

INTERNATIONAL STAPLE & MACHINE COMPANY
ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT AND SEC. 3 OF THE CLAYTON ACT

Docket 8083. Complaint, Aug. 19, 1960—Decision, Nov. 7, 1961

Order requiring one of the nation's largest manufacturers of wide crown carton-closing staples ,staplers, parts, and accessories, to cease violating Sec. 3

1080

Complaint

of the Clayton Act by such practices as its consistent policy of requiring its independent distributors and dealers to discontinue handling competitive products and to handle only its own; and to cease restricting the persons to whom, and the territories within which, said distributors and dealers might sell its products.

COMPLAINT

The Federal Trade Commission, having reason to believe that the International Staple & Machine Company, a corporation, hereinafter referred to as respondent, has violated the provisions of Section 3 of the Clayton Act (15 U.S.C.A. Sec. 14), and the provisions of Section 5 of the Federal Trade Commission Act (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, the Commission hereby issues its complaint, stating its charges in that respect as follows:

COUNT I

PARAGRAPH 1. Respondent International Staple & Machine Company, hereinafter referred to as International, is a corporation organized and existing under the laws of the State of Pennsylvania with its principal place of business located at Herrin, Illinois.

PAR. 2. Respondent is now and has been for some years engaged in the manufacture, distribution and sale of industrial carton-closing staples, staplers, parts and accessories. Respondent now sells, and for some years has been selling, such products principally to independent distributors and dealers located throughout the United States who in turn make sales directly to users. Respondent's industrial carton-closing staples, staplers, parts and accessories enjoy wide sales throughout the United States and respondent International is one of the largest manufacturers and distributors of such equipment in the industry. In the past, prior to the advent of staples for this purpose, such carton-closing operation was usually done by means of glue or gummed paper, or similar means not here involved. Respondent International's annual sales of its industrial carton-closing staples, staplers, parts and accessories, are approximately \$1,666,000.

PAR. 3. Respondent is now and has been engaged in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act. Respondent causes carton-closing staples, staplers, parts and accessories manufactured by respondent International to be transported from the manufacturing plant located at Herrin, Illinois, to independent distributors and customers located throughout the several states of the United States, and there is now, and has been for some years, a constant current of trade and commerce in said products between and among the various states of the United States, and the District of Columbia.

Complaint

59 F.T.C.

PAR. 4. In the course and conduct of its business, as herein described, respondent is and has been in substantial competition in the sale and distribution of industrial carton-closing staples, staplers, parts and accessories, in commerce between and among the various states of the United States and the District of Columbia with other persons and corporations.

PAR. 5. In the course and conduct of its business of manufacturing and selling carton-closing staples, staplers, parts and accessories, respondent has made sales and contracts for the sale of such products, and is now making such sales and contracts for the sale of such products on the condition, agreement, or understanding that the purchasers thereof shall not sell, deal or distribute carton-closing staples, staplers, parts and accessories sold or supplied by a competitor or competitors of respondent. Respondent has followed a consistent policy of requiring the independent distributors and dealers to whom it sells its carton-closing staples, staplers, parts and accessories to discontinue handling like or similar products supplied or sold by any competitor or competitors of respondent and not to handle any such products except those sold to such distributors and dealers by respondent.

PAR. 6. Competitors of respondent have been, and now are, unable to make sales of carton-closing staples, staplers, parts and accessories because of the conditions, agreements, understandings and practices described above in Paragraph Five. The distributors and dealers of respondent who purchase and sell respondent's carton-closing staples, staplers, parts and accessories constitute a large and substantial market for such products, and sales by respondent to such distributors and dealers have been, and are now, substantial.

PAR. 7. The effects of the sale and contracts of sale upon such conditions, agreements, and understandings, as described herein, may be to substantially lessen competition with respondent in the sale of carton-closing staples, staplers, parts and accessories, and may be to substantially lessen competition with respondent in such line of commerce, and may tend to create a monopoly in respondent in such line of commerce in which respondent has been, and is now, engaged.

PAR. 8. The aforesaid acts and practices of respondent constitute a violation of the provisions of Section 3 of the Clayton Act and of Section 5 of the Federal Trade Commission Act.

COUNT II

Paragraphs One through Seven, inclusive, of Count I of this complaint are hereby incorporated into this Count II to the same extent and with the same effect as though fully set out herein.

PAR. 9. Respondent, in the course and conduct of its industrial carton-closing staple business, grants its distributors and dealers the exclusive right to resell such products within assigned geographic territories and restricts and prevents such distributors and dealers from reselling respondent's industrial carton-closing staples, staplers, parts and accessories outside the geographic limits of the territories assigned to them. Respondent has restricted, and attempted to restrict, the persons to whom, and the territories within which, respondent's distributors and dealers may resell respondent's industrial carton-closing staples, staplers, parts and accessories.

PAR. 10. The acts and practices of respondent, as alleged in Paragraph Nine, have the tendency, capacity, and effect of obstructing, hindering, and preventing competition in the marketing and sale of industrial carton-closing staples, staplers, parts and accessories in commerce, within the meaning of the Federal Trade Commission Act, and constitute both in and of themselves, and in conjunction with exclusive dealing practices alleged herein, and under Count I, unfair methods of competition in commerce and unfair acts and practices in commerce, within the intent and meaning of, and in violation of Section 5 of the Federal Trade Commission Act.

Mr. Daniel H. Hanscom supporting the complaint.

Blenko, Hoopes, Leonard & Buell, Pittsburgh, Pa. by *Mr. John H. F. Leonard*, for respondent.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on August 19, 1960, charging it with having made sales and contracts for the sale of its carton-closing staples, staplers, parts and accessories on the condition, agreement or understanding that the distributors and dealers thereof should not use or deal in similar products of a competitor or competitors in violation of Section 3 of the Clayton Act and Section 5 of the Federal Trade Commission Act, and also charging it with having granted its distributors and dealers the exclusive right to resell such products within assigned geographic territories and having restricted such buyers from reselling such products outside the assigned geographic limits and from selling to certain persons within the territories in violation of Section 5 of the Federal Trade Commission Act.

This proceeding is before the hearing examiner for final consideration upon the complaint, answer, testimony and other evidence, proposed findings of fact and conclusions filed by counsel for respondent and by counsel supporting the complaint, and oral argument thereon. Consideration has been given to the proposed findings of fact and

Findings

59 F.T.C.

conclusions submitted by both parties, and all proposed findings of fact and conclusions not hereinafter specifically found or concluded are rejected, and the hearing examiner, having considered the entire record herein, makes the following findings as to the facts, conclusions drawn therefrom and order:

FINDINGS AS TO THE FACTS

1. Respondent International Staple & Machine Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal place of business located at Herrin, Illinois.

2. Respondent is now, and for some years has been, engaged in the manufacture, distribution and sale of wide crown carton-closing staples, staplers, parts and accessories. Respondent now sells, and for some years has been selling, such products principally to independent distributors located throughout the United States who in turn make sales directly to users.

3. Respondent is now, and has been, engaged in commerce, as "commerce" is defined in the Clayton Act and in the Federal Trade Commission Act. Respondent causes its wide crown carton-closing staples and stapling machines, parts and accessories manufactured by it to be transported from its manufacturing plant located at Herrin, Illinois, to customers located throughout the several states of the United States, and there is now, and for some years has been, a constant current of trade and commerce in such products between and among the various states of the United States.

4. Respondent's line of carton-closing staples and stapling machines is limited to staples which have a crown width of $1\frac{1}{4}$ ", or greater, and to stapling machines which apply such staples. Staples with a crown width of $1\frac{1}{4}$ ", or greater, were designed specifically for carton closing purposes and are commonly known in the trade as "wide crown" staples.

5. In the course and conduct of its business respondent is, and has been, in substantial competition in the sale and distribution of wide crown carton-closing staples, stapling machines, parts and accessories, in commerce, between and among the various states of the United States and the District of Columbia, with three other corporations.

6. Total annual dollar sales by respondent of wide crown carton-closing staples, stapling machines, parts and accessories, for the fiscal years ending January 31, 1958-1960 to all customers, were as follows:

1958.....	\$1, 454, 792
1959.....	\$1, 663, 708
1960.....	\$2, 087, 994

1080

Findings

7. Total annual dollar sales by respondent of wide crown carton-closing staples, stapling machines, parts and accessories, for the fiscal years ending January 31, 1958-1960, to respondent's distributors were as follows:

1958-----	\$1, 415, 479
1959-----	\$1, 626, 418
1960-----	\$1, 977, 328

8. In the conduct of its business of manufacturing and selling wide crown carton-closing staples, stapling machines, parts and accessories, respondent has sold such products to its distributors on the condition, agreement or understanding that they will not sell, deal in, or distribute the wide crown ($1\frac{1}{4}$ " crown, or greater) carton-closing staples, stapling machines for wide crown staples, and parts and accessories for such machines of competitors of respondent. Although respondent does not enter into a uniform written contract with its distributors, the record shows that its policy and practice is to have an understanding with its distributors that they will not deal in competitive products and there is also evidence showing such understandings with several particular distributors. As a part of such understanding, however, it was understood between respondent and its distributors that they were permitted to deal in staples of smaller size than $1\frac{1}{4}$ " and stapling machines to apply such staples.

9. Respondent has required distributors to whom it sells its wide crown staples, stapling machines, parts and accessories to discontinue handling like products of competitors of respondent. There are only two competitors who sell competitive stapling machines and three competitors who sell wide crown staples.

10. Wide crown carton-closing staples (crown width $1\frac{1}{4}$ ", or greater), and the stapling machines, parts and accessories to apply them, possess peculiar and unique characteristics and uses which make them different and distinct from other staples, glue, tape, wire stitching, steel strapping or other materials used to fasten cartons. Respondent contends that the line of commerce, upon which the effect of respondent's actions should be considered, includes all of these carton-closing materials. A significant fact is that there is a definite market for wide crown staples manufactured by respondent and three other domestic manufacturers. It is true that other means of closing cartons are employed, and it is also true that users may shift from one material and method of carton closing to another. Wide crown staples, however, have sufficient peculiar characteristics to constitute them sufficiently distinct from all other carton-closing materials to make them

Findings

59 F.T.C.

a line of commerce within the meaning of the Clayton Act.¹ Wide crown staples which are physically different from other materials and differ from other staples in size have certain advantages for some users over other materials, not the least of which is that they fit the stapling machines owned by many users. One advantage of wide crown staples over smaller staples is that fewer staples are needed to close cartons securely and the total cost of staples and their application is believed to be less. For whatever reasons there is a definite and distinct market for wide crown staples.

11. The annual dollar volume of wide crown carton-closing staples and wide crown stapling machines, manufactured and sold in the United States, was approximately 5½-million dollars for the year 1958 and was approximately 6-million dollars or more for 1959. Respondent's sales accounted for approximately one-third of this total volume, almost all of which was accounted for by respondent and two other competitors. There was a fourth competitor who sought to break into this market who had sales of a few thousand dollars for each year. This latter manufacturer did not manufacture the wide crown stapling machines, but did manufacture wide crown staples. It appears reasonably likely that its sales were limited to some extent by reason of the existence of the understandings respondent had with its distributors referred to in paragraph 8 above.

12. Respondent in the conduct of its wide crown staple and stapling machine business grants each of its distributors the exclusive right to resell respondent's products within specific assigned geographic territories, and has restricted and prevented its distributors from reselling its wide crown staples and stapling machines outside the geographic limits of the territories assigned to them. There are certain exceptions whereby distributors are permitted to sell stapling machines for shipment into another distributor's territory with the profit being split between the distributors, and there were some instances in which more than one distributor sold in the same territory. Respondent had forty distributors selling in thirty-two territories.

13. Respondent has limited the persons to whom its distributors may resell respondent's wide crown staples and stapling machines. Although respondent did in some instances permit a distributor to resell in the geographic area covered by another distributor, there were several instances in which a class of users, or particular named users, were not permitted to be sold by one or the other of the distributors. Respondent had definite understandings with these distributors as to

¹ See *U.S. vs. E. I. duPont de Nemours and Company*, 353 U.S. 587. See also *Tampa Electric Company vs. Nashville Coal Company, et al.*, 276 F. 2d 766, 365 U.S. 320; *U.S. vs. Bethlehem Steel Corporation*, 168 F. Supp. 576; and *Signode Steel Strapping Co. vs. F.T.C.*, 132 F. 2d 48.

whom they should not resell and such understandings between the respondent and these distributors provided for a division of markets between the distributors. In these instances, as well as in the division of geographic territories there was a similar understanding which precluded competition between the distributors, and but for respondent's restrictions and understanding some of its distributors would have competed with each other. There were, however, a few instances where the distributors did attempt to compete despite the understandings they had with respondent. The effects of these understandings were the same as those that would flow from an understanding between the distributors to refrain from competing with each other. The restrictions upon the geographic areas in which respondent's distributors may resell respondent's wide crown staples and machines, and the restrictions upon the customers and classes of customers to whom such distributors were permitted to resell, have had the effect of obstructing, hindering and preventing competition in the marketing of respondent's wide crown staples and machines. One distinction between this case and the Columbus Coated Fabrics Corporation case, Docket No. 6677, is that here there was a definite understanding between respondent and its buyers that the buyers would not sell outside specific areas; whereas, in the Columbus case no such agreement was found to exist.

CONCLUSIONS

1. Respondent has sold its wide crown staples and wide crown stapling machines to its distributors on the condition, agreement or understanding that such distributors would not deal in the wide crown staples and wide crown stapling machines of competitors of respondent.

2. Wide crown staples and wide crown stapling machines possess unique and peculiar characteristics for carton closing purposes, and constitute a line of commerce separate and distinct from small crown staples and small crown stapling machines and separate and distinct from glue and gluing machines, tape and taping machines, wire and wire stitching machines, and wire and steel bands and banding machines.

3. Sales in the United States of wide crown staples and wide crown stapling machines are substantial, and respondent's share of such sales is substantial.

4. Respondent's practice of selling its wide crown staples and wide crown stapling machines to its distributors on the condition, agreement or understanding that such distributors would not deal in the wide crown staples and wide crown stapling machines of competitors of respondent, has been or may be to substantially lessen competition

Order

59 F.T.C.

or tend to create a monopoly in the wide crown staple and wide crown stapling machine line of commerce.

5. Respondent's practice of preventing its distributors from reselling respondent's wide crown staples and wide crown stapling machines outside assigned geographic areas has had the tendency, capacity, or effect of obstructing, hindering and preventing competition in the sale of respondent's wide crown staples and wide crown stapling machines.

6. Respondent's practice of restricting its distributors as to the persons to whom such distributors may resell respondent's wide crown staples and wide crown stapling machines has had the tendency, capacity or effect of obstructing, hindering and preventing competition in the sale of respondent's wide crown staples and machines.

7. The practices of the respondent as herein found constitute violations of the Federal Trade Commission Act and the making of sales on the condition or understanding that the buyer will not deal in competitive products also constitutes a violation of Section 3 of the Clayton Act.

ORDER

It is ordered, That respondent International Staple & Machine Company, a corporation, and its officers, directors, agents, representatives and employees, directly or indirectly, or through any corporate, partnership or other device, in connection with the offering for sale, sale or distribution of carton-closing staples, or stapling machines, parts or accessories, or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or making any contract or agreement for the sale of any such products on any requirement, condition, agreement or understanding which limits or restricts the persons to whom, or the geographic areas within which, the purchasers thereof may resell such products;

2. Enforcing, or continuing in operation or effect any requirement, condition, agreement or understanding with any purchaser which limits or restricts the persons to whom, or the geographic areas within which, such purchaser may resell such products.

It is further ordered, That respondent International Staple & Machine Company, a corporation, and its officers, directors, agents, representatives and employees, directly or indirectly, or through any corporate, partnership or other device, in connection with the offering for sale, sale or distribution of carton-closing staples, or stapling machines, parts or accessories or any other products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1080

Complaint

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, deal in, sell, or distribute products supplied by any other seller;
2. Enforcing, or continuing in operation or effect, any requirement, condition, agreement or understanding with any purchaser which is to the effect that such purchaser shall not use, deal in, sell, or distribute products supplied by any other seller.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF
COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 7th day of November, 1961, become the decision of the Commission; and, accordingly:

It is 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.