

IN THE MATTER OF
HASTINGS MANUFACTURING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 2 (a) OF AN ACT OF
CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19,
1936

Docket 4437. Complaint, Dec. 27, 1940—Decision, Dec. 9, 1944

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of piston rings and other replacement parts for use in motor vehicles, to and through some six hundred jobbers, who distributed them to garages, service stations and others engaged in the repair and servicing of such vehicles; with a relative position in the industry in terms of volume of sales in the replacement trade originally apparently not better than sixth or seventh;

Following the introduction of its "steel vent" or new type of steel oil ring, and the inauguration of an aggressive campaign to acquire new and, as far as possible, exclusive channels of distribution; in pursuance of a general policy directed toward persuading jobbers to discontinue handling other lines of piston rings and to handle its rings exclusively; and as an inducement to jobbers to take on its line and handle it exclusively or at least to substitute it for one or more of the lines then handled and give it preferential treatment, used singly or in combination as required, the three principal methods below set out, supplementing them when necessary in other ways, such as granting a large jobbing account, override on the purchases of smaller jobbers in the same trading area, granting extra discounts and even in one instance the purchase of an automobile trailer from a jobber—

- (a) Purchased from distributors or prospective distributors of its said products competitive rings owned by the particular distributor or recalled by him from his customers, and even in a few instances rings purchased by said jobber at its suggestion to get the benefit of a credit balance with the particular competitor, on the understanding, usually either that its lines would be handled exclusively, or that its rings would receive preferential sales effort and constitute the number one ring line handled by the jobber; and in making such purchases regularly paid to the jobber in credit, its own rings, or cash, the actual cost to him of his "overage"—i.e. rings purchased by him as distinguished from consigned stock, which was returned to the competitor—regardless of age, condition or actual value; removed competitive rings thus acquired as soon as they could be replaced with its own or, sometimes, after a grace period during which the jobbers' salesmen and its own "missionary" men could convert the jobbers' customers to the use of its own rings; and as a matter of general policy destroyed such competitive rings and did not return them in any way to the channels of trade;
- (b) Made loans to jobbers from time to time with a view to inducing the recipients to become or continue to be exclusively its distributors or to concentrate their efforts on its line, and in some cases for jobbers' use in opening branches to handle its rings exclusively; and
- (c) Guaranteed to various jobbers from time to time that if they undertook the distribution of its rings their gross profit thereon during the year would be some specified percentage, usually 50%, greater than their gross profits from sales of competitive rings during the past year;

Capacity, tendency and effect of which acts, practices and methods—during the course of which it secured about 900 new distributors and rose from being one of the smallest ring manufacturers having national distribution to a position as the second largest seller of rings to the replacement trade—had been and was unfairly to divert trade to it from its competitors; unreasonably to hinder, hamper, and restrain manufacturers of competitive products in disposing of their merchandise to automotive parts and equipment jobbers; unreasonably to restrain and suppress competition in the sale of piston rings and other replacement parts for motor vehicles; and to tend to create in it a monopoly in the sale of said products to the replacement trade; all to the prejudice and injury of the public and of its competitors:

Held, That such acts and practices, as above set forth, constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Everett F. Haycraft for the Commission.

Beaumont, Smith & Harris, of Detroit, Mich., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the Hastings Manufacturing Co., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act, and is violating the provisions of Section 2 (a) of the Clayton Act as amended by the Robinson-Patman Act (U.S.C. Title 15, Section 13), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges as follows:

COUNT I

PARAGRAPH 1. Respondent, Hastings Manufacturing Co., is a corporation, duly organized under the laws of the State of Michigan, with its office and principal place of business located in Hastings, Mich. Respondent is now and for several years last past has been engaged in the business of manufacturing piston rings and other replacement parts for use in motor vehicles, and in the sale of said piston rings, under the trade name "Steel Vent," and other replacement parts for motor vehicles to automotive parts and equipment jobbers and wholesale distributors, hereinafter referred to as jobber customers, located in States other than the State of Michigan, and in the District of Columbia. It causes said products, when sold, to be transported from its said place of business in the State of Michigan to the said jobber customers. There has been, and now is, a course of trade in said products in commerce between the respondent and said jobber customers located throughout the several States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, respondent is now, and has been for more than two years last past, in substantial competition with other corporations and with individuals, firms and partner-

ships engaged in the sale and distribution of piston rings and other replacement parts for use in motor vehicles, hereinafter referred to as competitive products, to automotive parts and equipment jobbers and wholesale distributors, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, said respondent, in attempting to sell its said products either directly or on consignment to said jobber customers, as an inducement to prospective jobber customers handling and stocking said competitive products of respondent's competitors to discontinue handling and stocking all such competitive products and to thereafter handle and stock said respondent's products in place of said competitive products, engaged in the following methods and practices:

(a) Said respondent has offered and agreed, and now offers and agrees, to take over and buy up, and it has taken over and bought up, and now takes over and buys up, the stocks of competitive products in the hands of jobbers, either for cash or by giving the prospective jobber customers credit on account for the inventory value of the said competitive products then carried in stock and either removing said competitive products from the premises of the prospective jobber customers and thereafter destroying them, or, in some instances, causing the said competitive products to be sold to the trade at extremely low prices.

(b) Said respondent has offered and agreed, and now offers and agrees, to give prospective jobber customers credit on account, and it has given, and does give, prospective jobber customers credit on account, for stocks of competitive products which said jobber customers recall from their dealers to whom such competitive products had theretofore been sold by such jobber customers.

(c) Said respondent has offered and agreed, and now offers and agrees, to lend money to prospective jobber customers and it has made, and does make, loans to jobber customers, upon their terminating business relations with competitive manufacturers and taking on respondent's line of products.

(d) Respondent has offered and agreed, and now offers and agrees, to guarantee, and it has guaranteed, and does guarantee, to prospective jobber customers fixed increases, usually 50%, in gross profits in the sale of respondent's products, and to reimburse said prospective jobber customers for the amount of any deficiency between the gross profit realized and that guaranteed, by giving the jobber customers credit on account to cover such deficiency.

(e) Respondent made false and misleading statements in advertisements in publications of general interstate circulation to the effect that its said "Steel Vent" piston rings will reduce cylinder wall wear more than one-half, compared with the wear of competitive types of rings, when in truth and in fact, due to the many factors involved in making tests, it is impossible to determine the rate of cylinder wall wear by piston rings.

PAR. 4. The aforesaid acts, practices and methods of respondent have induced, and do now induce, a substantial number of jobber customers of competitors of the respondent to discontinue handling, stocking and distributing said competitors' products and to handle, stock and distribute respondent's said products instead of the products of said competitors;

and the capacity, tendency and effect of said acts, practices and methods are, and have been, unreasonably to hinder, hamper and restrain competing manufacturers of competitive products in disposing of their merchandise to automotive parts and equipment jobbers and wholesale distributors, and unreasonably to lessen, eliminate, restrain, hamper and suppress competition in the sale of piston rings and other replacement parts for motor vehicles, and to create in the respondent a monopoly in the sale of said products.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, have the tendency and capacity to unfairly divert, and have unfairly diverted, trade to respondent from its competitors, and, in consequence thereof, injury has been done and is now being done by respondent to competition in commerce among and between the various States of the United States, and said acts and practices are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act.

COUNT II

PARAGRAPH 1. The allegations of paragraphs 1 and 2 of Count I hereof are hereby incorporated herein by reference as though fully set forth verbatim in this Count.

PAR. 2. Since June 19, 1936, in the course and conduct of its business as aforesaid, the respondent has been and now is discriminating in price between purchasers buying said commodities of like grade and quality in interstate commerce, as aforesaid, through the practice of granting to some of such purchasers various concessions and monetary considerations which are not granted to other of its purchasers. Among the methods employed by the respondent in the accomplishment of the aforesaid discriminations in price are the following:

To some customers who have not previously purchased respondent's products, respondent makes cash gifts or donations in substantial amounts (such gifts or donations often ranging above \$1,000) in consideration of such customers taking on respondent's line, which gifts or donations are not granted to other of respondent's customers.

To some customers who have not previously purchased respondent's products, respondent agrees to pay and pays for the products of respondent's competitors then owned by such customers an amount substantially in excess of the value of such products, in consideration of such customers taking on respondent's line, which payments are not granted to other of respondent's customers.

PAR. 3. The effect of such discriminations in price referred to in the preceding paragraph hereof has been and may be to injure, destroy and prevent competition in the line of commerce in which respondent and its competitors are engaged.

PAR. 4. The foregoing alleged acts and practices are in violation of Sub-section (a) of Section 2 of the Clayton Act as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by Act approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission on December 27, 1940, issued and subsequently served its complaint in this proceeding upon respondent, Hastings Manufacturing Co., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act and with discriminations in price in the sale of piston rings in commerce in violation of the provisions of subsection (a) of Section 2 of the said Clayton Act as amended.

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 an examiner of the Commission theretofore duly designated by it, 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 the complaint, the answer thereto, testimony and other evidence, report of the trial examiner and exceptions thereto, briefs in support of and in opposition to the complaint, and oral arguments by opposing counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Hastings Manufacturing Co., is a corporation, organized and existing under the laws of the State of Michigan, with its office and principal place of business in Hastings, Mich. It is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of piston rings and other replacement parts for use in motor vehicles and has caused said products, when sold, to be transported from its place of business in the State of Michigan to the purchasers thereof at their various points of location in other States. There has been, and is now, a course of trade in said products in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, respondent is now, and has been for several years last past, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of piston rings and other replacement parts for use in motor vehicles.

PAR. 3. (a) Respondent began the manufacture of piston rings for replacement purposes about 1923. Such rings are used on the pistons of internal combustion engines to prevent loss of compression, "blow-by," and excessive oil consumption. The upper rings are generally called com-

pression rings and the bottom ring an oil ring, Until about the end of 1935 piston rings for use in internal combustion engines were customarily made of cast iron, though steel rings were then on the market. Late in 1935 respondent brought out a new type of steel oil ring under the trade name "Steel-vent," the desirable characteristics of which were said to be greater durability, better fitting in worn cylinders, and better control of oil consumption in worn motors. Respondent continued the manufacture and sale of cast iron rings for other purposes.

(b) At the time respondent brought out its "Steel-vent" ring, it had about 600 jobbers at various locations in the United States to and through whom its piston rings were distributed to garages, service stations, and others engaged in the repair and servicing of motor vehicles. At that time respondent's relative position in the industry in terms of volume of sales in the replacement trade was apparently not better than sixth or seventh, and its principal competitors were, and are: American Hammered Piston Ring Corporation (hereinafter frequently referred to as American Hammered), McQuay-Norris Manufacturing Co. (hereinafter frequently referred to as McQuay-Norris), Perfect Circle Co. (hereinafter frequently referred to as Perfect Circle), Ramsey Accessory Manufacturing Co. (hereinafter frequently referred to as Ramco), Sealed Power Corporation (hereinafter frequently referred to as Sealed Power), and Wilkening Manufacturing Co. (hereinafter frequently referred to as Pedrick). There are other producers of piston rings for replacement purposes, but their distribution is not as widespread as that of the concerns named above and their competition is in more localized areas. Hastings' business has been confined to the replacement trade, though a number of its competitors, in addition to serving the replacement trade, also have sold or sell their rings to motor manufacturers for use as original equipment. Respondent and a number of its competitors confine their business to piston rings and a few allied products, while a few of their competitors, including McQuay-Norris and Sealed Power, sell piston rings and, in addition thereto, many other automotive replacement parts.

(c) In distributing their piston rings, respondent and its competitors customarily place with jobbers a consigned stock of such rings. This stock is in the nature of a basic inventory, but usually there are some types of rings which are not included in the consigned stock and which the jobber must buy if he wishes to handle them. In some instances a larger discount is granted the jobber on outright purchases than he can secure on consigned stocks, and this tends to encourage purchases. It is not unusual for a jobber handling any of the better known lines of piston rings to have on hand a substantial quantity of rings in excess of the consigned stock, and this excess is commonly referred to as "overage." The record indicates that individual jobbers may handle from one to four lines of piston rings, and the handling of two or three competing lines is not uncommon.

PAR. 4. (a) Early in 1936 respondent began an aggressive campaign to acquire new and, so far as possible, exclusive channels of distribution. Respondent's general policy in seeking new jobber customers was directed toward persuading jobbers to discontinue handling whatever line or lines of piston rings they then stocked and in lieu thereof to handle Hastings rings exclusively. Although this was the goal, the policy was not rigid and if unable to persuade a jobbing account which it considered desirable to

"go 100% Hastings," respondent would, nevertheless, if possible, put its line in beside the other line or lines retained by the jobber upon the basis that the jobber would concentrate his sales effort on it, or in the hope that continuing efforts would persuade the jobber to abandon the competing lines in favor of the Hastings line.

(b) Three principal methods were used by respondent to induce jobbers to take on the Hastings line and handle it exclusively, or at least substitute it for one or more of the lines then being handled by such jobber and give it preferential treatment, and these methods were used singly or in combination as the circumstances of the particular case seemed to require. These methods were: The purchase from jobbers of the rings of their competitors owned by such jobbers and the replacement thereof with Hastings rings; the making of loans to jobbers where this would further respondent's purpose; and the guaranteeing of increased profits to jobbers from the sale of Hastings rings as compared with their profits during the preceding year from the sale of competitive rings. When necessary, these general methods were supplemented in other ways, such as granting a large jobbing account, which respondent considered desirable, an override on the purchases of smaller jobbers in the same trading area, granting extra discounts, and even in one instance the purchase of an automobile trailer from a jobber.

PAR. 5. (a) The purchase of competitive rings owned by a jobber was frequently offered by respondent as an inducement, and in fact operated as an inducement, in persuading a jobber to discontinue in whole or in part competitive lines of rings and substitute in lieu thereof respondent's line. When the substitution was complete, it usually followed an understanding that respondent's rings would be handled exclusively; and when the substitution was partial, the usual understanding was that respondent's rings would receive preferential sales effort and constitute the No. 1 ring line handled by the jobber. When such a purchase was negotiated, any consigned stock of the discontinued line or lines was, of course, returned to the consignor and respondent's purchase was limited to the "overage." In making these purchases, respondent regularly paid to the jobber the actual cost to him of the rings purchased, regardless of their age, condition, or actual value. The competitive rings thus purchased by respondent were shipped to its factory and there destroyed or were destroyed locally by respondent's representatives. There were a few instances where the rings purchased by the respondent were not destroyed, but in general its policy was to destroy such rings and not return them in any way to the channels of trade. After respondent negotiated a purchase of the rings of competitors, the rings thus purchased were sometimes removed from the jobber's stock as soon as they could be replaced with Hastings rings, and sometimes the jobber was allowed to retain the rings purchased for varying periods of time, occasionally for many months. Apparently this grace period was intended to protect the jobber's relations with his customers until his salesman and the "missionary men" furnished by respondent could convert all, or substantially all, of the jobber's customers to the use of the Hastings rings. The purchases from jobbers frequently contemplated and included the stocks of competitive rings of the discontinued line or lines in the hands of the jobber's customers, and respondent's "missionary men" assisted in the "lifting" of such stocks.

(b) The agreement by respondent to purchase the rings of its competitors owned by a jobber was usually negotiated at the time the jobber was persuaded to become a distributor of Hastings rings and the agreement was to purchase an indefinite quantity not to exceed a specified cost to respondent. Performance of the agreement took place when the jobber finally discontinued the competitive line or lines and delivered the rings to respondent or its representative and the exact number and cost could be finally ascertained. In some instances where a jobber who took on the Hastings line but retained a competing line of piston rings was subsequently persuaded to abandon the competing line which he had retained, respondent at that time agreed to purchase the "overage" in the jobber's hands of the discontinued line. Payment to the jobber for competitive rings purchased was usually made by setting up a credit on respondent's books in favor of the jobber in the amount of the purchase price of such rings and allowing the jobber to avail himself of this credit by deducting 25 percent from the cost of his monthly purchases from respondent until the credit was consumed. Sometimes the rate at which the jobber could avail himself of the credit was 50 percent or more instead of 25 percent of the monthly purchases, and in some instances payment for the competitive rings was made immediately by respondent in full in Hastings rings or in cash. The terms granted appear to have depended upon the trading ability of the particular jobber and the desirability of the account to respondent. The quantities of competitive rings purchased from individual jobbers by the respondent varied widely and the record shows instances ranging from \$100 or less to more than \$15,000.

(c) Respondent referred to the competitive rings purchased by it from jobbers as "obsolete." In fact, the rings purchased ranged all the way from old and unsalable odds and ends to current and salable stock, and even in a few instances to rings purchased from a competitor on the direction of respondent for the purpose of using a merchandise credit which the jobber had on the competitor's books and on which he could not obtain payment except in merchandise. Undoubtedly, substantial proportions of the competitive rings purchased by respondent from jobbers were in good condition and salable. However, when a jobber took on the Hastings line, respondent usually furnished salesmen called "missionary men" to work with the jobber's salesmen in converting the jobber's customers to the use of Hastings rings. When this was successfully done, the jobber's sales for the competitive line or lines of rings which he formerly carried ceased, though the rings might be in salable condition.

(d) Respondent's purpose and practice with respect to the purchase of rings of its competitors in the hands of jobbers are illustrated by the instances shown in the following excerpts from correspondence. An official of respondent, in writing a jobber under date of March 31, 1938, said in part:

It is understood that in return for your cooperation in pushing the sale of Hastings Piston Rings to your trade, we will protect you against any obsolescence loss on your present stocks of Pedrick and Ramco rings up to \$1,600 (Comm. Ex. 3).

In writing one of its representatives concerning a jobbing account, an official of respondent in a letter dated November 7, 1939, said in part:

What we would like to have you do, Harvey, is get into Milwaukee at your earliest convenience and get these rings returned to us here at Hastings. The \$2,000 protection was on his Pedrick stock and, as we understand it, the Sealed Power was in addition * * *.

We want you to do everything you can to get this account 100% Hastings. At any rate you can investigate and let us know the amount of Sealed Power stock still on hand at their stores and we will decide what to do later (Comm. Ex. 75).

In a letter dated September 7, 1938, to another sales representative concerning a jobbing account, respondent stated in part:

* * * If you can clean up the entire situation with Brennan for a \$350 credit and get the account 100% Hastings this certainly is the right thing to do and after you have confirmed it with Brennan give us a report on the situation and we will give him whatever confirmation he feels he has to have in writing (Comm. Ex. 87).

In reporting a deal with a jobber, two of respondent's salesmen advised respondent under date of November 17, 1938, in part:

* * * I had to make two minor concessions, inasmuch as they are going 100% Hastings and we promised to take care of their obsolescence up to \$1500.00 on the basis of 25% of their invoices per month. I now had to agree that we take care of them on their \$1500.00 immediately, that is the first \$1500.00 worth of rings that they purchase will take care of that and as much as that is done they will ship us that much in A. H. rings * * * (Comm. Ex. 95).

From the testimony of sales representatives who negotiated with many of the jobbers who became Hastings distributors, it is also apparent that respondent's purpose and efforts were to clear competitive rings from the jobbers' stocks and substitute Hastings rings exclusively, if possible, and where this was not possible, to make as full a substitution as circumstances permitted. The record shows about 173 jobbers from whom respondent purchased competitive rings during the four years beginning with 1937 at a total cost of approximately \$281,000. In substantial part these purchases were pursuant to and in furtherance of the general policy previously outlined.

(e) Respondent's standard form of consignment contract with its distributors contains a provision that the contract may be terminated

(B) By the CONSIGNOR in the event CONSIGNEE stocks or in any manner handles a competitive piston ring subsequent to the date of this agreement without permission of the CONSIGNOR (Comm. Ex. 44-A).

The evidence does not indicate that this contract provision was utilized unless a jobber, by reason of pushing some other line, became an unsatisfactory account from a business standpoint to respondent.

PAR. 6. From time to time respondent made loans to jobbers with a view to inducing the recipients to become or continue to be exclusively Hastings distributors or to concentrate their efforts on the Hastings line.

In agreeing to loan a jobber \$3,000, respondent in a letter dated May 27, 1937, stated in part:

We are doing this in consideration of your concentrating your efforts on piston ring and piston expanders to Hastings exclusively (Comm. Ex. 18).

A sales representative, in reporting to respondent on September 12, 1942, concerning a proposed deal with a large jobber, stated that the jobber wanted a loan of \$20,000 and said:

This acct would be immediately Hastings exclusive as American Hammered would be removed from their shelves at once, and completely (Comm. Ex. 121-C).

This jobber was taken to the respondent's home office where the loan was actually negotiated in the amount of \$16,000. In another instance a loan of \$2,500 was made and respondent's representative who negotiated the loan testified that it was made "to secure the account" and that in order that respondent should not appear in the transaction and that it appear to be a personal one between this representative and the jobber, the representative gave the jobber his personal check and the amount was refunded to the representative by respondent. In some cases loans were made to jobbers for their use in opening branches which would handle Hastings rings exclusively. During the years 1937-40, inclusive, respondent made loans to some 29 jobbers in an aggregate amount of approximately \$151,000, and a substantial number of these loans were in furtherance of respondent's general policy already outlined.

PAR. 7. As a means of inducing jobbers to undertake the distribution of Hastings rings exclusively or concentrate their efforts on Hastings rings, respondent from time to time guaranteed to various jobbers that if they undertook the distribution of Hastings rings their gross profit on rings during the next year would be some specified percentage, usually 50 percent, greater than their gross profits from sales of rings of respondent's competitors during the past year. Arrangements for these guarantees were usually made by respondent's sales representatives during the original negotiations, but such arrangements were frequently later confirmed in writing by respondent. An instance of such confirmation is in a letter of February 2, 1938, from respondent to a jobber, which reads as follows:

We hereby agree if you take on Hastings Rings that we will see to it that your gross profit, in Dollars, on piston rings in 1938 will be 50% more than the gross profit that you earned on piston rings in 1937. If, for any reason, the increase in your gross profit on your sales of piston rings in 1938, as compared to gross profit on piston rings sold in 1937, is less than 50%, we will credit your account with the difference (Comm. Ex. 1).

In writing a jobber confirming a verbal guarantee of greater profits through the handling of Hastings rings, respondent in a letter dated March 14, 1938, said in part:

It is usually customary, with an assurance of this kind, that the jobber, within a reasonable length of time, is pushing Hastings 100%. We are not making this requirement as we are entirely willing, as we have stated before, that you shall find out, from actual experience in the field just what you can do before you make any move to discontinuing the line and that when you make any move it will be an entirely voluntary move on your part.

We do believe that a jobber is better off pushing a line 100% and it is going to be our aim to do such a good job for you that you will want to concentrate your effort on Hastings but, as stated to you before, neither before nor after a jobber takes on our line, do we attempt to force him into any move of this kind. We just try to do such a good job that he will want to do it without any suggestion from us (Comm. Ex. 22).

In confirming a guarantee granted a jobber, respondent in a letter of July 13, 1940, stated in part:

In view of your acceptance with the trade and your 100% cooperation we feel that within a period of one year you will have no difficulty in reaching a volume that will automatically entitle you to our maximum rebate and we hereby agree that we will pay you 20% retroactive rebate on your purchases from us during the coming year and we also agree, in view of the letter that we wrote you on March 21, 1938, that your gross purchases from us will be \$25,000 as outlined above (Comm. Ex. 36-A).

An official of respondent testified that in no instance did the respondent have to make any cash payments to jobbers pursuant to their volume guarantees. Apparently a substantial number of such guarantees were made, but the record does not afford any approximation of the total number.

PAR. 8. Evidence was introduced showing jobbing accounts lost by American Hammered, McQuay-Norris, Pedrick, Perfect Circle, Ramco, and Sealed Power to respondent, the sales of these manufacturers to such accounts, and the subsequent sales by respondent to the same accounts. These accounts appear in Respondent's Exhibits 15-A to 20-D, inclusive, but they did not furnish a basis for attempting to appraise with mathematical precision the effects upon respondent's competitors of the various practices of respondent heretofore described, and any comparison of sales to individual accounts or the compilation of total figures therefrom is likely to be misleading because the testimony indicates that some of the accounts shown on these exhibits did not become exclusively Hastings accounts and the prior and subsequent sales of manufacturers whose lines were continued after the account took on Hastings rings do not appear in the exhibits, because some of the accounts carried brands of rings not appearing in the exhibits, and because it does not appear to what extent, if any, volumes shown are affected by the inclusion of sales to others on which overrides were granted to the jobbers listed. It is clear, however, that at the end of the years 1923-35, inclusive, respondent had about 600 jobbers distributing its products and that during the years 1936-40, inclusive, it secured about 900 new distributors of its rings; and, further, that respondent came from a position of being one of the smallest ring manufacturers having national distribution to a position as the second largest seller of rings to the replacement trade. The record shows, and the Commission finds, that in securing a substantial number of the new jobbing accounts acquired after 1935, including some of the larger and more desirable ones, upon an exclusive basis or upon a basis highly preferential to Hastings rings, respondent relied upon and used the practices heretofore described, and such use represented a deliberate policy executed on a large scale. The capacity, tendency, and effect of the aforesaid acts, practices, and methods, has been, and is, unfairly to divert trade to respondent from its competitors; unreasonably to hinder, hamper, and restrain manufacturers of competitive products in disposing of their merchandise to automotive parts and equipment jobbers; unreasonably to lessen, restrain, hamper, and suppress competition in the sale of piston rings and other replacement parts for motor vehicles; and to tend to create in respondent a monopoly in the sale of said products to the replacement trade, all to the prejudice and injury of the public and of respondent's competitors.

CONCLUSION

The aforesaid acts and practices, as herein found, constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner and the exceptions thereto, briefs filed herein, and the oral arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent Hastings Manufacturing Co., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of piston rings and other automotive replacement parts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from doing, directly or indirectly, any of the following acts or things (when done as an inducement to the distributor of automotive parts concerned to discontinue handling all products competitive with respondent's and thereafter handle respondent's products in lieu thereof, or when done upon any express or implied condition, agreement, or understanding that such distributor will discontinue handling all products competitive with those of respondent, or all such products of any competitor of respondent, and will handle respondent's products in lieu thereof):

1. Purchasing from any distributor or prospective distributor of respondent's piston rings or other replacement parts his stock, or stocks recalled by him from his customers, of the products of another manufacturer which are competitive with respondent's products.

2. Making any loan to a distributor or prospective distributor of respondent's piston rings or other replacement parts.

3. Guaranteeing to distributors or prospective distributors of respondent's piston rings or other replacement parts increased gross profits from the handling of respondent's products as compared with gross profits previously obtained from the handling of products competitive with those of respondent.

It is further ordered, That Count II of the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should future facts warrant.

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

IN THE MATTER OF
AUBURN DIE COMPANY, INC., ET AL

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

Docket 4921. Complaint, Mar. 2, 1943—Decision, Dec. 9, 1944

Where six corporations, four firms and an individual, engaged, in the New England states, in the manufacture and interstate sale and distribution of various types of steel cutting dies, which, used in the manufacture of shoes, are made in accordance with the specifications of each shoe manufacturing customer to conform with the particular shoe thereby made; doing an aggregate business of about \$500,000 annually, or about 35% of the total volume of cutting die business done in the New England States, and about 15% of such business done in the entire United States; in competition with one another and with others similarly engaged except insofar as such competition had been restrained and suppressed as below set forth;

Prior to the advent of the Office of Price Administration in 1942 which resulted in a change of the entire price structure, and to the current shortage of steel, in consequence of which they were unable to obtain their requirements for the manufacture of dies and shoe manufacturers were required to use the dies in their possession, with probability of few changes in shoe styles for the duration—

- (a) Entered into agreements and understandings as to sale prices and repair prices, both current and future, for dies made, sold and repaired by them, through discussing such prices at meetings of their unincorporated trade association, including base prices and specific charges for alterations, additions and repairs, and agreed to adhere to future prices thus determined; and
- (b) Republished copies of price lists containing the prices agreed upon, and later changed, as published by one member and disseminated among the others, and distributed the same to the trade, and made use thereof as a basis of quotations to customers, and generally adhered thereto;

Tendency, capacity, and effect of which agreement and conspiracy and of the acts and things done in furtherance thereof, as above set forth, had been and were unduly to restrain and suppress competition among the members in the sale and distribution of cutting dies in commerce and unduly to restrict and restrain trade therein as aforesaid:

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

Before *Mr. Webster Ballinger*, trial examiner.

Mr. Daniel J. Murphy for the Commission.

Thompson & Twomey, of Boston, Mass., for Auburn Die Co., Inc., and other respondents except as below set forth.

Goodwin, Procter & Hoar, of Boston, Mass., for Joseph E. Knox & Co., Inc.

Mr. Paul E. Nourie, of Manchester, N. H., for Axel Swanson and Raymond Duprey.