

Complaint.

FEDERAL TRADE COMMISSION

v.

THATCHER MANUFACTURING COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 7
OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 738—June 26, 1923.

SYLLABUS.

Where the largest producer of milk bottles in the United States, with the exclusive right to manufacture milk bottles on what had been, until a short time theretofore, the only successful automatic bottle-making machine, acquired indirectly the stock, businesses, and properties of four competing companies (and thereby the exclusive right to manufacture milk bottles on the only other successful automatic bottle-making machine), with the result that all competition, both between the businesses so acquired and between itself and said businesses, was eliminated, commerce in the sections and communities involved was restrained, and there was a tendency to create in itself a monopoly in the milk bottle business:

Held, That such acquisition of stock, under the circumstances set forth, constituted a violation of Section 7 of an Act of Congress approved October 15, 1914.

COMPLAINT.

Pursuant to the provisions of an Act of Congress approved October 15, 1914 (the Clayton Act), entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," the Federal Trade Commission, having reason to believe that Thatcher Manufacturing Company, hereinafter referred to as respondent, is and has been violating the provisions of Section 7 of said Act of Congress, issues this amended complaint and states its charges in that respect as follows:

PARAGRAPH 1. The Thatcher Manufacturing Company, hereinafter called the respondent, is a corporation organized under the laws of New York, with its principal office, manufacturing plant and place of business at Elmira, N. Y., with branch offices and manufacturing plants at Kane, Pa., Streator, Ill., Clarksburg and Cedar Grove, W. Va., Mt. Vernon, Ohio, Lockport, N. Y., and in other States of the United States. It is, and since 1905 has been, engaged in manufacturing milk bottles, and in selling, shipping, and transporting such bottles to purchasers among the several States of the United States and the District of Columbia, and in so doing is and for many years

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has been engaged in interstate commerce within the provisions of said Act of Congress approved October 15, 1914 (the Clayton Act), in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. (a) Travis Glass Company, on and prior to August 28, 1919, and for some time thereafter, was a corporation organized under the laws of West Virginia, having its principal office, place of business, and manufacturing plant at Clarksburg, W. Va., with a branch plant at Cedar Grove, W. Va., and was engaged in manufacturing milk bottles and in selling and shipping such bottles to purchasers among the several States of the United States and the District of Columbia, and in so doing was engaged in interstate commerce within the provisions of said Act of Congress approved October 15, 1914 (the Clayton Act), in competition with the respondent and with other persons, firms, and corporations similarly engaged.

(b) Essex Glass Company, on and prior to August 28, 1919, and for some time thereafter, was a corporation organized under the laws of Ohio, having its principal office and place of business at Mt. Vernon, Ohio, and with manufacturing plants at Mt. Vernon, Ohio, and Parkersburg, W. Va., and was engaged in manufacturing milk bottles, and in selling and shipping such bottles to purchasers among the several States of the United States and the District of Columbia, and in so doing was engaged in interstate commerce within the provisions of said Act of Congress approved October 15, 1914 (the Clayton Act), in competition with the respondent and with other persons, firms, and corporations similarly engaged.

(c) Lockport Glass Company, on and prior to August 28, 1919, and for some time thereafter, was a corporation organized under the laws of New Jersey, having its principal office, place of business, and manufacturing plant at Lockport, N. Y., and was engaged in manufacturing milk bottles, and in selling and shipping such bottles to purchasers among the several States of the United States and the District of Columbia, and in so doing was engaged in interstate commerce within the provisions of said Act of Congress approved October 15, 1914 (the Clayton Act), in competition with the respondent and with other persons, firms, and corporations similarly engaged.

(d) Woodbury Glass Company is, and for many years has been, a corporation organized under the laws of Indiana, with its principal office, place of business and manufacturing plant at Winchester, Ind., and is and has been engaged in manufacturing condiment bottles and bottles of other types and kinds, and in selling and shipping such bottles to purchasers among the several States of the United States and the District of Columbia, and in so doing is and

has been engaged in interstate commerce within the provisions of said Act of Congress approved October 15, 1914 (the Clayton Act), in competition with other persons, firms, and corporations similarly engaged.

(e) The J. T. & A. Hamilton Company is, and in 1919 and 1920 was, a corporation organized and existing under the laws of Pennsylvania with its principal office, place of business, and manufacturing plant at Pittsburgh, Pa. Formerly the J. T. & A. Hamilton Company was a partnership, but was later organized as a corporation as aforesaid. On and prior to August 28, 1919, and for some time subsequent thereto, the J. T. & A. Hamilton Company was engaged in manufacturing milk bottles and in selling and shipping such bottles to purchasers among the several States of the United States and the District of Columbia, and in so doing was engaged in interstate commerce within the provisions of said Act of Congress approved October 15, 1914 (the Clayton Act), in competition with respondent and with other persons, firms, and corporations similarly engaged.

PAR. 3. The Owens Bottle Company is a corporation under the laws of Ohio and was organized originally as Owens Bottle-Machine Company but duly changed its name in 1919 to The Owens Bottle Company. It has its principal office and place of business at Toledo, Ohio, and owns and operates glass factories in Ohio, West Virginia, New Jersey, Indiana, and other States, and is and for many years has been engaged in manufacturing and selling glass bottles and other glassware. The Owens bottle blowing machine is a modern, improved, patented machine with which glass bottles and other glassware are manufactured automatically and more rapidly, cheaply, and successfully than with semi-automatic machines or by hand labor. The Owens bottle blowing machine was the first, and until the year 1917, the only successful device or machine for manufacturing glass bottles and other glassware automatically. During the year 1903 the Owens Bottle-Machine Company acquired from the owner of the patents then covering the Owens bottle blowing machine the exclusive right to use said machine in the United States in making glass bottles and other glassware, and since said date the Owens Bottle Company has perfected improvements and additions to said machine and has secured and owns in its own right six or more patents covering such improvements and additions. The Owens Bottle Company did not and does not manufacture milk bottles.

PAR. 4. The Owens Bottle Company has licensed and leased or sold Owens bottle-blowing machines, and the right to use the same, to certain persons, firms, and corporations engaged in manufacturing

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glass bottles and other glassware, and the manufacture, sale, licensing, and leasing of the Owens bottle-making machines is controlled exclusively by the Owens Bottle Company. About the year 1905, under certain contracts, licenses, and leases from the Owens Bottle Company, the respondent acquired and still owns the exclusive right to use the Owens bottle-blowing machines in the United States for manufacturing milk bottles, and the exclusive right to all improvements that may be made thereon, and any new machines that the Owens Bottle Company may own or acquire.

PAR. 5. After the respondent had acquired and was using said Owens bottle-blowing machines as aforesaid, the Hartford-Fairmont Company of Hartford, Conn., produced a patented and improved machine for successfully making milk bottles and other glassware automatically, and said Hartford-Fairmont machine was different from, and, in efficiency and economy of operation, equal or superior to the Owens bottle-blowing machine. The Hartford-Fairmont Company granted exclusive licenses to use its bottle-making machines for making milk bottles to four certain companies, namely, the said Travis Glass Company, Essex Glass Company, Lockport Glass Company and J. T. & A. Hamilton Company, and also granted a nonexclusive license to the said Woodbury Glass Company to use said machines for producing condiment bottles, including the right to make fruit jars, grape juice, cider, vinegar, horse radish, and catsup bottles, and bottles, and containers for food and food ingredients. Such licenses so granted to the said Travis, Essex, Lockport, and Hamilton companies contained conditions and limitations under which the use of said machines for manufacturing milk bottles was exclusive in said four companies, and no license or machine could be transferred without the consent of Hartford-Fairmont Company. Under said licenses the Travis Glass Company, Essex Glass Company, Lockport Glass Company and J. T. & A. Hamilton Company manufactured milk bottles and sold and transported such bottles to purchasers among the several States of the United States and the District of Columbia in interstate commerce in competition with each other and with the respondent.

PAR. 6. The said bottle-making machines so produced, leased, and licensed by the Owens Bottle Company and Hartford-Fairmont Company, at the time the events herein set forth took place, were the only successful entirely automatic bottle-making machines devised and leased or sold as a complete unit, and the exclusive right to use said machines for manufacturing milk bottles was vested in and restricted to the respondent and the said Travis, Essex, Lockport, and Hamilton companies.

PAR. 7. On or about August 28, 1919, the respondent, while engaged in commerce as aforesaid, acquired the whole of the stock or other share capital of the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, the said corporations hereinabove described, while each of said corporations was engaged in interstate commerce as aforesaid in competition with the respondent. The effect of such acquisition of said stock or share capital was to substantially lessen competition between the respondent and each of said corporations whose stock or share capital was so acquired, namely, Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, and between each of said corporations whose stock or other share capital was so acquired and each other of said corporations. Such acquisition of said stock and share capital also tended to create in the respondent a monopoly in interstate commerce in the milk-bottle business, and was and is violative of said Act of Congress approved October 15, 1914 (the Clayton Act). The scheme and the methods by which the respondent acquired the said stock or share capital of said corporations are hereinafter set forth substantially.

PAR. 8. In 1919 a gentleman by the name I. T. Axton, then president and principal stockholder of the Woodbury Glass Company, attempted to merge or consolidate the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, and acquire the Hartford-Fairmont machine and license of the J. T. & A. Hamilton Company. In pursuance of said plan Axton secured options on the outstanding capital stock of said Travis, Essex, Lockport, and Woodbury companies, such options expiring on or about August 28, 1919. Failing to accomplish such merger himself, Axton, in July, 1919, approached F. E. Baldwin, the president and largest stockholder of the Thatcher Manufacturing Company, and inquired if Baldwin of the Thatcher Manufacturing Company would acquire or purchase the stock of the said four companies and the Hartford-Fairmont machine and license of the J. T. & A. Hamilton Company. Thereupon, Baldwin and H. C. Mandeville, a director and counsel of the Thatcher Manufacturing Company and subsequently its vice president, E. D. Libbey, president and a large stockholder of the Owens Bottle Company, and William Ford, a large stockholder in the Owens Bottle Company, agreed to purchase the stock of the Travis, Essex, Lockport, and Woodbury companies and the Hartford-Fairmont machine and license of the Hamilton Company under the options held by Axton. In pursuance thereof they organized the said Sterling Glass Company in August, 1919,

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with an authorized capital stock of \$600,000, of which \$500,000 was issued for cash, one-half of which was taken by Libbey and the remaining one-half by the respondent and certain of its agents or employees.

PAR. 9. On August 28, 1919, Axton caused the stockholders of the said Travis, Essex, Lockport, and Woodbury companies to meet in New York City, N. Y., in an office or room of the Guaranty Trust Company, said stockholders having with them the stock certificates in the respective companies ready for transfer and delivery on payment of the purchase price. On said date Messrs. Baldwin, Mandeville, Libbey, and Ford met in another office or room of the Guaranty Trust Company, and Baldwin, Libbey, and Ford executed their separate, individual promissory notes to the Guaranty Trust Company for a total of \$1,610,000 and each endorsed the notes of the others so that all were liable on all three notes. The sum secured from the Guaranty Trust Company on said notes, together with the \$500,000 subscribed in cash to the capital stock of the Sterling Glass Company, was used to purchase all the capital stock of the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company. The certificates of stock in the respective companies were endorsed in blank by the respective stockholders of the said companies, and by them delivered to the Guaranty Trust Company, and attached to the said notes of Baldwin, Libbey, and Ford as collateral security therefor.

PAR. 10. On August 28, 1919, immediately after the purchase of said stock, the Sterling Glass Company and Baldwin, Libbey, and Ford entered into a written agreement which set forth the transaction and the facts as to said individual notes, and provided, among other things, that the Sterling Glass Company assume all liability of the other parties upon said notes, and upon the payment of said notes the Sterling Glass Company should have the right to take over the stock of said companies then pledged as collateral for said notes. Said agreement gave Ford and Libbey the option to retire from the said stock transaction, and in that event Baldwin was to assume all their liability thereunder and on the said notes, and was to procure the release of Ford and Libbey from said notes, and hold them harmless against liability thereon, and repay to Libbey the \$250,000 invested by Libbey in the capital stock of the Sterling Glass Company. Upon the payment of said money and the release from endorsement and liability, Ford and Libbey were to release to Baldwin all interest in the stock of Sterling Glass Company and transfer the same to Baldwin's nominee, and Baldwin might thereafter proceed as he saw fit.

PAR. 11. On or about the same date, August 28, 1919, the Thatcher Manufacturing Company acquired by purchase the Hartford-Fairmont machine and license of the J. T. & A. Hamilton Company, and by contract of sale dated August 29, 1919, the respondent acquired all the milk-bottle business of the said Hamilton Company in the United States, outside of Allegheny County, Pa., and the said contract provided that for a period of ten years from January 1, 1920, the vendors individually should not manufacture and sell bottles outside the limits of Allegheny County, Pa., and should not manufacture and sell milk bottles made on the Owens bottle-making machine in Allegheny County, Pa.

PAR. 12. On December 11, 1919, Libbey and Ford decided to exercise their option to withdraw, and on said date so notified Baldwin and the respondent. The operation of the Essex Glass Company, Travis Glass Company, Lockport Glass Company, and the Woodbury Glass Company, after the purchase of the stock on August 28, 1919, was continued under their former management until January 1, 1920, when the entire control and direction of said companies was brought to the offices of the respondent at Elmira, N. Y., and thereafter said companies and their plants were operated by the respondent as a part thereof.

PAR. 13. In June, 1920, the certificates of stock in the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, held as aforesaid by the Guaranty Trust Company of New York, were transmitted by the Guaranty Trust Company to its agents at Elmira, N. Y., for formal transfer. Transfer of said shares of stock upon the books of the Travis, Essex, Lockport, and Woodbury companies was then made, the stock of said companies being reissued to F. E. Baldwin, president of the Thatcher Manufacturing Company, H. C. Mandeville, its counsel and stockholder and director and thereafter vice president, R. W. Niver, a vice president and director of the Thatcher Manufacturing Company, and F. L. Collins, auditor of the Thatcher Manufacturing Company, and in some instances a few shares to other persons sufficient to qualify the requisite directors in each company. All the capital stock of each of said four companies was issued to these four men, a different person being the principal transferee in the case of each company, and the other qualifying shares were issued to the other three of the four, except that where the authorized number of the directors exceeded four, qualifying shares were issued to a sufficient number of the old directors to constitute the requisite number of directors. The transferees of the stock in said transaction paid no money or other consideration for the same, nor did they receive

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possession of any certificates of stock. The certificates of stock which were thus issued were delivered to the agent of the Guaranty Trust Company and returned to the Guaranty Trust Company in New York where said certificates were placed as before, namely, attached to and as collateral security for the said Baldwin, Ford, and Libbey notes.

PAR. 14. Notice from Libbey and Ford of their intention to retire from said transaction was given as hereinbefore recited, and Baldwin nominated the Thatcher Manufacturing Company as the transferee of the 2,500 shares of capital stock of Sterling Glass Company owned by Libbey, and the same was so transferred by Libbey upon the payment to him by the Thatcher Manufacturing Company of the sum of \$250,000 with interest. The money to purchase said 2,500 shares of stock was secured by increasing the capital stock of the Thatcher Manufacturing Company from \$1,000,000 to \$1,625,000 on or about April 20, 1920.

PAR. 15. Prior to June, 1920, the Thatcher Manufacturing Company accomplished a bond issue in the sum of \$2,000,000, secured by a first mortgage to the Guaranty Trust Company of New York as trustee on all the assets of the Thatcher Manufacturing Company, Sterling Glass Company, Travis Glass Company, Essex Glass Company, Lockport Glass Company, and the capital stock of Woodbury Glass Company. The said bonds when executed were delivered to the underwriters, Bonbright & Company, and Hemphill Noyes & Company, who paid over the proceeds thereof to H. C. Mandeville who then and there as part of a simultaneous transaction produced the deeds and bills of sale of the Travis, Essex, Lockport, and Sterling companies to the Thatcher Manufacturing Company, and delivered said deeds and bills of sale to the underwriters for recording. The proceeds of said bond issue were then and there paid by said Mandeville to the Guaranty Trust Company, and in return therefor the Guaranty Trust Company delivered to the said Mandeville the said notes executed by Baldwin, Ford, and Libbey and the stock certificates attached thereto.

PAR. 16. In the month of June, 1920, at the request of Baldwin, Mandeville, Collins, and Niver, and their associates, who constituted the stockholders of the Travis, Essex, Lockport, and Sterling companies, respectively, the directors of said companies, namely, Baldwin, Mandeville, Collins, and Niver, and associates, resolved to transfer all the assets, rights, and property of the Travis, Essex, Lockport, and Sterling companies, respectively, to the respondent. Resolutions providing for such transfer were proposed and adopted by Baldwin, Mandeville, Collins, and Niver, and associates, as the

stockholders and directors of each of said companies. During the month of June, 1920, in pursuance of said resolutions, all the assets, rights, licenses, and properties of the said Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Sterling Glass Company, respectively, were transferred by deeds and bills of sale to the respondent. The Hartford-Fairmont licenses of the Travis, Essex, Lockport, Woodbury, and Hamilton companies were assigned and transferred to the respondent on or about June 1, 1920, and the Hartford-Fairmont Company assented to the same.

PAR. 17. Having caused all the assets, rights, and property of the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Sterling Glass Company to be transferred and conveyed to it by deeds and bills of sale, as hereinbefore recited, the respondent proceeded to bring about a dissolution of the said Travis, Essex, Lockport, and Sterling companies, and through its said officers and agents, namely, Baldwin, Mandeville, Collins, and Niver, and their associates, who constituted the stockholders, directors, and officers of said companies also, adopted resolutions for the dissolution of the said Travis, Essex, Lockport, and Sterling companies. In pursuance of said policy the Sterling Glass Company was dissolved September 9, 1920, the Lockport Glass Company was dissolved October 20, 1920, the Essex Glass Company was dissolved September 18, 1920, and the Travis Glass Company was dissolved January 13, 1921.

PAR. 18. Prior to the purchase of the stock of the Travis, Essex, Lockport, and Woodbury companies and the milk-bottle business and the Hartford-Fairmont machine and license of the Hamilton Company, each of the said companies was a competitor in interstate commerce in the milk-bottle business with the respondent, and with each other. On and after the purchase of said stock each of said companies, namely, the Travis, Essex, Lockport, Woodbury, and Hamilton companies ceased to compete in interstate commerce with the respondent and with each other.

PAR. 19. The acquisition of the capital stock of the said Travis, Essex, Lockport, and Woodbury companies as hereinbefore set forth was contrary to law, and in violation of the provisions of an Act of Congress approved October 15, 1914 (the Clayton Act) and especially of Section 7 thereof. The transfer to the respondent of the assets, rights, and properties of the Travis, Essex, Lockport, and Sterling companies and the dissolution of said companies was an artifice and subterfuge for evading the provisions of said Act of Congress approved October 15, 1914 (the Clayton Act). The respondent secured and retains and enjoys the fruits and benefits of such violations, artifice, and subterfuge, and should be ordered to cease and

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desist from such violations, and divest itself of the stock acquired contrary to the provisions of Section 7 of said Act of Congress, so that competition may be restored and encouraged, and a monopoly in the milk bottle business prevented.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved October 15, 1914 (the Clayton Act), the Federal Trade Commission issued and served its amended complaint upon the Thatcher Manufacturing Company, a corporation, charging that the Thatcher Manufacturing Company is and has been violating the provisions of Section 7 of said Act of Congress.

Thereupon the respondent, having entered its appearance, filed its answer to the amended complaint of the Commission, and a stipulation of facts was entered into by the respondent and approved by the Commission, and formal hearings were had before examiners of the Commission; thereafter the whole matter regularly came on for hearing before the Federal Trade Commission upon such stipulation and the testimony, and upon the briefs and argument of counsel, and the Commission having duly considered the record, and being fully advised in the premises, makes its report in writing and states its findings as to the facts as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The Thatcher Manufacturing Company, hereinafter called the respondent, is a corporation organized under the laws of the State of New York, with its principal office, manufacturing plant, and place of business at Elmira, N. Y. It has branch offices and manufacturing plants at Clarksburg and Cedar Grove, W. Va., Mt. Vernon, Ohio, Lockport, N. Y., and in other States of the United States. It is engaged in manufacturing milk bottles, and in selling, shipping, and delivering such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms and corporations similarly engaged, and it has been so engaged since the year 1905.

PAR. 2. The Travis Glass Company, on and prior to August 28, 1919, and until January 13, 1921, was a corporation under the laws of the State of West Virginia, with its principal office, place of business, and manufacturing plant at Clarksburg, W. Va., with a branch plant at Cedar Grove, W. Va. On and prior to August 28, 1919, and for some time thereafter, the Travis Glass Company was engaged in manufacturing milk bottles, and in selling, shipping, and deliver-

ing such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged.

PAR. 3. The Essex Glass Company, on and prior to August 28, 1919, and until December 18, 1920, was a corporation under the laws of the State of Ohio, with its principal office and place of business at Mt. Vernon, Ohio, having manufacturing plants at Mt. Vernon, Ohio, and Parkersburg, W. Va. On and prior to August 28, 1919, and for some time thereafter, the Essex Glass Company was engaged in manufacturing milk bottles, and in selling, shipping, and delivering such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged.

PAR. 4. The Lockport Glass Company, on and prior to August 28, 1919, and until October 20, 1920, was a corporation under the laws of the State of New Jersey, with its principal office, place of business, and manufacturing plant at Lockport, N. Y. On and prior to August 28, 1919, and for some time thereafter, the Lockport Glass Company was engaged in manufacturing milk bottles, and in selling, shipping, and delivering such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged.

PAR. 5. The Woodbury Glass Company is a corporation under the laws of the State of Indiana, with its principal office, place of business, and manufacturing plant at Winchester, Ind. On and prior to August 28, 1919, the Woodbury Glass Company was engaged in manufacturing whiskey bottles, condiment bottles, and milk bottles, and in selling, shipping, and delivering such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged. Since August 28, 1919, or shortly thereafter, the Woodbury Glass Company has been engaged in manufacturing condiment bottles, fruit juice bottles, fruit jars, and like glassware, and in selling and shipping such bottles and glassware to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged. On and prior to August 28, 1919, the Woodbury Glass Company was in competition with the respondent and with other persons, firms, and corporations in the sale, transportation, and delivery of milk bottles in interstate commerce.

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PAR. 6. The J. T. & A. Hamilton Company is a corporation under the laws of the State of Pennsylvania, with its principal office, place of business, and manufacturing plant at Pittsburgh, Pa. On and prior to August 28, 1919, the J. T. & A. Hamilton Company was engaged in manufacturing milk bottles, and in selling and shipping such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged.

PAR. 7. The Owens Bottle Company is a corporation under the laws of Ohio and was organized as The Owens Bottle-Machine Company but duly changed its name in 1919 to The Owens Bottle Company. It has its principal office and place of business at Toledo, Ohio, and owns and operates glass factories in Ohio, West Virginia, New Jersey, Indiana, and other States, and is and for many years has been engaged in manufacturing and selling glass bottles and other glassware, but does not manufacture milk bottles.

PAR. 8. The Owens bottle blowing machine is a modern, improved, patented machine with which glass bottles and other glassware are manufactured automatically and more rapidly, cheaply, and successfully than with semi-automatic machines or by hand labor. The Owens bottle blowing machine was the first, and until about the year 1917, the only successful device or machine for manufacturing glass bottles and other glassware automatically. During the year 1903 the Owens Bottle-Machine Company acquired from the owner of the patents then covering the Owens bottle blowing machine the exclusive right to use said machine in the United States in making glass bottles and other glassware, and since said date the Owens Bottle Company has perfected improvements and additions to said machine, and has secured and owns in its right six or more patents covering such improvements and additions.

PAR. 9. The Owens Bottle Company has licensed and leased Owens bottle-blowing machines, and the right to use the same, to certain persons, firms, and corporations engaged in manufacturing glass bottles and other glassware. The manufacture, sale, licensing, and leasing of the Owens bottle making machines is controlled exclusively by the Owens Bottle Company. About the year 1905, under certain contracts, licenses and leases from the Owens Bottle Company, the respondent acquired the exclusive right to use the Owens bottle-blowing machines in the United States for manufacturing milk bottles, and the exclusive right to all improvements that may be made thereon, and any new machines that the Owens Bottle Company may own or acquire. The respondent still owns such ex-

clusive rights, except that the exclusive right to said improvements and said new machines terminated October 1, 1920.

PAR. 10. About 1916 or 1917 the Hartford-Fairmont Company of Hartford, Conn., produced and patented a successful bottle-making machine and a feeder therefor, and both could be operated together as a complete automatic unit. The feeder is a device for transferring molten glass from the tank into the glass moulds or bottle forming machine. The Hartford-Fairmont feeders and machines when operated together were equal, and in some respects superior, to the Owens bottle-making machines. The Owens bottle-making machines and the Hartford-Fairmont feeders and bottle-making machines are the only successful entirely automatic bottle-making machines operated as complete units.

PAR. 11. After the Hartford-Fairmont feeders and bottle-making machines had been produced and patented, the exclusive right and license to use such feeders and machines for manufacturing milk bottles were acquired by the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the J. T. & A. Hamilton Company. Under such exclusive rights and with such feeders and machines, these four companies, on and prior to August 28, 1919, were successfully manufacturing milk bottles. The Woodbury Glass Company acquired a nonexclusive license to use the Hartford-Fairmont feeders only in manufacturing condiment bottles, fruit juice bottles, food containers, fruit jars, and glassware for carbonated soft drinks. The Woodbury Glass Company did not begin to use the Hartford-Fairmont feeders until August 28, 1919, or shortly prior thereto. Prior to using Hartford-Fairmont feeders, the Woodbury Glass Company manufactured whiskey bottles, condiment bottles, and milk bottles on semi-automatic machines, and so manufactured such bottles on and prior to August 28, 1919, and sold and delivered such bottles in commerce in competition with other persons, firms, and corporations.

PAR. 12. In the year 1919 I. T. Axton, the president and a large stockholder of the Woodbury Glass Company, attempted to merge the Woodbury Glass Company with the companies which held the exclusive rights to use the Hartford-Fairmont feeders and machines for manufacturing milk bottles. He controlled the common capital stock of the Woodbury Glass Company. In May, 1919, Axton secured options on the capital stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and on the Hartford-Fairmont License, feeder and machine, and milk-bottle business of the J. T. & A. Hamilton Company and tried to merge those companies

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with the Woodbury Glass Company, but failed to accomplish the proposed merger.

PAR. 13. A short time before his options expired, Axton approached F. E. Baldwin, the president and largest stockholder of the respondent, and suggested that the Thatcher Manufacturing Company, or Baldwin and his associates, exercise the options and rights which Axton held. Baldwin considered the proposition and conferred with H. C. Mandeville, a director and the general counsel of the respondent, and with E. D. Libbey, the president of the Owens Bottle Company. After negotiations and interviews with the Owens Bottle Company, its consent and advice to the purchase was obtained. E. D. Libbey agreed to assist in raising the necessary money, and also agreed to go into the transaction provided he could acquire the patents on the Hartford-Fairmont feeders and bottle-making machines. During August, 1919, it was decided to exercise the options and rights held by Axton.

PAR. 14. The options held by Axton expired September 1, 1919, and the remaining option time was short. In pursuance of the decision to exercise the options and rights held by Axton, the Stirling Glass Company, Inc., was formed on August 23, 1919, to serve as a temporary means through which the desired options and rights could be acquired quickly. Mandeville incorporated the Stirling Glass Company, Inc., under the laws of New York on August 23, 1919, with an authorized capital stock of \$600,000, of which \$500,000 was issued at par for cash. One-half of the issued capital stock of the Stirling Glass Company was taken by E. D. Libbey, and the remaining one-half by the respondent. Eight shares of such stock taken by the respondent were issued in the names of four agents or employees of the respondent, but such eight shares belonged to the respondent.

PAR. 15. On August 28, 1919, Axton, pursuant to directions, assembled the stockholders of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Woodbury Glass Company, at an office of the Guaranty Trust Company in New York City, N. Y., with their respective stock certificates ready for transfer and delivery on payment of the purchase price therefor. At the same time F. E. Baldwin, the president of the respondent, H. C. Mandeville, a director and general counsel of the respondent, E. D. Libbey, the president of the Owens Bottle Company, and William Ford, a business associate of Libbey and a large stockholder in the Owens Bottle Company, met in another room of the same building.

PAR. 16. The sum of approximately \$2,110,000 in cash was required to exercise the options and rights held by Axton, and the Stirling Glass Company had \$500,000 of that amount. To obtain the required

balance, F. E. Baldwin, E. D. Libbey, and William Ford, on behalf of the Stirling Glass Company, discounted to the Guaranty Trust Company their three separate individual promissory notes for a total of \$1,610,000, and each indorsed the notes of the other two so that all were equally liable on all three notes. Such notes were dated and discounted August 28, 1919, and were payable on demand, but the Guaranty Trust Company agreed to carry the notes for one year. The proceeds of said notes and the \$500,000 of the Stirling Glass Company were deposited in the Guaranty Trust Company to the credit of the Stirling Glass Company, and used, on August 28, 1919, to acquire the capital stock of the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company, also the common capital stock of the Woodbury Glass Company, and the license, machine, and milk-bottle business of the J. T. & A. Hamilton Company. The certificates of stock in the Essex, Travis, Lockport, and Woodbury companies were indorsed in blank by the respective vendors and retained by the Guaranty Trust Company as collateral security for the three notes of Baldwin, Libbey, and Ford. The transaction with the J. T. & A. Hamilton Company ran directly to the respondent, the J. T. & A. Hamilton Company transferring its Hartford-Fairmont license and machine and its milk-bottle business outside of Allegheny County, Pa., directly to the respondent.

PAR. 17. During the progress of said transaction at the Guaranty Trust Company, but before the capital stock of the Essex, Travis, Lockport, and Woodbury companies had been acquired, as stated in these findings, I. T. Axton wrote and delivered the following letter:

AUGUST 28, 1919.

GUARANTY TRUST COMPANY OF NEW YORK,
140 Broadway, New York City, N. Y.

GENTLEMEN: In connection with the proposed loan by your Company to Francis E. Baldwin, Esq., for the purpose of enabling him to acquire the outstanding stock of the Travis Glass Company, and the Woodbury Glass Company, I beg to inform you that the Woodbury Glass Company is engaged in the manufacture and sale of condiment bottles, jam jars, and fruit juice bottles. The Travis Glass Company is engaged in the manufacture of milk bottles only.

The Woodbury Glass Company has in the past manufactured a small amount of milk bottles, but by a different process from that employed by the Travis Glass Company, covering an almost wholly different territorial field. For about a year past, however, the manufacture of milk bottles by the Woodbury Glass Company has been declining, and it is the intention of the Company gradually to discontinue all manufacturing thereof.

There is, therefore, practically no competition between the two companies.

Yours very truly,

I. T. AXTON.

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PAR. 18. Immediately after the capital stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Woodbury Glass Company had been acquired as aforesaid, F. E. Baldwin, the president of the respondent, appeared before the vendors of the stock and requested the officers of said four companies to remain in their respective positions and continue the operation of the companies until further directions. The resignations of all officers of the four companies were taken by Baldwin to be exercised at his option. The respondent conducted these four companies under their own management until January 1, 1920, when the respondent brought the entire business of said four companies to Elmira, N. Y., and thereafter such companies were managed and directed by the Thatcher Manufacturing Company.

PAR. 19. After the capital stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Woodbury Glass Company had been acquired, as stated in these findings, Baldwin, Libbey, Ford, and the Stirling Glass Company entered into the following agreement:

Agreement made this 28th day of August, 1919 between FRANCIS E. BALDWIN, of the first part, WILLIAM FORD of the second part, EDWARD D. LIBBEY, of the third part, and STIRLING GLASS COMPANY, INC., hereinafter called "Stirling Company," of the fourth part.

WITNESSETH:

Whereas, Baldwin, Ford and Libbey are each making certain notes to the Guaranty Trust Company as follows:

Baldwin is making a note for Six Hundred Fifty Thousand Dollars (\$650,000) with collateral security of two thousand (2,000) shares of the common stock of the Woodbury Glass Company and five hundred (500) shares of the common stock of the Travis Glass Company, being all the outstanding stock of each of said Companies:

Libbey is making a note of Four Hundred Eighty Thousand Dollars (\$480,000) with one thousand (1,000) shares, being all the outstanding capital stock of the Essex Glass Company, as collateral; and

Ford is making a note for Four Hundred Eighty Thousand Dollars (\$480,000), with one thousand seven hundred sixty-two shares (1,762) of the common stock of Lockport Glass Company and one hundred ten (110) shares of its preferred stock, as collateral, together with Eighty Nine Thousand Dollars (\$89,000) par value of Bonds and One Hundred Seventeen Thousand Dollars (\$117,000) of notes of said Company; all of said notes being given on demand and amounting in all to One Million Six Hundred Ten Thousand Dollars (\$1,610,000) and

Whereas, the Stirling Company is a corporation organized under the laws of the State of New York, with an authorized

capital stock of Six Hundred Thousand Dollars (\$600,000) of which Five Hundred Thousand (\$500,000) has been paid in cash, and Libbey and Baldwin have each contributed one-half ($\frac{1}{2}$) of said capital stock; and

Whereas, Libbey, Baldwin and Ford have each endorsed the notes of the others, so that all are liable on all of the notes, either as maker or endorser; and

Whereas, it is the purpose of the parties hereto that at a later date a permanent company be organized to take over the ownership of the plants and assets of all the said Companies, together with the Thatcher Manufacturing Company, of Elmira, New York, and that said permanent Company shall have such capital and be organized in such form as may be agreed upon by the parties hereto, and it is agreed that the said stocks shall be held together and shall not be sold by either of the parties hereto without the consent of the others, and

Whereas, Libbey has entered into this agreement in contemplation of the purchase by him or for his account of the so-called "Hartford-Fairmont" patents covering certain automatic feeding devices and glass-blowing machinery now owned by Hartford-Fairmont Company, or under the control thereof; and

Whereas, it is agreed between the parties hereto that, if the parties do not mutually agree upon the form and capitalization of the Company and the details in respect thereto, Ford and Libbey may retire from Stirling Company and from this transaction, at their option, and shall, in that event be released from all liability as maker or endorser of said note, and Libbey shall be repaid the Two Hundred Fifty Thousand Dollars (\$250,000) or other amounts contributed to the capital stock of Stirling Company; and

Whereas, Stirling Company undertakes to assume and does hereby assume all liability of the other parties hereto upon the said notes, whether maker or endorser.

Now, therefore, in consideration of the endorsements above named and of the mutual covenants herein contained and of One Dollar (\$1.00), receipt whereof is hereby acknowledged by each of the parties hereto, it is agreed as follows:

First.—That Stirling Company hereby undertakes to and does hereby save the other parties to this agreement and each of them, harmless from any and all liability or obligation by reason of the making or endorsing of any of the notes above recited, and, upon the payment of the said note all of the collateral thereto shall become the property of Stirling Company.

Second.—That until the formation of the permanent Company above recited, all of the stock and collateral mentioned above shall be held together as one unit so that the said permanent Company may be formed either by merger or by sale of assets as may be determined, and that none of the parties hereto shall sell or dispose of the said stocks or collateral.

Third.—That if the so-called "Hartford-Fairmont" patents, or control thereof, shall not be acquired by Libbey within six

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months of the date of this agreement, or if the parties hereto shall fail to agree upon the form, capitalization or organization of the permanent Company hereinbefore referred to, Libbey may, at any time upon service of ten (10) days written notice, upon Baldwin, retire from this agreement. In the event of Libbey's retirement as aforesaid, Baldwin agrees to assume all liability hereunder, and all liability upon the said notes or in connection therewith, of each and all of the other parties hereto; to procure the release of the said other parties from said notes within four (4) months from the date of the aforesaid notice; to hold harmless and indemnify each and every of the other parties hereto from and against any and all liability for or on account of the aforesaid notes; and to repay to Libbey within four (4) months of the date of the service of the aforesaid notice upon him the Two Hundred Fifty Thousand Dollars (\$250,000) aforesaid, invested by Libbey in the capital stock of Stirling Company, and all other amounts which Libbey may have so invested or advanced to Stirling Company, with interest on each such investment and advance from the date thereof, at the rate of six per cent (6%) per annum.

Fourth.—Upon the repayment of said moneys and the release of said endorsements and liability, Ford and Libbey hereby release to Baldwin any and all interest in the stock of the Stirling Glass Company, and agree to transfer the same to his nominee, and Baldwin may proceed with the organization of such permanent Company and with the disposition of Stirling Company and its assets, in such manner as Baldwin may see fit, free from all obligations under this agreement.

Fifth.—This agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators and assigns of the first, second and third parties, and the successors and assigns of the fourth party.

Sixth.—This agreement supersedes and terminates an agreement made between Baldwin, Ford and Stirling Company, dated August 28, 1919, and approved and joined in by Libbey, by C. J. Wilcox, Secretary.

In witness whereof the parties have set their hands the day and year first above written.

F. E. BALDWIN,

E. D. LIBBEY,

WILLIAM FORD

STIRLING GLASS COMPANY, INC.

By H. C. MANDEVILLE.

PAR. 20. Some little time after August 28, 1919, and before December 11, 1919, it was determined that Libbey could not acquire the Hartford-Fairmont interests, and Libbey abandoned that idea. Separate written notices, dated December 11, 1919, were given by Libbey and Ford to Baldwin and the respondent stating that, as the plan of reorganization of the companies purchased under the agreement of August 28, 1919, did not meet their approval, they desired

to retire from the agreement and to be relieved from further liability under the notes given to the Guaranty Trust Company. Libbey's notice also stated that he expected to be reimbursed for the money advanced for the capital stock of the Stirling Glass Company, all to be accomplished not later than April 12, 1920. Libbey was not immediately paid for his investment in the Stirling Glass Company, nor were Libbey and Ford released from liability within the time and manner provided in the third paragraph of said agreement of August 28, 1919, and by the date stated in Libbey's notice. The indebtedness and notes to the Guaranty Trust Company remained unchanged until paid by the respondent on July 3, 1920. Libbey and Ford did not appear in the transaction subsequent to December 11, 1919, except that Libbey's stock in the Stirling Glass Company was transferred of record to the respondent on June 5, 1920, and on June 7, 1920, the respondent paid Libbey \$261,750 for such stock.

PAR. 21. On or about December 1, 1919, prior to the date of the notices from Libbey and Ford, the certificates of stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Woodbury Glass Company, acquired on August 28, 1919, were transmitted by the Guaranty Trust Company to its agent at Elmira, N. Y., and there formally transferred on the records of said companies. Such certificates were canceled, and new certificates for all the capital stock of the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company, and for all the common capital stock of the Woodbury Glass Company, were issued to persons nominated by Baldwin. All such stock in said companies, except two or three shares in each company issued to other persons to qualify the requisite directors, was issued to the following named persons:

F. E. Baldwin, president of the respondent.

H. C. Mandeville, a director and general counsel of the respondent.

R. W. Niver, vice president and a director of the respondent, and

F. L. Collins, a confidential employee of the respondent.

F. E. Baldwin and F. L. Collins were elected president and secretary, respectively, of said Essex, Travis, Lockport and Woodbury companies.

PAR. 22. On December 5, 1919, all the stock of the Travis Glass Company, except five shares to qualify five other persons as directors, was issued to H. C. Mandeville, and on January 5, 1920, the shares issued to Mandeville were transferred to F. E. Baldwin.

On December 6, 1919, all the stock of the Lockport Glass Company, except six shares to qualify six other persons as directors, was issued to H. C. Mandeville.

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On December 8, 1919, all the capital stock of the Essex Glass Company, except six shares to qualify six other persons as directors, was issued to H. C. Mandeville, and on January 5, 1920, the shares issued to Mandeville were transferred to F. L. Collins.

On December 8, 1919, all the common capital stock of the Woodbury Glass Company, except five shares to qualify five other persons as directors, was issued to H. C. Mandeville, and on January 5, 1920, the shares issued to Mandeville were transferred to F. E. Baldwin.

None of the persons to whom such stock was so issued paid any money for such stock or gave any consideration therefor. The certificates so issued were not delivered to such persons, but were severally indorsed in blank by the respective persons to whom issued, and returned to the Guaranty Trust Company at New York City and held as collateral security for the said notes of Baldwin, Libbey and Ford until such notes were finally paid.

PAR. 23. During the month of September, 1919, the respondent advanced \$40,605 to the Woodbury Glass Company, and during the month of October, 1919, the respondent advanced \$25,000 to the Travis Glass Company. On December 31, 1919, the respondent received \$75,000 from the Essex Glass Company, and that sum was mingled with and became a part of the funds and assets of the respondent. Such advances were not made in payment of any indebtedness whatever.

PAR. 24. The annual report for 1919 of F. E. Baldwin, as president of the respondent, was made to the stockholders and directors of the respondent on February 18, 1920, and in that report Baldwin formally related the acquisition of the capital stock of the Essex, Travis, Lockport and Woodbury companies in the following language:

During the year starting, I believe, in April, negotiations were held in regard to the merging of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, the Woodbury Glass Company, and the purchasing of the Hartford-Fairmont Feeder and Milk Bottle Machine and milk bottle business of the J. T. & A. Hamilton Company. These parties, except the Woodbury Glass Company held the exclusive licenses for the Hartford-Fairmont Feeder and the machines for the manufacture of milk bottles in the U. S. The Woodbury Glass Company had a nonexclusive license for the manufacture of condiment bottles. After several months' negotiations and interviews with the Owens Bottle Machine Company, and obtaining their consent and advice that we purchase these companies and thereby obtain the rights of the Hartford-Fairmont feeders, upon the 29th day of August, we purchased the capital

stock of the companies named and the Hartford-Fairmont feeder and the machines and the milk bottle business of the J. T. and A. Hamilton Company.

The money was borrowed for the making of these purchases of the Guaranty Trust Company of New York. We were assisted in obtaining same by E. D. Libbey, President of the Owens Bottle Company, and Mr. Williams Ford, a large stockholder in the Owens Bottle Company.

We conducted these companies under their own management until the first of January. The first of January we brought the entire business to Elmira, and the same is being now managed and directed by the Thatcher Manufacturing Company.

The opportunity to purchase these plants, I cannot help but feel was providential. It put us in the fore front as we never have been before in the manufacture of milk bottles. With the Hartford-Fairmont machines we can manufacture bottles at least 50¢ per gross cheaper than we can with the Owens machines.

PAR. 25. On and prior to August 28, 1919, the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Woodbury Glass Company sold milk bottles in commerce in competition with each other and in competition with the Thatcher Manufacturing Company in substantially all the States and Territories of the United States. There has been no competition between the respondent and the Woodbury Glass Company since August 28, 1919. All competition between the respondent and the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company ceased not later than January 1, 1920, and no competition has since existed between any of said companies.

PAR. 26. During the month of June, 1919, the Woodbury Glass Company sold and shipped milk bottles in carload lots to purchasers in the State of Illinois. On the 8th day of April, 1919, the Illinois Glass Company of Chicago, Ill., gave an order to the Woodbury Glass Company for one carload of 200 gross, quart, private mould, Wisconsin sealed milk bottles, to be shipped on May 3, 1919, and said order contained the following instruction:

The above car is to be followed with an additional car of quarts to be shipped the first day of each month on account of this contract until notified to discontinue.

It does not appear that such order or instruction was ever changed or discontinued.

PAR. 27. In order to finance the indebtedness to the Guaranty Trust Company under the three notes given by Baldwin, Libbey, and Ford, an agreement was made on April 10, 1920, by Baldwin with Hemphill, Noyes & Company and Bonbright & Company, bond buyers of New York City, providing a plan for a reorganization of the re-

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spondent by increasing its capital stock from \$1,000,000 to \$1,625,000, and also by issuing \$2,000,000 of its bonds to be purchased by such bond buyers. That agreement recited that Baldwin represented a control of at least two-thirds or more of both the outstanding common and preferred stock of the respondent for the purpose of carrying out the plan therein set forth. In the agreement Baldwin is called the "Seller;" Hemphill, Noyes & Company and Bonbright & Company are called the "Buyers;" and the respondent is referred to as the "Corporation." Paragraph IV of that agreement is as follows:

IV.

Either before or at the time of the reorganization, as herein provided, the Corporation shall acquire all of the assets and the business of the following companies, to wit: Travis Glass Company, Essex Glass Company, and the Lockport Glass Company, all of the shares of stock of said companies being now owned by the Stirling Glass Company, whose shares of stock are all owned by the Corporation; and at the same time, the Corporation shall also acquire all of the common stock of the Woodbury Glass Company which is now owned by the Stirling Glass Company. As a condition of such acquisition, the Corporation shall assume all of the obligations of the aforesaid companies, which shall thereupon be dissolved.

PAR. 28. The agreement of April 10, 1920, also provided that the bonds to be issued by the respondent should be secured by a mortgage or deed of trust, and among the provisions pertaining thereto are the following excerpts from paragraph V of such agreement:

V.

Immediately upon the filing of the certificate of reorganization of the Corporation as provided by law the Seller shall cause the Corporation to authorize, make and execute an issue of \$2,000,000 principal amount of its corporate bonds (hereinafter called the "Bonds"). The said issue of Bonds shall be limited to \$2,000,000 principal amount thereof; shall be matured ten years after the date thereof; shall be payable, principal and interest, in gold coin of the United States of America of the present standard of weight and fineness; shall bear interest at the rate of seven per cent per annum, payable semiannually; * * *

* * * * *

Should the Buyers notify the Seller that they will purchase the securities of the Corporation as hereinbefore provided, and should the Buyers contemporaneously therewith notify the Seller that it is their desire to have the bonds secured by mortgage on the property of the Corporation and the properties of the Travis

Glass Company, Essex Glass Company, and Lockport Glass Company to be acquired by it as hereinbefore provided, then and in such event the Seller shall cause the Corporation to execute a mortgage on all of its property and that of said companies, of every kind and description whatsoever, and also on the stock of the Woodbury Glass Company to be acquired by it as hereinbefore set forth, to secure the payment of principal and interest of the bonds; * * *

The Seller agrees that the following representations constitute a part of this agreement and are the basis upon which the sale hereinafter provided for is to be made:

A. * * *

B. * * *

C. That the Corporation and its aforesaid subsidiary companies have good and marketable title to all of their properties, free and clear of all incumbrances with the exception of the lien or aforesaid mortgage of \$149,500 on a portion of the property of the Corporation;

D. That the business of the Corporation and its said subsidiary companies is in sound condition, the present management successful and in good standing, and that the prospects for continued profitable business are good.

PAR. 29. The reorganization of the respondent was carried out in accordance with the agreement of April 10, 1920, between Baldwin and the bond buyers. Two days after such agreement, viz, on April 12, 1920, the stockholders of the Thatcher Manufacturing Company authorized an increase in the capital stock of the respondent as stipulated in the agreement. Such additional stock was issued for cash, and from the proceeds thereof the respondent, on June 7, 1920, paid Libbey \$261,750 for the sum Libbey advanced for the capital stock of the Stirling Glass Company with interest thereon. The stock in Libbey's name was transferred of record to the respondent on June 5, 1920, and thereupon the respondent became the owner of record of all the capital stock of the Stirling Glass Company, except the eight shares issued in the names of agents or employees of the respondent.

PAR. 30. On June 3, 1920, before the stock in Libbey's name was transferred of record or paid for by the respondent, the following communication was given to the Stirling Glass Company, and its board of directors:

JUNE 3, 1920.

STIRLING GLASS CO., INC., AND THE
BOARD OF DIRECTORS THEREOF:

DEAR SIR: The undersigned have acquired all the shares of the capital stock of Stirling Glass Company Inc., and are desirous of having Stirling Glass Company, Inc., dissolved, and

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in anticipation of such dissolution to have all of its property and assets as going concern assigned, transferred and set over to Thatcher Manufacturing Company. Upon such a transfer the Thatcher Manufacturing Company will assume and pay all debts and obligations of Stirling Glass Company, Inc., including all of its obligations under a certain agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Stirling Glass Company, Inc., party of the third part.

Therefore, the undersigned hereby request Stirling Glass Company, Inc., and its board of directors to cause to be transferred and set over to Thatcher Manufacturing Company, all of the property of Stirling Glass Company, Inc., of every kind and description and wheresoever situated, including the aforesaid agreement between Francis E. Baldwin, William Ford and Stirling Glass Company, Inc., bearing date August 28th, 1919, together with all its right, title and interest therein, for the consideration of one dollar (\$1.00) and the assumption and payment of all of the debts and obligations of Stirling Glass Company, Inc.

Furthermore, the undersigned requests the board of directors of Stirling Glass Company, Inc., to institute the proper proceedings under the laws of the State of New York for the voluntary dissolution of Stirling Glass Company, Inc., and hereby covenant and agree, as the holders of all the stock of Stirling Glass Company, Inc., to take all the necessary proceedings and to vote the said stock so as to consummate said dissolution.

Yours very truly,

THATCHER MANUFACTURING COMPANY.
By F. E. BALDWIN, *Pres.*
H. C. MANDEVILLE.
ELY W. PERSONIUS.
LEO WAXMAN.
W. P. RODGERS.

PAR. 31. The Stirling Glass Company on June 7, 1920, by H. C. Mandeville, its president, executed a bill of sale by which all property and assets of the Stirling Glass Company of every kind and description, including the agreement of August 28, 1919, with all rights and interest therein, were transferred to the respondent.

Assignments or transfers dated as of June 1, 1920, of the rights and licenses to use the Hartford-Fairmont feeders and machines were executed and delivered to the respondent by the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the J. T. & A. Hamilton Company. The Hartford-Fairmont Company assented and agreed to the transfer and assignment of such rights and licenses to the respondent.

PAR. 32. Pursuant to the condition expressed in Paragraph IV of the contract of April 10, 1920, for the acquisition of the assets of

the Essex Glass Company, the Travis Glass Company and the Lockport Glass Company, and for a dissolution of said companies, separate written notices were addressed to the Essex, Travis, and Lockport companies, and the respective boards of directors thereof, by Baldwin, Mandeville, Collins, and Niver, and the persons holding one share each of stock in such companies, and all such notices are dated June 7, 1920. It was recited in each notice that the persons whose names were signed thereto had acquired all the capital stock of the company named, and desired to have such company dissolved, and in anticipation of such dissolution to have all the properties and assets of such company as a going concern transferred to said persons or their nominee. Each company was requested to cause all the assets and property of such company to be transferred to said persons or their nominee. Resolutions providing for such transfer and dissolution were thereupon adopted by such persons as the stockholders and directors of the Essex, Travis, and Lockport companies, respectively. In each case the respondent was nominated as the transferee for the property of such companies. Deeds and bills of sale were severally drawn and executed by each company purporting to transfer and convey to the Thatcher Manufacturing Company all property and assets of every kind belonging to the Essex, Travis, and Lockport companies, respectively. Such deeds and bills of sale were executed and ready for delivery, and were executed by each company by F. E. Baldwin as president, and attested by F. L. Collins as secretary, respectively. The deeds and bills of sale from the Essex Glass Company were dated June 17, 1920. The deeds and bills of sale from the Travis Glass Company and the Lockport Glass Company were dated June 25, 1920. Each deed and bill of sale recited a consideration of one dollar and other good and valuable consideration.

PAR. 33. In pursuance of the agreement of April 10, 1920, between Baldwin and the bond buyers, to accomplish the issue of bonds provided for therein, the respondent executed a mortgage or deed of trust to the Guaranty Trust Company, as trustee, to secure the payment of said bonds. Such mortgage or deed of trust included all properties of the respondent, also all properties of the Essex, Travis, and Lockport companies, and the common capital stock of the Woodbury Glass Company. The bonds to be issued and sold and to be secured by such mortgage or deed of trust were drawn and signed, and dated April 1, 1920.

PAR. 34. On July 3, 1920, Baldwin and Mandeville, representing the respondent, met the representatives of the bond buyers at the offices of the Guaranty Trust Company in New York City, N. Y.

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The bonds and mortgage or deed of the respondent, and also the deeds and bills of sale from the Essex, Travis, and Lockport companies were produced and delivered to the bond buyers. Such deeds and bills of sale, bonds, and mortgage or deed of trust became effective on such delivery. The bond buyers delivered the proceeds of the bonds to the Guaranty Trust Company, and such proceeds were deposited therein to the credit of the Thatcher Manufacturing Company. The respondent, by Baldwin as its president, drew a check on the fund arising from the proceeds of such bonds, in favor of the Guaranty Trust Company for \$1,634,955, for payment of the three notes of Baldwin, Libbey, and Ford, with the interest thereon. The Guaranty Trust Company accepted the payment, marked such notes paid, and delivered said notes and the certificates of stock of the Essex, Travis, and Lockport companies to Baldwin and Mandeville. The certificates for the common stock of the Woodbury Glass Company were retained by the Guaranty Trust Company under the terms of said mortgage or deed of trust. The mortgage or deed of trust, and the deeds to the respondent from the Essex, Travis, and Lockport companies were placed of record by the bond buyers and the trustee. The delivery of the deeds and bills of sale, bonds, and proceeds, mortgage or deed of trust, notes and certificates of stock, and the payment of said notes occurred contemporaneously and constituted one transaction.

PAR. 35. The dissolution of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Stirling Glass Company was accomplished pursuant to the condition expressed in Paragraph IV of the agreement of April 10, 1920, and in compliance with the notices, requests, and resolutions of the stockholders and directors of said companies as heretofore stated in these findings.

The Stirling Glass Company was dissolved September 9, 1920;

The Lockport Glass Company was dissolved October 20, 1920;

The Essex Glass Company was dissolved December 18, 1920; and

The Travis Glass Company was dissolved January 13, 1921.

PAR. 36. It was admitted that the respondent acquired and now owns the common capital stock of the Woodbury Glass Company. The respondent acquired that stock through the transaction in the Guaranty Trust Company on August 28, 1919, and subsequent proceedings stated in these findings, and the capital stock of the Essex, Travis and Lockport companies was included in the same transaction. All the common capital stock of the Woodbury Glass Company now appears of record in the names of the persons to whom such

stock was issued on December 8, 1919, and January 5, 1920, as stated in paragraph 22 of these findings. The persons to whom the common capital stock of the Woodbury Glass Company was issued on December 8, 1919, and January 5, 1920, and in whose names such stock remains of record, claim no right, title or interest in or to such stock adverse to the right, title and interest of the respondent. All the common capital stock of the Woodbury Glass Company is the property of the Thatcher Manufacturing Company.

PAR. 37. The Woodbury Glass Company began manufacturing milk bottles about 1914 or 1915, and made and sold milk bottles every year thereafter until it ceased manufacturing milk bottles in 1919, and during all that time the Woodbury Glass Company was equipped for manufacturing milk bottles, and made and sold milk bottles whenever it was so disposed. Milk bottles manufactured by the Woodbury Glass Company were sold over the United States generally. On and prior to August 28, 1919, the Woodbury Glass Company had contracts outstanding for the sale and delivery of milk bottles in commerce, and subsequent to August 28, 1919, orders to the Woodbury Glass Company for milk bottles, and such outstanding contracts, were filled and completed by the Thatcher Manufacturing Company. Since August 28, 1919, the Woodbury Glass Company has not manufactured milk bottles, and there has been no competition between the Woodbury Glass Company and the respondent since that date.

PAR. 38. The production of milk bottles was not the principal business of the Woodbury Glass Company during the years 1918 and 1919. The Woodbury Glass Company produced about 34,000 gross milk bottles in 1918 and about 8,000 gross milk bottles in 1919 prior to August 28. The total production of glass bottles of all kinds by the Woodbury Glass Company in 1918 was about 200,000 gross, and its total production of glass bottles of all kinds during 1919 was about 140,000 gross.

PAR. 39. The total number of milk bottles produced and sold during the years 1918 and 1919 by the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, the J. T. & A. Hamilton Company, and the Woodbury Glass Company is stated below. Such figures are by the gross, and do not include bottles made by the Essex, Travis, Lockport, and Hamilton companies by hand or by semiautomatic process, but only milk bottles made by said companies on Hartford-Fairmont machines. The figures below of 8,000 gross, giving the output of the Woodbury Glass Company for 1919,

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show the number of milk bottles produced by that company in 1919 prior to August 28:

	1918	1919
Essex Glass Company-----	<i>Gross.</i> 57, 380	<i>Gross.</i> 87, 376
Travis Glass Company-----	59, 283	37, 016
Lockport Glass Company-----	88, 372	140, 781
J. T. & A. Hamilton Company-----	33, 087	50, 828
Woodbury Glass Company-----	34, 000	8, 000

PAR. 40. The Thatcher Manufacturing Company is the largest producer of milk bottles in the United States, and produced and sold milk bottles during 1918 and subsequent years in the following amounts:

	<i>Gross.</i>
1918-----	331, 055
1919-----	288, 713
1920-----	833, 870
1921-----	821, 750

In the year 1919 prior to the acquisition of the capital stock of the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company, and the common capital stock of the Woodbury Glass Company, the respondent produced and sold in commerce about 40 per cent of all the milk bottles manufactured in the United States. During the year 1920 the respondent produced and sold in commerce about 70 per cent of all the milk bottles manufactured in the United States. On April 23, 1920, Baldwin submitted certain information to the bond buyers in connection with the proposed bond issue of the Thatcher Manufacturing Company, and made the following statement:

The Thatcher Manufacturing Company will have the exclusive right to make milk bottles by the only successful bottle-making machines devised, and will manufacture and sell about 90% of all the milk bottles manufactured in the United States.

PAR. 41. The contract of April 10, 1920, between Baldwin and the bond buyers provided that the bonds to be issued thereunder might be called on the terms and conditions and at the premium therein named. The bonds which the respondent issued under that contract have been called and retired, and the mortgage or deed of trust securing such bonds has been cancelled. The respondent now holds its properties and the properties of the Essex, Travis, and Lockport companies, and the common capital stock of the Woodbury Glass Company free of the lien or incumbrance of such mortgage or deed of trust.

PAR. 42. The acquisition of the capital stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the common capital stock of the Woodbury Glass Company, on August 28, 1919, and the subsequent developments and transactions stated in these findings, constituted an acquisition by the Thatcher Manufacturing Company of the stock or share capital of said four companies within the purview and in violation of an Act of Congress approved October 15, 1914 (the Clayton Act), and especially of Section 7 thereof. The transfer and conveyance to the respondent of the assets, rights, and properties of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Stirling Glass Company, and the dissolution of said companies, was an artifice and subterfuge of the respondent to evade the provisions of said act of Congress and to escape the penalties thereof. By such acquisition, artifice, and subterfuge, the respondent secured, and now retains and enjoys, the fruits, benefits, and advantages of an illegal acquisition of the stock or share capital of competing corporations engaged in commerce.

PAR. 43. The effect of the acquisition by the respondent of the said stock or share capital of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Woodbury Glass Company, as stated in these findings, was:

- (a) to eliminate all competition in commerce in the milk bottle business between the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, the Woodbury Glass Company and the Thatcher Manufacturing Company, and also between each company and each other of said companies;
- (b) to restrain commerce in the milk bottle business in the sections or communities of the United States in which the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, the Woodbury Glass Company and the Thatcher Manufacturing Company were engaged in commerce on and prior to August 28, 1919; and
- (c) to tend to create a monopoly in commerce in the milk bottle business in the Thatcher Manufacturing Company.

CONCLUSION.

The acquisition by the respondent of the stock or share capital of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the common capital stock of the Woodbury Glass Company, as stated in the foregoing findings as to the facts, constituted a violation of an Act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against un-

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lawful restraints and monopolies, and for other purposes," and especially of Section 7 thereof.

ORDER TO CEASE AND DESIST AND DIVEST, ETC. (MODIFIED).¹

This proceeding was regularly heard by the Federal Trade Commission on a complaint duly issued and served on the Thatcher Manufacturing Company, the answer of the respondent thereto, a written stipulation of facts entered into by the respondent and approved by the Commission, the testimony and evidence on file, and the briefs and arguments of counsel. Thereupon the Federal Trade Commission made a report in writing, in which it stated its findings as to the facts with its conclusions that the Thatcher Manufacturing Company is and has been violating the provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and especially Section 7 thereof.

It is therefore ordered, That the Thatcher Manufacturing Company:

1. Cease and desist from the ownership, operation, management, and control of the assets, properties, rights, and privileges acquired by it from the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company through its acquisition, ownership, and control of the stock or share capital of said companies, together with all improvements and additions made thereto from the time of such acquisition to the date hereof, which said assets, properties, rights, and privileges are hereby declared to have been acquired and are now held by the Thatcher Manufacturing Company in violation of law or as a result thereof, and cease and desist from the ownership, operation, management, and control of said assets, properties, rights, and privileges in such manner as to restore in harmony with the law the competitive conditions, with respect to said assets, properties, rights, and privileges so acquired, which existed prior to such acquisition in the manufacture and sale of milk bottles in interstate commerce, and so that no part of such assets, properties, rights, and privileges shall be held, owned, managed, or controlled hereafter by the Thatcher Manufacturing Company.

2. Divest itself of all assets, properties, rights, and privileges acquired by it from the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company, through its acquisition, ownership, and control of the stock or share capital of said companies, together with all improvements and additions made thereto

¹ This modified order made as of December 31, 1923.

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from the time of such acquisition to the date hereof, which said assets, properties, rights, and privileges are hereby declared to have been acquired and are now held by the Thatcher Manufacturing Company in violation of law or as a result thereof, and divest itself of said assets, properties, rights, and privileges in such manner as to restore in harmony with the law the competitive conditions with respect to said assets, properties, rights, and privileges so acquired, which existed prior to such acquisition in the manufacture and sale of milk bottles in interstate commerce, and so that no part of such assets, properties, rights, and privileges shall be held, owned, managed, or controlled hereafter by the Thatcher Manufacturing Company.

3. Divest itself of all the stock or share capital of the Woodbury Glass Company now held and owned directly or indirectly by the Thatcher Manufacturing Company, together with all right, title, interest, and claim in and to such stock or share capital, which said stock or share capital is hereby declared to have been acquired, and is now held by the Thatcher Manufacturing Company in violation of law or as a result thereof.

4. Submit within thirty (30) days from the date of this order, for approval by the Federal Trade Commission, a plan for the performance by the Thatcher Manufacturing Company of the terms of this order, jurisdiction for this purpose being hereby retained.

