

Complaint

IN THE MATTER OF

AMERICAN METAL PRODUCTS COMPANY ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECS. 2(a) AND 2(f)
OF THE CLAYTON ACT

Docket 7365. Complaint, Jan. 22, 1959—Decision, June 8, 1962

Order vacating initial decision and dismissing for mootness, complaint charging manufacturers of plumbing supplies with, respectively, granting and receiving discriminatory prices in the sale of porcelain-on-steel sanitary ware, since the grantor no longer manufactured the product and the recipient no longer purchased it from any source, having purchased the assets of the former manufacturing subsidiary of the grantor which was then dissolved.

COMPLAINT

The Federal Trade Commission, having reason to believe American Metal Products Company, a corporation, and AllianceWare, Inc., a corporation, have violated and are now violating the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, Sec. 13), and that Crane Co., a corporation, has violated and is now violating the provisions of subsection (f) of Section 2 of said amended Clayton Act, hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. American Metal Products Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan with its principal office located at 5959 Linsdale Avenue, Detroit 4, Mich. American Metal Products Company's total sales in 1957 exceeded \$65,000,000.

On or about April 30, 1955, American Metal Products Company acquired complete ownership and control of AllianceWare, Inc., an Ohio corporation, and without changing its name reincorporated it under the laws of the State of Delaware. Said Delaware corporation, respondent AllianceWare, Inc., herein, has since its formation been under the domination, direction and control of respondent American Metal Products Company. The acts, policies and practices in which respondent AllianceWare, Inc., has engaged as hereinafter alleged were pursued with the knowledge, approval and at the behest of respondent American Metal Products Company.

PAR. 2. Respondent AllianceWare, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the

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State of Delaware with its principal office and place of business located at Alliance, Ohio. It is the wholly-owned subsidiary of respondent American Metal Products Company.

AllianceWare, Inc., is principally engaged in the manufacture, distribution and sale of porcelain-on-steel sanitary ware, including bathtubs, lavatories and sinks. AllianceWare's total sales for the year ending December 31, 1957, exceeded \$7,000,000.

AllianceWare, Inc., manufactures its products in several plants located throughout the United States and sells and ships said products to approximately 850 plumbing supplies wholesalers located in each of the States of the United States. Included among AllianceWare's 850 plumbing supplies wholesaler customers is the respondent, Crane Co. AllianceWare, Inc., in the sale of said products as described has been and is now in commerce, as "commerce" is defined in the amended Clayton Act.

PAR. 3. Respondent Crane Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office located at 836 South Michigan Avenue, Chicago 5, Ill. Crane Co.'s total sales in 1957 exceeded \$378,000,000.

Crane Co. is a manufacturer of plumbing supplies, including porcelain coated cast iron sanitary ware, and a wholesale distributor of porcelain-on-steel sanitary ware which it purchases from respondent AllianceWare, Inc. Crane Co. owns and operates approximately 150 branches through which it distributes and sells at the wholesale level, both the plumbing supplies manufactured by Crane and those purchased from respondent AllianceWare, Inc.

Crane Co.'s purchases from AllianceWare, Inc., are purchases in commerce, as "commerce" is defined in the Clayton Act. The products purchased are shipped between and among the several States of the United States from the respective states wherein the AllianceWare, Inc., factories are located to the respective different states wherein the approximately 150 Crane branches are located.

PAR. 4. In the sale and distribution of porcelain-on-steel sanitary ware, respondent AllianceWare, Inc., is in substantial competition with other sellers of similar products.

In many trade areas respondent AllianceWare's plumbing supplies wholesaler customers, including the Crane Co., are in substantial and direct competition with each other and with the plumbing supplies wholesaler customers of other manufacturers of similar products.

PAR. 5. In the course and conduct of its business in commerce, the respondent AllianceWare, Inc., has been and is now discriminating in price in the sale of its products of like grade and quality by selling

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them to the Crane Co. at substantially lower prices than it sells them to its other plumbing supplies wholesaler customers who compete with the Crane Co. in the resale of said products.

Among the methods which respondent AllianceWare, Inc., has utilized in effecting said discrimination in price is the method hereinafter described.

(1) During the period commencing on or about March 1, 1947, and ending on or about March 1, 1957, the Crane Co. was granted net prices which were 5 percent less than the net prices charged to all other customers. This discrimination was effected pursuant to a formal contract entered into on April 24, 1947, which provided, *inter alia*:

* * * the prices for the various items of steel sanitary ware sold by Alliance to Crane under the terms of this agreement shall be the lowest prices then current for the article to other purchasers in effect at the time Crane's order is received by Alliance, less discounts as follows: (a) As to all deliveries made by Alliance to Crane . . . the discount shall be 5%, . . .

(2) During the period commencing on or about March 1, 1957, and ending on or about March 1, 1958, the Crane Co. was granted net prices which were first 12½ percent and subsequently 15 percent less than the net prices charged to all other customers. This discrimination was effected pursuant to a formal contract dated March 1, 1957, which provided, *inter alia*:

Alliance agrees to manufacture and sell and Crane agrees to buy for the duration of this agreement "Crane steel ware" as hereinbefore defined at the then generally prevailing current net price of Alliance to wholesalers for the same or comparable steel ware items less twelve and one-half percent (12½%) until the first twenty thousand (20,000) bathtubs have been produced by Alliance and sold to Crane or until the expiration of six (6) months, whichever first occurs, and thereafter less fifteen percent (15%) from said net price.

(3) During the period commencing on or about March 1, 1958, and continuing to the present time the Crane Co. has been granted net prices which are 12½ percent on bathtubs and 7½ percent on sinks and lavatories less than the net prices charged to other customers. This discrimination is being effected pursuant to a formal contract dated March 1, 1958, which provides, *inter alia*:

(a) Alliance agrees to manufacture and sell and Crane agrees to buy for the duration of this agreement "Crane steel ware" as hereinbefore defined at the then generally prevailing current net price of Alliance to wholesalers for the same or comparable steel ware items. With regard to bathtubs defined herein under Paragraphs 4(a) and 4(b), the current net price shall be less ten percent (10%) until the first twenty-four thousand (24,000) bathtubs have been produced by Alliance and sold to Crane; then less eleven and one-quarter percent (11¼%) until the next six thousand (6,000) bathtubs have been produced by Alliance and sold to Crane; then less twelve and one-half percent (12½%) until the next

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six thousand (6,000) bathtubs have been produced by Alliance and sold to Crane. On all bathtubs over thirty-six thousand (36,000) produced by Alliance and sold to Crane, the current net price shall be less twelve and one-half percent (12½%) except that if thirty-six thousand (36,000) bathtubs or more are produced by Alliance and sold to Crane during the twelve (12) months period, March 1, 1958 to March 1, 1959, such current net price as diminished above shall be less an additional two and one-half percent (2½%) on the first twenty-four thousand (24,000) bathtubs and in addition thereto less one and one-quarter percent (1¼%) on the next six thousand (6,000) bathtubs.

(b) With regard to lavatories and sinks defined herein under Paragraph 4(c), the current net price shall be less seven and one-half percent (7½%).

PAR. 6. In the course and conduct of its business in commerce, the respondent, AllianceWare, Inc., has discriminated in price in the sale of its products of like grade and quality by selling them to some of its wholesaler customers at higher net prices than are charged to other customers who compete with the wholesaler customers charged the higher net prices.

Among the methods which respondent AllianceWare, Inc., has utilized in effecting said discriminations is the method hereinafter described.

Since 1956, and continuing to the present time, AllianceWare has in several trading areas designated one or two of its wholesaler customers as "stocking jobbers." Said designated customers are granted a 5 percent discount or rebate from list prices. The remainder of respondent AllianceWare's customers within each such trading area are required to pay list prices without the benefit of discount or rebate. Thus, the wholesaler customers not designated as "stocking jobbers" are required to pay net prices which are approximately 5 percent higher than the net prices afforded to the so-called "stocking jobbers" with whom they compete.

PAR. 7. The effect of respondent AllianceWare's discriminations in price, as above alleged, may be substantially to lessen, injure, destroy, or prevent competition between respondent AllianceWare, Inc., and competing sellers of similar products; between respondent Crane Co., and all other AllianceWare wholesaler customers; and between and among the AllianceWare "stocking jobber" wholesaler customers and all other wholesaler customers.

PAR. 8. The acts and practices of respondent AllianceWare, Inc., as above alleged, constitute violations of the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C., Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

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COUNT II

PAR. 9. Paragraphs 1 through 5 of Count I are hereby incorporated by reference and made a part of this charge as fully and with the same effect as though here again set forth verbatim.

PAR. 10. Respondent Crane Co., in purchasing porcelain-on-steel sanitary ware from respondent AllianceWare in the manner and at the prices as above alleged, has knowingly induced and knowingly received unlawful discriminations in price. Respondent Crane Co. knows, or has reason to know, that the prices it has induced and received are lower than the prices which respondent AllianceWare, Inc., charges to its other wholesaler customers who compete with the Crane Co. in the resale of AllianceWare, Inc., manufactured products and knows, or has reason to know, that said favorable prices constitute discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

PAR. 11. The effect of the knowing inducement and receipt by respondent Crane Co. of the discriminations in price, as above alleged, has been and may be substantially to lessen, injure, destroy, or prevent competition between respondent AllianceWare, Inc., and other manufacturers of sanitary ware; and between respondent Crane Co. and the wholesaler customers of AllianceWare, Inc., and other manufacturers of similar products.

PAR. 12. The foregoing alleged acts and practices of respondent Crane Co., in knowingly inducing or receiving discriminations in price prohibited by subsection (a) of Section 2 of the amended Clayton Act, are in violation of subsection (f) of Section 2 of said Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, Sec. 13).

Mr. William W. Rogal, Mr. S. Brockman Horne, and Mr. Stanley M. Lipnick for the Commission.

Mr. W. Robert Chandler, of Cook, Beake, Miller, Wrock & Cross, of Detroit, Mich., for respondents American Metal Products Company and AllianceWare, Inc.

Mr. Edward R. Johnston and Mr. Edward H. Hatton, of Thompson, Raymond, Mayer, Verner & Bloomstein, of Chicago, Ill., for respondent Crane Co.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint issued by the Commission on January 22, 1959, AllianceWare, Inc., and its corporate parent, American Metal Products Company, are charged with violation of subsection (a) of Sec-

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tion 2 of the Clayton Act as amended and Crane Co. is charged with violation of subsection (f) of Section 2 of said amended Clayton Act. At times herein the said respondents will be referred to as AW, AMP and Crane, respectively.

The complaint alleges in part:

PARAGRAPH FIVE:

* * * * *

Among the methods which respondent AllianceWare, Inc., has utilized in effecting said discrimination in price is the method hereinafter described.

(1) During the period commencing on or about March 1, 1947, and ending on or about March 1, 1957, the Crane Co. was granted net prices which were 5 percent less than the net prices charged to all other customers. This discrimination was effected pursuant to a formal contract entered into on April 24, 1947,

* * * * *

(2) During the period commencing on or about March 1, 1957, and ending on or about March 1, 1958, the Crane Co. was granted net prices which were first 12½ percent and subsequently 15 percent less than the net prices charged to all other customers. This discrimination was effected pursuant to a formal contract dated March 1, 1957,

* * * * *

(3) During the period commencing on or about March 1, 1958, and continuing to the present time the Crane Co. has been granted net prices which are 12½ percent on bathtubs and 7½ percent on sinks and lavatories less than the net prices charged to other customers. This discrimination is being effected pursuant to a formal contract dated March 1, 1958,

PARAGRAPH SIX:

* * * * *

Since 1956, and continuing to the present time, AllianceWare has in several trading areas designated one or two of its wholesaler customers as "stocking jobbers." Said designated customers are granted a 5 percent discount or rebate from list prices. The remainder of respondent AllianceWare's customers within each such trading area are required to pay list prices without the benefit of discount or rebate. Thus, the wholesaler customers not designated as "stocking jobbers" are required to pay net prices which are approximately 5 percent higher than the net prices afforded to the so-called "stocking jobbers" with whom they compete.

The answers of AMP and AW were in the nature of a general denial and affirmatively advanced a cost justification defense. They

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also alleged that the discounts to stocking jobbers were made in good faith to meet the equally low price of competitors. The answer of Crane was of like import but further denied that it had induced or received discounts which it knew or had reason to know to be illegal.

The hearing examiner has given consideration to the proposed findings filed by the parties hereto, and all findings of fact and conclusions not hereinafter specially found or concluded are herewith rejected. Upon consideration of the entire record herein, which is contained in a transcript of 2163 pages and approximately 1,000 exhibits, the hearing examiner makes the following findings of fact and conclusions:

American Metal Products Company, established in 1917, was incorporated under the laws of the State of Michigan in 1928 and its principal office and place of business is located at 5959 Linsdale Avenue, Detroit, Michigan. The business of AMP is the manufacture and fabrication of formed, welded steel, tubular parts, tubular and stamped assemblies; wire assemblies; and stampings which are sold to the automotive and aircraft industries. In addition to respondent AllianceWare, Inc., it has the following wholly owned subsidiaries:

Burroughs Manufacturing Co., Kalamazoo, Michigan, acquired October 28, 1950, produces metal office furniture, map racks, steel shelving, steel storage equipment, and parts bins;

Tube Reducing Corporation, Wellington, New Jersey, acquired February 1, 1954, produces "Rockrite" tubing for use in ball and roller bearings, hydraulic and pneumatic cylinders, helicopter spars, and airplane propellers; and

General Spring Products, Ltd., Kitchener, Ontario, acquired November 1, 1954, produces tubular, stamped, and wire seat spring assemblies, and other parts for the Canadian automotive industry.

AllianceWare, Inc., was incorporated on April 27, 1955 under laws of the State of Delaware and is a wholly-owned subsidiary of AMP. It is engaged in the manufacture of steel sanitary ware, washing machine tubs and other products and its principal office and place of business is located at Alliance, Ohio. It also has plants at Colton, California, Kilgore, Texas, and Evansville, Indiana, and warehouse space is leased in Tampa, Florida, and Miami, Florida. The steel sanitary ware products, which consist of porcelain enameled steel bathtubs, sinks and lavatories, are sold to plumbing wholesalers for resale to plumbers and plumbing contractors and to national distributors of plumbing supplies such as Crane Co. These products account for approximately fifty percent of AW's total sales. Its net sales for

the calendar year of 1957 were \$7,007,549.66, it is among the top five producers of porcelain on steel plumbing fixtures and probably ranks ninth among all producers of plumbing fixtures.

Crane Co. is an Illinois corporation with its principal office located at 836 South Michigan Avenue, Chicago, Illinois. It is a manufacturer and distributor of varied lines of products, as well as water heaters, pipe and other related industrial products. Crane is now and for many years has been a manufacturer of cast iron enamel ware such as bathtubs and other plumbing fixtures. The distribution system of Crane consists of branch houses engaged in the sale and distribution of a wide variety of products either manufactured by Crane or products manufactured by others, and a large number of Crane appointed independent wholesale distributors. Crane at the time of filing of the complaint in this proceeding, and for a period of at least 12 years prior thereto, had as many as 140 branches located throughout the country. During this period of time it also distributed products manufactured by it or produced for it by others through Crane designated plumbing wholesalers, which in numbers amounted to more than the number of Crane branches. However, since that time, up to September 28, 1960, Crane has disposed of the vast majority of its branch houses, leaving the company as of the foregoing date with 58 branch houses. The company, during the foregoing period of time, has increased substantially the number of its designated wholesalers to the extent that there are now between 300 to 400 such wholesalers. Although Crane is a substantial producer of cast iron enamelware, it has never manufactured steel enamelware.

The stationary, permanently installed, bathtub was first introduced into this country about 1870 and was manufactured from wood, metal, ceramic ware, tile, cement, soapstone and in fact almost anything that would hold water. The various types of bathtubs were later followed by the manufacture of heavy cast iron tubs.

In 1927, The Steel Sanitary Company, an Ohio corporation, was organized and began engineering development work on the use of drawn and stamped steel shapes for bathtubs and other sanitary ware. C. J. Rodman was one of the organizers of that company and its president. It long had been recognized that, because of its physical qualities, steel offered advantages over cast iron and other competing materials. The development work of said company extended over a period of five years, during which time it leased and equipped a plant; secured a number of design and process patents and carried the development of fabricating steel sanitary ware to a point where

it was believed actual manufacture could be placed on a practical basis in the relatively near future. In 1932, however, owing to the generally depressed financial condition of the country and the accompanying inactivity in the building and plumbing trades, the company ceased active operations.

The Alliance Porcelain Products Company was incorporated under the laws of the State of Ohio on April 24, 1934. In September, 1944, its corporate name was changed to "AllianceWare, Inc." At times herein said corporation will be referred to as Alliance-Ohio. In 1934, certain properties owned and leased by the Steel Sanitary Company were acquired by Alliance-Ohio. Steel Sanitary continued as a patent holding company with Alliance-Ohio as its only licensee. This arrangement continued until the patents and remaining assets of Steel Sanitary were purchased by C. J. Rodman in January 1947. All of such patents, patents pending, and all other patents owned by Mr. Rodman, were acquired by Alliance-Ohio.

On April 30, 1955, all of the property and assets of Alliance-Ohio, including its business and good will, and the right to the use of the trade name "Alliance Ware" in the United States, were sold to American Metal Products Company. To facilitate the use of the trade name by the purchaser, Alliance-Ohio, just prior to the transaction, changed its name to Alliance SteelWare Co. After sale of its properties and the distribution of its assets to its shareholders, Alliance-Ohio was dissolved. Approximately 75 percent of the purchased assets were transferred by AMP to its newly formed subsidiary, AllianceWare, Inc., the Delaware corporation.

After the end of World War II in 1945, Alliance-Ohio was in a position to manufacture and distribute a line of steel ware which might be marketed competitively to cast iron. It was new to the plumbing field and was faced with the lack of acceptability of steel sanitary ware. The company, during the time it first sought to enter the plumbing market and in the succeeding years, maintained a very limited sales force. Alliance-Ohio and AW since it came into existence, in selling steel sanitary ware to plumbing wholesalers, used the services of 20 to 25 independent manufacturers' representatives or sales agents who operated under contracts wherein each were assigned specific exclusive territories throughout the country. Such representatives were not employees of the seller and generally acted as sales agents for others. They were compensated by payment of 5% of the net sales made to plumbing wholesalers in their assigned areas. The representatives' contract had a provision "that the Manufacturer hereby reserves the right to sell and ship * * * to any national dis-

tributor, any railroad or governmental agency * * * at any location in the United States without obligation on the part of the Manufacturer to pay to the Sales Agency any compensation whatsoever, and such sales are hereby specifically exempted from this Agreement." Crane was a national distributor account and under the agreement Alliance-Ohio and AW were without obligation to pay its sales agents on sales made to Crane. No commissions were paid to the sales agents on Crane sales for the period from March 1, 1947 to January 1, 1952. However, from January 1, 1952 to approximately March 1, 1957 the Alliance corporations paid sales agents on all sales within their assigned territory, including Crane, at a reduced rate of 3%. After March 1, 1957, no commissions were paid on Crane sales and the rate of commission reverted back to 5%.

Although Crane had been engaged in the production and sale of cast iron plumbing fixtures for many years, it was not until 1947 when it began selling steel sanitary ware and became the first old-line cast iron manufacturer to distribute steel plumbing fixtures. On April 24, 1947, Crane and Alliance-Ohio entered into agreement whereby the former was appointed a distributor of steel sanitary ware manufactured by the latter, without any restriction as to territory. The agreement reads in part:

In view of benefits to Alliance, including those flowing from Crane's policies and facilities for advertising, warehousing and distribution, Crane's credit standing, the contemplated sales volume, and the forward buying procedure herein described, the prices for the various items of steel sanitary ware sold by Alliance to Crane under the terms of this agreement shall be the lowest prices then current for the article to other purchasers in effect at the time Crane's order is received by Alliance, less discounts as follows: (a) as to all deliveries made by Alliance to Crane prior to the date the additional production facilities are put into operation, as hereinbefore set forth, the discount shall be 5 percent, (b) as to all deliveries made by Alliance after the additional production facilities have been put into operation, as hereinbefore set forth, the amount of such discount shall be 10 percent.

The agreement recited that Alliance was providing additional manufacturing facilities intended to increase its productive capacity for steel sanitary ware by approximately 100% and it was anticipated that such facilities would be completed and placed in operation by September 1, 1947.

Shortly after the April 24, 1947 agreement was entered into, Crane invested \$600,000 in certain authorized but unissued stock of Alliance-Ohio and the proceeds were used for the enlargement of the facilities of Alliance-Ohio.

The 10% rebate provision of contract became operative July 1, 1949 and rebates were made at this rate from that date to December 12, 1950. By mutual consent of the parties, the rebates reverted back to 5% on the latter date.

The contract of April 24, 1947 was in effect on April 30, 1955 when the respondent American Metal Products Company acquired the assets and business of Alliance-Ohio and the respondent AllianceWare, Inc., the Delaware corporation came into existence. AW continued to do business with Crane on the basis of the agreement (as modified—5% rebate) until March 1, 1957 when a new agreement was entered into.

From March 1, 1947 to March 1, 1957 the steel sanitary ware which was sold to Crane was, with one exception, identical with that sold by the Alliance corporation to plumbing wholesalers and were identified and sold as AllianceWare brand products. The exception was the Ohio bathtub which was introduced in 1948 and was especially designed for Crane by Henry Dreyfuss, a well-known industrial designer who had been employed by Crane for this purpose, and which was manufactured for and sold exclusively to Crane.

After taking on the steel line, Crane did a considerable amount of advertising. It undertook an aggressive sales campaign with its own sales organization and then with its dealers. A sales team out of the main office held meetings with every salesman and every branch manager in the United States. The branches were provided with sales literature, bulletins and other types of advertising material and meetings with plumbing dealers and contractors were held in some 140 to 150 places in the United States. This was not done only once but was done periodically.

At the inception of the contract of April 24, 1947, and at all times thereafter, the Crane branches were billed by the Alliance corporations at the prevailing price to plumbing wholesalers. The discounts paid pursuant to the agreement of April 24, 1947 (as well as the subsequent contracts) were accumulated monthly and the aggregate amount was transmitted directly to the general office of Crane at Chicago. The branches of Crane were not informed of the discount arrangement and this information was restricted to a few in the main office. The discounts allowed to Crane by Alliance and other manufacturers were credited to the branches monthly in a manner that the source of the discount could not be determined. At the same time branches were debited in one lump sum for overhead, advertising and other related debits. The debits charged to the various branches at all times exceeded the credits.

At the annual meeting of the stockholders of Alliance-Ohio, held on September 19, 1950, the board of directors was increased from seven members to nine, and Carter Pollock and Earl Wyatt, both officials of Crane, were elected to the board. Their election was at the request of Mr. C. J. Rodman who was not only the predominant shareholder of Alliance-Ohio but was president of that company from the time of its organization until it was dissolved. Mr. Rodman continued as president of the respondent AW until August 6, 1956 when he was replaced by Mr. Paul Corp.

In January 1956 Crane initiated negotiations for a program whereby AW would produce a new Crane exclusive steel ware line. Crane made studies of the expenditures which it would be required to bear in connection with such a program, arrived at tentative cost estimates and was of the opinion, on the basis of the figures, that a discount of 17% would be reasonable. From time to time discussions were had by representatives of the two companies and at a meeting held at Chicago on August 28, 1946 the parties adopted a proposal made by the President of AW whereby AW would manufacture for Crane a line of steel ware all to be identified by the Crane name or mark. It was understood that the discounts being extended Crane were to be for the home office only and must not be extended to field outlets. The matters agreed upon are contained in a formal agreement dated March 1, 1957 whereby the steel ware was to be sold to Crane at a discount of 12½% off the published base price for a period of 6 months or 20,000 bathtubs, whichever may occur first and thereafter less 15%. As an incident to this agreement, the commission theretofore paid to AllianceWare manufacturer agents on sales to Crane was discontinued, and the agent's commission was returned to the previously existing 5%.

The new Crane line of steel tubs was designed by the Henry Dreyfuss organization. New tooling was required to produce the distinctively designed models. Crane undertook the preparation of the elaborate, extensive, and intensive promotional campaign to market, promote, advertise, and sell the Crane "Crestmont" line of steel ware. Elaborate and detailed brochures and pamphlets were prepared and distributed to Crane branches, plumbing wholesalers, plumbing contractors, and architects. For example, a 24-page brochure in color entitled "New Crane Crestmont Fixtures" was distributed to in excess of 25,000 plumbing contractors. Consumer advertisements appeared in the April issues of "American Home" and "House and Garden". Illustrated catalogs were prepared and disseminated to Crane branch personnel, plumbing wholesalers, plumbing contractors, and builders.

Sales meetings were held, not only of Crane branch and sales personnel, but plumbing contractors and Crane full line wholesalers. Between March 1, 1957, and September 4, 1957, figures compiled reflected that Crane had expended directly \$68,438 in advertising steel ware, whereas the Crane's total discount credited and returned to it during the same period amounted to \$57,167. Included in the advertising expenses were the direct cost for individual ads appearing in national consumer magazines such as "House and Garden," and direct cost of ads in trade publications, cooperative advertising in local newspapers, the production of catalogs on steel ware, the production of mailing pieces on steel ware, and the production of brochures on the Crane line of steel ware—known as Crane "Crestmont" line.

During the period March 1, 1957 through February 28, 1958, Crane purchased \$1,150,507 worth of steel ware from AW on which Crane received rebates totaling \$155,759 or 13.54% of its purchases.

The volume anticipated under the 1957 contract was not realized during the first year of operation and AW initiated negotiations with Crane which resulted in a new agreement dated March 1, 1958. Thereunder the discount on sinks and lavatories was fixed at 7½% and on bathtubs as follows: On the first 24,000, 10%; on the next 6,000, 11½%; on the next 6,000, 12½%. If Crane purchased 36,000 bathtubs or more during the 12-month period, a discount of 12½% was to be allowed on all bathtubs purchased during such period.

During the first year of the 1958 contract, Crane made purchases from AW totaling \$1,291,979 on which it received rebates totaling \$118,860.92, or 9.22%.

Since March 1, 1957, the branch house cost of the Crane line continued to be the same as the wholesale price list published by AW for sales of comparable AllianceWare brands of sanitary steel ware to plumbing wholesalers. The accounting, billing and rebate procedures which had been employed under the 1947 contract remained the same. The 1958 contract was in effect at the time of the filing of the complaint herein, and currently is in effect.

With the exception of one bathtub model—the "Ohio" tub—all items sold to Crane during the ten years prior to March 1, 1957, were identical in all details to the fixtures sold by both AllianceWare corporations to wholesalers competing with Crane. Since March 1, 1957, all the items purchased by Crane, with the exception of six "Crestmont" bathtubs, were identical to those sold by AW to independent wholesalers. The six "Crestmont" bathtubs, including the "Ohio" tub, were similar and comparable to like models sold under the brand name of AllianceWare, differing only in the design of

apron affixed to them. AW in billing Crane on the "Crestmont" tubs employed its wholesale price list of comparable AllianceWare brands of sanitary steel ware to plumbing wholesalers. The record herein establishes that the Crane "Crestmont" line of fixtures is of like grade and quality with the line of fixtures marketed by AW under its own trade and brand names.

Plumbing wholesalers and contractors from Cleveland, Toledo, Cincinnati, Louisville, and Detroit were called and used as witnesses by counsel in support of the complaint. Their testimony reflects that competition at the plumbing wholesale level is very keen; that the customers to whom they sold were price conscious and a small reduction of price by a competitor may shift business to the competitor; that a lower buying price afforded to one of their competitors may have an injurious effect upon their business or a favored competitor may have an advantage; that the percentage of net profit realized by a plumbing wholesaler on a year's operation is very low, that is: $3\frac{1}{2}\%$, 2 to 3%, 3%, 5.61%, 5%, less than 1%, $1\frac{1}{4}$ to $1\frac{1}{2}\%$, a fraction over 1%; that it was important to the successful operation of their business to take advantage of 2% cash discounts when offered by a supplier. The general characteristics of the plumbing supply industry were also covered by the testimony of the witnesses. Large residential housing jobs represent the major market for steel ware products. Steel ware is in direct competition with cast iron. Although cast iron has been normally associated with custom design housing, it has always retained a strong acceptance by consumers and builders even for low to medium price housing developments. Within the steel lines, themselves, there are many producers of acceptable tubs and related product lines. These many producers sell at prices approximately similar for comparable lines. In addition, manufacturers, as a matter of competitive custom, grant price concessions to wholesalers in order to meet local competitive conditions. Necessarily, the amount of such concessions will vary from job to job, depending upon the competitive situation. Also, there is relative ease of access by any established wholesaler to the product lines of any manufacturer.

The testimony and documentary evidence relating to bidding by plumbing wholesalers discloses that customarily wholesalers bid on a bathroom unit, not on separate components. Thus, it is generally accepted practice for plumbing contractors, in seeking bids from plumbing wholesalers, to request that the bid include all elements of a complete bathroom unit. This would include pipe, fittings, closets, tub, and lavatories. Additionally, of course, direct labor costs, over-

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head burden, and a margin for profit would be determined by the plumbing wholesaler.

There is no evidence in the record showing or tending to show that Crane used the discounts which it received to sell at a lower price than a competitor, nor is there evidence in the record to establish that there has been an actual, substantial lessening of competition, injury, or that a degree of monopoly has been created by the acts of the respondents. It is recognized that the statute does not require that the discriminations must in fact have harmed competition, but only that there is a reasonable probability that they may have such effect. Under the facts in the instant case, it cannot be inferred that the discounts allowed Crane had the requisite effect on competition to establish a violation of the statutes involved. The obligations assumed and performed by Crane in consideration of the discounts granted it under the three contracts did not give Crane an advantage in price as against its competitors. The cost to Crane branches of steel sanitary ware purchased from the AllianceWare corporations was at all times no less than the price charged to competing wholesalers for the same or like products. The testimony that monthly debits charged to each of the branches for overhead, advertising and other related debits at all times exceeded the lump sum credits for quantity discounts is without contradiction.

There is also the charge in the complaint that AW granted unlawful discriminatory discounts of 5% to certain wholesale customers designated as "stocking jobbers". Some time in 1957 AW initiated a program of appointing stocking jobbers which is explained by the testimony of one of its officials:

A stocking jobber, a sales procedure that is initiated initially on advice from a particular city or territory in which our prevailing price is not competitive. That starts it. The procedure, however, has an additional concept; that is, that it is a selection by the size, the credit responsibility, the competitive reputation and normal factors that you would take into consideration in determining a good wholesale customer, in which an effort is made on the part of the company to somewhat throw in its lot with a customer whom they believe will do the best job of representing the company in their particular area and one who, by consequence of maintaining an inventory, will pick up smaller sales in the area that we, the company, would likely miss if a stock wasn't maintained in that area by one of our customers.

The stocking jobbers were allowed a 5% discount on some of their purchases from AW but the record is not clear as on what items the discount is allowed. The evidence does not give a picture that would support a finding that there was competitive injury resulting from the granting of stocking jobber discounts.

The failure to establish the necessary competitive injury required to constitute an illegal price discrimination within the meaning of Section 2(a) of the Robinson-Patman Act is sufficient to cause a dismissal of charges of the complaint against the respondents American Metal Products Company and Crane Co., as well as AllianceWare, Inc. However, phases of the record pertaining to other defenses of the respondents will be discussed and findings made thereon.

There was received in evidence a study offered by AW which was prepared by Ernst & Ernst, a reputable certified accounting firm, entitled "Cost Factors In Support of Selling Price Differentials Between Independent Jobbers Sales and Crane Company Contract Sales" for the year ended February 28, 1959 (the first year under the 1958 contract), together with various working papers used in its preparation. The year involved in the study is representative of the cost savings for the period subsequent to March 1, 1957. The cost study was prepared from books and records of AW by Mr. Jerry Dice, a certified public accountant and an audit staff supervisor of Ernst & Ernst. Mr. Dice was familiar with the methods employed by AW in keeping its books and records in that he had been responsible for the performance of its annual audit and various tax returns prepared by his firm during the three or four years before the study was made. The work papers and report were reviewed in the Canton office of Ernst & Ernst by the manager thereof and were subsequently reviewed by the district supervisor in the management services division and by a partner in that division. The report reflects that during the year ended February 28, 1959, AW's advertising, selling and distribution costs were 12.74% per dollar of sales less with respect to Crane sales than with respect to sale to plumbing wholesalers. An arithmetical error made in one of the supporting work sheets reduces the differential by 0.05% to 12.69%. The report indicates additional areas of cost, such as manufacturing, storage, order and billing, shipping, and executive salaries, not included in the study, on further investigation and analysis, would possibly show further savings on Crane sales. Professor Herbert F. Taggart, Professor of Accounting at the School of Business Administration of the University of Michigan and a recognized authority and expert in the field of cost justification, testified that he was retained by AllianceWare and he consulted with Mr. Heacock and others in the AllianceWare office with respect to the preparation of cost justification study. After Ernst & Ernst were called in to make the study, he discussed the matter with Mr. Dice and made recommendations in regard to the methods of allocation and other matters relating to the preparation of the study. Professor Taggart

further testified that he was familiar with the report and he was of the opinion that the methods of allocation and distribution of costs were proper. A copy of the report was furnished to counsel supporting the complaint about four months before it was introduced in evidence and an accountant of the Commission was given full access to the books and records of AW at the offices of AW. The Commission's accountant testified that as a result of his review and the investigation he had conducted into the background of the exhibit, he had formed an opinion that certain items in the study were not properly allocated and the price differences on the bathtubs and sinks and lavatories should have been calculated separately rather than averaged as was done in the study. In the year ended June 30, 1958, sinks and lavatories constituted 20.87% of AW's sales to plumbing wholesalers and 21.09% of its sales to Crane. The record shows that steelware is primarily used in tract or project homes and a plumbing wholesaler in making bids and sales for such purpose usually prices his wares for entire bathroom units including bathtubs, lavatories, valves, pipe fittings and other plumbing components used in a residence. Under these circumstances, it would seem proper to use an average discount for comparison. The Commission's accountant expressed the opinion that the items of \$21,016 for advertising in trade publications and \$27,367 for displays and exhibits cannot be allocated in their entirety to the independent jobbers and he based such a conclusion on the assumption that there was general knowledge in the trade that Crane products are produced by AllianceWare and some of this advertising would benefit products sold to Crane. The record indicates that plumbing wholesalers generally had knowledge that Crane's steelware line was manufactured by AW, but there is nothing to indicate that Crane would benefit from such advertising. If it should be inferred that the advertising did rub off on Crane, it would also have to be inferred that Crane's advertising, which was more extensive, would benefit AW. An objection by counsel supporting the complaint which would materially affect the result is to the inclusion of commissions paid to manufacturers' representatives as a cost of selling to plumbing wholesalers. It is counsel's position that as a matter of law the commissions paid to manufacturers' agents cannot be utilized in a cost justification. No cases arising under Section 2(a) of the Act are cited but cases invoking violations of Section 2(c) of the Act are relied upon. Reasoning of counsel seems to be that every reduction in price, coupled with a failure to pay brokerage, automatically compels the conclusion that an allowance in lieu of brokerage has been granted. The Supreme Court in *FTC v. Henry Broch & Co.*, 363 U.S. 166, stated:

This is not to say that every reduction in price, coupled with a reduction in brokerage, automatically compels the conclusion that an allowance "in lieu" of brokerage has been granted. As the Commission itself has made clear, whether such a reduction is tantamount to a discriminatory payment of brokerage depends on the circumstances of each case. *Main Fish Co., Inc.*, 53 F.T.C. 88. Nor does this "fuse" provisions of Section 2(a), which permits the defense of cost justification, with those of Section 2(c) which does not; it but realistically interprets the prohibitions of Section 2(c) as including an independent broker's allowance of a reduced brokerage to obtain a particular order. (363 U.S. 175-176)

None of the respondents have been charged with a violation of 2(c) so it is not necessary to answer the question whether such section has been violated. As has been pointed out heretofore, AW in its contracts with its manufacturers' agents is not required to pay commissions on certain accounts. Under the circumstances of the instant case where the services of such agents is not required, there is no logical reason why such savings in cost may not be passed on to Crane. It is the opinion of the hearing examiner that proper methods of allocation and distribution of costs were followed in the preparation of the cost study and it reasonably reflects the difference between AW's costs in selling to Crane and its costs in selling to plumbing wholesalers. The percentage cost differential (12.69%) exceeds the average discount granted to Crane during the year ending February 28, 1959 (9.22%) by 3.47%. The discounts granted to Crane the previous year of 13.54% were justified within 0.85%. Under the holdings of the Commission in *U.S. Rubber Company*, 46 F.T.C. 998, an unjustified price difference in such amount would not warrant the issuance of a cease and desist order.

It is contended that the respondent American Metal Products Company is responsible for the acts of its subsidiary, AllianceWare, Inc., the Delaware corporation. The evidence shows that AMP owns all the stock of AW and the AW's board of directors is elected by the board of directors of AMP. Nine of the eleven members of the AW's board in 1955 were likewise members of the AMP board. Counsel supporting complaint dwells upon one incident to establish AMP's responsibility. In June of 1956, Mr. F. C. Matthaei, Chairman of AMP's board of directors, Mr. Kent Chandler, member of the AMP board of directors, and Mr. J. D. Judge, President of the AMP subsidiary, Tube Reducing Corporation, and a member of the AMP board, personally called upon the AW customer, Crane Co., at Chicago, to discuss contract negotiations then under way. Mr. Matthaei was also chairman and Mr. Chandler a member of the AW board. Mr. Rodman, President of AW, in a prior meeting with Crane people had indi-

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cated a lack of interest in supplying Crane with a complete line of steelware as it desired. It may be inferred that this information reached AMP officials and, Crane being AW's most important customer, prompted the visit to Crane by the three named gentlemen. At the meeting they said they, owning AllianceWare, were interested in doing everything they could to retain the relationship and more firmly to establish the relationship they had with Crane Co. They further stated that they were interested in further studying the Crane Co. needs for a line of steelware and on departing indicated there would be further contact on the part of AllianceWare representatives to discuss the situation with Crane. Thereafter Crane was contacted by Mr. Paul Corp who succeeded Mr. Rodman as President of AW in August 1956, which resulted in the 1957 contract. A document, offered by Commission counsel and received in evidence, which sets forth a description and function of the boards and officers of the AMP corporation organization, recites in part:

Article VIII—PRESIDENTS OF SUBSIDIARIES

The Presidents of AMP's subsidiaries are responsible for the operation of their companies within the framework of the objectives, policies, plans and budgets established by their own Board of Directors. Within this framework, the President of an AMP subsidiary has the same duties and responsibilities as the president of a separate company. It is his responsibility to make the decisions relating to the development, manufacture, and marketing of the products of his company. As each subsidiary has its own budgets, controls and quotas, the president is both responsible and accountable for the successful operation of its business.

The record indicates that AW and its Presidents functioned as required by the provisions of the cited article and there is no evidence to establish AMP's responsibility for the acts of its subsidiary AW. The factual situation here is similar to the case of *Press Co. v. N.L.R.B.*, 118 F. 2d 937, where the U.S. Court of Appeals for the District of Columbia held that a parent corporation's ownership of stock of subsidiary, and identity of officers of parent and subsidiary, do not create agency relations so as to make parent responsible for act of subsidiary, but there must be such control by parent as to show that subsidiary is being used as the instrument of the parent. The *Press Co.* case was followed by U.S. Court of Appeals for the Seventh Circuit, October term, 1955, in the case of the *National Lead Company, et al. v. Federal Trade Commission*, 227 F. 2d 825, wherein the opinion of the Court states: "* * * To come within the applicable rule, there must be evidence of such complete control of the subsidiary by the parent as to render the former a mere tool of the latter, and to compel

the conclusion that the corporate identity of the subsidiary is a mere fiction." The hearing examiner is not unmindful of the findings of the Commission *In the Matter of The American News Company*, Docket 7396, January 10, 1961, but in that case there is an entirely different factual situation from the instant case and in the opinion it is stated: "We feel that these facts are more than adequate to satisfy even the criterion of complete control applied in the *National Lead* case and conclude that American is responsible for and does control the activities of its subsidiary, Union."

It is contended by counsel in support of the complaint that Crane has always known or had reason to know that the prices it paid for AllianceWare products were not cost justified. To support such a conclusion reference is made to the fact that certain employees of Crane served on the AllianceWare Board of Directors and thus gained knowledge of the affairs of AllianceWare. There was nothing that took place at the board meetings that would in any way indicate that the discounts allowed (Crane) under the contract might be illegal under the Robinson-Patman Act. In proposed findings in support of complaint it is stated: "Crane Co. was directly notified by the AllianceWare Vice President Butt that the 10% rebate paid in 1949 and 1950 was not cost justified." Such a conclusion is a distortion of the record. Mr. Butt in a memorandum dated October 16, 1950, wherein he urged some change in the existing Crane-AllianceWare setup, stated: "* * * our net recovery profit-wise is actually over 6% of our dollar sales less on sales to Crane than to our own distribution." In the same memorandum he added: "While I do not question that the 10% rebate can be maintained legally, * * *." Additionally Mr. Butt when called as a witness by counsel in support of complaint testified that he never had expressed an opinion that the discounts were not legal.

There was received in evidence a copy of a four-page letter dated January 27, 1954, addressed to Alliance-Ware, Inc., attention—Mr. C. J. Rodman, from the law offices of Blumensteil, Strong & Blumensteil, signed by Mr. J. B. Blumensteil, Alliance-Ohio's local corporate attorney. The letter gives consideration to the validity of 1947 agreement as modified in 1950 (reducing the discount to 5%) and deals generally with the provisions of the Robinson-Patman Act insofar as it relates to price differentials. The document is of no import to the respondents AMP and AW (AMP did not acquire the assets of Alliance-Ohio until 1955) and is only relevant to the extent that it bears upon knowledge by Crane of the alleged illegality of the 1947 contract. Mr. Rodman, who was used as a witness in support of the complaint, was visibly hostile to the respondents and his testimony herein cannot

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be regarded as credible. He stated that he requested the opinion with reference to the 1947 contract in 1954 because he was very much concerned about the legality of the five percent discount. He testified that the latter was discussed at AllianceWare board meeting on March 15, 1954, but in the detailed minutes of such meeting there is no mention of the letter. Messrs. Wyatt, Pollack, and Butt, who were directors and in attendance at the mentioned meeting of the board, testified that they had never seen the letter nor had heard it discussed at any time. Furthermore, the letter deals with facts not disclosed, discusses generally the provisions of the Robinson-Patman Act insofar as it relates to price differentials and does not contain an absolute opinion that the contract involved was illegal. The concluding paragraph of the letter reads: "We, of course, are only in possession of the facts as presented by you and for that reason we have quoted the statute at length in this opinion as perhaps you will find some other justification for continuation of your discount arrangement with the Crane Company, under the permissive cost and accounting references contained in the statute. If you fail to do so, however, it would be our recommendation that you consider negotiations with the Crane Company for an early termination of this discount arrangement." Mr. Rodman in his testimony speaks of another opinion obtained in 1950 from the same law firm which he says was destroyed at the request of then President of Crane. The record does not reveal the contents of the opinion and it will serve no purpose to discuss the same.

The record shows that Crane, as well as Alliance-Ohio and the respondent AW, in entering into the contracts which are the subject of this controversy, was always concerned in any pricing structure to be within all regulatory laws. A letter (RX 2A-D) written on April 17, 1947 to Mr. C. J. Rodman, President, AllianceWare, Inc., by Mr. J. L. Holloway, President of Crane, is illustrative of the situation. The letter reveals that in connection with the negotiations of the 1947 contract Crane had employed outside counsel to discuss the Robinson-Patman phase of the contract with its home counsel, and such outside counsel was of the opinion that there should be little or no trouble under the Robinson-Patman Act with a 10% discount. The letter sets forth a cost study made by Crane based upon its experience and using its records for the years 1936-1940 as a base, indicating an 11% cost saving to Alliance-Ohio. It further suggested and offered the assistance of a senior accountant of Crane to collaborate with AllianceWare's Mr. Heacock in the matter. Attached to the letter was a detailed table which was prepared at the direction of Mr. Holloway by a Mr. E. E. Wyatt who at that time was Assistant Comptroller of

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Crane, showing the manner in which the 11% figure was arrived at. Mr. Wyatt testified that only the very direct and easy of measuring costs were employed and the percentage did not include many indirect costs nor did it give consideration to the 5% commission paid by Alliance-Ohio to its sales representatives. Mr. Wyatt discussed with Mr. Heacock the results of his estimates of Alliance-Ohio savings and was advised by Mr. Heacock that the Crane estimate of 11% "was low compared to theirs, in relation to sales." Mr. Rodman testified that Mr. Kreger, the general counsel of Alliance-Ohio, was in on the making and formulating of the 1947 contract and he gave an opinion that it was legal.

In January of 1956 discussions started between Crane and AW in connection with the proposed complete line of Crane steelware. Crane had made studies of the situation and on the bases of cost estimates respecting expenditures it would be required to make, it submitted to Mr. Rodman a preliminary figure of 17 percent as a discount to profitably accomplish what it was seeking to do. Mr. Paul Corp, who succeeded Mr. Rodman as President of AW on August 6, 1956, carried on the negotiations on behalf of AW which resulted in the 1957 contract. Two meetings were held between Mr. Corp and representatives of Crane and the schedule of discounts proposed by Mr. Corp at the second meeting for the production of the Crane steel ware line was accepted by Crane. The discounts granted to Crane under the 1957 contract had been predicated on an assumed volume of sales which did not materialize and Mr. Corp thereafter on behalf of his company initiated negotiations for a reduction of the discounts which resulted in the 1958 agreement. The evidence of record leads to the conclusion that the parties to the three agreements at all times considered the discount provisions thereof to be lawful and that Crane neither knew nor had reason to know that the difference in price accorded to it was not or could not be cost justified.

Although it is pleaded in the complaint that the alleged discriminations in price may be substantially to lessen, injure, destroy or prevent competition between respondent AllianceWare, Inc., and competing sellers of similar products, there was no attempt to establish injury in the primary line.

For the reasons hereinbefore stated, the hearing examiner finds that the record fails to establish a violation of the Robinson-Patman Act; Therefore,

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

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Complaint

ORDER VACATING INITIAL DECISION AND DISMISSING COMPLAINT

Counsel supporting the complaint, by their motion filed May 23, 1962, request the Commission to vacate the initial decision of the examiner in this proceeding and to dismiss the complaint on the ground of mootness. This motion, and the responses and affidavits filed in answer thereto by all respondents, show that on or about August 3, 1961, respondent American Metal Products Company sold substantially all of the assets of respondent AllianceWare, Inc., to respondent Crane Company; that AllianceWare, Inc., has since been dissolved; that Crane Company no longer purchases porcelain-on-steel sanitary ware from any source; and that American Metal Products Company does not now manufacture or sell porcelain-on-steel sanitary ware, and does not own the entire or majority interest in any company which does manufacture or sell such products. On the basis of these facts it appears that the issues raised by the allegations of the complaint in this proceeding, *viz.*, that respondents AllianceWare, Inc., and American Metal Products Company granted discriminatory prices in the sale of porcelain-on-steel sanitary ware to respondent Crane Company in violation of Section 2(a) of the Clayton Act, and that respondent Crane Company induced and received such discriminatory prices in violation of Section 2(f) of said Act, are now moot, and that for this reason any further action by the Commission in this proceeding would not be in the public interest. Accordingly,

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, vacated and the complaint be, and it hereby is, dismissed for mootness and not on the merits.

IN THE MATTER OF

SUE BRETT, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-147.—Complaint, June 8, 1962—Decision, June 8, 1962

Consent order requiring New York City manufacturers to cease violating the Flammable Fabrics Act by selling dresses so highly flammable as to be dangerous when worn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested

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in it by said Acts, the Federal Trade Commission, having reason to believe that Sue Brett, Inc., a corporation, and Jack Baker and Florence Baker, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Flammable Fabrics Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sue Brett, Inc., is a corporation duly organized, existing, and doing business under and by virtue of the laws of the State of New York. Respondents Jack Baker and Florence Baker are President and Secretary-Treasurer, respectively, of the corporate respondent. The individual respondents formulate, direct and control the policies, acts and practices of the said corporate respondent. The business address of all respondents is 1400 Broadway, New York, N.Y.

PAR. 2. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have manufactured for sale, sold and offered for sale, in commerce; have imported into the United States; and have introduced, delivered for introduction, transported and caused to be transported, in commerce; and have transported and caused to be transported for the purpose of sale or delivery after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act, articles of wearing apparel, as the term "article of wearing apparel" is defined therein, which articles of wearing apparel were, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

Among the articles of wearing apparel mentioned above were dresses.

PAR. 3. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have manufactured for sale, sold and offered for sale, articles of wearing apparel made of fabric which was, under Section 4 of the Act, as amended, so highly flammable as to be dangerous when worn by individuals, and which fabric had been shipped and received in commerce, as the terms "article of wearing apparel," "fabric" and "commerce" are defined in the Flammable Fabrics Act.

Among the articles of wearing apparel mentioned above were dresses.

PAR. 4. The acts and practices of respondents herein alleged were and are in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder and as such constitute unfair

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and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Sue Brett, Inc., is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Jack Baker and Florence Baker are President and Secretary-Treasurer, respectively, of said corporation. The business address of all respondents is 1400 Broadway, New York, N.Y.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Sue Brett, Inc., a corporation, and its officers, and respondents Jack Baker and Florence Baker, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

(1) (a) Importing into the United States; or

(b) Manufacturing for sale, selling, offering for sale, introducing, delivering for introduction, transporting or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

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(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce;

any article of wearing apparel which, under the provisions of Section 4 of the Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

2. Manufacturing for sale, selling, or offering for sale any article of wearing apparel made of fabric, which fabric has been shipped or received in commerce, and which, under Section 4 of the Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Com-