

It is ordered, That the respondents herein 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 the order to cease and desist.

IN THE MATTER OF
CURTISS-WRIGHT CORPORATION

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8072. Complaint, Aug. 9, 1960—Decision, Jan. 11, 1961

Order dismissing without prejudice—for the reason that respondent sold the part of its business concerned—complaint charging a manufacturer with making false soundproofing and noise control claims for its “Curon” accoustical wall covering.

Mr. John W. Brookfield, Jr., for the Commission.

Mr. Roger W. Mullin, Jr., of Wood-Ridge, N. J., and *Dewey, Ballantine, Bushby, Palmer & Wood,* of New York, N. Y., for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Respondent has moved for dismissal of the complaint on the ground that the case is moot by reason of the fact that respondent has sold the entire division of its business to which the complaint relates.

It is clear from the motion and supporting papers not only that respondent is no longer engaged in the manufacture or sale of the products which form the subject matter of the proceeding, but also that respondent has bound itself not to engage in the manufacture or sale of any similar products for a period of five years.

Respondent's motion is not opposed by Commission counsel, although counsel does express the opinion that if the complaint is dismissed the dismissal should be without prejudice to the right of the Commission to take any further action in the matter in the future which may be warranted.

It is apparent that in the present circumstances no useful purpose would be served by proceeding further with the case. The dismissal should, however, be without prejudice.

ORDER

It is therefore ordered. That the complaint be, and it hereby is, dismissed, without prejudice to the right of the Commission to take any further action in the matter in the future which may be warranted by the then existing circumstances.

DECISION OF THE COMMISSION

The Commission having considered the hearing examiner's initial decision, filed November 23, 1960, wherein the complaint was dismissed without prejudice in response to a motion to dismiss theretofore filed by the respondent; and

It appearing that the basis for such action was the showing made in the motion and supporting papers that the respondent, prior to the issuance of the complaint, had entered into a contract for the sale of that part of its business relating to the manufacture and sale of the products with which this proceeding is concerned; and

The Commission being of the opinion that in the circumstances disclosed, dismissal of the complaint without prejudice is appropriate, but that the record does not support the examiner's unqualified statement that the respondent "is no longer engaged in the manufacture or sale of the products which form the subject matter of the proceeding"; and, accordingly;

It is ordered. That the initial decision be, and it hereby is, modified by striking therefrom the second paragraph and substituting the following:

"According to the motion and supporting papers, respondent, on August 23, 1960, entered into a contract with Reeves Brothers, Inc., a New York corporation, whereby respondent agreed to sell and Reeves Brothers, Inc., agreed to buy that part of respondent's business having to do with the development, manufacture and sale of certain polyurethane products, including the wall covering product designated "Curon." As of October 27, 1960, the date of respondent's motion, the terms of the contract had not been completely executed, but the contemplated transfers of machinery, inventories, trademarks, trade names and personnel apparently were being made in orderly sequence, and it seems clear that following the sale respondent will have neither the machinery nor the technically qualified personnel to engage in any of the acts or practices complained of in the complaint. In addition, respondent has agreed in the contract not to engage in the United States or Canada in the business of

