

Syllabus

IN THE MATTER OF
HARLEY-DAVIDSON MOTOR CO.DECISION AND OPINION IN REGARD TO THE ALLEGED VIOLATION OF SEC. 3
OF THE CLAYTON ACT AND OF THE FEDERAL TRADE COMMISSION ACT*Docket 5698. Complaint, Sept. 14, 1949—Decision, June 29, 1954*

Where a corporation which was engaged in the manufacture and competitive interstate sale, advertisement, and distribution, under its trade name, of motorcycles, "servi-cars", sidecars, and package trucks, and a complete line of parts and accessories therefor, including oil, tools, shop supplies, and operators' clothing and equipment; was the largest manufacturer of motorcycles and related products in the United States; while selling some of its products directly to police departments, the Government, and some large fleet operators, sold the great majority thereof to some 800 independently owned franchise retail dealers which were considered by competing manufacturers to constitute the largest and best dealer organization in the field, and which, by virtue of said corporation's position as the dominant seller, and the functions performed by the motorcycle dealers in maintaining adequate service facilities, and engaging in various promotional activities designed to interest prospective purchasers, and to maintain their interest, constituted the largest existing potential market for motorcycles, equipment, parts, accessories, and motorcycle oil—

- (a) Entered into agreements with its dealers—who, with very rare exception, sold and repaired only its motorcycles and concentrated only on motorcycle riders of its product—whereby the dealer was obligated not to sell substitute component parts, accessories or oil for respondents' motorcycles; and, following the end of World War II, and while the period of scarcity still existed, resumed its policy of requiring and seeking, in effect, such exclusive dealing on the part of dealers;
- (b) Sanctioned or acquiesced in activities of its employees directed to that end, including periodic calls by its field representatives and the checking by them of dealers' stock for the purpose, among others, of ascertaining and reporting competitive products found, orders, in certain cases, to dispose of competitive merchandise, the exacting of promises so to do, and the holding up of dealer contracts pending the disposition of all such products and threats thereof, and, on one occasion, the preparation of a written pledge for the members of one of its dealer associations whereby the members undertook not to deal in parts and accessories not manufactured and sold by it, and the solicitation and securing of the executions thereof by the dealers at a meeting of the association and certain other action in said connection;

With the result that such dealer contracts and exclusive-dealing understandings and its efforts to enforce them resulted in loss of business by competitive sellers of parts, oils, and accessories; its dealers, insofar as appeared, complied strictly with their agreement to deal in its oil and parts exclusively; and while such dealers, despite a similar agreement as to accessories, did purchase the same from competitors, and were not forced out of the market by strict enforcement of the exclusive-dealing agreements, they

were caused to lose business through the exercise of its power, sporadically, under such agreements, to foreclose such competitors from their principal market, and their said business continued at its sufferance; and

- (c) While there was no written agreement between it and its dealers as to said matter, dealt on an exclusive-dealing-agreement basis with its dealers, through its firm policy of requiring exclusive dealing by them in its new motorcycles, and its enforcement thereof, and their understanding and compliance therewith, in accordance with which, and in response thereto, a manufacturer of a competitive lightweight motorcycle was practically completely shut out of the market;

With the result that competitors generally lost business and in varying degrees were foreclosed from the market represented by its dealers, and said exclusive-dealing agreements had the capacity and probability of causing a substantial adverse effect on competition in the field involved and of creating a substantial tendency toward monopoly in the line of commerce in which it was engaged:

Held, That such acts and practices in the sale of merchandise for use and for resale within the United States, on the agreement and understanding that the purchaser should not use or deal in merchandise of its competitors, under the circumstances set forth, constituted a violation of Section 3 of the Clayton Act.

Before *Mr. Earl J. Kolb*, hearing examiner.

Mr. William C. Kern and *Mr. Andrew C. Goodhope* for the Commission.

Shaw, Muskat & Paulsen and *Mr. Robert J. Davidson*, of Milwaukee, Wis., for respondent.

DECISION OF THE COMMISSION

STATEMENT OF THE CASE

The Federal Trade Commission on September 14, 1949, issued and served on respondent Harley-Davidson Motor Co., a complaint charging it with having violated section 3 of the Clayton Act and section 5 of the Federal Trade Commission Act by entering into and enforcing agreements requiring its dealers to sell its products exclusively. Respondent filed an answer denying that it had violated either Act as alleged.

Pursuant to notice, hearings were held in twelve cities throughout the United States from June 28, 1950, to October 24, 1951, before Earl J. Kolb, a hearing examiner duly designated by the Commission to hear this proceeding. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded respondent and counsel supporting the complaint. All testimony and other evidence was recorded and filed in the office of the Commission.

After receiving proposed findings of fact and hearing oral argument of counsel, the hearing examiner filed his initial decision on

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August 26, 1952, in which he concluded that respondent had violated the Clayton Act and Federal Trade Commission Act as alleged. Within the time permitted by the Commission's Rules of Practice, respondent appealed to the Commission from this initial decision.

Upon consideration of the entire record herein, including the briefs in support of and in opposition to the initial decision and oral argument of counsel, and having determined that the rulings of the hearing examiner are free of prejudicial error, the Commission, for the reasons stated in its written opinion, hereby denies respondent's appeal and in lieu of the initial decision issues its findings of fact, conclusion and order as follows:

FINDINGS OF FACT

I. The Business of the Respondent

Harley-Davidson Motor Co. is a Wisconsin corporation having its principal place of business in Milwaukee, Wisconsin. It manufactures and sells motorcycles, servi-cars, sidecars and package trucks and a complete line of parts and accessories therefor, including oil, tools, shop supplies, operators' clothing and equipment all of which are advertised and sold under the trade name "Harley-Davidson."

Respondent sells its products to motorcycle dealers located throughout the United States and regularly causes its products to be shipped from its factory and warehouse facilities in Milwaukee, Wisconsin, to the places of business of its purchasers in other States of the United States. It is engaged in competition in the sale of its products with others engaged in the sale of similar products in interstate commerce.

Respondent is the largest manufacturer of motorcycles and related products located in the United States. It sells some of its products directly to police departments, the United States Government, and some large fleet operators, but the great majority of all of its products are sold to its independently owned franchised retail dealers.

The dollar volume of business done by the respondent with its dealer-customers has been substantial. During the years 1946 to 1949, inclusive, sales by respondent to its dealer-customers of its various products were as follows:

<i>Sales to Dealers by Product</i>	<i>1946</i>	<i>1947</i>
Motorcycles -----	\$4, 201, 034. 29	\$6, 806, 750. 55
Sidecars -----	54, 994. 03	93, 811. 97
Servi-Cars -----	564, 659. 38	1, 068, 950. 65
Package Trucks -----	15, 718. 38	13, 913. 36
Accessories -----	166, 414. 70	513, 439. 55
*Parts -----	2, 716, 831. 18	3, 686, 058. 26
Oil -----	227, 714. 50	393, 090. 70

*Includes tools and shop supplies which are of comparatively small dollar value.

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<i>Sales to Dealers by Product</i>	<i>1948</i>	<i>1949</i>
Motorcycles-----	\$10, 810, 408. 30	\$10, 916, 841. 01
Sidecars-----	79, 895. 72	48, 836. 79
Servi-Cars-----	998, 637. 14	609, 789. 67
Package Trucks-----	9, 777. 72	7, 783. 25
Accessories-----	649, 733. 06	458, 070. 16
*Parts-----	3, 709, 517. 89	2, 791, 452. 00
Oil-----	392, 540. 26	302, 418. 34

*Includes tools and shop supplies which are of comparatively small dollar value.

II. Respondent's Dealer Organization

Respondent sells its products to approximately 800 dealers. These dealers are independent business organizations furnishing their own capital. This dealer organization is considered by competing manufacturers to be the largest and best in the field.

The majority of motorcycles sold at retail in the United States are purchased primarily for sport and recreational use. The motorcycle dealer performs a valuable function in maintaining adequate service facilities and engaging in various promotional activities designed to interest purchasers in the purchase of motorcycles and to keep their continued interest. Included in these are the organization of clubs and the promotion of various recreational activities. When a motorcycle dealer makes a sale of a motorcycle, the purchaser generally returns to the dealer from whom he purchased the machine for any further purchases of motorcycle equipment or accessories and also for any repairs or parts replaced on the machine. Consequently, as respondent is the dominant seller in the United States, the Harley-Davidson dealers constitute the largest existing potential market for motorcycles, equipment, parts, accessories, and motorcycle oil.

Of the 786 motorcycle dealers who handled respondent's products on January 1, 1950, 572 (with 585 outlets) had entered into respondent's standard form of dealer contract. The others had entered into special contracts designed for the State of Texas or sold respondent's products pursuant to a letter agreement designating them as Harley-Davidson dealers. All of these dealers are independently owned concerns and are not representatives or agents of respondent.

III. Exclusive Dealing Understandings as to Parts, Accessories and Oil

Respondent's standard form of contract with its dealers, which has remained unchanged for over 15 years, contains the following provisions:

(11) The Dealer agrees not to sell substitute component parts, accessories or oil for Harley-Davidson Motorcycles, Sidecars, Servi-Cars, Package Trucks,

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and Chassis, and that he will not use substitute component parts in repairing Harley-Davidson Motorcycles, Sidecars, Servi-Cars, Package Trucks, and Chassis.

* * * * *

(14) If the Dealer shall violate, or fail, or neglect to perform any of the terms or conditions of this agreement on his part to be kept or performed, the Seller may at its election terminate this contract after mailing written notice to this effect to the Dealer, or to his representative, at his above address, or such other place as the Dealer may have in writing last indicated.

(15) Either party may cancel or terminate this Agreement at any time, provided the party desiring to so terminate and cancel the same gives unto the other a written notice of such intention at least THIRTY DAYS prior to the date of such proposed termination and cancellation.

(16) * * * (b) After the expiration of the term of this Agreement, the continued sale of Motorcycles, Sidecars, Servi-Cars, Package Trucks, Chassis, Parts and Accessories by the Seller to the Dealer or the referring by the Seller of inquiries from said territory to the Dealer, shall not be construed as a renewal or extension of this Agreement; but all such orders accepted by the seller and all such sales made by the Dealer, shall be governed by the stipulations of this Agreement. The Seller reserves the right under the condition described in this paragraph to appoint a new Dealer or to discontinue supplying Motorcycles, Sidecars, Servi-Cars, Package Trucks, Chassis, Parts and Accessories to the former Dealer at any time without notice.

* * * * *

(19) The failure of the Seller to enforce at any time any of the provisions of this contract, or to exercise any option which is herein provided, or to require at any time performance by the Dealer of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this contract or any part thereof, or the right of the Seller to thereafter enforce each and every such provision. (Com. Ex. 1.)

During World War II when respondent was engaged primarily in war work and when materials were in short supply, it did not object to its dealers handling parts and accessories purchased from other sources. However, after the conclusion of the war and while the period of scarcity still existed, respondent again put its policy of requiring exclusive dealing on the part of its dealers into effect.

On October 29, 1946, respondent's sales manager of parts and accessories, Mr. H. A. Devine, in a letter to respondent's salesman stated:

The management has decided that it is fully time that we start an active campaign to change all Harley-Davidson dealers back to stores that handle only Harley-Davidson trademark products. As this department is primarily interested in spare parts, accessories and oil, this letter is to tell you what to do about these items with the various dealers in your territory.

During the war when this company was primarily interested in whether we were going to win the war with Germany and Japan, we did not object—in fact we rather encouraged some dealers to add parts and accessories from other sources to their Harley-Davidson line. That stand was all right in wartime, but this is no longer wartime, and there is every reason now why the dealer should change back to 100% Harley-Davidson trademark merchandise.

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It is true that there are still many shortages. In spite of these shortages, we insist that this is the time to change back to 100% Harley-Davidson goods. If we wait until the supplies of Genuine Harley-Davidson accessories are more than sufficient to take care of the demand, we will have to wait until there is some recession in business. This would be inadvisable for the dealers or for ourselves.

* * * * *

Our accessory line is growing rapidly. We expect by the turn of the year to have a fairly complete line of accessories to ship to dealers. Already such things as spotlights, fender lights, parking lamps, chrome stacks and similar items are being shipped in reasonable quantities. Before the first of the year we will have such items as chrome rear bumpers and optional types of fender tips, and quite a number of other items that we have not heretofore been in a position to furnish. Riding breeches will be here, and we hope to have some arrangements made on riding boots. If the leather is available at all, we will have Harley-Davidson jackets.

We do not want dealers to be caught with a large stock of other than Harley-Davidson merchandise which would be extremely difficult to liquidate, when we have the same items to sell in an ample supply. We will be actively advertising these items to the dealers' customers, and it is very likely that our quality will be higher than that of competitive goods and prices even more reasonable.

* * * * *

By all means, start the ball a-rolling immediately whenever you talk to a Harley-Davidson dealer, either individually or in a group. Adopt a slogan, "It is better to be out of merchandise than to provide a substitute." The time to stop buying outside merchandise is now. If the purchase of this material is stopped now, many of our dealers will be very fortunate if they have liquidated such stocks by the first of the year.

The writer has talked to 30 or 40 dealers on this same subject, and has found them to be in agreement with our views. Most of the dealers we talked to are in the bigger cities. Apparently, they were just waiting for word from us and expected to be told that they would, of necessity, have to sell Harley-Davidson merchandise exclusively. It is not too soon to make the change right now. (Com. Ex. 20-A, B.)

Again in 1948 Mr. Devine, as sales manager in charge of parts and accessories, sent a letter to all of respondent's salesmen dated September 3, 1948, which read in part, as follows:

The dealer who decides to buy certain accessories elsewhere than from Harley-Davidson hurts himself much more than he does us. Here is what he is doing:

* * * * *

6. He is acting in bad faith when he denies us a full market for our products. We did not establish him as a dealer so he could sell some other manufacturer's merchandise. (Com. Ex. 25.)

Respondent's standard dealer contract does not prohibit its dealers from selling or using competitive parts, accessories, or oil on brands of motorcycles other than Harley-Davidson. However, as, with very rare exception, the only new motorcycles sold by respondent's dealers are Harley-Davidson motorcycles, and the only motorcycles repaired

by them are Harley-Davidson Motorcycles, and as their sales policy is to concentrate on Harley-Davidson motorcycle riders, the effect of this contract and the understanding between respondent and its dealers, as illustrated by the above-quoted excerpts from respondent's sales manager's letters, is that its dealers are not to sell competitive parts, accessories, or oil purchased from other sources.

Further indication of the understanding between respondent and its dealers as to handling competitive parts and accessories is shown by the following excerpts from the reports of Mr. William Gardner, one of respondent's sales representatives:

Parts and Accessories. Parts bins have been added to make more room and these have been enclosed. Accessories are being displayed in two show cases and in wall displays. Has stocked a few "other-than-H-D" items and was advised to carry our line exclusively. (Com. Ex. 57-A.)

Parts and Accessories: * * * Has very limited amount of other than H-D mdse. and this is being discontinued. (Com. Ex. 58-A.)

Parts and Accessories. * * * Has been able to get his "other-than-H-D" mdse down to less than \$400.00 and is moving it out fast. Well on the way to being exclusive. (Com. Ex. 64-A.)

Parts and Accessories. * * * Estimate that he has about \$1,000.00 in other than H-D mdse which he will discontinue. Has stated that he is anxious to become an exclusive dealer and he will be held to his promise as far as discontinuing competitive merchandise is concerned. (Com. Ex. 65-A.)

Parts and Accessories. * * * Has less than \$1,000 in other than H-D items which will be discontinued as soon as they can be moved. This amount consists mainly of jackets, sport shields, bumpers, etc. Store is nicely arranged and mdse is well displayed. Will be exclusive. (Com. Ex. 85-A.)

Another field representative of respondent, Mr. Hartwick, prepared a written pledge that members of a dealer association, known as the Ohio-Indiana-Kentucky Harley-Davidson Motorcycle Dealers Association, would not deal in parts and accessories not manufactured and sold by respondent. He solicited and secured the execution thereof by the dealers assembled at a meeting of the Association on September 13, 1948, secured the signature of at least one absent dealer-member of the Association and sent the signed pledge to respondent. The pledge was returned at once to the Association.

Respondent contends that the above activities of its sales representatives were neither authorized nor condoned by respondent. However there is no indication that Mr. Gardner, the author of the above-quoted reports, was reprimanded in any way. And as to the activities of Mr. Hartwick in connection with the exclusive dealing pledge of the Ohio-Indiana-Kentucky Harley-Davidson Motorcycle Dealers Association, it is clear that his objective of securing an exclusive dealing agreement from the dealers was in accordance with the wishes of respondent's sales officials. The original impetus for the pledge was

provided by irritation of the dealers at Joseph Buegeleisen Company for selling its accessories to chain stores. Various ineffective resolutions restricting purchases of competitive products, but short of exclusive dealing, were voted by the Association early in 1948.

The participating dealers contemplated reporting to respondent, dealers who did not cooperate. The Association asked respondent to have its factory representative take this subject up with Harley-Davidson dealers not present at the meetings. Mr. Devine, Manager of respondent's Parts and Accessories Department, informed the Association that Mr. Hartwick, the factory representative, would be more than glad to cooperate with the Association in every way possible. Later, on May 3, 1948, Mr. J. G. Kilbert wrote the Secretary-Treasurer of the Association as follows:

We understand pressure is being put on the officers regarding the Association's stand on accessories. Don't give an inch. Your stand is sound and to back up would discredit the officials and break down the thing you are working for.

With this background it is clear that Mr. Hartwick was acting in accordance with the wishes of respondent's sales officials in encouraging its dealers to pledge that they will deal exclusively in its products. The fact that Mr. Devine returned the signed pledge, mailed in by Mr. Hartwick to the Association, is not sufficient to disassociate respondent from his actions.

Respondent's dealer contracts and exclusive dealing understandings and its efforts to enforce them resulted in loss of business by competitive sellers of parts, oil and accessories. For example, during 1947, Ray Phillips, a Harley-Davidson dealer in Anderson, Indiana, discontinued handling a motorcycle fork for the front wheels of motorcycles which was manufactured and sold by Vard, Inc., of Pasadena, California. On May 23, this dealer wrote Vard, Inc., a letter which read in part as follows:

Enclosed is a sample of advertisement I used at Daytona. Since then several persons receiving them sent them in to the Harley Davidson factory. Being a Harley Davidson dealer HD they have been on me like a wet shirt. They even informed me that unless I stopped selling Vard forks they would shut me off. J. B. Jones is employed by us and a good friend of Harley-Davidson factory. J. B. also told them off, of course for Vard.

I offered to let Harley Davidson ride my motorcycle and they refused by saying they had not tested your forks and they were not going to. We have been having a lot of fork trouble on Harley Davidson. As soon as we install Vard forks trouble vanishes. I told Harley Davidson one life was worth more than the whole Harley Davidson factory in which they replied I did not know. When stated I had a good idea as I have ridden them 2400 mi. I sure wished they were here to help me when they get on me. They have been at the shop 3 times to see me and one time we were installing a set and the other time they had came after his Harley who had a set installed. Boy is things popping.
m. Ex. 155-A.)

On May 19, 1947, this same dealer again wrote Vard, Inc., in part as follows:

We are very sorry to advise you that we are now cancelling all of our unfilled orders. The HD factory has put so much pressure on us we are now asking you to terminate our agreement to handle Vard products in Indiana. (Com. Ex. 156.)

When Ray Phillips was called as a witness in this proceeding, he stated that he had not given the real reason he had canceled with Vard in the correspondence as he was seeking an easy way to discontinue purchasing Vard, Inc.'s product. He also contradicted certain other statements in the correspondence. However, the hearing examiner, after noting the demeanor of this witness upon the stand and certain discrepancies in his testimony, found that his explanation was an afterthought. The admission by the witness that he did not tell the truth in the first instance, tends to destroy his reputation for veracity as a witness and the written statement made at the time that this controversy arose is accepted as stating the real reason for this discontinuance.

Other of respondent's dealers testified that they dealt in respondent's parts and oil exclusively. There is no evidence that respondent's dealers did not strictly comply with their agreement to deal in Harley-Davidson oil and parts exclusively.

Despite a similar agreement as to accessories, respondent's dealers did purchase accessories from competitors. If they had not so purchased, the result would have been to practically put respondent's competitors in the accessories field out of business. For example, Joseph Buegeleisen Company, one of the largest manufacturers of motorcycle accessories, sold over sixty percent of its products to Harley-Davidson dealers. They constitute its principal market, without which it could not keep its salesmen on the road. However, while these competitors were not forced out of this market by strict enforcement of the exclusive dealing agreements, sporadic enforcement caused them to lose business and clearly shows respondent's power under these agreements to foreclose competitors from their principal market. For example, certain dealers when told by respondent's salesman William Gardner to discontinue handling competing accessories, did discontinue or greatly reduced their purchases of competitors' products. Also, members of the Ohio-Indiana-Kentucky Harley-Davidson Motorcycle Dealers Association, upon being asked to sign a pledge not to buy accessories competitive with Harley-Davidson's and upon being informed by respondent's representative at their meeting that those not cooperating may lose the factory's blessing, signed the pledge and greatly reduced their purchases of competing accessories. For example, sales to members of this latter group by the Joseph Buegelei-

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sen Company dropped off in the year of the pledge to slightly over one-third of the dollar volume of the previous year. This occurred during a period of rising sales in the motorcycle field.

IV. Exclusive Dealing Understandings as to Motorcycles

There is no written agreement between respondent and its dealers as to exclusive dealing in Harley-Davidson motorcycles. However, it is respondent's firm policy to require exclusive dealing by its dealers in its new motorcycles. Respondent's dealers understand and comply with this requirement. With only the rarest exception, none of its dealers sell any brand of new motorcycles other than Harley-Davidson.

The existence of this understanding between respondent and its dealers is well illustrated by the manner in which respondent's dealers stopped buying "Servi-cycles," a lightweight motorcycle manufactured by the Simplex Manufacturing Corporation of New Orleans, Louisiana, when respondent came out with a new competitive lightweight motorcycle late in 1947. Prior to this time Harley-Davidson dealers constituted a major part of the market for "Servi-cycles." Soon after this time only in the rarest case was a "Servi-cycle" sold to a Harley-Davidson dealer.

The president of Simplex Manufacturing Corporation personally informed Mr. William Davidson, respondent's president, that respondent's policy of not allowing its dealers to handle his product was unfair to the dealers and to himself. Mr. Davidson replied that that was respondent's firm policy and would be adhered to.

An illustration of the methods used by respondent to secure compliance with and agreement to its exclusive dealing policy as to motorcycles is shown by the letter written by Mr. J. G. Kilbert, respondent's Domestic Sales Manager, to Mr. Rudy Bolling of the J. R. Bolling Co., Inc., a Harley-Davidson dealer in Winston-Salem, North Carolina, on August 29, 1947, which stated as follows:

We heard recently that you were selling English motorcycles. We have also heard that you were distributing Servi-cycles. I believe you either operate or are interested in an electric appliance business. Inasmuch as George Balmer is covering a lot of territory and is not able to call on you as regularly as in normal times we will appreciate it if you will tell us exactly what lines you are selling, and, if you care to, whether you are interested in any other business besides J. R. Bolling Co.

During the war some of our dealers took on side lines and we did not say anything because we did not have enough merchandise for them because the army was taking almost everything we made. However, the time is here to find out what the thinking of the dealers is who took on outside lines, and that is the purpose of this letter.

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Naturally we are going to try to protect our own interests, and if a dealer is going to divide his efforts we are going to have to take such steps as we see fit and assure us of adequate sales coverage. We will hold up any action on your 1948 dealership (the 1948 season starts October 1, 1947) until we have heard from you and Mr. Balmer has been on the ground. (Com. Ex. 32.)

Subsequent to this time Rudy Bolling discussed this matter with Joseph G. Kilbert, Domestic Sales Manager of the Harley-Davidson Motor Co., and on October 23, 1947, notified George Balmer, Sales Representative of the Harley-Davidson company, as follows:

After long consideration Nell and I have decided to go along with Harley Davidson. We have decided, and agree too, that in the long run, we will be better off with the Harley Davidson franchise. Therefore, we are taking steps to sell out our holdings—both in the retail and also wholesale of Servi-cycles.

We also agree not to sell competitive makes of new motorcycles after our present stock are exhausted, so long as we are authorized Harley Davidson Dealers.

Thanking you for your personal interest in getting this matter straightened out, I remain (Com. Ex. 33)

During the year 1947 the J. R. Bolling Co., Inc., made purchases in the amount of \$138,509.67 from the Simplex Manufacturing Corporation. Subsequent to this exchange of correspondence between Harley-Davidson and the J. R. Bolling Co., Inc., the purchases by J. R. Bolling Co., Inc., from Simplex Manufacturing Corporation consisted of only minor purchases of parts and accessories but no Servi-cycles.

When Mr. Kilbert was asked about respondent's policy as to new motorcycles, he testified:

Well, you may say our policy has been to require our dealers to sell only our product. We have always maintained that we have that inherent right, but we have not always enforced it.

As a result of respondent's policy of compelling its dealers to discontinue competing lines of motorcycles, the Simplex Manufacturing Corporation was effectively excluded from seeking any distribution through Harley-Davidson dealers. These dealers constitute 80 percent of the potential market for the Servi-cycle; and when Simplex was denied access to these dealers as the result of respondent's policy, it was unable to distribute its Servi-cycles effectively and was forced to take its eight salesmen off the road because they were not able to secure sufficient dealers outside the Harley-Davidson organization to pay their expenses and make it profitable. From 1947 to 1949 sales of Servi-cycles dropped 50 percent. During this same period of time respondent's sales increased 60 percent. Since then the sales of Servi-cycles have further dropped to approximately 25 percent of its 1947 sales.

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Respondent contends that this loss of business was a result of the preference of its dealers to sell its new lightweight motorcycle which it contends was a superior product. However, the above-quoted excerpt from the October 23, 1947, letter of Mr. Bolling and the following statements of reasons for cancellation by other dealers show that the fact respondent required its dealers to deal exclusively in its new motorcycles was the real reason for cancellation.

Late in the year 1947 Mr. Otis Lee, Harley-Davidson dealer located at Mobile, Alabama, called upon the president of the Simplex Manufacturing Corporation at New Orleans, Louisiana, and informed him that while he owed a great deal of his success to his association with Simplex, he had a bigger investment and a greater volume of sales with Harley-Davidson and that he was compelled to discontinue sale of Servi-cycles at the insistence of the Harley-Davidson Motor Co. During the year 1947, Lee purchased products from Simplex in the amount of \$39,143.87, but subsequent to this conversation he purchased only an inconsequential amount of parts and only one Servi-cycle.

On January 16, 1949, Howard Griffin, a Harley-Davidson dealer in Monroe, Louisiana, wrote the Simplex Manufacturing Corporation as follows:

You will recall that I called you on the phone over two months ago and explained our difficulties that we were having with Harley-Davidson about handling their line exclusively.

At that time I asked that we be permitted to represent Simplex in an unofficial way for the time being until we could see what was going to develop.

Since then Harley has kept a watchful eye on our operation to such an extent that I feel that we are not doing any sort of decent job for Simplex, being handicapped as we are now.

Therefore, in all fairness to you, Simplex, and Mr. Treen I am relinquishing our position as dealer for Monroe and vicinity. Of course, we shall be glad to handle all service matters until such time as you are able to get a suitable dealer in Monroe and, in this connection, would like to be allowed to order parts on the same basis as formerly until such time as you have been able to establish proper service facilities in Monroe.

Jack, I want you and Paul to know that doing this is exceedingly difficult for me, that I have always enjoyed the very fine business relationship with Simplex and its capable organization, and that I am not overlooking the fact that your product has helped us in no small measure in building up this business to what it is today.

Taking full cognizance of all this makes it hard, indeed, to make this decision, but we have to consider the cold facts of business and analization of potential markets which forced us to remain with Harley because of the increased demand for large motorcycles.

If we can be of any assistance in helping you locate another dealer please do not hesitate in calling on us and I would appreciate your dropping me a line, Jack, about our getting parts until you do get your new dealer. (Com. Ex. 116)

During the year 1947, Howard Griffin made purchases from Simplex in the amount of \$17,085.23, but since the writing of said letter his purchases have been only inconsequential purchases of parts. Howard Griffin appeared as a witness and testified that Bob Brandenburg, salesman for the Harley-Davidson Motor Co., asked him to drop the Cushman Scooters and Servi-cycles from his line and that he agreed to drop these lines.

On June 4, 1949, Ted Edwards, a Harley-Davidson dealer at Atlanta, Georgia, wrote the president of the Simplex Manufacturing Corporation in part as follows:

We have just taken on the Harley-Davidson motorcycle franchise and are giving up Indian here in Atlanta.

As you probably know, Harley-Davidson will not allow us to handle any other line. Therefore it looks as though I am going to have to give up my Servicycles, which I certainly feel bad about as I have enjoyed being connected with Simplex the past eight years and our business relations have always been most pleasant, not to mention our personal friendship of which I am sure you know how I feel and will always continue to feel the same. * * * (Com. Ex. 111)

The purchases made by Ted Edwards from Simplex amounted to \$33,060.38 in 1947, \$7,559.10 in the fiscal year 1948, and \$3,995.55 during period from September 1948 to June 1949. Subsequent to letter of June 4, 1949, Simplex has been unable to sell any of its products to said dealer.

V. Justification

Respondent does not admit the existence of any exclusive dealing contract, agreement or understanding. It does admit it has actively encouraged its dealers to deal exclusively in its new motorcycles. It contends that its contract requiring the sale or use of Harley-Davidson parts, accessories and oil in Harley-Davidson motorcycles is not an exclusive dealing contract as it does not prohibit other sales for other motorcycles.

Respondent has presented evidence to justify its contract provision as to parts, accessories and oil. It has shown its general warranty guaranteeing its new motorcycles against mechanical defects for either 90 days or 4,000 miles, whichever comes first. It has introduced evidence that, in order to maintain its goodwill and to protect itself under its guarantee, it must be assured of the use of genuine Harley-Davidson parts and, at least, functional accessories. Evidence was also introduced tending to establish that parts and oil supplied by respondent are considered by its dealers to be of better quality and more satisfactory for use in Harley-Davidson motorcycles than parts and oil from other sources. It is established, however, that there are other

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brands of oil, especially designed for air-cooled motors, which are also suitable for use in motorcycles. Many accessories do not have any relationship to the mechanical operation of a motorcycle and their use has no bearing upon respondent's guarantee. Further, many Harley-Davidson dealers and their customers prefer to buy certain accessory items manufactured by respondent's competitors.

Evidence has also been presented by respondent to the effect that it is more satisfactory from an economic standpoint for a dealer to confine his activities to one brand of motorcycles because it reduces the inventory outlay so far as parts are concerned. Evidence has also been introduced showing that the respondent furnishes assistance to its dealers in promoting the sale of motorcycles and equipment which are of substantial value to the dealer.

VI. General Conclusions

Respondent's contracts with its dealers which require exclusive selling and use of respondent's parts, oil and accessories for Harley-Davidson motorcycles are interpreted as and are in fact exclusive dealing agreements as its dealers, with rare exceptions, repair only Harley-Davidson motorcycles and attract only the business of riders of Harley-Davidson motorcycles.

Respondent's policy of requiring its dealers to sell its new motorcycles only, its acts and practices to enforce this policy, and its dealers' compliance with this policy constitute exclusive dealing agreements between them as to new motorcycles.

The size and importance of the market for motorcycles and motorcycle parts, oil and accessories controlled by respondent's dealers, the foreclosure of this market to certain competing sellers, competitors' loss of sales of parts, oil, and accessories to this market as a result of said exclusive dealing agreements, to the extent herein found, considered together with respondent's power under these agreements to foreclose this market to its competitors, establish that the effect of these agreements may be to substantially lessen competition or tend to create a monopoly in respondent in this line of commerce.

CONCLUSIONS OF LAW

For the reasons stated in the written opinion of the Commission, respondent's acts and practices as herein found establish that respondent has sold merchandise for use and for resale within the United States on the agreement and understanding that the purchaser thereof shall not use or deal in merchandise of competitors of respondent, where the effect of such sale and agreement or understanding may be

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to substantially lessen competition and tend to create a monopoly in respondent in the line of commerce in which respondent is engaged, in violation of section 3 of the Clayton Act.

ORDER

It is ordered, That the respondent, Harley-Davidson Motor Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the sale of motorcycles and motorcycle equipment, parts, accessories, oil, and other similar or related products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Selling or making any contract or agreement for the sale of any such products on the condition, agreement, or understanding that the purchaser thereof shall not use, or deal in, or sell motorcycles, motorcycle equipment, parts, accessories, oil, or other similar or related products supplied by any competitor or competitors of respondent.

2. Enforcing or continuing in operation or effect any condition, agreement, or understanding in, or in connection with, any existing contract of sale, which condition, agreement, or understanding is to the effect that the purchaser of said products shall not use or deal in motorcycles, motorcycle equipment, parts, accessories, oil, or other similar or related products supplied by any competitor or competitors of respondent.

3. Causing any of its dealers or other purchasers of its said products to refuse to purchase any competitive product from its competitors by:

(a) Threatening, directly or by implication, the cancellation of its franchise, contract, or selling agreement with said dealer or other purchaser.

(b) Participating in or encouraging by any overt act efforts to secure, either individually or through associations of dealers, pledges or agreements of any of said dealers or other purchasers to deal exclusively in any or all of its said products.

(c) Intimidating or coercing its dealers or other purchasers in any way for the purpose or with the effect of causing them or any of them to deal exclusively in any or all of its said products.

Provided, however, That nothing in this order shall prohibit respondent from entering into an agreement with its dealers prohibiting them from using or selling for use, in a Harley-Davidson motorcycle, oil or parts which would adversely affect its mechanical operation.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission

a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Commissioners Howrey and Gwynne not participating for the reason that oral argument was heard prior to their appointment to the Commission.

OPINION OF THE COMMISSION

By MASON, Commissioner:

This matter is before the Commission upon an appeal by respondent, Harley-Davidson Motor Co., from an initial decision of a hearing examiner of the Commission holding that it has violated Section 3 of the Clayton Act and Section 5 of the Federal Trade Commission Act. This initial decision holds that respondent has entered into and enforced agreements with its dealers requiring them to deal exclusively in its motorcycles and its motorcycle equipment, parts, accessories, and oil. It further holds that these agreements have had the effect of substantially lessening competition and the tendency to create a monopoly in this company in the sale of these products. Respondent in its appeal contends that it has had no such agreements with its dealers and that its business practices have had no adverse effect on competition.

I

The record shows that respondent is the largest manufacturer of motorcycles in the United States. Its total domestic sales to its dealers has increased greatly since the war, totalling over 15 million dollars in 1949. It is one of a very few remaining motorcycle manufacturers in this country. Its principal competition in the motorcycle field now comes from foreign manufacturers, its largest domestic competitor having encountered production and financial difficulties in recent years, according to respondent. There are numerous domestic competitors for the accessories and supplies business.

Respondent sells its products to approximately 800 independently owned, franchised dealers. This is the largest and best dealer organization in the field.

Motorcycles have an appeal to a very special class of customers. While their facility makes them useful in police, traffic, and certain forms of commercial work, these functions absorb only a minor share of the total production. The great majority are sold to people young in spirit who love motion, the rush of air, the sense of freedom, the joy of the open, uninhibited by glass windows, plush arm rests, adjustable seats, and thermodynamic air conditioning. It is this appeal that sells three-fourths of all motorcycles.

When the American spirit of adventure and competition sputters out, there'll be no market for motorcycles.

Whether it be the world famous Isle of Man Tourist Trophy or our American contests such as the Jack Pine Endurance Run, the Daytona 200 Mile Road Race, or the 500 other sanctioned motorcycle sporting events—these sell motorcycles, as a half a million young Americans can tell you.

To be a success a motorcycle dealer has to be, first of all, a lover of motorcycles. He has to ride one himself. He has to go out with the boys on Sundays, not just to sell them motorcycles but to sell them on motorcycling and to supply the sport and activity that goes with it. A motorcycle is of no value to a boy unless he has fun with it, and to be a success a dealer must encourage that fun. He must organize motorcycle clubs and promote races, hill climbs and other competitive events. He must have that motorcycle atmosphere around his place of business that makes the motorcycle crowd like to hang out there. He must eat, sleep, live and talk motorcycles. This takes an unusual type of person—one who has a feeling for motorcycles and is willing to do all these things because he enjoys them himself.

Harley-Davidson has done an excellent merchandising job in this field. It has long realized that what is good for sport is good for its business, and it has carefully selected its dealers and encouraged and helped them stimulate motorcycling for sport. As a result respondent has grown and prospered. Likewise the independently owned companies dealing in its motorcycles have become the largest market for motorcycles, parts, accessories and supplies in the country. Access to these dealers is almost essential in the selling of motorcycle parts, supplies, accessories and oil in the American market.

During World War II when products were in short supply, respondent did not object to its dealers selling competitors' products. For example, many of them sold Servi-cycles, a lightweight motorcycle manufactured and sold by the Simplex Manufacturing Corporation of New Orleans. However, shortly after the close of the war, respondent campaigned to get its dealers to sell Harley-Davidson products exclusively.

When respondent introduced a lightweight motorcycle into its line in the fall of 1947, its representatives got in touch with franchise dealers which were selling Servi-cycles and let them know that they were expected to sell Harley-Davidson motorcycles exclusively, including its new lightweight motorcycle. Respondent held up renewing and threatened to cancel dealers' franchises until they agreed not to sell competitive makes of new motorcycles.

These dealers constituted a major percentage of the market for Servi-cycles; and when they became unable to handle this motorcycle, the sales of the Simplex Manufacturing Corporation dropped off

sharply while respondent's sales increased greatly. Shortly thereafter Simplex laid off all of its salesmen and its sales were reduced 75 percent. The President of Simplex Manufacturing Corporation testified that he personally complained to respondent's President, Mr. Walter Davidson, about respondent's practice of not allowing its dealers to handle Servi-cycles and that Mr. Davidson replied that that was the firm policy of his company and would be adhered to. At the present time, with rare exceptions, respondent's dealers sell Harley-Davidson motorcycles only.

In the parts and accessories field, respondent has placed in its standard form of contract with its dealers a requirement that the dealer agrees not to sell any component parts, accessories or oil other than respondent's for Harley-Davidson motorcycles. The record shows that this provision has been interpreted by respondent as meaning that all dealers are to deal in Harley-Davidson parts, accessories and oil exclusively. Respondent's field representatives called periodically on dealers and on such visits checked the dealers' stock for the purpose, among others, of ascertaining and reporting competitive products found. In certain cases these representatives have ordered dealers to dispose of the competitive merchandise, have exacted promises from the dealers to dispose of such merchandise, and have held up and threatened to cancel dealer contracts unless the dealers disposed of all such products.

On one occasion respondent's representatives and officials encouraged a dealer association known as the Ohio-Indiana-Kentucky Harley-Davidson Motorcycle Dealers Association to solicit and secure the written pledge of all of the members of that association that they would not deal in parts and accessories not manufactured and sold by respondent.

The record shows that these unsportsmanlike activities in the accessories field were only sporadic. They only happened from time to time and in different areas. Too zealous salesmen (but with the encouragement and knowledge of company officials) took the initiative in most of these cases. On occasion a complaint to respondent's home office by an indignant competitor would cause a halt in a particularly obnoxious form of coercion. In the field of accessories, respondent's competitors have continued to do business with respondent's dealers despite the restrictive agreements. They constitute their most important market. However, at all times respondent has had the power under its agreements with its dealers to foreclose competitors from this market. And from time to time it has given its competitors a little squeeze.

Respondent does not defend those acts of coercion and intimidation by its salesmen in this field. It denies responsibility for them and

denies it has committed any illegal act. But it stated through counsel in oral argument before the Commission that it would not object to an order relating to the practices in the accessories field.

We are glad no defense is made of these unsportsmanlike practices themselves. Just like what is good for sports is good for the motor-cycling business; what is good for free and fair competition is good for all business. But in both competitive fields, there must be rules to govern the game. When the enthusiasm of a contestant clouds his better judgment, there must be a referee or umpire to call the contestant to account. Sometimes, when a motorcyclist drifts out on the turn to force out a rival, it is difficult to determine whether it was deliberate or accidental. The same holds true in the field of industry. The Federal Trade Commission is to interstate commerce what the American Motorcyclists' Association referee is to a sanctioned race meet. Whether the challenged action was intentional or not, the turn must be called when someone fudges on the rules. In the realm of business that's our job. We do not fine; we do not disqualify; we do not penalize, such as referees in the world of sports may do. We interpret the rules and relate them to a specific business practice. If the practice is illegal, we point it out to the offender. The great majority of American Businessmen need only have their attention directed to a bad business practice to correct it.¹

The respondent in this instant case finds itself before us in just such a situation. Its practices, if engaged in by a lesser company, might not lessen or restrain commerce seriously. But Harley-Davidson is the dominant domestic factor in an industry which at one time counted many vital producers. This is all to its credit for we reject the idea that success and resultant bigness in a company makes it a threat to our free competitive system. But in a field where large and small companies compete, the larger ones must be especially careful to stay within the rules. Size brings with it increased responsibilities, commensurate with its increased power.

II

The facts of record establish that the Harley-Davidson Motor Co. in selling its products to its franchised dealers under an agreement and understanding that the dealers will not deal in motorcycles, parts, accessories or oil of its competitors. This constitutes a violation of Section 3 of the Clayton Act if the effect of such agreements and understandings may be to substantially lessen competition or tend to

¹ Under the Clayton Act, violation of a Commission order carries no penalty. If respondents do not clear up their practices, however, the Commission can secure a Court order, violation of which would be penalized.

create a monopoly in any line of commerce. These exclusive dealing agreements do have this requisite substantial likelihood of future adverse effect on competition.

In reaching this conclusion, we have not restricted ourselves to determining only whether or not respondent had a substantial share of the market in this field. We have looked at the actual effect on competition of respondent's practices in the past and have considered their potentialities for future lessening of competition.

Section 3 of the Clayton Act does not prohibit all exclusive dealing agreements. It only prohibits those agreements which have the capacity and likelihood of lessening competition or tending to create a monopoly in any line of commerce. The legislative history of this Act shows that Congress believed that exclusive dealing agreements by a small business trying to break into a market should not be prohibited.² Such agreements would not provide a substantial threat to free competition even though all exclusive dealing agreements by their very nature foreclose some accounts to competitors.

Thus, such restrictive agreements standing alone might not merit the attention of the Commission. However, here these agreements are between the largest domestic manufacturer of motorcycles and its large and effective dealer organization in a field where the bonds between the motorcyclist and the dealer are especially strong.

In addition, competitors of respondent have lost business and in varying degrees have been foreclosed from the market represented by respondent's dealers. The manufacturer of the competitive lightweight motorcycle Servi-cycle has been practically completely shut out of this market while competing manufacturers of accessories have lost business and to a great extent are continuing in business at the sufferance of respondent as long as these exclusive dealing understandings are continued.

These facts establish that these exclusive dealing agreements have the capacity and probability of causing a substantial adverse effect on competition in this field and of creating a substantial tendency toward monopoly. We, therefore, conclude that respondent has violated Section 3 of the Clayton Act.

III

Respondent urges that it has a right to require its dealers to agree to sell and use only those functional parts purchased from it for Harley-Davidson motorcycles. While the record shows that respondent has

² See McAllister, "Where the Effect may be to Substantially Lessen Competition or Tend to Create a Monopoly," Proceedings of the American Bar Association, Section on Antitrust Law, August 26-27, 1953, p. 130.

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gone beyond this in its agreements, still this question is squarely raised in determining the proper remedy.

It is urged that such a requirement is necessary to protect respondent's good will and to protect owners of its motorcycles who expect to get genuine, high-quality parts from a Harley-Davidson dealer. In opposition to this contention counsel supporting the complaint cite *Judson L. Thompson Mfg. Co. v. F. T. C.*, 150 F. (2d) 952 (C. A. 1, 1945) as holding that the open market, not the court, is the place for presentation of claims as to the relative merits of competitive products. However, in that case, involving a tying contract for the use of rivets in a leased riveting machine, the court carefully distinguished *F. T. C. v. Sinclair Refining Co.*, 261 U. S. 463 (1923) which permitted an agreement restricting the use of Sinclair's pumps leased to dealers, to the sale of Sinclair gasoline saying:

"A different question is presented from that in the Sinclair case * * *. As the only use made of the gasoline was to sell it, and as there was no restraint upon the purchase and sale of competing gasoline, there was no violation of the Clayton Act." *International Business Machines Corporation v. United States*, 298 U. S. 131, 135 (1936).

It seems to us that respondent has a real interest in the proper repair of Harley-Davidson motorcycles by its dealers. In the absence of any exclusive dealing requirement, it could certainly require its dealers to agree not to use defective parts or improper oil in the repair and servicing of Harley-Davidson motorcycles. In its order in the matter of *General Motors Corporation*, 34 F. T. C. 58, 86 (1942), the Commission recognized this right as to automobile parts necessary to the mechanical operation of an automobile, even though, where there was no other source of proper parts, the agreement might have the effect of requiring exclusive dealing as to such parts.

The paramount need in this case is to prohibit respondent from restricting its independently owned dealers from exercising their right to make their own decisions as to what they want to sell. Harley-Davidson Motor Co. can select its own dealers, but it cannot legally, by threats of cancellation, force its dealers to agree to sell any class of its products exclusively. However, as to functional parts and oil, we believe that an agreement prohibiting the use of oil or parts which would adversely affect the mechanical operations of Harley-Davidson motorcycles would be proper in all respects.

Having determined that respondent's acts and practices constitute a violation of Section 3 of the Clayton Act, and inasmuch as they all can be prohibited under that Act, we believe that it is not necessary

to consider whether they might also violate Section 5 of the Federal Trade Commission Act. See *Standard Oil Co. of California v. U. S.*, 337 U. S. 293, 314.

This conclusion necessitates a revision of the initial decision which holds that certain of respondent's practices violated Section 3 of the Clayton Act and others Section 5 of the Federal Trade Commission Act. In our opinion all of the acts found in the initial decision relate to respondent's exclusive dealing practices and should be considered in the light of Section 3 of the Clayton Act which specifically relates to such practices.

IV

In reaching the conclusion that respondent has violated Section 3 of the Clayton Act, we have considered each of respondent's exceptions to the initial decision.

We wish to refer specifically to its exceptions to the inclusion in the findings of the excerpts of letters by certain of respondent's dealers to its competitors telling them that they do not intend to buy from them in the future because of respondent's insistence on exclusive dealing. Respondent excepts to these letters as being hearsay. Especially do they object in those cases where the author testified that he had given false reasons in the letters for cancelling. The hearing examiner did not believe this testimony.

It has long been established that under the circumstances of this case letters of third party dealers are admissible under an exception to the hearsay rule to show the reason why they refused to deal with competitors of respondent. Standing alone, these letters could not establish the existence of an exclusive dealing agreement. But where the exclusive dealing arrangement has been established, and where certain of respondent's dealers have stopped buying certain competitive products, letters of these dealers to the sellers cut off are competent to show the reason for this action given by the dealer at the time. Taken together with other evidence showing the existence of respondent's activities to enforce its exclusive dealing policy, and the actual stopping of purchases from the competitor, these letters are very persuasive, competent, and clearly material as part of the evidence showing the effect of respondent's practices on competition.

We do not believe that the testimony of the author of a letter that it does not state the real reasons he stopped buying competitive products destroys its evidentiary value where the hearing examiner does not believe this explanation. The hearing examiner, who has had the opportunity to observe the demeanor of the witnesses, is the best judge of the credibility of their testimony.

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Further exception is taken to the hearing examiner's refusal to permit certain additional cross-examination of witnesses McDonald and Treen. We are of the opinion that the hearing examiner's ruling did not constitute prejudicial error as the evidence sought to be elicited by the additional cross-examination would only have been surplusage tending to prove facts otherwise established and would not have affected the outcome of this case if allowed. The record contains the comparative sales volume of Mr. Treen's company for the years in question and establishes that the great bulk of respondent's dealers sold competitors' accessories.

We conclude, therefore, that respondent's appeal should be denied.

Commissioners Howrey and Gwynne did not participate for the reason that oral argument was heard prior to their appointment to the Commission.

IN THE MATTER OF
BLACKSTONE COLLEGE OF LAW, INC. ET AL.

DECISION AND OPINION IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 5906. Complaint, July 18, 1951—Decision, June 29, 1954

Where a corporation and its president, engaged in the operation of a correspondence school which sold courses of study and instruction in law, in advertising their said courses (in connection with which they imposed no requirements as to previous formal education for admission) in magazines of national circulation, in which, under the caption "LAW" and "The Law-Trained Man," they invited the reader to send for a free copy of their booklet thus entitled, showing how to qualify at home for the LL. B. degree and a bar examination through their course, and in which they referred to judges and lawyers as among their graduates—

- (a) Falsely represented that their course and the degree of Bachelor of Laws which they there offered to confer upon students successfully completing the same would fulfill the requirements for education and legal training requisite to participating in the bar examination of the respective States;

The facts being that while the minimal requirements for admission for examination vary, those imposed by the vast majority of the jurisdictions concerned follow a pattern which excludes applicants whose legal training has been secured solely through home study, or whose education or legal training are limited to completion of respondents' course, and in only a very few States would recipients of respondents' degrees who are educated or trained as above indicated be allowed to participate in bar examinations; and

- (b) Falsely represented and implied that their school was a college of law within the generally accepted meaning of that term, i. e., an institution of higher learning specializing in legal subjects, with a resident faculty and student body, and library and classroom facilities, through use of the word "college" in the trade name "Blackstone College of Law", featured in all advertisements and in its corporate name and in other statements designating the school as a college;

The facts being the school carried on all its operations from a small office; its full-time employees comprised five persons, four of whom were engaged in clerical work exclusively; the fifth was an attorney who managed the office and did most of the teaching work consisting, among other things, of forwarding lessons to students, grading examination papers, and corresponding with the students; another attorney who assisted the latter, engaged in the practice of law in Chicago, and devoted a portion of his time to the school in return for a small weekly salary; the school had no buildings or facilities for resident study, and its said president, who was not an attorney, spent little time at the school in Chicago, and had his office in New York City:

Held, That such misrepresentations were to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. William L. Pack*, hearing examiner.

Mr. William L. Pencke for the Commission.

Mr. Gunther W. Harms, of Chicago, Ill., for respondents.