

IN THE MATTER OF
SHELTON TACK COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 4564. Complaint, Aug. 11, 1941—Decision, Feb. 9, 1944

Where a corporation which was engaged in the manufacture and interstate sale and distribution of tubular and bifurcated rivets to industrial manufacturers and to the carton and jobbing trade, and in the manufacture, sale and lease of automatic rivet-setting machines to manufacturers, in competition with others so engaged, and, but for the restrictive leases below set forth, with concerns engaged in interstate sale and distribution of such rivets suitable for use with its said machines; was one of a group of eight manufacturers in the United States engaged in the manufacture and sale of such rivets, and manufacture, sale and lease of such machines—prices of which range from \$150 to \$1,000 and more, with the ordinary or more popular machines selling for around \$300; and was one of six of said manufacturers, which followed the other two original occupants of the field, in the making of such restrictive leases;

Leased its machines upon the condition that they should be used only for setting rivets made by it or sold under its authority, on a yearly rental basis, for amounts which were not sufficient, without the sale of the rivets, to warrant the leasing,—in connection with which it made no additional charges for servicing—and which were waived or rebated to the lessee if the lessee used quantity of its rivets stated in the lease at prices about ten per cent higher than those to non-leasing purchasers;

With the result that through said excluding condition it precluded other concerns from selling to its lessees rivets suitable for use in such machines, and excluded from the tubular and bifurcated rivet market numerous potential purchasers of such articles from its competitors, and competition in aforesaid market was restricted and contracted in direct proportion to the extent to which it was successful in so leasing its machines;

Effect of which, materially increased by similar practices of the other seven manufacturers hereinbefore referred to, might be to substantially lessen competition in sale in commerce of aforesaid articles:

Held, That through use of acts and practices described, said corporation had violated and was violating Section 3 of the Clayton Act.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Lynn C. Paulson and *Mr. George W. Williams* for the Commission.

Mr. William Ewin Bonn, of Baltimore, Md., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that Shelton Tack Company, a corporation, hereinafter referred to as respondent, has violated the provisions of Section 3 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and commonly known as the Clayton Act, hereby issues this its complaint against said respondent and states its charges in respect thereto as follows, to-wit:

PARAGRAPH 1. Respondent, Shelton Tack Company, is a corporation, organized, existing and doing business under the laws of the State of Connecticut, having its office and principal place of business at 1937 Canal Street, Shelton, Conn.

Respondent has been for many years last past and is now engaged in the business of manufacturing and selling tacks, nails and staples and tubular and bifurcated rivets. In connection with the manufacture and sale of tubular and bifurcated rivets, respondent trades under the name of Shelton Tubular Rivet Company. In connection with its aforesaid tubular and bifurcated rivet business, respondent leases or sells rivet-setting machines or permits the use of them by way of a license. Some of such machines are manufactured by respondent and others it purchases or acquires by other means. Such rivet-setting machines are intended for use and are used in setting tubular and bifurcated rivets. Tubular and bifurcated rivets are used in the manufacture of many articles of commerce, principally as a device for fastening two or more parts together.

PAR. 2. In the course and conduct of its aforesaid business, respondent has leased, licensed or sold and is now leasing, licensing and selling rivet-setting machines, and has sold and still sells its tubular and bifurcated rivets to individuals, partnerships and corporations, many of whom are located in States of the United States other than the State of Connecticut, and in the District of Columbia, and has caused, and still causes such machines and rivets, when leased, licensed or sold, to be transported from its principal place of business in Connecticut to the licensees, lessees and vendees thereof at their various places of location in the several States of the United States and the District of Columbia. Said respondent has been for many years last past and now is continually engaged in commerce in said products between and among the several States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business in commerce as aforesaid, said respondent is, and has been for many years last past in competition with individuals, partnerships and corporations engaged both in the manufacture, leasing, licensing and vending of rivet-setting machines and in the manufacture and sale of tubular and bifurcated rivets, and with other individuals, partnerships and corporations, who have been and are engaged in the manufacture and sale of tubular and bifurcated rivets, most, if not all, of which competitors manufacture and sell rivets suitable for use in and with respondent's rivet-setting machines, with whom, but for the restrictive condition of respondent's contracts of license, lease and sale, as hereinafter more particularly set forth, respondent would have been and would now be in more active and substantial competition.

PAR. 4. Respondent, in the course and conduct of its aforesaid business in commerce during all of the time herein referred to and continuing up to the present time, has leased, licensed and sold, or contracted to sell, rivet-setting machines for use in the several States and territories of the United States and in the District of Columbia, or fixed a price charged therefor or discount from or rebate upon such price, on the condition, agreement or understanding that the lessee, licensee or vendee thereof will not use the said machine or machines for setting any other tubular and bifurcated rivets than those manufactured by the respondent or sold under its authority.

PAR. 5. The effect of leasing, licensing or selling or contracting to sell, rivet-setting machines by respondent on the condition, agreement or understanding as aforesaid may be to substantially lessen competition or to tend to create a monopoly in a line of commerce, to wit: the sale and distribution of tubular or bifurcated rivets between the several States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts, practices and methods of respondent constitute a violation of the provisions of Section 3 of the hereinabove mentioned Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of that certain Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, the Federal Trade Commission on August 11, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Shelton Tack Company, a corporation, charging it with the violation of the provisions of Section 3 of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of, and in opposition to, the allegations of said complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, including testimony and other evidence taken in Commission's proceeding under Docket 4111 (Judson L. Thomson Manufacturing Company), which by stipulation upon the record were made a part of the record in this proceeding, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Shelton Tack Company, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, having its principal office and place of business at 1937 Canal Street, Shelton, Conn. Respondent is now, and for many years last past has been, engaged in the business of manufacturing and selling tubular and bifurcated rivets and also in the manufacture of automatic rivet-setting machines, which the respondent leases and sells to various manufacturers of commercial articles for use in setting such rivets.

PAR. 2. In the course and conduct of its business, the respondent causes its automatic rivet-setting machines when leased or sold, and its tubular and bifurcated rivets when sold, to be transported from its principal place

of business in the State of Connecticut to the purchasers and lessees of such products located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of its business, said respondent is, and for several years last past has been, in competition with firms, partnerships, corporations, and individuals engaged in the manufacture and sale in commerce among and between the various States of the United States, of tubular and bifurcated rivets, and in the manufacture, sale, and leasing of automatic rivet-setting machines for use in setting such rivets.

There are in the United States other corporations, individuals, firms, and partnerships who have been, and are, engaged in the sale in commerce among and between the various States of the United States of tubular and bifurcated rivets suitable for use in, and with, respondent's rivet-setting machines and with whom, but for the restrictive conditions of respondent's contracts of lease as hereinafter set forth, respondent would have been, and would now be, in active, substantial competition in the sale of tubular and bifurcated rivets.

PAR. 4. Tubular rivets are rivets which have the end of the shank of the rivet away from the head drilled or punched out so that a portion of this end of the shank forms a tube. When the rivet is set, the metal in this tubular part of the shank is caused to spread or flow so as to form a clinch. Bifurcated rivets have a v-shaped slot cut in the shank at the end away from the head and are set by causing the prongs on each side of this slot to be spread in opposite directions.

Tubular and bifurcated rivets are sold to two classes of customers—first, to manufacturers in the industrial field who use them for the purpose of assembling their products or as component parts of their products, and second, to the carton or jobbing trade, which includes the sale of rivets through mail-order houses and hardware jobbers and others for replacement and repair purposes. Rivets used in the industrial field by manufacturers are generally set in automatic-feed setting machines. Rivets sold to the carton or jobbing trade are as a rule not used in automatic-feed machines but, instead, are used in small hand-feed machines and some in special brake-lining machines.

Automatic rivet-setting machines all operate on the same general principles. The essential parts of such machines are the automatic feeding mechanism, the plunger or driving stem, the pocket, and the anvil. The rivets are poured into a hopper at the top of the machine and assorted mechanically so that they slide down a track. At the end of the track there is a cutoff in the feeding mechanism which releases one rivet at a time from the track and delivers it to the pocket. The pocket holds the rivet while it is being driven by the driving stem, which comes down on top of the rivet from above and pushes the rivet through the material to be riveted and against the anvil. The operation of the driving stem against the anvil spreads the prongs of bifurcated rivets or, in the case of the tubular rivets, causes the metal sides of the tube on the end of the shank to flow against the materials and clinch the rivet. A split or bifurcated rivet punches its way through the material to be riveted, and the rivet is clinched on a fixed anvil. The tubular rivet is clinched on a disappearing-point anvil.

Findings

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PAR. 5. There are eight companies in the United States, including the respondent, engaged in the business of selling tubular and bifurcated rivets and in supplying automatic rivet-setting machines for the setting of such rivets. All of said companies were, at the time of the filing of the complaint herein or prior thereto, engaged in the practice of leasing automatic rivet-setting machines on the condition and understanding that the lessee shall not use said leased machinery for setting any other rivets than those made and sold by the lessor.

From about 1889, when the use of tubular and bifurcated rivets for industrial purposes began, until the year 1914, the Judson L. Thomson Manufacturing Company (respondent in Commission's proceeding under Docket 4111) and Tubular Rivet & Stud Company (respondent in Commission's proceeding under Docket 4113) were the only companies engaged in the business of selling tubular and bifurcated rivets and supplying automatic rivet-setting machines for setting such rivets. The practice of these companies was to lease their automatic rivet-setting machines and not to sell such machines. The Judson L. Thomson Manufacturing Company has outstanding on lease approximately 8,000 automatic rivet-setting machines, and the Tubular Rivet & Stud Company has approximately 7,412 machines on lease. The total volume of business of the above eight companies in tubular and bifurcated rivets for the year 1939 was \$5,180,304.75. Of this amount \$1,243,927.86, or about 25 percent, was done by the Judson L. Thomson Manufacturing Company and \$1,331,550.98, or about 25 percent, by the Tubular Rivet & Stud Company.

The Penn Rivet Corporation (respondent in Commission's proceeding under Docket 4563) entered the industrial field and began the manufacture of bifurcated rivets and automatic rivet-setting machines about the year 1914 and subsequently included tubular rivets. This company both sold and leased its rivet-setting machines. During the period from 1932 to 1936 it made no new leases but resumed this practice in 1936, and now has approximately 500 machines outstanding on lease. While the evidence is not complete as to number of machines sold by this company, it appears that it has sold in excess of 2,000 machines during the time that it has been in business. The gross sales of tubular and bifurcated rivets by the Penn Rivet Corporation amounted to \$307,000 in 1939.

The Edwin B. Stimpson Company (respondent in Commission's proceeding under Docket 4560) began the manufacture and sale of tubular and bifurcated rivets about the year 1920, and about two years thereafter began supplying automatic rivet-setting machines. This company both sold and leased its rivet-setting machines. It has about 2,000 machines now outstanding on lease, and during the time that it has been in business has sold approximately 300 machines. The gross sales of tubular and bifurcated rivets of this company for the year 1939 amounted to \$286,500.

In 1920 the Chicago Rivet and Machine Company (respondent in Commission's proceeding under Docket 4562) began the manufacture and sale of tubular and bifurcated rivets but did not supply automatic rivet-setting machines until sometime between the years 1925 and 1928. Since that time it has supplied customers with automatic rivet-setting machines by lease, outright purchase, and on a lease-sale arrangement. The Chicago Rivet and Machine Company had 800 to 1,000 rivet-setting machines outstanding on lease. During the time that this company

has been engaged in distributing automatic rivet-setting machines, it has sold in excess of 3,000 machines. Its gross sales of tubular and bifurcated rivets for 1939 amounted to \$1,011,527, or about 20 percent of the total business done by the eight companies supplying rivet-setting machines.

During the period from 1927 to 1930 the respondent, Shelton Tack Company, Shelton, Conn.; Milford Rivet & Machine Company, Milford, Mass. (respondent in Commission's proceeding under Docket 4110); and National Rivet & Manufacturing Company, Waupun, Wis. (respondent in Commission's proceeding under Docket 4561), began the manufacture and sale of tubular and bifurcated rivets and supplying automatic rivet-setting machines. All three of these companies both lease and sell automatic rivet-setting machines. The machines of these companies outstanding on lease are as follows:

Shelton Tack Company	45 machines
Milford Rivet & Machine Company	269 machines
National Rivet & Manufacturing Company	96 machines

The number of automatic rivet-setting machines sold by these companies during the time they have been in business is as follows:

Shelton Tack Company	146 machines
Milford Rivet & Machine Company	254 machines
National Rivet & Manufacturing Company	207 machines

The gross sales of these companies of tubular and bifurcated rivets for the year 1939 were as follows:

Shelton Tack Company	\$213,225
Milford Rivet & Machine Company	396,574
National Rivet & Manufacturing Company	390,000

These three companies, together with the Penn Rivet Corporation and Edwin B. Stimpson Company, do approximately 30 percent of the total business done by the eight companies supplying rivet-setting machines.

When automatic rivet-setting machines are sold, the prices range from \$150 to \$1,000 and sometimes more, depending upon the nature and extent of special construction. The ordinary or more popular machine sells for around \$300. When such machines are placed with customers on a lease basis, the yearly rental is usually upon a more or less nominal basis and is not sufficient to show a profit. Rivets sold to lessees for use in leased machines cost approximately 10 percent more than corresponding rivets sold on the open market or sold to persons who do not lease machines.

PAR. 6. The respondent sells its tubular and bifurcated rivets to both industrial manufacturers and to the carton and jobbing trade. Rivets sold for use in automatic rivet-setting machines amount to approximately two-thirds of its sales. For the purpose of increasing the purchase of its tubular and bifurcated rivets, the respondent began supplying automatic rivet-setting machines for use in setting such rivets. Since that time the respondent has supplied automatic rivet-setting machines to customers both by sale and by lease agreement.

When automatic rivet-setting machines were supplied to customers on a lease basis, respondent followed the practice of leasing such machines on a yearly rental basis, which rental was waived or rebated to the lessee

if the lessee used a quantity of rivets stated in the lease. Respondent made no additional charge for servicing machines held by customers on lease.

The form of lease used by the respondent provides that the leased machine shall be used only for setting rivets manufactured by the respondent or sold under its authority and that the lessee will allow the respondent or its agents to inspect the machine at all reasonable times.

PAR. 7. The revenue received by respondent from the leasing of its rivet-setting machines is of minor importance as compared with the revenue received from the sale of its tubular and bifurcated rivets. The primary purpose of leasing the equipment is to enable respondent to sell tubular and bifurcated rivets in or with the equipment, as is evident from the provisions of the agreement rebating rental paid when a specified number of rivets is used by the lessee. The amount of rental charged by the respondent is not sufficient to warrant leasing its rivet-setting machines in the absence of the sale of rivets.

PAR. 8. There is on the market an ample supply of tubular and bifurcated rivets for use in or with respondent's rivet-setting machines which is for sale and which can be supplied for sale by concerns which sell or lease rivet-setting machines and by concerns which do not sell or lease such machines. These concerns are prepared to sell tubular and bifurcated rivets to lessees of respondent's rivet-setting machines but are precluded from making such sales by reason of the restrictive conditions in respondent's lease contract. While the respondent manufactures rivets of many various sizes and shapes, many of which are specially designed, such rivets can be duplicated and supplied by any competent rivet manufacturer.

PAR. 9. Among the concerns which do not supply rivet-setting machines in connection with the sale of tubular and bifurcated rivets are Atlas Tack Company, New Jersey Rivet Company, Townsend Company, J. W. Coombs Mfg. Co., and Manufacturers Belt Hook Co.

The gross sales of these companies of tubular and bifurcated rivets for the year 1939 were as follows:

Atlas Tack Company	\$ 24,994
New Jersey Rivet Company	40,000
Townsend Company	300,000
J. W. Coombs Mfg. Co.	39,000
Manufacturers Belt Hook Co.	72,000

The Atlas Tack Company sells its rivets to both the hardware and jobbing trade and to industrial users. Its sales, however, have been more or less limited to the hardware and jobbing trade, as it has not had much success in the industrial field. The New Jersey Rivet Company sells practically all of its rivets for use in automatic rivet-setting machines but has had difficulty in making sales where leased machines are present. The Townsend Company sells to both the hardware and jobbing trade and to industrial users. A representative of this company testified that the use of leased machines by manufacturers curtails outlets and narrows the market for its rivets. The J. W. Coombs Mfg. Co. sells to both industrial manufacturers and to the hardware and jobbing trade. About 80 percent of the rivets sold by this company are sold to one customer to whom it originally supplied 12 rivet-setting machines. The Manufacturers Belt Hook Company began the sale of tubular and bifurcated

rivets in 1910 but did not become interested in the industrial business until 1927 or 1928. It now sells both to hardware and jobbing trade and to industrial users. Sales are made mostly to industrial users who own their rivet-setting machines.

While the business of all these companies has increased during the past several years, there is no evidence whether such increase was due to a greater demand by the hardware and jobbing trade or by industrial users. However, the testimony of representatives of these various companies clearly indicates that the outlets for their tubular and bifurcated rivets were curtailed, and competition therein restrained, by the practice of leasing rivet-setting machines in the manner hereinabove described.

PAR. 10. The Commission finds that the practice of respondent in requiring that the lessees of its rivet-setting machines use in or with such machines no tubular or bifurcated rivets other than those supplied by the respondent, results in the exclusion from the market of numerous parties who, in the absence of such restrictions, would be prospective and potential purchasers of tubular and bifurcated rivets from respondent's competitors. Competition in the tubular- and bifurcated-rivet market is restricted and contracted in direct proportion to the extent to which respondent is successful in leasing its rivet-setting machines under agreements containing such restrictive conditions.

PAR. 11. The Commission further finds that the effect of such restrictive conditions under the circumstances set forth herein may be to substantially lessen competition in the sale of tubular and bifurcated rivets in commerce between and among the several States of the United States and in the District of Columbia. Such effect is materially increased by reason of the fact that it forms a part of the cumulative effect of the practices of the other companies described in paragraph 5 hereof upon competition in commerce among and between various States of the United States.

CONCLUSION

Through the use of the acts and practices described herein, the respondent has violated, and is now violating, Section 3 of the Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony and other evidence in support of, and in opposition to, the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of that certain Act of Congress of the United States entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act.

Order

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It is ordered, That the respondent, Shelton Tack Company, a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the leasing, sale, or making any contract for the sale of respondent's automatic rivet-setting machines in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Leasing, selling, or making any contract for the sale of, respondent's automatic rivet-setting machines on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use in or with such machines any rivets other than those acquired from respondent or from some source authorized by respondent.

2. Enforcing or continuing in operation or effect, any condition, agreement, or understanding in or in connection with any existing lease or sale contract, which condition, agreement, or understanding is to the effect that the lessee or purchaser of respondent's automatic rivet-setting machines shall not use in or with such machines rivets other than those acquired from respondent or from some source authorized by it.

It is further ordered, That the respondent shall, within 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.

Complaint

IN THE MATTER OF

SAMUEL MICKELBERG TRADING AS EXHIBIT SALES
COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 4024. Complaint, Feb. 7, 1940—Decision, Feb. 23, 1944

Where an individual engaged in competitive interstate sale and distribution of radios and other merchandise together with push cards and other devices designed for use by retailers in resale thereof to the public by means of a game of chance, gift enterprise or lottery scheme, and also of assortments so packed and assembled as to involve the use of such games of chance by ultimate purchasers—typical combination consisting of a radio and a 3,000 hole punch board equipped with ten red and five gold seal pull tabs, on which ten lucky punches received choice of the red tabs, entitling particular purchaser, as case might be, to \$5, \$1, 50¢, or choice of the gold tabs and prize of \$10, \$5, \$2.50 or the radio, while purchaser of the last punch became entitled to all of the remaining seals, others receiving nothing further for the 5 cents charged—

Sold such combinations and assortments to wholesalers, jobbers and retailers by whom, as direct or indirect purchasers, they were exposed and sold to the public in accordance with aforesaid sales plan, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of merchandise in accordance with such plan, involving sale of a chance to procure one of the articles involved at much less than its normal retail price, contrary to an established public policy of the United States government and in violation of the criminal laws, and in competition with many who refrain from use of any such method;

With the result that many persons were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell said merchandise in preference to that of aforesaid competitors, whereby trade was unfairly diverted to him from them:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. John W. Addison*, *Mr. W. W. Sheppard* and *Mr. Andrew B. Duvall*, trial examiners.

Mr. L. P. Allen, Jr., *Mr. J. V. Mishou* and *Mr. J. W. Brookfield, Jr.* for the Commission.

Mr. James Russell Murphy, of Washington, D. C., and *Mr. Gordon L. Bazelon*, of Chicago, Ill., for respondent.

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 Samuel Mickelberg, an individual, trading as Exhibit Sales Company, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the