

with fact.

(4) Respondent shall, within sixty (60) days after service of this order upon it, file with the Commission a written report setting forth in detail the manner and form of its compliance with the terms of the order.

By the Commission, Commissioner Anderson not participating for the reason he did not hear oral argument.

IN THE MATTER OF
AMERICAN CEMENT CORPORATION

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

Docket C-681. Complaint, Jan. 20, 1964—Decision, Jan. 20, 1964

Consent order requiring a portland cement manufacturer in Los Angeles—one of the ten largest in the United States, operating seven cement manufacturing plants in Pennsylvania, Michigan, California, Arizona and Hawaii, and a principal supplier in the New York City area herein concerned—to divest itself within 9 months of all the stock, assets and tangible and intangible properties, rights and privileges acquired in its acquisition of a manufacturer operating four ready-mixed concrete plants in the New York City area, one of the five largest consumers of portland cement in that area.

COMPLAINT

The Federal Trade Commission has reason to believe that the above-named respondent has acquired the assets and stock of another corporation in violation of Section 7 of the Clayton Act (U.S.C. Title 15, Sec 18), as amended; and therefore, pursuant to Section 11 of said Act, it issues this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. (A) American Cement Corporation (American), respondent herein, is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at 2404 Wilshire Boulevard, Los Angeles, California.

(B) American is, and for many years has been, engaged in the business of manufacturing and selling portland cement, one of the two lines of commerce relevant herein.

(C) Prior to and since January 29, 1960, in the course and conduct of its business, American has been engaged in commerce (as "commerce" is defined in the Clayton Act, as amended), having sold and shipped portland cement, or having caused it to be sold and shipped, from the State in which it was manufactured to purchasers located in other States.

PAR. 2. (A) For many years prior to and until about January 29, 1960, M. F. Hickey Company, Inc. (Hickey), was a corporation organized and existing under the laws of the State of New York, with its principal office located at 1301 Metropolitan Avenue, Brooklyn, New York.

(B) Hickey was engaged in the business of manufacturing and selling ready-mixed concrete, the other line of commerce relevant herein.

(C) In the regular course and conduct of its business, Hickey was engaged in commerce (as "commerce" is defined in the Clayton Act, as amended), having purchased and caused to be shipped into the State of New York portland cement manufactured in other States of the United States.

PAR. 3. On or about January 29, 1960, respondent acquired all of the outstanding capital stock of Hickey, by exchanging therefor 164,300 shares of American common stock, valued at approximately \$3,645,400.

PAR. 4. (A) Ninety-five percent, more or less, of all cement produced in the United States is portland cement. Portland cement is an essential ingredient in the manufacture of ready-mixed concrete.

(B) Ready-mixed concrete is so called because it is delivered from a central plant by mixer trucks to the job site ready to pour. Substantially all concrete sold for construction purposes is ready-mixed concrete. In the New York City area, ready-mixed concrete producers account for more than fifty percent of all portland cement used.

PAR. 5. (A) American is among the ten largest producers and sellers of portland cement in the United States. It has seven wholly owned cement manufacturing plants, located in Pennsylvania, Michigan, California and Arizona, and has a partial interest in the Hawaiian Cement Corporation, a Hawaiian cement producer.

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(B) For calendar years 1957 through 1962, the sales, net income, and total assets of respondent stated in millions of dollars, were approximately as follows:

Year	Sales	Income	Assets
*1962.....	\$82.7	\$5.8	\$112.0
*1961.....	74.6	4.4	107.4
*1960.....	71.1	4.0	114.6
1959.....	56.8	6.8	93.7
1958.....	51.8	6.7	88.6
1957.....	55.6	8.4	73.3

*Includes Hickey and other subsidiaries.

PAR. 6. (A) Hickey's sales, net income and total assets for the fiscal years ending April 30, were approximately as follows:

Year	Sales	Income	Assets
1959.....	\$6,912,480	\$305,445	\$2,937,442
1958.....	5,696,827	275,116	2,510,863
1957.....	5,581,951	248,206	2,319,484

(B) Prior to and at the time it was acquired by respondent, Hickey owned and operated four ready-mixed concrete plants; three of which were located in Brooklyn, New York and one in Flushing, Queens, New York.

PAR. 7. (A) For many years prior to its acquisition, Hickey sold substantially all of its ready-mixed concrete in the New York City area, the section of the country relevant herein, which consists of the boroughs of Manhattan, Bronx, Brooklyn and Queens of the city of New York.

(B) Prior to, and at the time of the acquisition, Hickey was one of the five largest consumers of portland cement in the New York City area.

PAR. 8. For many years prior to and since January 29, 1960, American, from its plant at Stockertown, Pennsylvania, in competition with other cement producers, has been a principal supplier of portland cement in the New York City area.

At the time of the acquisition of Hickey, none of respondent's competitors in the sale of portland cement in the New York City area

owned or controlled in said area a significant consumer of portland cement, such as a ready-mixed concrete producer.

PAR. 9. In the following ways, among others, the effect of respondent's acquisition of Hickey may be substantially to lessen competition or tend to create a monopoly in either the manufacture and sale of portland cement or in the manufacture and sale of ready-mixed concrete, or in both of these lines of commerce, in the New York City area:

(1) Present and future competitors of respondent, have been or may be precluded from selling portland cement to a substantial consumer to the detriment of actual and potential competition;

(2) Actual and potential competitors of respondent, have been or may be foreclosed from, and respondent has been assured of, a substantial share of the market for portland cement;

(3) The entry of new sellers of portland cement has been or may be inhibited or prevented;

(4) The competitive position of respondent in the sale of portland cement has been or may be substantially enhanced;

(5) Further integration of suppliers and consumers of portland cement may result, in that competitors of respondent in the manufacture and sale of portland cement have been or may be encouraged, or feel a necessity to merge or otherwise become affiliated with manufacturers of ready-mixed concrete; likewise, competitors of respondent in the manufacture and sale of ready-mixed concrete have been or may be encouraged, or feel a necessity to merge or otherwise become affiliated with manufacturers of portland cement;

(6) As an integrated manufacturer and seller of portland cement and ready-mixed concrete, respondent has achieved or may achieve a decisive competitive advantage over its competitors engaged only in the manufacture and sale of ready-mixed concrete; and

(7) The entry of new sellers of ready-mixed concrete has been or may be inhibited or prevented.

PAR. 10. Prior to its acquisition of Hickey, respondent had, it now has, and, after the divestiture of Hickey which is sought in this proceeding, will continue to have, such a significant competitive position in the sale of portland cement in the New York City area and in every other section of the country in which American is engaged in the sale of portland cement, that the effect of any acquisition by it of any of the stock or assets of any corporation engaged in commerce, and engaged in the sale of ready-mixed concrete, in any of the sections of the country where respondent produces or sells portland cement or ready-mixed concrete, may be substantially to lessen competition or tend to create a monopoly as alleged in Paragraph 9.

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PAR. 11. The acquisition of Hickey constitutes a violation by respondent of Section 7 of the Clayton Act (U.S.C. Title 15, Sec. 18), as amended.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of Section 7 of the Clayton Act, as amended, and the respondent 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 respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 American Cement Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 2404 Wilshire Boulevard, Los Angeles, California.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent, American Cement Corporation, a corporation, through its officers, directors, agents, representatives and employees shall, within nine months from the date of service upon it of this Order, divest itself, in good faith, and in so far as reasonably possible as a unit, and to a purchaser, or purchasers, approved by the Federal Trade Commission, of all stock or of all rights, title and interest in all assets, properties, rights and privileges, tangible and intangible, including but not limited to, all properties, plants, machinery, equipment, raw material reserves, trade names, contract rights, trademarks and good will acquired by respondent as a result of its acquisition of the stock and assets of the M. F. Hickey Company, Inc., together with all plants, machinery, buildings, land, raw

material reserves, improvements, equipment and other property of whatever description that have been added to or placed upon the premises of the former M. F. Hickey Company, Inc., as may be necessary to restore or continue the M. F. Hickey Company, Inc., insofar as reasonably possible, as a going concern and an effective competitor in the manufacture and sale of ready-mixed concrete.

It is further ordered, That, except in the ordinary course of business pending divestiture, respondent shall not, without prior approval of the Federal Trade Commission, make any changes in any of the plants, machinery, buildings, equipment, or other property of whatever description of the former M. F. Hickey Company, Inc., which shall impair its present capacity for the production, sale and distribution of ready-mixed concrete, or its market value, unless such capacity or value is restored prior to divestiture.

It is further ordered, That, without prior approval of the Federal Trade Commission, the aforesaid assets or stock required to be divested under this Order shall not be sold or transferred, directly or indirectly, to anyone who, at the time of the divestiture, respondent knows or has reason to know is a stockholder, officer, director, employee, or agent, or otherwise is directly or indirectly connected with or under the control of respondent or any of its subsidiaries or affiliated companies, except that the current stockholdings of former owners, Lawrence F. Hickey and family, shall not prevent divestiture to them with the approval of the Federal Trade Commission.

It is further ordered, That, without prior approval of the Federal Trade Commission, in said divestiture, respondent shall not sell or transfer, directly or indirectly, any of the aforesaid stock or assets, to any corporation, or to anyone who, at the time of said divestiture, respondent knows or has reason to know is an officer, director, employee or agent of a corporation, which at the time of such sale or transfer, is a manufacturer or substantial distributor of portland cement anywhere in the United States, or is engaged in the production or sale of ready-mixed concrete in the New York City area, as defined in the complaint.

It is further ordered, That respondent shall, within sixty (60) days after service upon it of this Order, file with the Federal Trade Commission a report, in writing, setting forth in detail its plan for carrying out the provisions of this Order. In the event divestiture has not been accomplished within this sixty day period, respondent will thereafter report each sixty days its progress in carrying out the provisions of this Order.

By the Commission, Commissioner MacIntyre not concurring.

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IN THE MATTER OF

CHORI NEW YORK, INC., ET AL.

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

Docket C-682. Complaint, Jan. 21, 1964--Decision, Jan. 21, 1964

Consent order requiring New York City importers to cease violating the Flammable Fabrics Act by importing and distributing in commerce fabrics which were 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 in it by said Acts, the Federal Trade Commission, having reason to believe that Chori New York, Inc., a corporation, and Shosuke Tanikaga, Kunio Misaki and Akira Utsumi, individually and as officers of the 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 Chori New York, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Shosuke Tanikaga, Kunio Misaki and Akira Utsumi, are president, secretary and treasurer, respectively of Chori New York, Inc., the corporate respondent. The individual respondents together with the Board of Directors of said corporation, participate in the formulation, direction and control of the acts, practices and policies of said corporation. All respondents have their offices and principal place of business located at 350 Fifth Avenue, New York 1, New York.

The respondents are engaged in the importation into the United States and in the sale and distribution of such imported fabrics.

PAR. 2. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have 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,