

Syllabus

IN THE MATTER OF
SAYLES FINISHING PLANTS, INC., SPECIAL FABRICS,
INC., ET AL.

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

Docket 5878. Complaint, May 3, 1951—Decision, June 10, 1953

Where four corporate manufacturers of starch-filled or pyroxylin-impregnated book cloth, and sales subsidiary of one, constituting a substantial proportion of the interstate sellers of said product, and sellers of a major part of all the book cloth sold to dealers and consumers in the United States—
Engaged in practices, discussions, common understandings, and courses of action relative to the establishment of prices, terms, and conditions of sale in interstate commerce of such product; and in pursuance of such practices, etc.; as the case might be—

- (1) Discussed with others of their number, changes in prices for book cloth, including discounts and terms and conditions of sale under which they offered to and did sell the cloth;
- (2) Changed their method of pricing so as to eliminate quantity discounts and adopted in lieu thereof a uniform quantity to which list prices would be applied, with uniform premium charges for lesser quantities;
- (3) Adopted uniform premium charges for specified services in connection with the manufacture of book cloth, e. g., embossing;
- (4) Changed their freight allowance policy so as to eliminate free delivery points and adopted in lieu thereof the policy of allowing full freight to all customers located east of the Mississippi River and purchasing roll lots or more, and selling f. o. b. St. Louis, Missouri, to customers located west of said Mississippi River and purchasing like quantities; and
- (5) Increased their prices from time to time:

Held, That such acts and practices, under the circumstances set forth, tended to lessen competition, were oppressive to the public interest and unfair within the intent and meaning of the Federal Trade Commission Act, and, if not checked, would unduly suppress competition; and that said interest and the provisions of the Act required the restraining of said respondents involved by appropriate order to cease and desist.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. Lynn C. Paulson and *Mr. Joseph J. Gercke* for the Commission.

Mr. Raymond S. Smethurst, of Washington, D. C., and *Edwards & Angell*, of Providence, R. I., for Sayles Finishing Corp. and Special Fabrics, Inc.

Complaint

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Mr. William A. Graham, of Providence, R. I., for Winterbottom Book Cloth Co., Ltd. and Interlaken Mills.

Sullivan & Worcester, of Boston, Mass., for Holliston Mills, Inc.

Davis, Polk, Wardwell, Sunderland & Kiendl, of New York City, for Joseph Bancroft and Sons Co., Albert D. Smith and Co. and Banco, Inc.

Bond, Schoeneck & King, of Syracuse, N. Y., for Albert D. Smith and Co. and The Columbia Mills, Inc.

McBride & Baker, of Chicago, Ill., for Joanna-Western Mills Co.

Covington & Burling, of Washington, D. C., for E. I. duPont de Nemours and Co., Inc.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act (52 Stat. 111; 15 U. S. C. A. Sec. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Sayles Finishing Corporation is a corporation duly organized and existing under and by virtue of the laws of Rhode Island and has its main office and principal place of business at Saylesville, Rhode Island. Respondent Special Fabrics, Inc., a wholly-owned subsidiary of the aforesaid Sayles Finishing Corporation, is also a corporation duly organized under and by virtue of the laws of Rhode Island and likewise has its main office and principal place of business in Saylesville, Rhode Island.

Respondent Winterbottom Book Cloth Company, Ltd., is a corporation duly organized and existing under and by virtue of the laws of the United Kingdom and has its main office and principal place of business at 12 Newton Street, Manchester 1, England. Respondent Interlaken Mills, a wholly-owned subsidiary of the aforesaid Winterbottom Book Cloth Company, Ltd., is a corporation duly organized and existing under and by virtue of the laws of Rhode Island and has its main office and principal place of business in Fiskeville, Rhode Island.

Respondent Holliston Mills, Inc., is a corporation duly organized and existing under and by virtue of the laws of Massachusetts and has its main office and principal place of business at Lenox Street, Norwood, Massachusetts.

Respondent Joseph Bancroft and Sons Company is a corporation duly organized and existing under and by virtue of the laws of Delaware and has its main office and principal place of business at "Rockford," Wilmington, Delaware. Respondent Albert B. Smith and Company, a wholly-owned subsidiary of the aforesaid Joseph Bancroft and Sons Company, is a corporation duly organized and existing under and by virtue of the laws of New York and has its main office and principal place of business at 40 Worth Street, New York, New York. Respondent Banco, Inc., likewise a wholly-owned subsidiary of the aforesaid Joseph Bancroft and Sons Company, is a corporation duly organized and existing under and by virtue of the laws of New York and has its main office and principal place of business at 40 Worth Street, New York, New York.

Respondent The Columbia Mills, Inc., is a corporation duly organized and existing under and by virtue of the laws of New York and has its main office and principal place of business at 428 South Warren Street, Syracuse, New York.

Respondent Joanna-Western Mills Company is a corporation duly organized and existing under and by virtue of the laws of Illinois and has its main office and principal place of business at South Jefferson and West Cermak Streets, Chicago, Illinois.

Respondent E. I. du Pont de Nemours and Company, Inc., is a corporation duly organized and existing under and by virtue of the laws of Delaware and has its main office and principal place of business at 1007 Market Street, Wilmington, Delaware.

In addition to the respondents named above, Brookfield Mills, Inc., a corporation duly organized in 1946 and existing under and by virtue of the laws of Massachusetts and having its main office and place of business in East Brookfield, Massachusetts, is named herein as co-conspirator and as having participated in and been a party to the matters, transactions, practices and methods of competition herein-after detailed and charged. Said Brookfield Mills, Inc., has not been made a respondent herein because complete ownership and control of said corporation was acquired in 1948 by respondent Holliston Mills, Inc., and therefore no longer functions as a competitive entity in the industry with which this complaint is concerned.

PAR. 2. Respondents, either directly or through their wholly-owned subsidiaries named also as respondents herein, manufacture and sell book cloth for use by book manufacturers or binderies in the process of binding books. Book cloth is classified as starch-filled or pyroxylin-impregnated, according to the materials used in the processing of the cotton cloth from which said book cloth is manufactured.

PAR. 3. Each of the respondents herein has been and is now engaged in interstate commerce in the sale and distribution of book cloth to purchasers who deal in or consume book cloth, and said purchasers are located throughout the United States. Pursuant to such sales and in the regular course of their business, respondents have shipped and do ship such products to their said customers at their respective places of business located at various points in the United States or in the District of Columbia other than in the States of the origin of such shipments.

Respondents now constitute, and throughout the periods of time hereinafter mentioned have constituted, substantially all of the sellers of book cloth and have been the sellers of substantially all the book cloth sold to dealers and consumers, and as such respondents have had and now have the power and capacity to dominate and manipulate the markets supplied by them and thus frustrate, destroy, suppress, lessen and eliminate competition in the industry.

PAR. 4. *Historical Background.* Respondents organized the Institute of Book Cloth and Impregnated Fabrics Manufacturers in June, 1933, and at that time entered into and thereafter carried out a planned common course of action, agreement, combination and conspiracy to suppress, restrain and eliminate competition in the sale of starch-filled and pyroxylin-impregnated book cloth. Pursuant to said course of action, agreement, combination and conspiracy and in furtherance of it respondents did the acts and things described below. From time to time members of the industry, other than those herein named as respondents, became parties to and cooperated in carrying out said course of action, agreement, combination and conspiracy. Each of the respondents hereinabove named was a member of the aforesaid Institute and cooperated with the members thereof in the acts, practices and methods determined, agreed upon and maintained by the members of said Institute.

Using the Institute as a central medium, these respondents and others agreed with one another to fix and maintain, and did fix and maintain prices, terms and conditions of sale for book cloth.

They agreed upon and maintained agreement concerning cash discounts and credit terms, uniform discounts off list prices for specified quantity purchases, and uniform premiums to be charged in addition to list prices for specified quantity purchasers.

They fixed and maintained minimum and maximum standards for classifications in accordance with which book cloth is priced and sold.

They exchanged price lists and schedules in advance of publication thereof to the trade.

They induced adherence to announced prices by threats, coercion and persuasion.

By joint action through the aforesaid Institute they fixed and maintained uniform freight allowances and designated free delivery points for the purpose and with the effect of depriving customers of the benefits of competition to be derived from geographical locations.

They entered into and carried out agreements not to sell book cloth classified as seconds, remnants or job lots in excess of five percent of the yardage manufactured each month.

The aforesaid Institute was dissolved in 1941. Following the dissolution of the aforesaid Institute, respondents have engaged in and continued the unfair methods of competition set forth in Paragraph 5 below.

PAR. 5. Offenses Charged. Respondents have for some time past and are now engaging in the use of unfair methods of competition in that they are discussing, composing, establishing and maintaining prices for book cloth through a planned common course of action, agreement, combination and conspiracy. More particularly, in pursuance of the present aforesaid course of action, agreement, combination and conspiracy:

1. Each of the respondents agreed to discuss, and does discuss, with other respondents any proposed change in prices for book cloth, including discounts and the terms and conditions of sale under which said respondent offers to sell or does sell book cloth.

2. Each of said respondents agreed with other respondents to change, and did change its method of pricing so as to eliminate quantity discounts and adopt in lieu thereof a uniform base quantity to which list prices would be applied, with uniform premium charge for lesser quantities.

3. Each of said respondents agreed with other respondents to adopt, and did adopt, uniform premium charges for specified services in connection with the manufacture of book cloth, e. g., embossing.

4. Each of the respondents agreed to change, and did change, its freight allowance policy so as to eliminate free delivery points and adopt in lieu thereof the policy of allowing full freight to all customers located east of the Mississippi River and purchasing roll lots or more, and selling f. o. b. St. Louis, Missouri, to customers located west of said Mississippi River and purchasing like quantities.

5. Each of the respondents agreed with other respondents to increase its prices, and pursuant thereto did increase its prices, from time to time.

PAR. 6. Each of said respondents acted in concert and in cooperation with one or more of the other respondents in doing and perform-

ing the acts and things hereinabove alleged in furtherance of the aforesaid understandings, agreements, combinations and conspiracies.

PAR. 7. The understandings, agreements, combinations and conspiracies hereinabove described and the acts and things done thereunder and pursuant thereto, as hereinabove alleged, have had and do have the effect of unreasonably and unduly restricting and restraining trade and commerce in book cloth between and among the several States of the United States and in the District of Columbia; of substantially enhancing prices to the purchasers of book cloth and maintaining prices at artificial levels and depriving the public of the benefits that otherwise would flow from competition among and between the respondents; of eliminating competition between the respondents and having the tendency and capacity to create a monopoly in the sale of book cloth in said commerce; of promoting discrimination against some buyers and users of respondents' products; of having a dangerous tendency to hinder, frustrate, suppress and prevent competition in book cloth in trade and commerce between and among the several States of the United States and in the District of Columbia; and the aforesaid acts, practices, methods and policies constitute unfair methods of competition and unfair practices in commerce, within the meaning of Section 5 of the Federal Trade Commission Act, as amended.

DECISION, FINDINGS AS TO THE FACTS, CONCLUSION, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 3, 1951, issued and subsequently served upon the respondents hereinafter described its complaint in this proceeding, charging said respondents with the use of unfair methods of competition in commerce in violation of section 5 of said Act. All of said respondents (except Winterbottom Book Cloth Company, Ltd., which appeared specially) filed appearances and answers in this matter; testimony was taken and evidence in support of the complaint was introduced by counsel supporting the complaint; and thereafter such counsel rested the case on behalf of the Commission. Thereafter, this matter having come on to be heard by the Commission upon a proposal for settlement dated March 18, 1953, submitted by all of the respondents except those as to whom the complaint is hereby dismissed, said proposal for settlement having been accepted and recommended by counsel in support of the complaint, the Director of the Bureau of Antimonopoly, the Chief of the Division of Investigation and Litigation, and the Hearing Examiner, and the Commission having duly considered said proposal for settlement and being of the opinion that said proposal for settlement provides for disposition of this proceeding in the public interest, accepts the same

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Findings

and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The States of incorporation and location of the main offices and principal places of business of the following named corporate respondents are, respectively, as follows:

Name of corporation	State of incorporation	Main office and principal place of business
Special Fabrics, Inc.....	Rhode Island.....	Saylesville, R. I.
Interlaken Mills.....	Rhode Island.....	Fiskeville, R. I.
Holliston Mills, Inc.....	Massachusetts.....	Lenox Street, Norwood, Mass.
Joseph Bancroft & Sons Co..	Delaware.....	"Rockford," Wilmington, Del.
Albert D. Smith & Company, Inc.	New York.....	40 Worth Street, New York, N. Y.

The Brookfield Mills, Inc., named in the complaint in this case, but not as a respondent, is a corporation organized in 1946 and existing under and by virtue of the laws of Massachusetts and has its main office and principal place of business in East Brookfield, Massachusetts. Complete control of said Brookfield Mills, Inc., was acquired by respondent, Holliston Mills, Inc., in 1948.

The evidence of record does not establish participation by the following named companies, named as respondents in the complaint, in the practices hereinafter found. Therefore, they are not hereinafter included in the term "respondents."

Name of corporation	State of incorporation	Main office and principal place of business
Sayles Finishing Plants, Inc.	Rhode Island.....	Saylesville, R. I.
The Winterbottom Book Cloth Company, Ltd.	England.....	12 Newton Street, Manchester 1, England.
Banco, Inc.....	New York.....	40 Worth Street, New York, N. Y.
Joanna Western Mills Company.	Delaware.....	So. Jefferson and West Cermak Streets, Chicago, Illinois.
E. I. duPont de Nemours & Co., Inc.	Delaware.....	1007 Market Street, Wilmington, Delaware.
The Columbia Mills, Inc.....	New York.....	428 So. Warren St., Syracuse, New York.

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PAR. 2. Respondents Special Fabrics, Inc., Interlaken Mills, and Holliston Mills, Inc., manufacture and sell book cloth. The respondent, Joseph Bancroft & Sons Co., manufactures book cloth, and its subsidiary, the respondent, Albert D. Smith & Company, Inc., sells book cloth. Book cloth is classified as starch filled or pyroxylin impregnated, according to the materials used in the processing of the cotton cloth from which said book cloth is manufactured.

PAR. 3. Each of the respondents is engaged in interstate commerce in the sale or distribution of book cloth to purchasers who deal in or consume book cloth and said purchasers are located throughout the United States, and pursuant to such sales and in the regular course of their business the respondents, with the exceptions above stated, have shipped and do ship such products to the respective places of business of their customers located at various points in the United States or in the District of Columbia other than in the State of origin of such shipments.

The respondents now constitute and since June, 1933, have constituted a substantial proportion of the sellers of book cloth in the United States, and have been the sellers of a major part of all the book cloth sold to dealers and consumers in the United States.

PAR. 4. Respondents made subject to the annexed order to cease and desist, up to about May, 1950, engaged between and among themselves in practices, discussions and common understandings and courses of action with relation to the establishment of prices, terms and conditions of sale of book cloth in interstate commerce, although not all such respondents engaged in all such practices, discussions and common understandings and courses of action. In pursuance of the above:

1. Some of the respondents discussed with other respondents changes in prices for book cloth, including discounts and the terms and conditions of sale under which said respondents offer to sell or do sell book cloth.

2. Some of said respondents changed their method of pricing so as to eliminate quantity discounts and adopted in lieu thereof a uniform base quantity to which list prices would be applied, with uniform premium charges for lesser quantities.

3. Some of said respondents adopted uniform premium charges for specified services in connection with the manufacture of book cloth, e. g., embossing.

4. Some of the respondents changed their freight allowance policy so as to eliminate free delivery points and adopted in lieu thereof the policy of allowing full freight to all customers located east of the Mississippi River and purchasing roll lots or more, and selling f. o. b.

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St. Louis, Missouri, to customers located west of said Mississippi River and purchasing like quantities.

5. Some of the respondents increased their prices from time to time.

PAR. 5. The acts and practices hereinbefore described and found, taken together and under the circumstances stated, have tended to lessen competition, are oppressive to the public interest and unfair within the intent and meaning of the Federal Trade Commission Act.

PAR. 6. For the reasons hereinabove stated, dismissal of the complaint as to Sayles Finishing Plants, Inc., The Winterbottom Book Cloth Company, Ltd., Banco, Inc., Joanna Western Mills Company, E. I. du Pont de Nemours & Co., Inc., and The Columbia Mills, Inc., is warranted.

CONCLUSION

The acts and practices hereinbefore described and found, if not checked, would unduly suppress competition. Therefore, the public interest and the provisions of the Federal Trade Commission Act require that the respondents should be restrained as provided in the following order.

ORDER TO CEASE AND DESIST

I. *It is ordered*, That respondents, Special Fabrics, Inc., a corporation, Interlaken Mills, a corporation, Holliston Mills, Inc., a corporation, Joseph Bancroft & Sons Co., a corporation, and Albert D. Smith & Co., Inc., a corporation, through and by means of their respective officers, agents, representatives and employees, in or in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of starch-filled and pyroxylin-impregnated book cloth, do forthwith cease and desist from entering into, cooperating in, carrying out or continuing, directly or indirectly, any planned common course of action, understanding or agreement between any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, engaged in competition with any of said respondents, to do or perform any of the following acts and things:

1. Establishing, fixing, maintaining or changing prices, terms or conditions of sale.
2. Eliminating or fixing discounts for quantities or establishing and maintaining premium charges in lieu thereof.
3. Establishing, fixing or maintaining premium charges, e. g., for embossing, in connection with the manufacture and sale of book cloth.
4. Establishing, fixing or maintaining any method, practice, policy or system with respect to delivery charges or allowances.

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Provided: That nothing contained in this order shall be construed as prohibiting the establishment or maintenance of any lawful bona fide relationships between respondents Joseph Bancroft & Sons Co. and Albert D. Smith & Co., Inc., as parent corporation and subsidiary, respectively, when such relationships are not established or maintained with the purpose or effect of lessening competition or restraining trade.

II. *It is further ordered,* That the complaint be, and the same hereby is, dismissed as to the respondents Sayles Finishing Plants, Inc., The Winterbottom Book Cloth Company, Ltd., Banco, Inc., E. I. du Pont de Nemours and Company, Inc., Joanna Western Mills Company, and The Columbia Mills, Inc.

III. *It is further ordered,* That the complaint be, and it is hereby, amended by striking out the names "Sayles Finishing Corporation" and "Albert B. Smith and Company," where they appear in the caption and wherever they appear in the body of the complaint and inserting in lieu thereof the correct names of said respondents, as follows: "Sayles Finishing Plants, Inc." and "Albert D. Smith & Co., Inc."

IV. *It is further ordered,* That the respondents Special Fabrics, Inc., Interlaken Mills, Holliston Mills, Inc., Joseph Bancroft & Sons Co., and Albert D. Smith & Co., Inc., shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

SPENCER INCORPORATED

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

Docket 5995. Complaint, May 23, 1952—Decision, June 23, 1953

Where a corporation engaged in the business of making, selling, and distributing its "Spencer Supports," individually designed, cut, and fitted in accordance with the measurements of the wearer as taken by a corsetier in local shops operated by said corporation in various states and cities, or as prescribed by a physician; in advertising in circulars, leaflets, pamphlets, newspapers, magazines, and other periodicals of interstate circulation—

- (a) Falsely represented, directly and by implication, that its said "Spencer Breast Supports" were effective in guarding against breast diseases and guarding health of the breasts generally; would improve circulation in the breasts, and would give the wearer vitality, new and glowing health and energy, a quicker acting mind, and added pep;
 - (b) Represented falsely that said devices would be effective in helping to maintain and restore firmness and contour of the breasts, cause flabby muscles to become firm and trim, and enable the abdomen to regain its natural, healthful flatness;
 - (c) Represented falsely that they would help to prevent tuberculosis of the lungs, cancer of the breasts and abscessed breasts, and were of value in treating cerebral palsy, diabetes, chronic nephritis, anginoid pain due to radiculitis, arthritis, tired feet or nervousness, and would be helpful in preventing pooling of the blood in extremities;
 - (d) Falsely represented that said products would rid the wearer of bulges and posture imperfections, overcome impairment of digestion and elimination due to postural imperfections, promote healthful posture, relieve and correct lordosis and conditions resulting therefrom, maintain spinal balance and give the support intended by nature, put the abdominal organs in position to function normally and raise them to their natural position, and could be relied upon to place equal weight on each of the discs of the spinal column;
 - (e) Represented falsely that sagging or pendulous breasts exert harmful or significant pressure on the heart, lungs, and diaphragm, invite breast diseases, tend to induce scoliosis, and that such diseases and conditions would be relieved, improved, and prevented by respondent's said devices;
 - (f) Represented falsely that said devices were of value as preventives of backache and other back troubles and were effective in relieving, correcting, and eliminating back fatigue, backache, general fatigue, and a tired-out feeling;
- When in fact preventative, corrective, or therapeutic properties of said devices were limited to the measure of support to, and change of position of, the