change in the Delta Sigma Phi jewelry contract or regulations. However, it is vitally important that each of you contact the chapters in your vicinity as quickly as possible. . . .

* * * * *

I had a nice order for 70 necklaces using the round disc from number 1084 bracelet, but mounting the Beta Theta Pi (a men's national college social fraternity [CX 727] dragon on it in place of the crest. This could also be done with the eagle of Sigma Chi (a men's national college social fraternity; CX 727), the lion of Sigma Alpha Epsilon (a men's national college social fraternity; CX 727), the crown of Zeta Tau Alpha (a

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women's national college social fraternity; CX 727), and many others. This same idea could be used for cuff links. Instead of mounting the crest, mount the shape we use in our sorority bracelets, such as the kite, anchor, arrow, lyre bird, and many others. Another idea would be to develop a necklace using the shapes we now use on our sorority bracelets, hanging on a chain. I know that we could sell a raft of them. . . . (CX 464A-B.)

* * * * *

All of us must join together in attempting to educate the undergraduates to the value and the necessity of fraternities and sororities protecting their name and insignia. A great majority of national organizations are stressing this fact to their chapter officers and down to the member level. In our own organization we can help ourselves by urging the chapter officers to incorporate in their pledge training their vows to uphold national rules and regulations and by training these pledges to the necessity of eliminating unofficial representatives and to prohibit their displays. (CX 465B.)

* * * * *

Attached to this Bulletin is a reproduction of an "open letter" which Mark McCole, manager of our Seattle, Washington branch office, is sending to members of *all national fraternities and sororities* in his territory. Mark is facing local competition by retail merchants who are handling a line of insignia and *national* jewelry. To offset this type of competition on the local level, Mark is inserting the open letter in the college paper, which should set the records straight. The program works for Mark. It could work for you if you are faced with the same situation. (CX 466D; emphasis supplied.)

103. The Balfour Blue Book is the Fraternity Division's catalogue of fraternity and sorority products (Tr. 293, 473, 496, 583). It is directed to the sale of Balfour products primarily to national college fraternity members as is illustrated by the following:

The cover of the 1951 Balfour Blue Book (CX 366) depicts the Parthenon and bears the caption:

The PARTHENON is a symbol of classic Greek culture, the inspiration for the ideals of many modern Greek-letter fraternities.

The inside front cover carries the following statement:

BALFOUR REPRESENTATIVES make personal displays of insignia and crested jewelry at all fraternity and sorority chapters throughout the country.

A FRIENDLY INVITATION is extended to you to visit the BALFOUR STORE nearest your chapter.

The reverse side of the "Balfour Order Form" inserted before page 1 of the Balfour Blue Book, 1951 (CX 366), bears the following instructions, among others:

All prices include the mounting of your fraternity coat-of-arms. Be sure to give full fraternity name . . . Some fraternities require orders to be approved by the *National* office. To avoid delay please indicate name of member for whom order is placed. (Emphasis supplied.)

104. The Balfour Blue Book for 1961 (CX 393) advises that

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"Insignia price lists for most *national* fraternity insignia" are available and that "local insignia" is "a specialty" (emphasis supplied).

105. Balfour's advertisement appearing in Leland's 1961 Fraternity-Sorority Directory (CX 728, p. 4) states:

Balfour is dedicated to the service of fraternities and sororities.

* * * * *
Write for price list for your *national* . . . write mentioning fraternity.
(Emphasis supplied.)

106. Numerous other documents in the record clearly show that Balfour views the national college fraternity market as a separate and distinct market. The following are a few examples:

107. A *Balfour Bulletin Representatives Edition* speaking on the subject of competition in the national college fraternity field, states:

Experience has proved that no firm can enter this *field* unless they do so officially and obtain official contracts. Furthermore, no firm could survive financially and be a major competitor over any period of time. (CX 465B; emphasis supplied.)

108. A retail jeweler in Fort Worth, Texas, inquired of Balfour about handling sorority and fraternity jewelry. Sargeant, General Manager of the Fraternity Division, replying to this inquiry, states:

. . . we have representatives covering the entire United States. Each representative has our exclusive sales franchise for the territory under his jurisdiction. . . . We serve the majority of *national* organizations under contract, and *all* official insignia is protected legally by trademarks coverage. Distribution of fraternity and sorority jewelry can be made *only* through the accredited official jeweler. . . . (CX 740; emphasis supplied.)

109. In a similar vein, Sargeant wrote to the College Seal and Crest Company after a Balfour salesman had discovered in a gift shop a national sorority Greek-letter monogram pendant bearing College Seal and Crest Company's identification tag:

. . . *all* fraternity and sorority insignia, including Greek letter monogram pendants, is legally protected by the *national* accredited fraternities and sororities. (CX 584; emphasis supplied.)

110. Finally, Mr. Balfour himself makes it clear that he views the national college fraternities as a separate market. In a letter to William Underwood, dated December 13, 1957, Mr. Balfour states:

. . . Balfour contracts are made directly with the *national* fraternities and sororities, and, under the terms of these contracts, we have the *exclusive* privilege of soliciting and delivering any merchandise bearing the fraternities' names or insignia. (RX 76A-B; emphasis supplied.)

*Respondents' Unlawful Acts and Practices Within
The National College Fraternity Market Demonstrate
That Respondents Themselves Consider This Market
As a Separate, Unique and Distinct Market*

111. Respondents have engaged in numerous unlawful acts and practices to monopolize the national college fraternity insignia products market, to prevent the entry of potential competitors into that market and to destroy and eliminate from that market those small competitors which are engaged in selling insignia products to members and chapter houses of the national college fraternities. Each of these unlawful acts and practices are discussed *seriatim* and in detail. A brief mention of these acts and practices is now made simply to show that respondents have, during the entire period pertinent to this proceeding, viewed and dealt with the national college fraternity insignia products market as a separate, unique and distinct market.

112. The respondents have knowingly engaged in a program to urge the national college fraternities to register their official insignia as trademarks. Respondents have done this both directly and through IRAC. There is no evidence showing that respondents have urged any other type of social, philanthropic, civic or business organization to register their insignia as trademarks. Respondents' educational program, both directly and through IRAC, has been directed exclusively to the national college fraternities.

113. The respondents have over the years knowingly and directly engaged in a program urging the national college fraternities to register their insignia as trademarks. An early effort by Balfour is a bulletin prepared by Frank Licher, a Balfour Fraternity Division employee, and disseminated by Balfour (CX 83; Tr. 637-39). This bulletin is called "Protection of Fraternity Insignia." It is dated October 14, 1952. It states:

The system of insignia . . . is the property of the national fraternity.

* * * * *

Some fraternities sought the protection of federal laws, as the copyright law.

* * * * *

The regrettable thing about copyright protection is that at the expiration of copyright time . . . the design falls in the public domain.

* * * * *

Other fraternities have sought protection under the commercial design patent laws. Patents like copyrights have a limited time for protection . . . the design falls into the public domain.

* * * * *

Realizing the inadequacy of existing laws to give adequate protection on

insignia, trademarks, etc., Congress passed the Lanham Act.

* * * * *

[The Lanham Act] makes it mandatory for the fraternities to be vigilant, scotch infringements, and unauthorized reproduction and distribution of its insignia.

* * * * *

With no protection—any individual may buy insignia and merchandise decorated by the Greek letter combination or coat of arms—and the fraternity has no recourse. (CX 33A-B.)

114. By letter of February 14, 1955 (CX 516), Balfour employee Margaret O'Leary sent IRAC Chairman Myers a "new Bulletin *we* have completed on registration of insignia." Miss O'Leary then states:

It was *my* thought that *we* might mail these to *all* of the fraternities and sororities together with an additional bulletin listing the names of the fraternities and sororities who are properly registered *as recorded in this office*. (CX 516; emphasis supplied.)

115. By letter of February 14, 1955 (CX 517), Chairman Myers indicated his lack of previous awareness that a "new brochure covering the information on registration of college fraternity insignia has been prepared" and he stated that he had not seen a copy. Myers concluded by saying:

If it meets with his [Mr. Balfour's] approval, you need not send it on to me for approval. . . . (CX 517A.)

116. By letter of September 14, 1956, Miss O'Leary advised Myers (CX 569) that she had furnished Sigma Sigma Sigma²² with a copy of the bulletin on registration and with the name and address of Mr. Doane as a "source for obtaining assistance in registration." She concluded her letter by stating:

As a matter of fact Mr. Doane wrote *this office* last October and advised *me* that he would be willing to assist any of the fraternities and sororities who might desire to register in the United States and Canada. (CX 569; emphasis supplied.)

117. In January, 1958, Miss O'Leary wrote to IRAC Chairman Myers requesting him to determine how much Doane charges for "re-registration" of trademarks before listing Doane's price on registration in the IRAC bulletin (CX 528).

Again in January, 1958, Miss O'Leary wrote to Myers' secretary (CX 530) stating that IRAC should prepare a "new Bulletin [on registration] for distribution to the various fraternities. . . ."

118. Not only has the Balfour Company engaged in a campaign to urge the national college fraternities to register their trademarks, Mr. Balfour personally has done so, as is evident from a letter which he wrote on IRAC stationery on February 24, 1955,

²² Sigma Sigma Sigma is a women's national college social fraternity (CX 727).

to Mrs. Clairborne H. Kinnard of Delta Delta Delta²³ wherein Mr. Balfour states:

I am enclosing a copy of *our* registration broadcast and recommend if you have not already done so that you protect not only your Greek letters but your coat-of-arms, badge, pledge pin, and all official insignia. Then there will be no more trouble. . . . Despite repeated complaints from the various fraternities the Federal Trade Commission has held that they are absolutely powerless unless the fraternities register their Greek letters as a trademark and unless they do everything within their power to protect their names and insignia. (CX 780C-D; emphasis supplied.)

119. In a letter of August 31, 1959, Balfour wrote to Myers as follows:

I fully agree with you that the Conference [NIC]²⁴ should concentrate all of its energies and money available on attempting to protect the Greek letter Fraternities' rights to protect their names and insignia. (CX 548.)

120. Respondents have also used IRAC²⁵ to conduct an educational campaign to convince the national college fraternities of the need to register their insignia as trademarks. This fact is evidenced by the previously cited documents (CX 517, 528, 530, 548, 569, 780) as well as by the following quoted documents.

121. On March 11, 1955, Balfour employee Margaret O'Leary released the IRAC Bulletin which she had referred to in her letter of February 14th to Myers (CX 516A). This bulletin (CX 768A-C) lists the names of more than 100 national college fraternities which "according to our IRAC files held in Attleboro . . . are registered in Attleboro." The Bulletin then states:

We understand that a comparatively few [national college fraternities] have covered all official insignia including the coat-of-arms as well as your names and Greek letters. . . .

If you are not registered IRAC *strongly recommends* your giving this subject *careful consideration*. Your registered claim of ownership will prevent duplication of your name and insignia . . . and will further assist you to legally control the manufacture and distribution of all approved items. (CX 768A-C; emphasis supplied.)

122. In Mr. Balfour's Annual Report of May 1955 (CX 518), as IRAC "Administrative Secretary-Treasurer" he reports that:

. . . IRAC has prepared and distributed a revised bulletin on Protection of Names and Insignia by Registration.²⁶ Copies have been mailed to *all*

²³ Delta Delta Delta is a women's national college social fraternity (CX 727).

²⁴ It will be recalled that Balfour as a Past Chairman of NIC is a member of an "Advisory Committee" attached to the NIC "Executive Committee" and is privileged to attend all NIC Executive Committee meetings. Mr. Balfour each year underwrites the expense of the summer NIC Executive Committee meeting which is generally held in or near Attleboro where the Executive Committee members are Mr. Balfour's guests. Mr. Balfour also attends other NIC Executive Committee meetings held outside Attleboro.

²⁵ The respondents have always controlled and dominated IRAC.

²⁶ This bulletin is the one which the Balfour Company prepared and which O'Leary released on March 11, 1955 (CX 516, 517, 576).

member groups.

Your Administration Office [i.e. Mr. Balfour and the Balfour Company] and Judge Myers' Office have worked overtime²⁷ on this subject in an effort to offer our members a maximum of protection. (CX 518L; emphasis supplied.)

123. The respondents have urged the national college fraternities to "protect" their registered trademarks by refusing to buy from respondents' competitors and by instructing their members that they should not buy from respondents' competitors. Respondents have warned the national college fraternities of the "dire consequences" if the fraternities fail to "protect" their registered trademarks. Respondents have done this both directly and through IRAC.

124. The following is an example showing that respondents have directly engaged in this campaign directed exclusively to the national college fraternities. In the previously mentioned letter of February 24, 1955, to Kinnard of Delta Delta Delta, Mr. Balfour states:

Thank you for the continued support Delta Delta Delta has given us throughout the years and for your assurance that loyalty to the contract will be emphasized at your Leadership School. . . . I hope you will further emphasize the fact that the protection of your name and insignia represents a personal responsibility on the part of each and every member of your sorority. (CX 780C)

125. The following is quoted from the previously mentioned Balfour Company bulletin on "Protection of Fraternity Insignia," dated October 14, 1952 (CX 33A-B):

It is required of the *national* fraternity to police its own membership, and securing their constant cooperation:

1. To report all violations.
2. NOT to encourage unauthorized reproduction and distribution through patronage of pirates.²⁸

* * * * *

With no protection—any individual may buy insignia . . . The little boot-black on the corner; the hairdresser with shop on the floor above; the corner grog shop, as well as the kids in the school yard may make free with fraternity insignia. . . . The thought is advanced, that knowing the facts, each fraternity . . . controls . . . to protect his particular system of insignia. (Emphasis supplied.)

Respondents also engaged in this activity through IRAC as is evident from the following examples.

126. In October 1954 Mr. Balfour sent IRAC Chairman Myers advertisements and folders issued by various firms soliciting sales

²⁷ Myers was not even aware of the new Bulletin until it was completed (CX 517).

²⁸ A "pirate" is any seller of national college fraternity insignia products who is obtaining business to which respondents claim they are entitled under respondents' official jeweler contract (Tr. 2035).

of national college fraternity insignia products. Myers wrote to each firm. Myers further suggested that each national college fraternity be directed to advise their chapters that these firms have no right to sell such items without "the written authority and consent of the national organization," and that: "no chapter member shall purchase such merchandise from these concerns." (CX 479B.)

127. In the previously mentioned IRAC Bulletin released by O'Leary on March 11, 1955 (CX 768A-C), the national college fraternity members of IRAC are reminded that IRAC had recently called their attention to several firms attempting to sell national college fraternity insignia decorated products. The Bulletin points out that:

IRAC is not concerned over the few sales involved but is concerned because these sales constitute a definite threat to fraternity names and insignia which have been legally protected under trademark registration. (CX 768C.)

128. On October 18, 1955, Judge Myers wrote a special report on "Violators of Fraternity Insignia Registration" wherein he requested the Trustees of IRAC to contact the members of each Conference, and advise the members [national fraternities] to (1) "emphasize" to their chapters not to purchase insignia products from unauthorized manufacturers, (2) "admonish" their chapters if a chapter did purchase from unauthorized sources, and (3) give IRAC permission to use the fraternity name in bringing complaints to the Federal Trade Commission (CX 482B).

Mr. Balfour commented that these instructions by Judge Myers [IRAC] to the national college fraternities were "great" (CX 482B; Tr. 2799).

129. The Minutes of the IRAC meeting of May 6-8, 1960 (RX 175A-KK), contain the following statement which appears on page 15 thereof (RX 175P):

Following a statement by the Honorable Vernon H. Doane it was VOTED: that his report be referred to the Resolution Committee requesting the Committee to present a resolution admonishing the Four Conferences to urge their member groups to instruct their chapters to purchase fraternity jewelry, favors, prizes, awards and materials bearing the fraternity insignia only through authorized sources.²⁹

130. The respondents have attempted to prevent and have prevented firms and individuals from engaging in the sale of national college fraternity insignia bearing products by threatening

²⁹ It should be noted that the above-quoted statement was incorporated into the 1960 IRAC Minutes at the suggestion of Mr. Balfour (CX 554). Mr. Balfour proposed a number of changes in the draft of the 1960 IRAC Minutes. All of his suggestions were incorporated into the text of the 1960 IRAC Minutes as finally published. (Compare CX 554A-B; RX 1750.)

legal action and by claiming the protection of trademark registration of all the national college fraternities. Respondents have done this both directly and through IRAC. A few examples follow.

131. Balfour has done this directly, as is evidenced by a June 7, 1957, letter from Balfour Fraternity Division Manager, Sam Sargeant, to David Warsowe, College Seal & Crest, Cambridge, Massachusetts (CX 584). Sargeant advised Warsowe that a Balfour salesman had found in a gift shop a national sorority Greek-letter monogram pendant, carrying College Seal & Crest's identification tag. Sargeant advised Warsowe that:

. . . all fraternity and sorority insignia . . . is legally protected by the national accredited fraternities and sororities. (Emphasis supplied.)

Sargeant concludes his letter by saying:

. . . I am sure that you will understand the situation and will put a stop to this illegal procedure which, if continued, will result in complications. (CX 584.)

132. In another letter dated October 27, 1958, written by Sargeant to Mr. Joseph E. Kubes, Kubes Jewelers, Fort Worth, Texas, who had inquired about the handling of sorority and fraternity jewelry, Sargeant advised Kubes:

We serve the majority of national organizations under contract, and all official insignia is protected. . . (CX 740; emphasis supplied.)

Sargeant concluded his letter by expressing regret that Balfour was not in a position to be of service to Kubes Jewelers (CX 740).

133. The record in this proceeding contains numerous documents showing that respondents have engaged in this practice through IRAC. Only a few such documents are herein cited as examples.

134. Commission Exhibits 290 and 291 are letters written on IRAC stationery dated October 28 and November 1, 1957, respectively, and addressed to Witherwax Jewelers, 2306 Telegraph Avenue, Berkeley, California. These letters also bear Myers' address as "Chairman, Judge Frank H. Myers, Box 899, Attleboro, Massachusetts."³⁰ These letters were typed in Attleboro by a Balfour employee and O'Leary "rubber-stamped" Frank Myers' signature thereon as O'Leary testified:

. . . he [Myers] asked me if I would assist him in writing some of the letters for the Interfraternity Research and Advisory Council. He even sent me a rubber stamp signature. I wrote his letters at his direction and

³⁰ "Box 899, Attleboro, Massachusetts" has been owned by the Balfour Company for over 30 years (Tr. 1146).

stamped his name on them.³¹ (Tr. 260.)

135. The October 28th IRAC letter advises Witherwax Jewelers that several IRAC fraternities and sororities had called IRAC's attention to a Witherwax advertisement in which all of the items which Witherwax had illustrated were "legally protected with copyrights or designed patents." The letter then states:

This is legal notice to the effect that unless you discontinue violating protected fraternity names and insignia we will be forced to take legal action. Unless we hear from you to that effect within the next two weeks we will present the facts to our Legal Department. (CX 290.)

136. Witherwax Jewelers replied by return mail and expressed willingness to "cooperate" with IRAC as is indicated by the "rubber-stamped" IRAC letter of November 1st (CX 291). This second letter to Witherwax also advises that *legal action* will probably be instituted against J. O. Pollack Co.,³² Witherwax's supplier of national college fraternity products, and that Witherwax "will not want to become involved." The letter then indicates that the Federal Trade Commission is about to take action against "unauthorized" insignia suppliers:

All of the national social and professional fraternities and sororities have registered their names and insignia in Washington and have recently secured the full support of the Federal Trade Commission to control the manufacture and distribution of any and all articles carrying this insignia. Distribution by unauthorized firms or agents is now the subject of a national survey by appointed members of the Federal Trade Commission. (CX 291; emphasis supplied.)

137. The respondents used IRAC to bring suit against the J. A. Buchroeder Co., Inc.³³ (hereinafter referred to as the Buchroeder litigation) and the name of two fraternities, Sigma Chi and Phi Delta Theta. Both Sigma Chi and Phi Delta Theta are national college fraternities, as are all the member fraternities of IRAC. This is the only instance available in the record establishing respondents' involvement in litigation against a competitor. This litigation concerns this competitor's manufacture, sale and dis-

³¹ It should be noted that when O'Leary testified she claimed that: (1) She never wrote any letters for Myers without first obtaining Myers' authorization to do so; (2) Myers gave O'Leary authorization by means of "pencilled memos" which Myers mailed to O'Leary; and (3) whenever O'Leary received letters addressed to Myers at "Box 899, Attleboro, Massachusetts," O'Leary never opened such letters, but mailed them directly to Myers in Washington (Tr. 260-64). It is apparent, however, in the case of Commission Exhibit 291 that O'Leary (1) could not have had time to obtain Myers' written authorization to write CX 291 for Myers, and (2) did not have time to forward Witherwax's letter of October 30th, which is referred to in CX 291, to Myers for Myers' examination. It is apparent that O'Leary opened the letter and wrote CX 291 without obtaining Myers' authorization, or consulting with him in any manner.

³² Total fraternity sales of J. O. Pollack Co. and its subsidiary in 1961 were \$89,631 (CX 404, 421).

³³ Total sales of fraternity insignia products of the J. A. Buchroeder Co., Inc., in 1960 were approximately \$30,000 (Tr. 1328-29; CX 737).

tribution of national college fraternity insignia products.

138. The respondents Lloyd G. Balfour and the Balfour Company used their two acquired companies, Edwards Haldeman & Company (hereinafter Edwards Haldeman) and BPA, as fronts for so-called competition. Furthermore, this arrangement actually prevented the ultimate purchaser of jewelry from having a choice. Thus, the purchaser of a fraternity pin who wanted to buy from BPA, as a supposed competitor, was actually buying a Balfour product. Balfour not only deceived the general public, but also some of the fraternity and sorority members under the co-official jeweler's contract.

139. As of 1951, both Edwards Haldeman and BPA were acquisitions of the Balfour Company (Respondents' Answer, Par. 5, page 4). Edwards Haldeman went out of existence sometime after 1953 (Tr. 2212-13. BPA has continued in operation during the entire period pertinent to this proceeding (Respondents' Answer, Par. 1, page 2). Respondents Lloyd G. Balfour and the Balfour Company kept the true ownership of Edwards Haldeman secret until that company went out of existence; and kept the true ownership of BPA secret until forced to reveal Balfour's ownership in 1959 as a result of the Buchroeder litigation.

140. The record establishes three reasons why Mr. Balfour and the Balfour Company kept the acquisition of Edwards Haldeman and BPA secret. All relate solely to the national college fraternity field. These three reasons are:

1. To monopolize all of the national college fraternity business.
2. To artificially stimulate competition in sales to national college fraternities.
3. To deprive the national college fraternities of royalties.

141. All of these heretofore mentioned practices of respondents have been directed to the national college fraternity insignia market, and have been engaged in to further respondents' monopoly in that market. Therefore, these acts and practices by respondents clearly set forth the national college fraternity insignia market as a separate and distinct market.

*Respondents' Acknowledgment of its Competitors
Demonstrates that Respondents Recognize National
College Fraternity Products as a Separate Market*

142. In a Balfour Fraternity Division sales bulletin of October 8 1959, Balfour names "the competition we are facing this year" as: (1) L. and L. Party Favors, Inc.; (2) Nassau China Company, Trenton, New Jersey; (3) Pollack, Brochon and National

Fraternity Supply Co. of Chicago, Illinois; (4) Pennington "on the west coast"; (5) the "stationery houses"; and (6) the "Detroit boys" (CX 468A-B).

143. It will be recalled that the first four competitors named above are virtually exclusively engaged in the sale of national college fraternity insignia products.³⁴ Columbus Stationery Company is a "stationery house" that is engaged exclusively in the sale of college fraternity insignia products primarily to national college fraternities. The "Detroit boys" is, of course, BPA, Balfour's acquisition, and is engaged virtually exclusively in sales to national college fraternities.

144. The Balfour sales bulletin also makes it clear that the market involved is national college fraternities not local college fraternities. Commenting on Nassau China's catalog, the Balfour Bulletin states:

The Nassau China Company has not to our knowledge been recognized by the national groups. (CX 468B.)

The Balfour Bulletin concludes by stating:

Yet, in spite of this horde of competitors, our boys are in there doing their job and battling to the finish. (CX 468B.)

145. A BPA sales bulletin of September 20, 1957, is similar in content to the above-mentioned Balfour sales bulletin. In an article entitled "*Competitive Catalogs*" the BPA sales bulletin states:

Several salesmen have already picked up some competitive literature . . . we must depend on you men in the field to keep us posted on competitive situations, . . . We don't want a catalog pick-up war with the Balfour Company . . . however, if any of you have access to any literature or catalogs from the *price cutting houses*, please send them to us. (CX 755D; emphasis supplied.)

The BPA sales bulletin then names BPA's competitors:

Buchroeder Company of Columbia, Missouri is planning a big splash this year . . . National Fraternity Supply Company of Chicago has sent flyers . . . *L. and L.* is out again this year . . . (CX 755D; emphasis supplied.)

The bulletin concludes by stating that these competitors "are bound to land an occasional order" (CX 755D).

146. Respondents' own statements quoted above make it clear there is a separate market to which respondents are directing their sales efforts. It is the same market to which Buchroeder, Pollack, L & L Party Favors and respondents' other small competitors have directed their sales efforts, but have achieved practically no success, namely, the national college fraternity insignia products market.

³⁴ The combined total sales of these four firms for fiscal 1958-1959 were approximately \$290,000 (Tr. 1576, 1754, 2119, 2298; CX 404, 421, 448).

*Local College Fraternity Insignia Products Are
Not Part of the National College Fraternity
Insignia Products Market*

147. Local college fraternities (hereinafter "locals") differ in structure from national college fraternities (hereinafter "nationals"). Locals do not have a "central office" and have only one or a few chapters located in a limited geographic region (CX 727; Tr. 1008-1009, 1475, 2521). Most locals remain local only for a short period, and either merge with a national or go out of existence (Tr. 1932, 2084-85, 2209, 2522; CX 472C, 509, 721B, 776D).

148. Nationals are interested in acquiring locals, and respondents assist locals in merging with nationals because respondents' volume of business thereby increases (CX 472C, 509).

149. The testimony of the officials of insignia jewelry manufacturers who testified in this proceeding clearly separates the locals from the nationals. While many of these firms have been excluded or virtually excluded from the national market, they nevertheless compete in the manufacture, sale and distribution of local insignia jewelry.

150. The local college fraternity market is distinct from the national college fraternity market by the fact that competition exists in the former and is completely absent in the latter.

151. Finally, in their communications (1) telling retail jewelers that fraternity insignia products are sold only through respondents, (2) policing competitors, (3) urging the fraternities to register their insignia as trademarks, (4) urging the fraternities to refuse to buy from respondents' competitors, (5) disparaging competitors, (6) threatening competitors with litigation, (7) urging fraternities to file complaints with the Federal Trade Commission against respondents' competitors, and (8) telling respondents' suppliers that they must sell only to respondents, respondents make constant and continual references to the *national* college fraternities, but never to *local* college fraternities (CX 278, 420, 470, 482, 531, 584, 768, 780).

*The National College Fraternity Insignia Products
Market Has Two Distinct Sub-Markets, A Jewelry
Submarket and Non-Jewelry Submarket*

152. Within the national college fraternity insignia products market there are two distinct submarkets, the jewelry submarket and the non-jewelry submarket. The jewelry submarket prin-

cipally includes such jewelry products as the fraternity badge or key, coat-of-arms, pledge pin, recognition pin and other jewelry items bearing a fraternity's coat-of-arms, Greek letters or other identifying insignia. The non-jewelry submarket includes those non-jewelry products bearing a fraternity's coat-of-arms, Greek letters or other identifying insignia, and includes such products as stationery, knitwear, ceramics, leather products, wood products and novelty-like items suitable as gifts or party favors.

153. Evidence that the jewelry submarket is distinct from the non-jewelry submarket is the fact that different manufacturing facilities are employed for the manufacture and processing of insignia jewelry products. The record shows that only jewelry manufacturers manufacture and process fraternity insignia jewelry products (Tr. 1243, 3045-47). On the other hand, the processing of fraternity insignia non-jewelry products is performed by relatively small firms which do not have jewelry manufacturing facilities and whose processing facilities do not entail substantial capital investment (Tr. 1449, 1480, 1833, 2115-16, 2352-53).

154. The national college fraternity insignia jewelry and non-jewelry submarkets differ as to competitors. Respondents have only two competitors in the jewelry submarket, Buchroeder and Pollack, both of whom are extremely small in comparison with respondents.³⁵ The competitive situation with respect to non-jewelry products is somewhat different. There are a number of "one-man operations" and small firms engaged in the sale and distribution of national college fraternity insignia products. They, however, do not sell to the national college fraternity group.

155. Respondents have been more successful in getting the national college fraternity members to abide by the restrictions in respondents' official contracts with respect to the purchase of jewelry products than non-jewelry products, as a Balfour Bulletin states:

. . . There was a time when the coat-of-arms mounted on a piece of jewelry was the one and only accepted favor. It is not so today in many territories, as conditions and thinking have changed. Competition, *not being able to compete* with us on the application of *metal coat-of-arms on jewelry*, pioneered *new fields* for favor items. They came up with the furry animals with the gold stamped ribbon. We had to follow . . . We followed the same

³⁵ Respondents refused to furnish their actual annual total dollar sales of national college fraternity jewelry. The only estimate available is an oral statement given by Balfour's Comptroller that Balfour sold about \$2.5 million of national college fraternity jewelry in 1961 (Tr. 2944). In 1960 BPA's total sales of national college fraternity jewelry were \$636,460 (CX 669). Buchroeder's total sales of national college fraternity jewelry in 1960 were approximately \$26,744 (CX 737). Pollack's total 1961 sales of college fraternity insignia products, including both jewelry and non-jewelry products, were \$89,631 (CX 404, 421).

course with ceramics, felt animals, and knitwear. (CX 463A; emphasis supplied.)

Respondents' Contracts with National College Fraternities

156. Respondents Balfour and BPA have entered into exclusive contracts with national college fraternities, and have utilized such contracts over a long period of time. The contracts can be classified preliminarily into three groups: sole official jeweler contracts, official jeweler contracts, and co-official jeweler contracts (CX 717, 791). However, as utilized by respondents, these contracts, whether "sole official," "co-official" or "official," serve the same end purpose; they confine all the national college fraternity business to respondents, as is shown by the record in this proceeding. Respondents in their interpretation and usage of these contracts do not distinguish between the three types of contracts. As far as respondents are concerned, all these contracts grant to respondents the exclusive right to manufacture, sell and distribute all items bearing the fraternities' insignia.

157. Copies of some of respondents' contracts are in the record. CX 10-11 are copies of sole official jeweler contracts between Balfour and Sigma Chi Fraternity, Mr. Balfour's own fraternity. Sigma Chi is a men's national college social fraternity. Balfour has been sole official jeweler to Sigma Chi since the 1920's (Tr. 4505). The two Sigma Chi contracts in the record are dated June 30, 1954 (CX 11), and June 1, 1956 (CX 10). By the terms of these contracts Balfour was appointed and designated as sole official jeweler to Sigma Chi. As such, Balfour was authorized to supply Sigma Chi with badges, pledge buttons and pins, recognition pins, and "all other articles of jewelry, novelties and awards of every description mounted with or bearing the Fraternity badge, coat-of-arms, Greek letters or other authorized insignia" (CX 11A). The 1956 contract added the words "awards and merchandise or material" (CX 10A).

These contracts further provide that:

The Fraternity agrees to use its best endeavors to have all Chapters and members of the Fraternity patronize the Company for all merchandise covered by this contract. (CX 11A, 10J.)

158. The 1954 contract provides that Balfour will pay the fraternity a royalty of \$300 per month "for designation by the Fraternity of the Company as the sole and official jeweler for the Fraternity" (CX 11B); the 1956 contract raised this royalty rate to \$450 per month (CX 10J). In consideration of the royalty payment, the fraternity agreed to carry in each issue of its magazine an official notice of Balfour's "official position and capacity" (CX 11D, 10K).

159. The fraternity was required by the terms of the contracts to submit to Balfour any suggestions for new items deemed suitable for sale to the fraternity members; however, the fraternity was given the right to purchase such items elsewhere if Balfour is unable to supply them (CX 11D, 10K). *The 1954 contract was for a two-year period and it superseded the original agreement between the parties dated May 1, 1923* (CX 11E). The 1956 contract, which superseded the 1954 agreement, is of indefinite duration, cancellable on one year's notice in writing (CX 10L). As of 1961, Balfour was still sole official jeweler to Sigma Chi (CX 717B).

160. CX 10, the 1956 Sigma Chi contract, has also been identified by respondents' top fraternity sales official, Sam Sargeant, as a standard form of contract used by Balfour with fraternities and sororities (Tr. 451-52).

161. CX 17C-F is a copy of a contract between Balfour and Delta Tau Delta, a men's national college social fraternity. This contract, *dated October 16, 1933*, was furnished to the Commission during 1960 by the fraternity's legal counsel as being the fraternity's then current contract (CX 17A-B).

162. This contract, CX 17, appoints and designates Balfour to be one of three Official Jewelers to Delta Tau Delta. The fraternity's counsel, in his letter of October 5, 1960, states that the three designated official jewelers were "L. G. Balfour Company, Burr Patterson & Auld Company, and Edwards Haldeman Company" (CX 17B). As of 1961, BPA and Balfour were still co-official jewelers for Delta Tau Delta and they held this position during the period 1951-1961 (CX 717A, 791).

163. CX 28 is a form contract used by Balfour with fraternities where Balfour is appointed and designated as "Sole Official Jeweler." This form contract also has the standard provisions which give Balfour the right to supply the fraternity with all articles mounted with fraternity insignia, and the fraternity agrees to use its "best endeavors" to have all members patronize Balfour for all such merchandise. This form contract has a royalty provision, and provides that stones used in badges shall be the "best quality obtainable," pearls shall be of the grade known as "extra extra" and diamonds to be "brilliant cut." This form contract, turned over to a Commission investigator in 1954, provides that the fraternity will give Balfour "one full page of advertising" in each issue of its publication "without charge."

164. The form contract also provides that the fraternity agrees to furnish to Balfour any suggestions on new items suitable for

sale to its members, and, if Balfour is unable to supply such items, the fraternity "has the right to purchase the items elsewhere." Salesmen are required to carry a full line of badges and novelties upon visiting chapters. The terms of this form contract are indefinite, terminable by one year's notice in writing.

165. CX 665 is a copy of a sole official jeweler contract between Kappa Kappa Gamma, a women's national college social sorority, and BPA dated *September 3, 1946*. This contract provides that BPA shall supply the fraternity with all jewelry mounted with sorority insignia and the sorority will use its "best endeavors" to have all chapters and members patronize the Company. All stones are to be of the "highest quality obtainable." BPA is to pay a 10% royalty to the sorority. The contract is of indefinite duration, cancellable on one year's notice in writing. *This contract was still in effect in 1959 (CX 667)*, and BPA was sole official jeweler to Kappa Kappa Gamma at least during the period 1951-1961 (CX 717C, 791).

166. CX 779 is a copy of a contract dated September 1, 1960, between Alpha Gamma Rho, a men's national college social fraternity, and BPA whereby the fraternity appointed BPA "Sole Official Jeweler" authorized to manufacture all badges, official and novelty jewelry. The fraternity agreed to purchase only from BPA and to recognize no other jeweler to make such products. The fraternity also agreed to use its "best endeavors" to have all chapters and members of the fraternity patronize BPA. BPA agreed to pay a 20% royalty on badges, pledge pins, recognition pins and guards; the royalty rate on novelties was set at 10%, except where discounts are granted to meet competition. The contract provided that no royalty was to be paid on knitwear, paddles, stationery, ceramics, etc. BPA salesmen are required to call on each chapter house at least four times per year, and to carry a full line of badges and novelties on each such call. BPA agreed to take a full page advertisement in the fraternity magazine at \$125 yearly rate. The term of the agreement is indefinite, terminable on one year's notice in writing. By rider of the same date (September 1, 1960), L. G. Balfour Company was authorized to sell favors and novelties and also replacement orders for official badges. BPA was the sole official jeweler to Alpha Gamma Rho at least during the period 1951-1961 (CX 717A, 791).

167. RX 208 is a copy of a contract dated *August 1, 1956*, between Alpha Xi Delta, a women's national college social sorority, and Balfour appointing and designating Balfour as "Sole Official Jeweler." The sorority agreed to use its "best endeavors"

to have all chapters and members patronize Balfour. The contract provides that the stones to be used in the jewelry are to be the "best quality obtainable," the pearls "of the grade known as extra extra" and the diamonds "brilliant cut." The royalty rate is established at 20% on official jewelry and 10% on other items, excepting items sold to chapters "at net prices or on a service basis." Balfour agreed to pay \$105 annually for one full page of advertising in each issue of the sorority's publication. The sorority must submit ideas for new items to Balfour; however, the sorority has the right to purchase elsewhere if Balfour is unable to supply such items. Salesmen are required to carry a full line of badges and novelties upon visiting chapters. The contract is of indefinite duration, terminable on one year's notice in writing. *Balfour has been this sorority's sole official jeweler since 1923* (Tr. 4546).

168. RX 218 is a contract dated June 1, 1922, between Phi Delta Phi, a men's national college professional fraternity, and Balfour appointing and designating Balfour as the fraternity's sole official jeweler. This contract has remained in effect from 1922 through 1961, except for "minor" modifications (Tr. 4564-65), discussed hereinafter. The fraternity agreed to use its best endeavors to have all chapters and members patronize Balfour. All badges were to be 14K gold (later *reduced* to 10K), the stones were to be the "best quality obtainable," the pearls "extra extra" and the diamonds "brilliant cut." The royalty rate was set at 20% (later *reduced* to 10%). Balfour agreed to furnish an appropriate souvenir at each annual convention of the fraternity (Balfour was later relieved of this expense) and Balfour agreed to purchase advertising in the fraternity's publication (Balfour was later relieved of this expense). Salesmen were required to carry a full line of badges and novelties upon visiting chapters. The contract was for an indefinite term, cancellable on one year's notice in writing. *Balfour has remained Phi Delta Phi's sole official jeweler from 1922 to 1962* (Tr. 4564).

169. Testimony in the record by various fraternity officials, and ex-officials, describes other official jeweler contracts between the fraternities and respondents and also sets forth the fraternities' understanding of the nature of these official jeweler contracts. Carl Billman, executive secretary, Phi Beta Kappa, a national college honor society, testified that Balfour had been Phi Beta Kappas' sole official jeweler since 1920 (Tr. 4142, 4153) and that during this period no one else had been permitted to manufacture the Phi Beta Kappa keys (Tr. 4150, 4153).

170. Charles E. Pledger, a former president of Theta Delta Chi (Tr. 4169), a men's national college social fraternity, a former NIC chairman (Tr. 4182) and IRAC official (Tr. 4190), testified that Balfour had been sole official jeweler for Theta Delta Chi since 1922 (Tr. 4208-4209).

171. Ernestine B. Grigsby, a former national president of Delta Delta Delta (Tr. 4582), a women's national college social sorority, and a former trustee of IRAC (Tr. 4597), testified that Balfour had been the sole official jeweler to Delta Delta Delta since 1919 (Tr. 4592).

172. Robert D. Lynn, former executive secretary of Pi Kappa Alpha, a men's national college social fraternity, testified that pursuant to an oral arrangement Balfour and BPA serve as official jewelers to the fraternity. This agreement has been in effect at least as far back as 1946 (Tr. 4264). The by-laws of this fraternity require the members to buy from the official jeweler (Tr. 4261). At one time Edwards Haldeman, BPA and Balfour served as official jewelers to Pi Kappa Alpha; Edwards Haldeman later dropped out of the picture (Tr. 4286, 4288, 4293).

173. In addition to this evidence of contractual relationship between respondents and the fraternities, complaint counsel prepared a tabulation from the records of Balfour and BPA (Tr. 3430-34) which establishes that as of 1961 respondents had 279 of these previously described official jeweler contracts with national college fraternity organizations, out of a total of 288 such organizations in the national college fraternity market (CX 718A).

174. The fraternities, themselves, look upon these official jeweler contracts as authorizing *only* respondents to manufacture, sell and distribute jewelry or other products which bear the fraternity's insignia. This is clear from documents written by the fraternity officials (1) refusing to permit any other company to manufacture items for the fraternity and (2) warning or threatening any company or individual which does manufacture or display such items. Numerous such letters are in this record (RX 17, 27, 123, 125, 128, 131, 212, 214, 215; CX 41, 44, 357, 374, 395, 423, 449). An example of this type of letter is a letter from Alpha Xi Delta to a manufacturer of women's compacts and cigarette lighters that had requested permission to use the sorority's insignia on such products for sale to Alpha Xi Delta members. The letter stated:

We regret to say that the use of this emblem is restricted by the Na-

tional Fraternity and use of it in any merchandise such as that described in your letter must be cleared through the official jeweler. (RX 214.)

On June 28, 1955, Sigma Chi wrote to a company which was advertising for sale items bearing the Sigma Chi insignia:

We have only contracted with the L. G. Balfour Company, giving them the exclusive right to use these items in making, distributing, selling, etc., all items of jewelry, novelties, etc. (CX 352.)

A copy of this letter was sent to the magazine publisher that carried the offending advertisement.

175. The fraternities regularly caution their chapters to purchase merchandise bearing fraternity insignia only from the official jewelers (RX 301; CX 462B), even causing chapters to cancel competitors' orders covering such merchandise (CX 390-392). Sigma Chi wrote to all its chapters on October 27, 1954, cautioning such chapters about buying from unauthorized sources:

As all of you should know, the Sigma Chi Fraternity has an exclusive contract with the L. G. Balfour Company as sole distributors of Jewelry bearing the Insignia of our Fraternity. (CX 280.)

176. One fraternity chapter president (Phi Delta Theta Chapter, Arizona State University) wrote to one of Balfour's small competitors, Western Collegiate Supply Co., complimenting it on the fast service rendered on a previous order, but cancelling a later order and requesting a refund of the deposit placed on the latter order. The chapter president stated:

However, the past agreement [to purchase stuffed animals as party favors] with your company was reported to our National Headquarters and they advised us not to do business with any company except Balfour, the official fraternity jeweler. (CX 391.)

177. The executive secretary of Phi Delta Theta wrote on November 3, 1953:

. . . the L. G. Balfour Company is the one and only official jeweler to Phi Delta Theta Fraternity, and the only firm authorized to manufacture and sell our insignia. The General Headquarters October *Newsletter* carried information to that effect, this newsletter having been distributed to each and every chapter of Phi Delta Theta Fraternity. (CX 38.)

178. Some fraternities have provisions in their constitutions and by-laws prohibiting members from purchasing merchandise from unauthorized sources (CX 395; RX 17, 206SS; Tr. 4261), and fines or expulsion from the fraternity can result from making unauthorized purchases (Tr. 1443, 1606-1607, 1621, 2203; CX 390). Two fraternity members were investigated by their fraternity because they engaged in the sale of unauthorized fraternity jewelry; William G. Underwood was investigated by Sigma Chi (CX 395, 396; Tr. 1619-1620), and Herbert Michaelis was eventually expelled from Pi Kappa Alpha (CX 32; Tr. 2203-2204).

179. Alpha Xi Delta sorority has the following clause in its by-laws:

Chapters may be fined from ten dollars (\$10.00) to fifty dollars (\$50.00) by the National Counsel for the purchase of official insignia from any but the Official Jeweler. (RX 207; Tr. 4526-27.)

180. Respondents also consider the official jeweler contracts to grant to them the exclusive right to manufacture, sell and distribute any fraternity insignia product (CX 65, 740). For example, a form letter used by Balfour in routine correspondence has the statement that the Balfour Company has "exclusive contracts" with the national fraternities (CX 739). On October 27, 1958, Sam Sargeant, general manager of Balfour's Fraternity Division, wrote to a retail jeweler in Fort Worth, Texas, who had expressed an interest in handling fraternity jewelry:

We serve the majority of national organizations under contract, and all official insignia is protected legally by trademark coverage. Distribution of fraternity and sorority jewelry can be made only through the accredited official jeweler, and we are permitted to distribute the insignia only direct to the individual members or through our authorized representatives. (CX 740.)

181. The Balfour District Manager in Seattle, Washington, in an "open letter" to all fraternities and sororities in his area (CX 466D), stated:

The L. G. Balfour Company is fortunate to have been selected as the only authorized supplier for the large majority of national organizations. On a few others, we serve on a co-official basis with another reputable authorized supplier [BPA]. (CX 466I.)

Mr. Balfour himself referred to the fraternity contracts as "exclusive" (CX 65). Mr. Balfour has further stated:

You apparently failed to recognize the fact that the Balfour contracts are made directly with the national fraternities and sororities and, under the terms of these contracts, we have the exclusive privilege of soliciting and delivering any merchandise bearing the fraternities' names or insignia. . . . (RX 76.)

182. Balfour wrote to an attorney representing L & L Party Favors that L & L had been violating "exclusive fraternity and sorority contracts covering the manufacture and distribution of jewelry and kindred articles, which are recognized under the Fair Trade Practice Law" (CX 65).

183. Respondents' officials in their testimony admitted that they interpret the contracts to grant Balfour exclusive right to manufacture, sell and distribute all fraternity insignia items.

184. Mr. Sargeant testified that beer mugs, stationery, Christmas cards and all decorated products bearing the distinctive insignia of the fraternity come under the official contracts (Tr. 525, 572). Mr. Licher testified that the use of the Greek-letter

name or the hanging of a coat-of-arms around "little teddy bears and rabbits and silly things" made the item come within the terms of the Balfour contracts (Tr. 606). Mr. Yeager testified that respondents' contracts with fraternities cover "their official insignia" which would include "the official pin", "insignia bearing jewelry" and "crested" products (TR. 747-48). The contracts would also include a "fur kitten" or "fur dog" (Tr. 774): "Anything that carries a crest is official jewelry, as we interpret it." (Tr. 758.)

185. Respondents have cautioned fraternity officials against permitting chapters to purchase fraternity insignia products from unauthorized sources (RX 304; CX 37, 40, 346B, 465B, 545, 564B, 780; Tr. 1655-56). An especially good example of this type of communication is Balfour's letter of October 20, 1954 urging all fraternities to contact their chapters and enlist their aid against firms offering merchandise in violation of fraternity regulations (CX 278).

186. IRAC interprets these fraternity contracts to grant exclusive rights to respondents to manufacture and sell all products bearing national college fraternity insignia, and IRAC has cautioned fraternity officials about chapters purchasing unauthorized merchandise (CX 282, 768, 780). IRAC advised the fraternities as follows:

The central offices of national fraternities should emphasize to their chapters that chapter officers and members shall not order articles of merchandise or jewelry or stationery bearing the insignia or Greek-letter names of the fraternity without the written authority of the central office unless such order is given to the manufacturing firm officially authorized to use such insignia and name. (CX 482B.)

(This exhibit has the handwritten notation "great" in Balfour's handwriting (Tr. 2799).)

187. As is apparent, respondents' official jeweler contracts with fraternities grant to respondents the exclusive authority to sell all products bearing fraternity insignia which respondents choose to sell. The written contract provisions so provide, and the parties thereto understand the contracts to create exclusive arrangements. Nowhere in this record do respondents or IRAC, or the fraternities, make any distinction between "official jeweler," "sole official jeweler" or "co-official jeweler" contracts. They are all treated alike. Further, nowhere do respondents, IRAC, or the fraternities, mention that there are other official jewelers in the national college fraternity market, only respondents are mentioned.

188. The contracts which Balfour has entered into with the

national college fraternities were basically all of indefinite duration, terminable upon one year's notice (CX 10L, 779F, 791; RX 208P, 218D; Tr. 3471). Respondents have, in fact, stipulated that substantially all their contracts with national college fraternities were in effect during the entire ten-year period 1951-1961 (CX 791).

189. Mr. Yeager, when asked how many national fraternity contracts Balfour had lost since 1948, testified: "I don't know of one." (Tr. 819.) Mr. Balfour and Miss O'Leary both wrote letters stating that, once a contract was awarded to Balfour, it remained with Balfour (CX 684).

190. An "open letter" by Balfour's Seattle, Washington, representative dated February 1959 addressed to "Members of National Fraternities and Sororities" refers to the fact that it has been a pleasure to serve such fraternities for "thirty-seven years" (CX 466I).

191. This record is, therefore, clear that respondents' contracts are exclusive arrangements, both in terms of the written provisions and as interpreted by both the fraternities and respondents. Further, the terms of these national fraternity contracts are of "indefinite" duration, and they have actually been in effect for years.

*Respondents' Percentage of the National College
Fraternity Market*

192. CX 717 and 718 are tabulations in the record which set forth the number and type of contracts held by respondents Balfour and BPA with the national college fraternities. These tabulations include all national college fraternities, including men's and women's social and professional fraternities, and all honor and recognition societies which are listed in Baird's Manual of American College Fraternities, Sixteenth Edition, 1957 (Tr. 3433, 3443, 3475, 3482, 3514, 3545-46). This book is in the record as CX 727. This edition of Baird's was published in 1957; however, all known changes that have occurred since 1957, such as mergers, consolidations, etc., were incorporated in the tabulations (Tr. 3436-37).

193. In addition to Baird's Manual, Leland's Annual, The 1961 Fraternity-Sorority Directory was also used in determining the names of all national college fraternities in existence in 1961 (Tr. 3475, 3514). This Leland's Annual, a directory issue of the publication, is in evidence as CX 728. Leland's Annual lists 16 fraternities not listed in Baird's Manual; however, the tabula-

tions in the record include these additional 16 fraternities (Tr. 3441, 3556; CX 717J). These tabulations, CX 717 and 718, also show the actual number of chapters in each fraternity and the total membership of each such fraternity. The number of chapters and membership was taken from information contained in Leland's Annual, CX 728. In cases where Leland's Annual did not indicate chapters and membership of a particular fraternity, reference was made to Baird's Manual, 1957 edition, for such information (Tr. 3436).

194. Baird's Manual is recognized within the industry as an authoritative directory of all national college fraternities. CX 727, the Baird's Manual which is the primary basis for the tabulations, CX 717 and 718, is the sixteenth edition of such publication, the first edition having been published in 1879 (CX 727, p [vi]). Baird's lists all national college fraternities and those local fraternities fifty or more years old.

195. Witnesses in this proceeding testified as to the authoritative nature of this publication as a directory of national college fraternities. Mr. Buchroeder, a witness who has been manufacturing and selling fraternity jewelry for over thirty years, stated that he relied upon Baird's Manual "highly" and that Baird's Manual was the "best authority that I know anything about," and "I think this is recognized here as being the number one directory" (Tr. 1360, 1434). Mr. Michaelis, a salesman in the fraternity field for 28 years testified that Baird's Manual "is a very accurate listing of the organizations" (Tr. 2215). An advertisement for Baird's Manual on the back cover of Banta's Greek Exchange, a fraternity monthly, describes Baird's Manual as "an indispensable reference book" (CX 789). Margaret O'Leary a Balfour employee who has worked in the fraternity division at Balfour for over 40 years (Tr. 234-38), used Baird's Manual as a directory in the fraternity field (CX 509B).

196. As for Leland's Annual, the Balfour Company has admitted that its salesmen have found the directory issue "to be extremely valuable" (CX 467C). In an issue of the Balfour Bulletin directed to fraternity salesmen, Balfour informed the salesmen of the availability of the directory, and that:

This directory (the only one of its kind) lists all college fraternities and sororities, with the date and place of founding, together with illustrations of the badge, pledge button, and coat-of-arms of each group. Additionally listed are the number of members as of the current year, the number of active and alumni chapters, the names of all national officers, their latest addresses, name of the fraternity or sorority magazine, and the name and address of the editor. . . . In previous years, a number of our salesmen have found this issue to be extremely valuable. (CX 467C.)

197. Baird's Manual and Leland's Annual therefore constitute reliable directories for all national college fraternities, and together form a proper basis for a tabulation listing all such fraternities.

198. The two sources also form a proper basis for a tabulation showing chapter and membership figures. Leland's Annual was used as the primary source for this tabulation as it lists chapters and members as of 1961. In instances where Leland's Annual did not reveal such figures, Baird's Manual was used as the source (Tr. 3436,3561). The number of chapters shown on the tabulation refers to active undergraduate college chapters in existence as of 1961; the membership figures indicate total membership in the fraternity, including alumni members (Tr. 3442, 3449-50, 3565-67). Membership figures were not available in either Baird's or Leland's for 765 of the fraternity chapters listed in the tabulation; that is membership figures for 765 chapters out of a total of 15,866 chapters are not shown on the tabulation (CX 717, 718B; Tr. 3465-66, 3570-71).

199. Leland's Annual makes the representation that the statistics used in the directory issue were supplied by the fraternities themselves, and are accurate as of December 1, 1960 (CX 728, p. 7).

200. The information as to the contractual relationship between respondents and the fraternities shown on the tabulations was obtained from respondents' own records. Respondents' current 1961 salesmen's instruction book was used primarily, both Balfour's and BPA's (Tr. 3433-34, 3443). These salesmen's instruction books indicated the contractual arrangements between respondents and the named fraternities, *i.e.*, whether Balfour and BPA were official jewelers, sole official jewelers, or co-official jewelers (Tr. 3433, 3440, 3518). These instruction books contained the most up-to-date and reliable information available, according to Balfour's official (Tr. 3473).

201. In some few instances, the language in the salesmen's instruction book was not clear and definitive; in those instances questionnaire letters were sent to the fraternities involved asking the fraternities the name of their official jeweler (Tr. 3439, 3525). A copy of the form letter that was used for this purpose is in the record (RX 61), and a typical response to this form letter is also in the record (RX 62). About 12 such letters were mailed (Tr. 3525), and the information received from the fraternities in response to the letters was incorporated into the tabulations (Tr. 3440-41).

202. CX 718A sets forth the percentage of the national college fraternities under contract with Balfour and BPA. Of 288 fraternities listed, respondents have 279 under contract, or 96.9 percent of the total number of fraternities. Of the total number of fraternities, BPA is official jeweler to 42, or 14.5 percent. Including the contracts where Balfour and BPA are co-official jewelers, BPA serves 52 fraternities, or 18 percent of the total number of fraternities.³⁶

203. Of the 279 fraternities under contract with Balfour, there is only one fraternity where a competitor also serves as official jeweler. That single instance is Alpha Gamma Upsilon, a men's national college social fraternity, not a member of NIC, with only 12 active chapters and only 3,892 members. The other official jeweler to this fraternity is Miller Company, Detroit, Michigan (CX 717A).

204. CX 718B lists the total number of active fraternity chapters as 15,866 and a total membership of 6,205,336. It should be recalled that there are 765 chapters for which membership is not available, and also that there were some 552 chapters for which membership figures were obtained from Baird's, the 1957 edition. These two exceptions to this tabulation would only serve to increase total membership, if figures were available. It should also be noted that the total membership figure includes active as well as alumni members.

205. CX 718B shows that of 15,866 fraternity chapters, respondents have contracts covering 15,585 chapters, or 98.2 percent of all chapters. Of 6,205,336 total members, respondents have contracts with fraternities having 6,115,440 members, or 98.6 percent of all membership.

206. Attached hereto as Appendix A is a chart prepared from CX 717. It shows the basic information set forth above, *i.e.*, names of all fraternities shown in Baird's and Leland's, respondents' contracts with such fraternities, the chapters and membership of each such fraternity and the percentage of fraternity chapters and membership under contract with respondents. Appendix A is basically a simplified version of the information shown on CX 717-718, and is attached to these findings for ready reference.

207. These tabulations, as stated, show the percentage of national college fraternities and their membership under official jeweler contracts with respondents as of 1961. These contracts

³⁶ Mr. Nelson, president of BPA, testified that in 1951 BPA had about 50 official jeweler contracts, and the same number in 1962 (Tr. 2976-77). Complaint counsel's tabulation shows BPA actually had 52 such contracts (CX 717).

as shown on CX 717 basically remained in effect throughout the ten-year period 1951-1961. Counsel in this proceeding entered into a stipulation which sets forth those fraternities which respondents did not have under contract in 1951, but which were placed under contract at some time during the ten-year period 1951-1961, and therefore appear on CX 717 (CX 791).

208. This stipulation reveals that during the period 1951-1961, Balfour acquired contracts with 17 fraternities.³⁷ Therefore, as of 1951, Balfour had 262 fraternities under contract (279 as of 1961 less 17 acquired during the period 1951-1961) out of a total of 288 fraternities shown on CX 717. The percentage of fraternities under contract with respondents in 1951 was 91 percent. During the ten-year period respondents' percentage of the national college fraternities under contract increased from 91 percent to 96.9 percent.

209. Respondents did not lose any contracts during this ten-year period, they only gained contracts (CX 684-85). Mr. Yeager was asked about national college fraternity contracts that had been lost since 1948. He answered: "I don't know of one." (Tr. 819.)

210. There is other substantial record support for the fact that respondents have practically all the national college fraternities under contract. At an early hearing herein, on October 31, 1961, respondents' counsel stipulated that Balfour and BPA were official or co-official jewelers to all NIC fraternities, and to all NPC sororities with the exception of one, Chi Omega (Tr. 1844). This stipulation is in accord with the information shown on complaint counsel's tabulation (CX 717A-C).

211. Record evidence shows that only the following national college fraternities are in the hands of competitors:

Fraternity	Chapters	Members	Competitor
Alpha Gamma Upsilon.....	12	3,892	Miller Co.*
Chi Omega.....	125	73,530	Dorst Co.
Upsilon Alpha.....	7	160	Spies Bros., Inc.
National Collegiate Players.....	60	9,000	Erffmeyer.
Alpha Kappa Mu.....	58	5,517	Metal Arts.
Sigma Epsilon Sigma.....	8		Erffmeyer.
Alpha Chi.....	51	20,791	Star Engraving Co.

* Co-official jeweler with Balfour.

³⁷ Complaint counsel have not included Phi Kappa Theta because this fraternity was formed in 1959 from two fraternities that were at that time under contract to respondents. Therefore, respondents had a continuous contract in effect with the membership of this fraternity throughout the ten-year period 1951-1961 (CX 791, footnote).

212. Chi Omega, the women's national college social sorority, is the only significant national college fraternity not under official jeweler contract with respondents. As to this fraternity, Balfour sells it crested products (Tr. 614, 726; CX 365) and badges (Tr. 2029). BPA depicts the Chi Omega badge in its catalog and offers it for sale at a price of \$8.50 (CX 368; Tr. 1351), although Mr. Buchroeder testified this badge was comparable to the Delta Upsilon badge³⁸ which BPA prices at \$19.25 (Tr. 1352). BPA sold the Chi Omega badge at a price lower than the official jeweler price (Tr. 2186-87). Mr. Yeager has attempted on several occasions to get the Chi Omega contract (Tr. 808). Mr. Sargeant stated: "I would love to have it, Chi Omega." (Tr. 536.)

213. This record seems clear that respondents have substantially all of the national college fraternities under official jeweler contracts.

*Respondents' Contracts With National College
Fraternities Have Foreclosed Competition From
the National College Fraternity Products Market*

214. Respondents, as has been shown, have substantially all the national college fraternities under official jeweler contracts. Further, respondents and the fraternities understand these contracts to authorize only respondents to manufacture, sell or distribute all products bearing national college fraternity insignia. The fraternities through threats of fines and expulsion have attempted to insure the effectiveness of the official jeweler contracts. Respondents have also taken steps to insure the exclusiveness of the agreements. The record is clear that respondents have succeeded in foreclosing practically all competitors from this market. Also, since respondents have had these contracts in effect at least during the ten-year period 1951-1961, this market foreclosure has been sustained by respondents from 1951 to 1961. The evidence in this record sets forth in detail the nature and extent of such foreclosure.

215. Out of 13 manufacturing jewelers called as witnesses in this proceeding, only two are now engaged to any appreciable degree in the sale of national college fraternity jewelry. Seven of these 13 companies were once substantially engaged in the sale of national college fraternity jewelry, but at the present time are almost completely withdrawn from the market. The two companies (Buchroeder and Pollack) presently devoting a sub-

³⁸ Balfour is sole official jeweler to Delta Upsilon (CX 717A). BPA, therefore, reduces the price of the Chi Omega badge, but not the Delta Upsilon badge. Mr. Buchroeder is a member of Delta Upsilon (Tr. 1347).

stantial effort to the sale of national college fraternity jewelry have had little or no success (Tr. 1332-33, 1711).

216. Sales figures of national college fraternity jewelry sold by these 13 manufacturing jewelers are small. Mr. Balfour himself designated Buchroeder as the "major violator in this field" (CX 673). It is interesting to note that Buchroeder's sales of fraternity jewelry were approximately only \$15,000 in 1959 (CX 737). This indicates that there are no substantial competitors in the national college fraternity field. Mr. Balfour also suggested that Buchroeder and L & L Party Favors should be the firms to be sued by IRAC (CX 743). L & L's sales volume was only \$107,000 in the 1956-57 fiscal year; this entire sales volume was in party favors (Tr. 2119).

217. Not only have manufacturing jewelers been forced out of the national college fraternity jewelry field, but there have been no new entries into this market in at least the past ten years. This was admitted by Mr. Yeager, Balfour's President, on cross-examination:

Q. You don't know of any major competitor that has entered the college fraternity market in the last ten years?

* * * * *

HEARING EXAMINER LYNCH: . . . If you ask the question as to whether any major competitors entered the field in this particular business you are talking about. Can you answer that?

THE WITNESS: The only thing I can think of is in the social end of it, the L & L Party Favors.³⁰

HEARING EXAMINER LYNCH: You consider them a major competitor?

BY MR. BARNES:

Q. Do they sell jewelry to these organizations?

A. They sell favors.

Q. Can you name any competitor that has gone into the Jewelry business in the last ten years?

HEARING EXAMINER LYNCH: That was the question I put. Can you answer that?

THE WITNESS: No, sir, I can't answer that. (Tr. 3780, 3782.)

218. There are, however, two companies that have entered the manufacturing jewelry business during the period 1951-1961, although not the national college fraternity jewelry market. These two companies are Morgan's, Inc., and C. W. Small Company (Tr. 3779, 4301).

219. Respondents have substantially all of the national college fraternities under official jeweler contracts. Competitors have attempted to acquire official jeweler contracts, but have been un-

³⁰ Total sales of L & L Party Favors for the 1960-61 school year were \$104,000, for national college fraternity party favors (Tr. 2119).

successful. Examples of unsuccessful attempts are established both by documents and by testimony (Tr. 949-50; CX 374, 375).

220. Dyer made an attempt to secure a national contract, but was unsuccessful (Tr. 1171-72). Buchroeder made an effort on three occasions in recent years to obtain permission to bid on national college fraternity contracts by writing letters to the fraternities. He was met with complete refusal (Tr. 1332-34; RX 12). Pollack has had no success in attempting to acquire contracts (Tr. 1711). Pollack at one time had as many as 12 national college fraternity contracts, mostly Negro fraternities, but has lost all these contracts except one to BPA (Tr. 1701-02).

221. The contracts are a necessary predicate to successful entry into the national college fraternity field; Balfour has them all and fraternities will not grant others permission to sell. Thus, foreclosure is complete.

222. Testimony by competitors clearly establishes the difficulties which they have in attempting to compete in the sale of national college fraternity insignia products. Companies that attempt to sell national college fraternity insignia products are frequently prohibited from going on a college campus for this purpose. Only the official jeweler is allowed on campus to call on the fraternity houses (CX 741-42; Tr. 1525-28, 1717-18, 2111). The following prohibition was in effect on the campus of the University of Florida:

To prohibit solicitors from being in the fraternities in person or by representative, with the exception of Gainesville merchants, who must deliver at time of purchase, and Balfour, Burr, Patterson and Auld who would be allowed to display jewelry and, to sell all other fraternity items. (CX 741.)

Even where permitted to call on campus, competitive salesmen have extreme difficulty in gaining admittance to chapter houses to make displays of merchandise and, consequently, sales (Tr. 1508-09, 1514, 1530, 1553-54, 2085-86, 2371-72). Testimony establishes that personal sales contact is by far the most effective way to sell fraternity products (Tr. 1790, 1879).

223. Competitors, after making a sale, often find that their orders have been cancelled (Tr. 1457, 1533-38; CX 390, 391, 392, 447). Respondents, Balfour and BPA, both affirmatively instruct their salesmen to cancel competitors' orders (Tr. 2211, 2252; CX 465, 516B). Cancellation of competitors' orders is a particularly distressing practice. In response to a salesman's complaint about competition, Balfour stated in a Balfour Bulletin sent to all fraternity salesmen that "we had already sent personal letters to national offices of chapters which had placed orders with com-

petitors, and had received strong national backing." Further:

Our salesmen must continue to report any and all violations. We will get the necessary support from the national offices, and in a good many instances you will find that any orders placed with a competitor will be promptly cancelled. There is nothing that discourages unofficial representatives and suppliers more than to have cancellations. (CX 465B.)

224. Competitors have difficulty in maintaining a sales force. Salesmen attempting to sell national college fraternity products cannot meet expenses and they, therefore, resign from the field (Tr. 1334, 1529-30, 1696-97, 1852-54, 2114).

225. Competitors attempting to establish outlets for national college fraternity insignia products in retail jewelry stores located near campuses of colleges or universities often have their stock of merchandise returned by the jewelers because of the highly unfavorable climate that exists in the market (Tr. 1718-19; CX 399, 400). In one such instance at the University of Toledo, the retail jeweler was requested to appear before a "combined meeting of Panhellenic and Interfraternity Councils" to discuss his jewelry display (CX 399). At the meeting of the interfraternity councils university faculty advisors were also present (Tr. 1723). As a result of the meeting, the retail jeweler was faced with a boycott from the university. He, therefore, returned his stock of fraternity products to the manufacturer (Tr. 1724).⁴⁰

BPA in its Burr Patter (bulletin) of November 12, 1959, noted this incident at the University of Toledo and commented that:

It is probable that the National Interfraternity Council will take steps to stop this type of merchandising sacred fraternity insignia. (CX 760C.)

226. In another instance, Balfour employee O'Leary wrote a letter to a Berkeley, California, retail jeweler who was selling the Pollack line of fraternity products. O'Leary wrote the letter on IRAC stationery, "rubber-stamping" Myers' signature, advising the retail jeweler that:

All of the items which you have illustrated [in your advertisement] are legally protected with copyrights or designed patents. This is legal notice to the effect that unless you discontinue violating protected fraternity names and insignia we will be forced to take legal action. Unless we hear from you to that effect within the next two weeks, we will present the facts to our Legal Department. (CX 290, emphasis supplied.)

By return mail the Berkeley, California, jeweler replied and agreed to drop the Pollack line of fraternity jewelry.

227. Competitors are unable to advertise fraternity insignia jewelry. The only two publications that are circulated to the national college fraternity field are Banta's Greek Exchange and

⁴⁰ This inability to sell national college fraternity products adversely affects sales of other products in the retailer's store (Tr. 1335, 1607).

Leland's Fraternity Month (Tr. 1359; CX 728, 787, 788, 789). Sigma Phi Epsilon wrote to Mr. George Banta, Jr., Banta's Greek Exchange, protesting an advertisement by Collegiate Specialty Company that appeared in Mr. Banta's magazine. The purpose of this letter was to induce the publisher to discontinue such advertisements. The letter states that Leland's has already discontinued such advertisements (CX 355).

228. It is, therefore, apparent that the official jeweler contracts, and the acts and practices of respondents in connection therewith, have effectively foreclosed to competitors the national college fraternity insignia product market.

*Balfour Has Urged National College Fraternities
to Obtain Trademarks and to "Protect" Their Insignia*

229. Balfour Company and Mr. Balfour have made a continuous and unremitting effort to have national college fraternities secure trademarks for their names and symbols of identification, and to otherwise "protect" their insignia. Balfour also has represented that it is he who "protects" the fraternity names and insignia (CX 510C, 518L, 545, 780). Balfour also used IRAC to urge the national college fraternities to "protect" their fraternity names through registration as trademarks. The purpose behind this effort, made directly and through IRAC, has been to maintain and strengthen Balfour's monopolistic control over the national college fraternity product market.

230. As early as 1953, Balfour, then chairman of IRAC, reported:

In several cases we have been successful in answering the appeals of our members to assist them to protect their names and to control the manufacture and distribution of their insignia. (CX 510C.)

Again, in his May 1954 report, IRAC Chairman Balfour, enumerating the accomplishments of IRAC during the preceding year, listed:

INCREASED ASSISTANCE to establish fraternities and sororities in an effort to avoid duplication of names and insignia. . . . Our procedure is to accomplish this voluntarily, even if we have to pay for entirely new insignia as we have done in many instances. (CX 513C.)

231. In February 1955, IRAC Chairman Myers, after returning from a three-day visit with Balfour in Nassau, wrote to Margaret O'Leary in Attleboro stating that he was happy "to note that the new brochure covering the information on registration of college fraternity insignia has been prepared although I did not see a copy while visiting Mr. Balfour. If it meets with his approval, you need not send it on to me for approval. . ." (CX 517A).