

HOME FURNITURE, INC., ET AL.

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

Docket C-288. Complaint, Dec. 27, 1962—Decision, Dec. 27, 1962

Consent order requiring Fargo, N.D., retailers of furniture to cease advertising falsely in newspapers and by radio that they are conducting a "quitting business" sale, offering merchandise at prices as much as 75% below usual prices, and representing excessive amounts as "Reg." prices.

Complaint

61 F.T.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Home Furniture, Inc., a corporation, and David E. Bullert, Henry Cruz and Dennis Erickson, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said 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 Home Furniture, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Dakota with its principal office and place of business located at 414-16 Main Avenue, in the city of Fargo, State of North Dakota.

Respondents David E. Bullert, Henry Cruz and Dennis Erickson are individuals and are officers of said corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is Northport Furniture, Northport Shopping Center, Fargo, N. Dak.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of furniture at retail to the purchasing public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said merchandise when sold, to be shipped from their place of business in the State of North Dakota to purchasers thereof located in various other States of the United States and the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the purchase of their merchandise, respondents have made certain statements and representations with respect thereto in newspapers and in radio broadcasts of which the following are typical but not all inclusive:

Yes! Going out of Business
Quitting Business
Home Furniture is Quitting Business
Quitting Business Sale
We must Liquidate! Time Is Short!

1457

Complaint

Help!

Disaster Strikes! Due to circumstances beyond our control, we are forced to reduce our large stock at once.

Emergency Sale

We are forced to unload our vast stock.

Store wide Sacrifice of Definitely Better Furniture!

We Quit Forever

Every Item On Sale

You will actually save

48%—55%—70% and more

off our regular price

Stocks Must Go—Reductions to 75%

Save up to ½

5 Pc. Drop Leaf Table & 4 Chairs

Reg. \$99.50 now 59.97

Davenport & Chair..... Reg. 389.50.....289.97

PAR. 5. Through the use of the above said statements and representations, and others of similar import, but not specifically set out herein, respondents have represented, directly or by implication that:

1. Respondents are conducting a bona fide "quitting business" sale caused by circumstances beyond their control.

2. Respondents' merchandise is being offered for sale at reduced prices and that said reductions represent savings to the purchasers thereof of the differences between the selling prices of said merchandise and the prices at which said merchandise was usually and customarily sold at retail by the respondents in the recent regular course of their business.

3. Respondents have reduced the prices of their merchandise as much as 75% below the usual and customary prices at which such merchandise was sold in the recent regular course of their business and that said reductions represented savings to purchasers thereof from respondents' usual and customary retail prices.

4. The higher stated prices set out in said advertisements in connection with the term "Reg." are the prices at which the advertised merchandise had been usually and customarily sold by respondents at retail in the recent regular course of business and that the differences between the higher and lower prices represent savings, to purchasers from respondents' usual and customary retail prices.

PAR. 6. In truth and in fact:

1. The sale conducted by the respondents is not a bona fide "quitting business" sale conducted by them because of circumstances beyond their control and respondents are not actually quitting business but are merely conducting the same business from another location and under another name.

2. Certain of the advertised merchandise is not being offered for sale at reduced prices and the purchasing public is not afforded savings of the differences between the reduced prices and the prices at which said merchandise was usually and customarily sold at retail by respondents in the recent regular course of their business.

3. Respondents have not reduced the prices of their merchandise by 75% or any other such high percentage and the purchasing public is not afforded savings in such amounts from the prices at which such merchandise is usually and customarily sold at retail by the respondents in the recent regular course of their business.

4. The higher stated prices set out in said advertisements in connection with the term "Reg." were in excess of the prices at which the advertised merchandise had been usually and customarily sold by respondents in the recent regular course of business and the differences between the higher and lower prices did not represent savings to purchasers from respondents' usual and customary retail prices.

Therefore, the statements and representations referred to in paragraphs 4 and 5 are false, misleading and deceptive.

PAR. 7 In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as that sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' merchandise by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice of the public and respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5(a)(1) 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 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 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 Home Furniture, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Dakota, with its office and principal place of business located at 414-16 Main Avenue, in the city of Fargo, State of North Dakota.

Respondents David E. Bullert, Henry Cruz and Dennis Erickson are officers of said corporation and their address is Northport Furniture, Northport Shopping Center, Fargo, N. Dak.

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 respondents, Home Furniture, Inc., a corporation, and its officers, and David E. Bullert, Henry Cruz and Dennis Erickson, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of furniture or any other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or indirectly that:

1. Such merchandise is distress merchandise or is from the stock of a business which is being liquidated or which is going out of business.

2. Any savings are afforded from the usual and customary retail price of merchandise, unless the price for which such merchandise is offered constitutes a reduction from the price

Complaint

61 F.T.C.

at which it has been sold by respondents in the recent regular course of business.

B. Using the words "regular price" or "Reg.", or any other word or words of similar import or meaning, to describe or refer to the retail prices of such merchandise, unless the prices so designated are those at which such articles of merchandise have been usually and customarily sold by respondents in the recent regular course of business.

C. Misrepresenting, in any manner, the savings available to purchasers of respondents' merchandise or the amount by which the price of such merchandise has been reduced.

D. Misrepresenting, in any manner, the type and kind of sale which they are conducting.

It is further 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 this order.

IN THE MATTER OF

CRANE CO.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF
THE CLAYTON ACT

Docket 7833. Complaint, Mar. 18, 1960—Decision, Dec. 23, 1962

Order dismissing—on motion of complaint counsel and after respondent had divested itself of the properties concerned—complaint charging one of the largest manufacturers of plumbing fixtures, heating apparatus, and fabricated steel pipe with acquiring, within a two-year period, all or part of the stock or assets of five competing producers of the same range of products.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Sec. 45), and Section 7 of the Clayton Act (U.S.C. Title 15, Sec. 18), as amended and approved December 29, 1950, 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, Crane Co. (hereinafter sometimes referred to as Crane), is a corporation doing business under and by virtue of the laws of the State of Illinois, with its principal offices and place of business located at 836 South Michigan Avenue, Chicago 5, Ill.

Crane Co. is the successor to a business established in 1865 under the name North Western Manufacturing Co. Following several changes in name during subsequent years, the name and style "Crane Co." was adopted in the year 1922.

Crane Co. is now, and for several years last past has been, directly and indirectly, engaged in the manufacture, sale and distribution of different categories of products in the plumbing fixture and heating apparatus field together with other kindred and related products including, among others, (1) valves and fittings; (2) plumbing fixtures and fittings; (3) heating equipment and auxiliary or related products; and (4) fabricated steel pipe.

Crane Co. is now, and for several years last past has been, one of the largest, if not the largest, manufacturer of a complete line of valves and fittings in the United States and is one of few companies in the United States equipped to manufacture, distribute and sell a complete, or virtually complete, line of these products.

Crane Co. is now, and for several years last past has been, a major and significant factor in the manufacture, distribution and sale of plumbing fixtures and equipment, and in the manufacture, distribution and sale of heating apparatus and auxiliary products. It is also a significant factor in the manufacture, distribution and sale of fabricated steel pipe.

As of December 31, 1958, Crane's products, and products available to Crane, either through purchase or otherwise, were handled by 1,312 independent wholesale establishments and by 175 company-owned branches located throughout the United States and Canada. As of the end of 1958, approximately one-half of the sales made by Crane and its domestic subsidiaries were of goods manufactured by Crane and its domestic subsidiaries and approximately one-half of such sales were of goods manufactured by others and handled by Crane and its domestic subsidiaries on a jobbing or agency basis.

Selected financial data for Crane Co. for the year ending December 31, 1958, is as follows:

Sales.....	\$336, 196, 279
Total assets.....	224, 073, 781
Net current assets.....	136, 163, 472
Net income.....	5, 475, 593

PAR. 2. Crane as a manufacturer and fabricator purchases some, if not all, of the necessary materials and supplies from sources located in States of the United States other than the State or States in which the manufacturing and fabricating processes take place and the ultimate products are then caused to be shipped or otherwise transported by Crane to various States of the United States other than the State in which such manufacturing and fabricating took place and to foreign countries.

In addition, Crane is a distributor for the various related and allied product lines set forth herein, including valves and fittings, fabricated steel pipe, plumbing fixtures and equipment, heating apparatus and auxiliary products.

The material purchased and used by Crane in the manufacture and fabrication of the various products listed herein, as well as the various products purchased and sold by Crane as a distributor thereof, are transported from one State or another to various other States of the United States and to foreign countries, and respondent, as a result thereof, is now, and has been, engaged in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

PAR. 3. In a series of transactions taking place within the past two years, Crane has acquired, directly or indirectly, all or part of the stock or assets of the certain corporations, hereinafter named, engaged in the purchase, manufacture, processing, fabrication or distribution of different categories of products in the valve, plumbing fixtures and equipment and heating apparatus industry, together with other kindred and related products, including, among others, (1) valves and fittings; (2) plumbing fixtures and fittings; (3) heating equipment and auxiliary or related products; and (4) fabricated steel pipe. All of the acquired corporations at the time of the said acquisitions, in the regular course of business, either purchased, manufactured, processed, fabricated or distributed the foregoing products in and throughout the various States of the United States or purchased and received shipments related to the manufacture, processing, fabrication or distribution of said products from other purchasers, suppliers, manufacturers, fabricators or processors located throughout the United States. All of the acquired corporations, prior to and at the time of the acquisitions, were engaged in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

Respondent's acquisitions include, among others, all or part of the stock or assets of the following corporations:

(1) Chapman Valve Manufacturing Company, a Massachusetts corporation.

- (2) Briggs Manufacturing Company, a Michigan corporation.
- (3) National-U.S. Radiator Corporation, a Maryland corporation.
- (4) Swartout Company, Inc., an Ohio corporation.
- (5) Pipe Fabricators, Inc. (Crane also acquired at this time Canadian Pittsburgh Piping, Ltd., a subsidiary of Pipe Fabricators, Inc.), an Indiana corporation.

PAR. 4. The effect of the aforesaid acquisitions by the respondent, individually and collectively, may be substantially to lessen competition or to tend to create a monopoly in the production, distribution and sale of (1) valves and fittings; (2) plumbing fixtures and fittings; (3) heating equipment and auxiliary or related products; and (4) fabricated steel pipe within the meaning of Section 7 of the Clayton Act as amended and approved December 29, 1950.

Specifically, the effects flowing from the acquisitions recited herein include the actual or potential lessening of competition or a tendency to create a monopoly in violation of Section 7 of the Clayton Act in the following ways, among others:

- (1) Chapman, National-U.S., the Autronic Division of Swartout, Pipe Fabricators, Inc., and Canadian Pittsburgh Piping, Ltd., have been or may be permanently eliminated as substantial independent competitive factors in their respective industries;
- (2) Briggs will either (a) be eliminated as a substantial independent competitive factor in its industry if Crane gains control or working control of Briggs, or (b) the competitive vigor of Briggs will be substantially impaired, lessened or eliminated should Crane elect one or more members to Briggs' Board of Directors;
- (3) Respondent's competitive position in the products or product lines hereinbefore named has been materially improved, or will be materially improved, to the actual or potential detriment of competition in these products or product lines;
- (4) Actual and potential competition between respondent and the corporations hereinbefore named has been or will be substantially decreased or entirely eliminated;
- (5) Actual and potential competition between wholesalers and distributors of the products or product lines hereinbefore named may be, or will be, substantially lessened or completely eliminated;
- (6) Actual and potential competition in the products or product lines hereinbefore named may be substantially lessened and industry-wide concentration in these products or product lines has been and may be substantially increased;
- (7) Respondent (a) has materially strengthened its financial position; (b) is better able, or will be better able, to arrange financial ac-

commodations; (c) has facilitated, or will have facilitated, its access to markets; (d) has increased the number and scope of technical and managerial skills available to it; (e) has become, or will become, better able to inhibit new producers from entering its markets; (f) is better able, or will become better able, through the decrease in unit costs of production and distribution or through other means, to drive existing producers and distributors from its markets.

PAR. 5. The foregoing acquisitions alleged and set forth hereinabove constitute a violation of Section 7 of the Clayton Act (U.S.C. Title 15, Sec. 18), as amended and approved December 29, 1950.

PAR. 6. The acquisitions hereinbefore described tending substantially to lessen competition or to create a monopoly are to the prejudice and injury of the public and constitute an unfair method of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

PAR. 7. The foregoing acquisitions, acts and practices as hereinbefore alleged and set forth constitute a violation of Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Sec. 45).

Mr. Norman L. Holmes for the Commission.

Lord, Day & Lord, by *Mr. John D. Garrison*, *Mr. Thomas F. Daly*, and *Mr. Raymond L. Hays*, of New York, N.Y.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

The complaint in this proceeding, issued March 18, 1960, alleged that the effect of respondent Crane Co.'s acquisition of all or part of the stock or assets of (1) Chapman Valve Manufacturing Company, a Massachusetts corporation, (2) Briggs Manufacturing Company, a Michigan corporation, (3) National-U.S. Radiator Corporation, a Maryland corporation, (4) Swartout Company, Inc., an Ohio corporation, and (5) Pipe Fabricators, Inc., an Indiana corporation, individually and collectively, may be substantially to lessen competition or to tend to create a monopoly in certain lines of commerce, enumerated in the complaint, in violation of § 7 of the Clayton Act, as amended. Pursuant to a ruling of the hearing examiner, on December 14, 1961, respondent filed its "Supplemental Statement of Facts" giving the details of certain voluntary divestitures and acquisitions which had occurred after the complaint was filed.

Hearings were held at which formal background evidence was introduced. Respondent's Supplemental Statement contained other recitals bearing upon the alleged monopolistic effect, if any, of respondent's acquisitions and divestitures. On May 7, 1962, the exam-

iner entered an order for counsel supporting the complaint to show cause why this proceeding should not be dismissed for want of prosecution. This rule to show cause and the proceeding generally were set for October 15, 1962, in Washington, D.C. Thereafter complaint counsel sought by court action to obtain, and did obtain, additional information to help evaluate the monopolistic effects, if any, of respondent's acquisitions.¹

On September 17, 1962, complaint counsel filed his motion to dismiss these proceedings setting forth:

2. Respondent, Crane Co., has divested all of its substantial stock holdings in the Briggs Manufacturing Company, (Tr. 66-67) thereby restoring Briggs as a substantial competitor in the plumbing fixtures industry. Furthermore, respondent, on December 14, 1961, filed with the Hearing Examiner, a Supplemental Statement of Facts, wherein respondent states that it has voluntarily divested the following assets of the National-U.S. Radiator Corporation:

a. The Viking Products Division, which manufactured blowers, fans, humidifiers and components for air conditioning equipment.

b. The Drayer-Hanson Division, which manufactured central air conditioning and air handling equipment and heat transfer units.

c. The stock of Magnetic Powders, Inc., as well as the assets of the Powdered Metals Division.

d. Two plants in Illinois have been sold and a third plant in that state has been offered for sale.

3. In this same aforementioned Supplemental Statement of facts, respondent states that it has disposed of the physical inventories acquired from Pipe Fabricators, Inc., and has sold or has put up for sale, the remaining acquired property, equipment and plant.

4. Canadian Pittsburgh Piping, Ltd., was acquired by Crane, Ltd., a Canadian subsidiary of respondent. There is no indication in any of the various materials submitted by respondent and in the possession of counsel supporting the complaint that either Crane, Ltd., or Canadian Pittsburgh Piping, Ltd., made any sales of fabricated pipe in the United States.

5. Now therefore inasmuch as the aforementioned divestitures of stock and assets by respondent have served the public interest as concerns respondent's acquisition of such stock or assets, and whereas such divestiture has substantially vitiated the basis of the complaint as concerns the divested stock and assets, counsel supporting the complaint respectfully urge the dismissal of this matter without prejudice to the right of the Commission to undertake such further investigation or further proceedings to protect the public interest as may be warranted in the future on the basis of all the facts and circumstances pertinent to an evaluation of such matters.

After complaint counsel filed the aforesaid motion to dismiss, counsel for respondent were requested to state whether respondent intended to file any paper responsive to said motion to dismiss, or in opposition thereto, and have represented that they do not intend to do so. The

¹ See Civil Action M 18-304 in the U.S. District Court for the Southern District of New York, *FTC v. Cooper*.

hearing set for October 15, 1962, on the Rule to Show Cause of May 7, 1962, and for further proceedings, has been canceled because the parties have indicated that they deem the pending motion to dismiss as dispositive of this proceeding, if allowed.

Rule 4.6(e) of this Commission's Rules of Practice, *inter alia*, provides:

When a motion to dismiss a complaint . . . is granted with the result that the proceeding before the hearing examiner is terminated, the hearing examiner shall make and file an initial decision in accordance with the provisions of § 4.19. . . .

In view of the recitals contained in the motion to dismiss complaint filed September 17, 1962, and it appearing that complaint counsel has therein admitted that the public interest does not require that this particular proceeding go forward,

It is ordered, That the Rule to Show Cause of May 7, 1962, be and hereby is discharged; and

It is further ordered, That this complaint and the proceeding thereunder be and hereby are dismissed without prejudice to the rights of the Federal Trade Commission to institute such further proceeding in the future as the facts and circumstances may at that time warrant.

FINAL ORDER

The Commission by its previous order having placed this case on its docket for review; and

The Commission now having concluded that the initial decision of the hearing examiner is appropriate in all respects to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner filed October 17, 1962, be, and it hereby is, adopted as the decision of the Commission.

By the Commission, Commissioner MacIntyre not concurring.

IN THE MATTER OF

C-E-I-R, INC.

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