

by the said Act to be affixed to such fur product.

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
AMERICAN SERVICE, INC., ET AL.

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

Docket C-693. Complaint, Jan. 21, 1964—Decision, Jan. 21, 1964

Consent order requiring Milwaukee, Wis., sellers of a correspondence course, to cease representing falsely, in advertisements in the "Help Wanted" or "Job Opportunities" columns of newspapers, that specific positions described and a large number of other law enforcement positions were immediately available to qualified applicants at starting salaries of up to

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\$6,900 a year, and that respondents were affiliated with government agencies and the United States Civil Service Commission, along with other false representations.

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 American Service, Inc., a corporation, and Robert Runte and Dennis Lee Roberts, 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 American Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 5810 West Oklahoma Avenue in the city of Milwaukee, State of Wisconsin.

Respondents Robert Runte and Dennis Lee Roberts are officers of the 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 the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of a course of instruction to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said course of instruction, when sold, to be shipped from their place of business in the State of Wisconsin to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product 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 obtaining leads to prospective enrollees, and for the purpose of inducing the sale of their said course of instruction, respondents have made certain statements and representations in advertisements which they caused to be published in newspapers of interstate circulation. Frequently, these advertisements were caused to be placed under the "Help Wanted", "Employment" or "Job

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Opportunities" columns of the classified sections. Typical, but not inclusive, of such advertisements are the following:

LAW ENFORCEMENT
WORK

MEN WANTED

MEN 18 TO 49

Up to \$6,900 first year

APPLICANTS TO TRAIN FOR LAW ENFORCEMENT POSITIONS IN
THIS AREA

Radio patrol officer, border patrolman, highway patrol, custom service officer, security officer, corrections officer, private investigator. Many others available

RIGHT NOW.

NO EXPERIENCE NECESSARY

DO NOT DELAY

For free information write to American Peace Officer, Box B80 Sentinel. Out-of-town inquiries invited.

* * * * *

MEN-WOMEN NEEDED

Age 18 to 59 to train for

CIVIL SERVICE JOBS

Grammar School education usually sufficient.

Thousands of jobs open. NO EXPERIENCE NECESSARY.

Start as high as \$5300 or more. No lay-offs—Security.

Preparatory training guaranteed until appointed.

DO NOT DELAY

For free information write:

AMERICAN SERVICE

Box 4, Calumet News

PAR. 5. By and through the use of such statements and representations, and others of similar import not specifically set forth herein, respondents have represented, and now represent, directly or by implication, that:

1. Inquiries are solicited for the ultimate purpose of tendering offers of employment to qualified applicants.
2. The specific positions described as well as a large number of other law enforcement positions are immediately available in the area in which the representation is made.
3. The specific positions described as well as a large number of other law enforcement positions are regularly offered to applicants who have had no prior educational or occupational experience.

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4. The specific positions described as well as a large number of other law enforcement positions are regularly offered to applicants between the ages of thirty-five and forty-nine.

5. Applicants are regularly appointed to law enforcement positions generally, and to the particular positions described, at starting salaries of \$6,900 per year.

6. Respondents are affiliated with governmental agencies and private firms in which law enforcement positions, including the specific positions described, are presently available.

7. Respondents are affiliated with the United States Civil Service Commission.

8. Thousands of civil service positions are immediately available in the area in which the representation is made.

9. Inexperienced applicants with no more than a grammar school education are regularly appointed to civil service positions at starting salaries of \$5,300 per year.

10. Civil service employees are never laid-off.

11. Respondents will furnish specific information regarding the location, terms and conditions of employment of the particular positions described and many other presently available positions.

PAR. 6. In truth and in fact:

1. Inquiries are not solicited for the ultimate purpose of tendering offers of employment to qualified applicants but for the purpose of obtaining leads to prospective purchasers of respondents' course of instruction.

2. Neither the specific positions described nor a large number of other law enforcement positions are immediately available in the area in which the representation is made.

3. Neither the specific positions described nor a large number of other law enforcement positions are regularly offered to applicants who have had no prior educational or occupational experience.

4. Neither the specific positions described nor a large number of other law enforcement positions are regularly offered to applicants between the ages of thirty-five and forty-nine.

5. Applicants are not regularly appointed to law enforcement positions generally, or to the particular positions described, at starting salaries of \$6,900 per year.

6. Respondents are not affiliated with any governmental agency nor are they affiliated with any private firm in which law enforcement positions are presently available.

7. Respondents are not affiliated with the United States Civil Service Commission.

8. Thousands of civil service positions are not immediately available in the area in which the representation is made.

9. Inexperienced applicants with no more than a grammar school education are not regularly appointed to civil service positions at starting salaries of \$5,300 per year.

10. Civil service employees are sometimes laid-off.

11. Respondents do not furnish specific information regarding the location, terms or conditions of employment of the particular positions described or any other presently available positions.

Therefore the statements and representations as set forth in Paragraphs 4 and 5 hereof were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, and for the purpose of inducing the sale of their course of instruction, respondents cause an authorized field representative to call on prospective enrollees in their own homes. At such times and places, respondents' authorized field representative makes oral statements and representations with respect to respondents' business. In addition, respondents have made certain statements and representations in letters and promotional material which they caused to be mailed to prospective enrollees, or which they otherwise caused to be read or exhibited to prospective enrollees. Typical, but not all inclusive, of such statements and representations are the following:

Milwaukee Association of Commerce—Founded 1861

American Service is a private educational institution devoted to preparing ambitious and honest men in the 17 to 49 age group for Peace Officer work through manual training in their spare time in their own home. We are nationally famous for our training program and are considered to be the leaders in this particular field.

Our purpose is to supply you with all available information and advice, and if you are sincerely interested in this type of work, to determine your qualifications. In order to determine whether or not you are qualified, our Authorized Representative will call on you. He will probably be limited to one interview with you due to the many, many inquiries and the necessity to adhere to a strict schedule, so please be prepared to make your decision at that time. You will find this Representative to be courteous, helpful, and thoroughly trained in his duties. He will give you his frank opinion whether or not you can qualify, and if approved, you would be on the first step to being a Peace Officer. Please present this letter to our Representative so he may return it to this office, explaining why you were accepted or rejected.

The only way, basically, to get a Civil Service position is to pass a Civil Service examination. These Civil Service examinations appear to be 'tricky' to one who is not prepared; 4 people out of 5 fail to pass in many instances. SO, BE PREPARED. Enroll in a course of study that covers several positions. Increase your chances for a quick appointment.

"During the month of February I enrolled in your school to train in the field of police work * * * I have received the appointment." G.F. (Note: Enrolled Feb. 1962—received appointment Summer 1962)

PAR. 8. By and through the use of oral and written statements, as aforesaid, and others of similar import and meaning not specifically set forth herein, respondents have represented, and now represent, directly or by implication, that:

1. Respondents' business is endorsed or accredited by the Milwaukee Association of Commerce.

2. Enrollment in respondents' course is limited to persons who may reasonably expect to obtain employment in the positions they have selected.

3. By virtue of special training, respondents and their agents are qualified to determine whether or not prospective enrollees possess the requirements necessary to obtain employment in specific positions.

4. Prospective enrollees will receive a frank and unbiased opinion as to whether or not respondents' course will be of substantial assistance to them in obtaining employment.

5. A test administered by respondents' agents provides a reliable indication as to whether or not a prospective enrollee will be materially benefited in obtaining employment as a result of respondents' course.

6. In most cases respondents' course will enable graduates to pass examinations which they would otherwise fail.

7. Civil service examinations are tricky and require special preparation.

8. Respondents offer separate and distinct courses for the various positions in which enrollees are seeking employment.

9. Respondents' course is designed to teach the basic subject matter of a particular occupational field, as distinguished from a course in general examination preparation.

10. Respondents will furnish authoritative textbooks and other source materials covering the basic subject matter of the occupational field for which the student is enrolled.

11. One of respondents' enrollees completed the entire law enforcement course in about seven months and obtained an appointment in the position for which he was preparing.

12. The time of respondents' agent is limited and prospects who do not contract for the course at the time of his visit must forego indefinitely the opportunity to enroll.

13. All persons who are present at the time respondents' agent interviews a prospective enrollee are required to sign the enrollment contract.

14. Respondents are nationally famous and are considered leaders in the field of law enforcement instruction.

15. Respondents receive advance information regarding civil service openings.

PAR. 9. In truth and in fact:

1. Respondents' business is not endorsed or accredited by the Milwaukee Association of Commerce.

2. Enrollment in respondents' course is not limited to persons who may reasonably expect to obtain employment in the positions they have selected.

3. Neither respondents nor their agents are qualified, by virtue of special training or otherwise, to determine whether or not prospective enrollees possess the requirements necessary to obtain employment in specific positions.

4. Prospective enrollees do not receive a frank and unbiased opinion as to whether or not respondents' course will be of substantial assistance to them in obtaining employment.

5. The test administered by respondents' agent does not provide a reliable indication as to whether or not a prospective enrollee will be materially benefited in obtaining employment as a result of respondents' course.

6. Respondents' course will not usually or customarily enable graduates to pass examinations which they would otherwise fail.

7. Civil service examinations are not tricky and do not require special preparation.

8. Respondents do not offer separate and distinct courses for the various positions in which enrollees are seeking employment.

9. Respondents' course is not designed to teach the basic subject matter of a particular occupational field, as distinguished from a course in general examination preparation.

10. Respondents do not furnish authoritative textbooks or other source materials covering the basic subject matter of the occupational field for which the student is enrolled.

11. None of respondents' enrollees has completed the entire law enforcement course.

12. The time of respondents' agent is not limited and prospects need not contract for the course at the time of his visit or forego indefinitely the opportunity to enroll.

13. All persons who are present at the time respondents' agent interviews a prospective enrollee are not required to sign the enrollment contract.

14. Respondents are not nationally famous and are not considered leaders in the field of law enforcement instruction.

15. Respondents do not receive advance information regarding civil service openings.

Therefore the statements and representations as set forth in Paragraph 8 hereof were and are false, misleading and deceptive.

PAR. 10. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of a course of instruction of the same general kind and nature as that sold by respondents.

PAR. 11. 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' course of instruction by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of 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 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; 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 aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent American Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the

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State of Wisconsin, with its office and principal place of business located at 5810 West Oklahoma Avenue in the city of Milwaukee, State of Wisconsin.

Respondents Robert Runte and Dennis Lee Roberts are officers of said corporation, and their address is the same as that of said corporation.

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 American Service, Inc., a corporation, and its officers, and Robert Runte and Dennis Lee Roberts, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a course of instruction or any other product or service, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising in any manner or using any sales presentation which does not clearly, conspicuously and specifically disclose the nature of the business with respect to which the advertisement or presentation is made and the identity of the product or service which is being sold.

2. Representing, directly or by implication, that:

(a) Employment is being offered unless such employment is in fact being offered.

(b) Any employment opportunity exists, or is expected to exist, without disclosing the nature of the position, the identity of the prospective employer, the specific location of the employment, the salary which is being offered or which is expected to be offered, as well as any consideration with respect to age, sex, physical condition, education, training, veterans' status, marital status or other factor which would tend to materially reduce the number or class of persons who might reasonably expect to obtain such employment.

(c) Any person, product, service or business is affiliated with or endorsed, approved or accredited by any person, firm, organization, government or government agency without specifically disclosing the nature and extent of the affiliation, endorsement, approval or accreditation.

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(d) Any person, product, service or business is affiliated with or endorsed, approved or accredited by the United States Civil Service Commission.

(e) Enrollment in respondents' course of instruction is limited or restricted to persons who may reasonably expect to obtain employment in any position or class of positions.

(f) Any of the respondents or any of their agents are qualified, by virtue of special training or otherwise, to determine whether or not any person possesses the requirements necessary to obtain employment in any position.

(g) Any opinion or recommendation with respect to the enrollment of any person is conditioned upon or influenced by a frank or unbiased determination that respondents' course of instruction will be of substantial assistance to such person in obtaining employment.

(h) Any test administered by respondents or any of their agents provides a reliable indication that any person will be substantially benefited in obtaining employment as a result of respondents' course of instruction.

(i) Respondents offer more than one course of instruction, or that respondents' course of instruction encompasses the body of knowledge of any particular occupational field, as distinguished from a course in general examination preparation, or that any study material is furnished unless the nature and extent of the materials which are actually furnished are fully and specifically disclosed.

(j) Civil Service employees are never laid-off, or otherwise misrepresenting the job security of civil service employees.

(k) Respondents furnish specific information regarding the location, terms or conditions of employment of any available position unless in every instance such information is actually furnished.

(l) Respondents' course will usually or customarily enable graduates to pass an examination which they would otherwise fail, or that any improvement in the grade or score that any particular person may reasonably expect to achieve as a result of respondents' course is greater than the true such improvement.

(m) Civil Service examinations are tricky or that special preparation is ordinarily required to pass a civil service examination.

(n) Any person has completed respondents' course of instruction, unless such person was a bona fide enrollee who did in fact complete respondents' course.

(o) The time of respondents' agent is limited or that prospects who do not enroll at the time of his visit must forego indefinitely the opportunity to enroll.

(p) Any person other than the enrollee or the husband, wife or legal guardian of an enrollee is customarily expected to sign a contract of enrollment.

(q) Respondents are nationally famous or are considered leaders in the field of law enforcement instruction or any other type of instruction.

(r) Respondents receive any information regarding civil service positions which is not generally available.

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
BEARINGS, INC., ET AL.

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

Docket 7134. Complaint, Apr. 29, 1958—Decision, Jan. 22, 1964

Order dismissing without passing on the merits because the record was composed of "cold and stale evidence"—the alleged violations having taken place as long as 14 years ago—complaint charged respondents with (1) using their purchasing power as an economic weapon against various bearings manufacturers to prevent the establishment of new distributorships and to bring about the cancellation of certain already existing competitive distributorships, (2) trying to create a monopoly in the bearings replacement market by excluding and limiting potential and actual competition through coercive tactics, and (3) conspiring among themselves to use economic pressure to suppress competition.

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 the respondents named in the caption hereof and more particularly described herein-

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after, have violated the provisions of said Act, and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in respect thereto as follows:

COUNT I

PARAGRAPH 1. Bearings, Inc. (Delaware), is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 3634 Euclid Avenue, Cleveland 15, Ohio.

All of the following corporations are wholly owned subsidiaries of Bearings, Inc. (Delaware), and are named herein as separate corporate respondents:

Balanrol Corp. is a corporation organized and existing under the laws of the State of Ohio, with its principal office and place of business located at 313 Niagara Street, Buffalo, New York.

Bearings, Inc. (Maryland), is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located at 1901 North Howard Street, Baltimore, Maryland.

Dixie Bearings, Incorporated, is a corporation organized and existing under the laws of the State of Tennessee, with its principal office and place of business located at 276 Memorial Drive, S.W., Atlanta, Georgia.

Kentucky Ball & Roller Bearing Co. is a corporation organized and existing under the laws of the State of Kentucky, with its principal office and place of business located at 3634 Euclid Avenue, Cleveland 15, Ohio.

Tennessee Bearings, Inc., is a corporation organized and existing under the laws of the State of Tennessee, with its principal office and place of business located at 3634 Euclid Avenue, Cleveland 15, Ohio.

Carolina Bearings, Inc., is a corporation organized and existing under the laws of the State of North Carolina, with its principal office and place of business located at 3634 Euclid Avenue, Cleveland 15, Ohio.

Joseph M. Bruening and William J. Scully are president and vice president, respectively, of each of the respondent corporations, and are named as respondents herein, both individually and as officers of said corporations. Their principal office and place of business is 3634 Euclid Avenue, Cleveland 15, Ohio.

John F. Raymond is vice president of respondent Bearings, Inc. (Delaware), and respondent Kentucky Ball & Roller Bearing Co., and is named as a respondent herein, individually and as an officer

of said corporations. His principal office and place of business is 3634 Euclid Avenue, Cleveland 15, Ohio.

Edward F. Brown is vice president of respondent Dixie Bearings, Incorporated, and is named as a respondent herein, individually and as an officer of said corporation. His principal office and place of business is 276 Memorial Drive, S.W., Atlanta, Georgia.

The conduct of the affairs of all of the aforementioned corporate respondents with respect to their business practices and policies are now, and have been during all the times mentioned herein, under the control, direction, domination, and supervision of the individual respondent officers, named and described herein.

PAR. 2. The corporate respondents, collectively and individually, are now and for a number of years last past, have been engaged in the business of purchasing ball, roller, anti-friction, anti-thrust, and thrust bearings, transmission units, bearing specialities, accessories, and other related bearing products, for resale and distribution to users thereof, including manufacturers and various repairers of machinery, vehicles, and other industrial equipment which utilize said bearing products. Said business is carried on through approximately 42 store outlets located in Indiana, Ohio, Pennsylvania, New York, New Jersey, Kentucky, West Virginia, Maryland, Delaware, Tennessee, North Carolina, Louisiana, Georgia, South Carolina and Florida.

PAR. 3. The corporate respondents, in the course and conduct of the aforesaid business, are now making, and have continued to make, purchases of the aforesaid bearing products from different manufacturing suppliers located in the several States of the United States, and, after purchase, said bearing products are now, and have been, transported from the said States where manufactured to the places of business of the corporate respondents, located in other States of the United States, from whence such bearing products are now being, and have been, offered for sale, sold, and distributed to purchasers thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act, and at all times mentioned herein the corporate respondents are now and have been engaged in a constant current and course of trade in said commerce between and among various States of the United States. The volume of trade in said commerce of the corporate respondents is substantial.

PAR. 4. At all times mentioned herein the corporate respondents, collectively and individually, are now and have been in direct and substantial competition with each other and with other individuals, corporations, partnerships and firms engaged in the sale and distribution of said bearing products in commerce, except to the extent that

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such competition has been restrained, lessened, or eliminated by the unlawful acts and practices hereinafter alleged.

PAR. 5. Respondent Joseph M. Bruening organized the Ohio Ball Bearing Company in 1922, which subsequently was incorporated in the State of Ohio during 1925. In May 1952, respondent Bruening and other individuals caused the combination and merger of the Ohio Ball Bearing Company with Indiana Bearings, Inc., West Virginia Bearings, Inc., and Pennsylvania Bearings, Inc., into a new and separate corporation, Bearing Specialists, Inc., incorporated in the State of Delaware. In February 1953, Bearing Specialists, Inc., combined and merged with Jim Brown Stores, a corporation of the State of Delaware, retaining the name Bearing Specialists, Inc. In June 1953, Bearing Specialists, Inc., combined and merged with Bearings, Inc., a corporation of the State of Pennsylvania, and by assuming that corporation's name became Bearings, Inc. (Delaware), respondent herein. In July 1957, respondent Dixie Bearings, Incorporated, was acquired by respondent Bearings, Inc. (Delaware), as a wholly owned subsidiary. Prior to that time respondent Bruening possessed a substantial financial interest in and performed an active managerial role with respect to respondent Dixie Bearings, Incorporated, and its predecessor corporations. In September 1957, respondent Dixie Bearings, Incorporated, purchased certain assets of Southern Bearings Company of Jacksonville, Florida, for the use of respondent Bearings, Inc. (Delaware), and its wholly owned subsidiaries in their aforesaid business activities.

Respondent Bearings, Inc. (Delaware), respondent Dixie Bearings, Incorporated, and the other five wholly owned subsidiaries of Bearings, Inc. (Delaware), collectively maintain a volume of trade amounting to approximately \$25,000,000 per year in aggregate sales. Respondent Bearings, Inc. (Delaware), singly or in combination with its wholly owned subsidiaries, serves as the largest distributor in the United States for many of the major manufacturers of the aforesaid bearing products. The corporate respondents, acting collectively, are the largest distributors of said bearing products in the fifteen-state area in which they operate, and as a result thereof, are able to, and do exercise sufficient economic power and control upon the manufacturing suppliers of said bearing products to cause the exclusion of some potential, and the limitation of some actual, competition in the sale and distribution of such products; and such exclusion and limitation cannot be solely attributed to the ability, business acumen, or natural economic and other advantages of the corporate respondents, or to their adaptation to inevitable economic laws.

PAR. 6. From time to time, as hereinafter alleged, respondent Bearings, Inc. (Delaware), acting individually or through its wholly owned subsidiaries, has engaged in certain acts and practices for the purpose and with the objective of monopolizing, or attempting to monopolize, the sale and distribution of the aforesaid bearing products, and of eliminating and suppressing, or attempting to eliminate and suppress, the competition of others engaged in the sale and distribution of the same or similar products, and of otherwise furthering the leading and dominant position of the corporate respondents in the sale and distribution of the aforesaid products in commerce.

Pursuant to and in order to effectuate and carry out such purposes and objectives in the sale and distribution of such products in commerce, respondents from time to time have engaged in, performed, and carried out, by various means and methods, the following acts and practices:

Coerced, intimidated, or otherwise compelled certain manufacturing suppliers of the aforesaid bearing products (a) to refuse to deal with or otherwise supply such bearing products to some of the corporate respondents' competitors; (b) to cancel certain franchises given by such manufacturing suppliers to some of the corporate respondents' competitors to sell, distribute, and market such bearing products; and (c) to refrain from offering or giving such franchises to some of the corporate respondents' competitors.

PAR. 7. The acts and practices, as hereinbefore alleged, have had and now have the tendency and capacity unlawfully to restrain, lessen, and eliminate competition in the sale and distribution of the aforesaid bearing products, in commerce; unreasonably to restrain competition among the manufacturing suppliers of such products; to coerce such suppliers to deal on respondents' terms; to prevent the corporate respondents' competitors from obtaining, in commerce, at competitive and non-discriminatory prices, supplies of certain nationally recognized, popular lines of the aforesaid bearing products; and to create in the respondent corporations a monopoly in the sale and distribution of such products, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

COUNT II

PAR. 8. The allegations of Paragraph 1 through 5, inclusive, of Count I of this complaint are hereby adopted, and incorporated herein by reference and made a part of this Count II as if they were repeated herein verbatim.

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PAR. 9. From time to time, as hereinafter alleged, the corporate respondents, acting through their corporate officers, entered into, maintained, and effectuated an understanding, agreement, combination, and conspiracy to pursue, and they have pursued, a planned common course of action between and among themselves to adopt and adhere to certain practices and policies to restrain, lessen, and eliminate competition between and among themselves and with others in the sale and distribution of the aforesaid bearing products, in commerce; to monopolize the sale and distribution of such products, in commerce; and otherwise to further the leading and dominant position of the corporate respondents in the sale and distribution of the aforesaid products, in commerce.

Pursuant to, and in furtherance of, said understanding, agreement, combination, conspiracy, and planned common course of action, respondents from time to time have engaged in, performed, and carried out, by various means and methods, the following acts and practices:

Persuaded, induced, coerced, intimidated, compelled, caused, or otherwise influenced, or attempted to influence, certain manufacturing suppliers of the aforesaid bearing products (a) to refuse to deal with or otherwise supply such bearing products to some of the corporate respondents' competitors; (b) to cancel certain franchises given by such manufacturing suppliers to some of the corporate respondents' competitors to sell, distribute, and market such bearing products; and (c) to refrain from offering or giving such franchises to some of the corporate respondents' competitors.

PAR. 10. The acts, practices, understandings, agreements, combinations, conspiracies, and planned common courses of action, as alleged in Paragraph 9 of Count II, have had and now have the tendency and capacity unlawfully to restrain, lessen, and eliminate competition in the sale and distribution of the aforesaid bearing products, in commerce; unreasonably to restrain competition among the manufacturing suppliers of such products; to coerce, persuade, or otherwise influence such suppliers to deal on respondents' terms; to prevent the corporate respondents' competitors from obtaining, in commerce, at competitive and nondiscriminatory prices, supplies of certain nationally recognized, popular lines of the aforesaid bearing products; and to create in the respondent corporations, a monopoly in the sale and distribution of such products in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

PAR. 11. The acts and practices of the respondents, all and singularly, as hereinabove alleged in Count I and Count II, are to the

prejudice and injury of the public and constitute unfair methods of competition and unfair acts and practices, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Mr. Rufus E. Wilson, Mr. Thomas A. Sterner, Mr. Americo M. Minotti and Mr. Daniel R. Kane for the Commission.

Gregg, Fillion, Fillenwarth & Hughes, by Mr. John D. Hughes, Indianapolis, Ind., for respondent Mr. John F. Raymond; Falsgraf, Kundtz, Reidy and Shoup, by Mr. Wendell A. Falsgraf and Mr. William H. Talmage, Cleveland, Ohio, for all other respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

MARCH 6, 1962

I. THE COMPLAINT

1. The complaint herein was issued on April 29, 1958; contains two counts; and charges as follows:

A. Count I

a. That Bearings, Inc. (Delaware), and the six wholly owned subsidiaries thereof, named above, have been engaged for a number of years in the business of purchasing ball, roller, anti-friction, anti-thrust, and thrust bearings, transmission units, bearing specialties, accessories and other related products for resale in commerce through approximately forty-two store outlets, variously located in New Jersey, Kentucky, West Virginia, Maryland, Delaware, Tennessee, North Carolina, Louisiana, Georgia, South Carolina and Florida, respondents' collective yearly sales aggregating approximately \$25,000,000;

b. That respondent Bearings, Inc. (Delaware), singly or in combination with its wholly owned subsidiaries, serves as the largest distributor in the United States for many of the major manufacturers of the aforesaid bearing products;

c. That the corporate respondents have been, collectively and individually, in direct and substantial competition with each other and with other firms and individuals engaged in the sale and distribution of bearing products, except to the extent that such competition has been restrained, lessened or eliminated by the unlawful acts alleged in the complaint;

d. That respondent Bearings, Inc. (Delaware), acting individually or through its wholly owned subsidiaries, has engaged in certain acts and practices for the purpose of monopolizing or attempting to

monopolize the sale and distribution of bearing products, and of eliminating and suppressing, or attempting to eliminate and suppress, the competition of others engaged in the sale and distribution of the same or similar products;

e. That respondents, particularly, have coerced, intimidated or otherwise compelled certain manufacturing suppliers of bearing products:

(1) To refuse to deal with or otherwise supply bearing products to some of respondents' competitors;

(2) To cancel certain franchises given by such manufacturing suppliers to some of the corporate respondents' competitors; and

(3) To refrain from offering or giving such franchises to some of respondents' competitors;

f. That the business practices and policies of all of the aforementioned corporate respondents are now, and during all the times relevant hereto have been, conducted under the control, direction, domination and supervision of the individual respondent officers named above; and

g. That the above-described acts and practices have the tendency and capacity unlawfully to restrain, lessen and eliminate competition in the sale and distribution of bearing products in commerce; unreasonably to restrain competition among the manufacturing suppliers of such products; to coerce such suppliers into dealing on respondents' terms; to prevent the corporate respondents' competitors from obtaining in commerce, at competitive and non-discriminatory prices, supplies of certain nationally-recognized, popular lines of bearing products; and to create in the corporate respondents a monopoly in the sale and distribution of such products, in violation of § 5 of the Federal Trade Commission Act;

B. *Count II*

a. That the unlawful acts and practices charged in Count I have been promoted by the corporate respondents, acting through their corporate officials, entering into an agreement, combination and conspiracy to effectuate such unlawful acts and practices, in violation of § 5 of the Federal Trade Commission Act.

II. The Answers

2. Respondents other than John F. Raymond, in their answer, admit:

A. That the identity of the various corporations and of the corporate officials named is as alleged, except that they allege that John F.

Raymond was dismissed as a vice president of both Bearings, Inc. (Delaware), and Kentucky Ball & Roller Bearing Co. on January 16, 1958;

B. That Bearings, Inc. (Delaware), Bearings, Inc. (Maryland), Balanrol Corp. and Dixie Bearings, Incorporated, are in substantial competition in commerce with others engaged in the sale of bearing products in commerce;

C. That Bearings, Inc. (Delaware), Bearings, Inc. (Maryland), Balanrol Corp. and Dixie Bearings, Incorporated, maintained a gross sales volume of approximately \$25,000,000 for the fiscal year ending June 30, 1957.

3. Respondents other than John F. Raymond, in their answer, deny:

A. That Kentucky Ball & Roller Bearing Co., Tennessee Bearings, Inc., and Carolina Bearings, Inc., are engaged in competition in commerce;

B. That any of the respondent corporations have been engaged in any substantial competition with each other;

C. That Kentucky Ball & Roller Bearing Co., Tennessee Bearings, Inc., and Carolina Bearings, Inc., maintained any gross sales volume whatsoever during 1957 or any other year;

D. That respondent Bearings, Inc. (Delaware), singly or in combination with its wholly owned subsidiaries, is the largest distributor of bearing products in the United States;

E. That respondents have sufficient economic power over the manufacturing suppliers of bearing products to cause any of the injury to competition alleged in the complaint; and

F. That they have at any time engaged in the acts or practices alleged in Counts I and II of the complaint, or that they have engaged in any acts or practices to the prejudice or injury of the public or in violation of § 5 of the Federal Trade Commission Act.

4. Respondent John F. Raymond answered separately that he was no longer associated with the other respondents, and prayed for dismissal of the complaint against him.

III. Hearings and Proposed Findings As To The Facts

5. Hearings for the reception of evidence in support of the case-in-chief, in defense, and in rebuttal were held intermittently from September 17, 1958, to and including December 18, 1961. The testimony of forty-five witnesses and many exhibits were received in evidence. In addition, the testimony of six additional witnesses was stipulated on the record. Consideration has been given to the entire record herein, including proposed findings as to the facts, proposed

conclusions, and written arguments in support thereof. Each of those proposals which has been accepted has been, in substance, incorporated into this initial decision. All proposals not so incorporated are hereby rejected.

IV. The Issues

6. The pleadings raise a number of subordinate issues, but only one controlling issue appears in each of the two counts of the complaint.

7. In Count I, as correctly stated by counsel supporting the complaint, the respondents " * * * are considered as a single economic unit, which, by itself, has unilaterally threatened at various times to refuse to deal with certain manufacturers unless each of them performs certain acts beneficial to respondents, * * *".

8. Counsel supporting the complaint also correctly states, however, that in Count II the " * * * respondents are to be considered as separate legal entities which have combined their economic power and concertedly threatened to refuse to deal with certain manufacturers unless each of those manufacturers performed some of the aforementioned acts for the benefit of the intra-enterprise conspirators".

9. The controlling issues thus appear as follows:

A. Has respondent Bearings, Inc. (Delaware), acting individually or through its wholly owned subsidiaries, coerced, intimidated, or otherwise compelled manufacturing suppliers of bearing products to:

a. Refuse to deal with other otherwise supply bearing products to some of the corporate respondents' competitors;

b. Cancel certain franchises given by such manufacturing suppliers to some of the corporate respondents' competitors; and

c. Refrain from offering or giving such franchises to some of the corporate respondents' competitors, resulting in unlawful restraint, lessening, or elimination of competition in the sale and distribution of bearing products in commerce, and creating in the respondents a monopoly in the sale and distribution of such products, in violation of § 5 of the Federal Trade Commission Act?

B. Did the corporate respondents, acting through their corporate officers, enter into, maintain and effectuate an understanding, agreement, combination and conspiracy to pursue, and have they pursued, a planned common course of action between and among themselves for the purpose of restraining, lessening or eliminating competition, and creating in themselves a monopoly in the sale and distribution of such products in commerce, in violation of § 5 of the Federal Trade Commission Act?

V. Identification of Respondents

10. The respondents admit their identity, as follows:

A. *The parent corporation*: Respondent Bearings, Inc. (Delaware), hereinafter referred to as Bearings, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 3634 Euclid Avenue, Cleveland 15, Ohio.

B. *Active wholly owned subsidiaries*:

a. Respondent Balanrol Corp., a wholly owned subsidiary of Bearings, Inc., is a corporation organized and existing under the laws of the State of Ohio, with its principal office and place of business located at 313 Niagara Street, Buffalo, New York.

b. Respondent Bearings, Inc. (Maryland), a wholly owned subsidiary of Bearings, Inc., was, until its dissolution on August 12, 1960, a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located at 1901 North Howard Street, Baltimore, Maryland.

c. Respondent Dixie Bearings, Incorporated, a wholly owned subsidiary of Bearings, Inc., is a corporation organized and existing under the laws of the State of Tennessee, with its principal office and place of business located at 276 Memorial Drive, S.W., Atlanta, Georgia.

C. *Inactive wholly owned subsidiaries*: Respondents Kentucky Ball & Roller Bearing Co., Tennessee Bearings, Inc., and Carolina Bearings, Inc., all wholly owned subsidiaries of Bearings, Inc., and organized, respectively, under the laws of the States of Kentucky, Tennessee, and North Carolina, are inactive corporations not engaged in business. According to the testimony of respondents William J. Scully and Joseph M. Bruening, these presently-existing corporations using those names are "dummy" corporations maintained only for the purpose of preserving certain trade names.

D. *Individual Respondents*:

a. Respondents Joseph M. Bruening and William J. Scully are president and vice president, respectively, of each of the respondent corporations, and the principal office and place of business of each of them is 3634 Euclid Avenue, Cleveland 15, Ohio.

b. Respondent Edward F. Brown is vice president of respondent Dixie Bearings, Incorporated, and his principal office and place of business is 276 Memorial Drive, S.W., Atlanta, Georgia.

11. Respondent John F. Raymond was, for a considerable period of time prior to January 1958, a vice president of Bearings, Inc. (Delaware), and Kentucky Ball & Roller Bearing Co., with his

principal office and place of business located in Indianapolis, Indiana. On or about January 16, 1958, however, he was relieved of all duties in this capacity, and since then he has not been associated in any capacity with the other respondents herein.

VI. Control of The Corporate Respondents

12. The conduct of the affairs of the aforementioned corporate respondents with respect to their business practices and policies is now, and has been during all the times mentioned in the complaint, under the control, direction, domination and supervision of the individual respondent officers mentioned above, excepting that respondent Edward F. Brown, subject to the final authority of respondent Joseph M. Bruening, has control, direction, domination and supervision only of respondent Dixie Bearings, Incorporated, and excepting further that respondent John F. Raymond has had no affiliation since January 16, 1958, with any of the corporate respondents.

VII. Line of Commerce—Interstate Commerce

13. It is found that the active corporate respondents, collectively and individually, are now, and for a number of years last past have been, engaged in the business of purchasing ball, roller, anti-friction, anti-thrust and thrust bearings, transmission units, bearing specialties, accessories, and other related bearing products, for resale and distribution in commerce to users thereof, including manufacturers and various repairers of machinery, vehicles, and other industrial equipment which utilize said bearing products; and that said business, at all times set forth in the complaint, was carried on through approximately forty-two store outlets located in Indiana, Ohio, Pennsylvania, New York, New Jersey, Kentucky, West Virginia, Maryland, Delaware, Tennessee, North Carolina, Louisiana, Georgia, South Carolina and Florida.

VIII. Competition With Others

14. Respondents Bearings, Inc. (Delaware), Balanrol Corp., Bearings, Inc. (Maryland), and Dixie Bearings, Incorporated, have been in direct and substantial competition with other individuals, corporations, partnerships and firms engaged in the sale and distribution of bearing products in commerce. On August 12, 1960, Bearings, Inc. (Maryland), was dissolved, and since that time its business has been carried on in Baltimore, Maryland, by respondent Bearings, Inc. (Delaware), under a special permit from the State of Maryland.

15. Respondents Kentucky Ball & Roller Bearing Co., Tennessee Bearings, Inc., and Carolina Bearings, Inc., are not now, nor have they ever been, engaged in such competition.

16. None of the respondent corporations are now, nor have they ever been, engaged in any substantial competition with each other.

IX. History of Respondents' Organization

17. It is found that respondent Joseph M. Bruening organized the Ohio Ball Bearing Company in 1922, which subsequently was incorporated in the State of Ohio during 1925. In May 1952, respondent Bruening and other individuals caused the combination and merger of the Ohio Ball Bearing Company with Indiana Bearings, Inc., West Virginia Bearings, Inc., and Pennsylvania Bearings, Inc. (all of which had been organized by respondent Bruening), into a new and separate corporation, Bearing Specialists, Inc., incorporated in the State of Ohio. In February 1953, Bearing Specialists, Inc., combined and merged with Jim Brown Stores, Inc., a corporation of the State of Delaware, retaining the name Bearing Specialists, Inc. In June, 1953, Bearing Specialists, Inc. combined and merged with Bearings, Inc., a corporation of the State of Pennsylvania, and by assuming that corporation's name became Bearings Inc., a Delaware corporation, respondent herein. In August 1957, respondent Dixie Bearings, Incorporated, was acquired by respondent Bearings, Inc., as a wholly owned subsidiary. Prior to that time respondent Bruening possessed the controlling financial interest in and was the chief executive officer of respondent Dixie Bearings, Incorporated, and its predecessor corporations. In September 1957, respondent Dixie Bearings, Incorporated, purchased certain assets of Southern Bearings Company of Jacksonville, Florida.

X. Size of Respondents' Business

18. Respondents Bearings, Inc., Balanrol Corp., and Dixie Bearings, Incorporated, maintained a gross sales volume of approximately \$25,000,000 for the fiscal year ended June 30, 1957, but respondents Kentucky Ball & Roller Bearing Co., Tennessee Bearings, Inc., and Carolina Bearings, Inc., maintained no gross sales volume whatever during that year or any other year. Respondent Bearings, Inc. (Delaware), singly or in combination with its wholly owned subsidiaries, serves as the largest distributor in the United States for many of the major manufacturers of the aforesaid bearing products. The corporate respondents, acting collectively, are the largest distributors of said bearing products in the fifteen-state area in which they operate.

XI. Respondents' Manufacturing Suppliers

19. The annual report for 1955 of the corporate respondent Bearings, Inc. (Delaware), and its wholly owned subsidiaries represents Bearings, Inc., as the "World's Largest Authorized Distributor * * *" for twenty-nine manufacturers of bearings, and twenty-two manufacturers of bearing specialties. Among those manufacturers of bearings with which we are here concerned are the following:

- A. Norma-Hoffman Bearing Company, Stamford, Connecticut;
- B. McGill Manufacturing Company, Inc., Valparaiso, Illinois;
- C. Stephens-Adamson Manufacturing Company, Aurora, Illinois;
- D. Fafnir Bearings, Inc., New Britain, Connecticut;
- E. Bunting Brass & Bronze Company, Toledo, Ohio;
- F. SKF Industries, Inc., Philadelphia, Pennsylvania;
- G. Rollaway Bearings Company, Syracuse, New York;
- H. Martin Rockwell Corporation, Jamestown, New York; and
- I. Link-Belt Company, Chicago, Illinois.

XII. Examples of Respondents' Intimidation Tactics

20. In 1956 Palmer Bearings Company of Cleveland, Ohio, a competitor of Bearings, Inc., applied to Norma-Hoffman for a distributorship. There is considerable evidentiary confusion as to exactly what occurred between Mr. Sargent, the representative of Norma-Hoffman in the Cleveland area, and Messrs. Bruening and Scully, respectively president and vice president of Bearings, Inc., of Cleveland, concerning Palmer's application for distributorship. It is clear, however, that Mr. Sargent, in conferring with Max G. Palmer, president of Palmer Bearings, informed him that Norma-Hoffman intended to grant him a distributorship, but that before awarding it, he would, by way of business courtesy, confer with Mr. Bruening. Thereafter Mr. Sargent visited with Mr. Bruening and Mr. Scully. It is clear that one or the other of those officials expressed displeasure at the prospect of having Palmer Bearings appointed a distributor in the Cleveland area. It is also clear that they suggested the appointment of Bearings Distributors, Inc., of Cleveland, a larger bearings distributor, instead of Palmer Bearings. Mr. Sargent testified that Mr. Bruening stated during the conference, "Well, don't forget that if you do appoint him, we have retaliatory methods that we can use." Mr. Sargent also testified that before he left, Mr. Bruening walked out of the office and left the conference. Following this conference, Mr. Sargent, who is described as having been at that time emotionally and physically ill, informed Mr.

Palmer that because of the disapproval of Mr. Bruening, he must defer granting the distributorship. It appears that Mr. Sargent was afraid that the respondent corporation might purchase fewer bearings from his company if a distributorship were granted to the Palmer Bearings Company. Approximately six months later Mr. Sargent resigned his position with Norma-Hoffman. Shortly thereafter the Norma-Hoffman Bearings Corporation did in fact grant the desired distributorship to the Palmer Bearings Company.

21. Mr. Bruening and Mr. Scully, in expressing to the representative of Norma-Hoffman their displeasure at the possibility that Norma-Hoffman might appoint Palmer Bearings Company as a distributor, would have been within their legal rights, had they been speaking for themselves alone, or for a small corporation. The Supreme Court held in *Federal Trade Commission v. Raymond Company*, 263 U.S. 565, that a buyer " * * * may lawfully make a fixed rule of conduct not to buy from a producer or manufacturer who sells to consumers in competition with himself. * * * Likewise a wholesale dealer has the right to stop dealing with a manufacturer 'for reasons sufficient to himself'." The Court added, however, the explanatory qualification that:

The present case discloses no elements of monopoly or oppression. So far as appears the Raymond Company has no dominant control of the grocery trade, and competition between it and the Stores Company is on equal terms. Nor do we find that the threatened withdrawal of its trade from the Snider Company was unlawful at the common law, or had any dangerous tendency unduly to hinder competition.

The above qualification was, in substance, reaffirmed by the Supreme Court in the case of *Lorain Journal v. U.S.*, 342 U.S. 143, wherein the Court held that a publisher who was engaged in an attempt to monopolize advertising in interstate commerce, in violation of § 2 of the Sherman Antitrust Act, was properly enjoined under § 4 of that Act from continuing such attempt. The Court stated:

Unless protected by law, the consuming public is at the mercy of restraints and monopolizations of interstate commerce at whatever points they occur. Without the protection of competition at the outlets of the flow of interstate commerce, the protection of its earlier stages is of little worth.

22. Mr. Bruening and Mr. Scully, when they expressed their displeasure to the representative of Norma-Hoffman concerning the appointment of a competitor, were not speaking merely for themselves, nor for a small corporation, but for the largest and most economically powerful bearings-distributing organization within a fifteen-state area, an organization with five active wholly owned subsidiary corporations and forty-two store outlets under its con-

trol. Because of this real and potential economic power over the sale and distribution of bearing products, the displeasure expressed by the respondents carried too much weight to be ignored. At least, Mr. Sargent thought so, and feared that if he granted a dealership to Palmer Bearings Company in the face of such displeasure, he might expect economic retaliation in the form of smaller bearing orders from the respondents. Under the circumstances, such a conclusion on his part appears to have been reasonable. Accordingly, Norma-Hoffman did not grant the distributorship to Palmer until about eight months later, after Mr. Sargent had left its employ.

23. We are not here concerned with the question of whether Palmer Bearings Company was a good choice as a distributor for Norma-Hoffman, or whether Mr. Bruening and Mr. Scully considered that company worthy of appointment. We are concerned with the fact that Mr. Bruening and Mr. Scully, as spokesmen for a dominant segment of the bearings industry, possessed sufficient economic power to constrain a manufacturing company to withhold a distributorship at their pleasure, thereby depriving a competing company, for nearly a year, of a distributorship which it would otherwise have sooner enjoyed, and interfering with the manufacturer's exercise of free will in its choice of distributors. Acts not unlawful in themselves become unlawful when combined with such economic power that their impact upon others is injurious. An expression of displeasure which carries an implied threat of reprisal by reason of the economic power of the displeased entity is unlawful, because its end result is intimidation and coercion. Thus the respondents' acts constituted an unlawful interference with competition in commerce, to the injury of both Norma-Hoffman, the manufacturer, and Palmer Bearings Company, respondents' competitor, as well as general injury to the public.

24. Mr. Sargent gave a further example of respondents' coercive tactics in its dealings with Norma-Hoffman. He testified that he had promised, in 1956, at the instance of respondent John F. Raymond, president of respondents' wholly owned subsidiary in Indianapolis, Indiana, that Norma-Hoffman would not grant a distributorship to Aero Bearing Corporation, respondents' competitor in that city. Mr. Kelley, salesman for Norma-Hoffman, in a report to his company, sums up the situation and expresses the effect of the intimidation exercised against his company as follows:

To sum up, I think we would be foolish to seriously consider the disturbance of this account at this time. It adds up to our risking a potential \$50,000 per year account to take a chance on picking up an additional \$15,000.00 per year at the outside. I assured Bud [respondent Raymond] that I would report the

facts to Mr. Sargent as I saw them and that I felt sure that no changes would be made in this area at this time. However, I made sure that he understood that we will expect his continued support as he indicated and that any sharp fall-off would cause us no end of concern. Bud was optimistic and said he could see no reason to expect any decrease and again pledged his continued support.

25. Bearings Service Company of Pittsburgh, Pennsylvania, is a bearing specialist with annual sales in excess of one million dollars. This distributor of bearings has been in business in that same location since January 1933. In 1953 it applied to Norma-Hoffman for a distributorship, and the granting thereof was delayed for approximately five years because of respondents' opposition. Mr. Chase, president of Bearings Service Company, testified that he was in Sargent's office at Norma-Hoffman's plant in Stamford, Connecticut, in 1953, renewing his request for a distributorship. He testified further that on that occasion Mr. Sargent left the office for a few minutes, and then returned and informed him that "Joe [Bruening] says nothing doing". The conclusion is obvious.

26. In 1953 the above-named distributor, Bearings Service Company of Pittsburgh, had its franchise with McGill Manufacturing Company, Inc., cancelled. Mr. William F. Chase, president of Bearings Service Company, testified that:

The notice of cancellation was brought to me personally by Mr. V. J. Brownell who was at that time Sales Manager for McGill. While the notice stated that they had appointed Pennsylvania Bearings as the exclusive distributor, Mr. Brownell's remarks were that the buying power of the combination of Pennsylvania Bearings, Ohio Ball Bearings, Indiana Bearings, and West Virginia Bearings, at that time, was such that he had no alternative except to cancel us.

27. In 1953 McGill Manufacturing Company, Inc., also cancelled the authorized distributorship of Kentucky Bearing Service of Louisville, Kentucky. A letter written by John F. Raymond, then president of Indiana Bearings, Division of Bearings Specialties, Inc., reveals the pressure he brought to bear on the manufacturer to disfranchise this competitor. He wrote in part as follows:

This will in turn prove to you that with the cooperation you have given us in Louisville by "canning" one distributor, that a job can be done * * *, and we hope that sometime in the future you will find reason to "can" the other account that you have in Louisville, because they are very sharp with their pencil and have many ways of getting prices to the user. We have not been able to get definite information on McGill price irregularities, but we will, and will let you know in detail.

28. Excerpts from correspondence between officials of McGill Manufacturing Company and respondent Edward F. Brown, vice president of Tennessee Bearings, Inc., show that McGill cancelled the distributorship of Volunteer Bearings and Transmission Com-

pany, Inc., Chattanooga, Tennessee, one of respondents' competitors, at the insistence of the respondents. Part of this correspondence is as follows:

Keith Brownell asked that I write to you in reply to your letter of January 5, after his telephone conversation of January 14, regarding your store in Chattanooga.

We are removing Volunteer Bearings and Transmission Company, Inc., at Chattanooga as one of our jobbers and have requested that they no longer advertise that they are an authorized distributor of our bearings.

This letter was forwarded by respondent Brown in Knoxville, Tennessee, to respondent Bruening in Cleveland, Ohio, who noted thereon: "Very good. J.M.B."

29. The evidence shows that in 1952 the distributorship of Bearings, Inc., Louisville, Kentucky, a competitor of the respondents in that area, was cancelled by SKF Industries, Inc., after 35 years as its distributor. Two years later, in an interoffice memorandum from Mr. Bruening to Mr. Raymond, Mr. Bruening states:

As for Bearings, Inc. * * * Sometimes I think we should have let 'em have SKF—they couldn't make as much on 'em when they chiseled as they now make on two off brands. * * * J.M.B.

We think this is clear evidence that respondents were responsible for this cancellation also.

30. In 1955 Max Lammers, the manager of respondent Dixie Bearings, Inc., in New Orleans, Louisiana, requested the Rollaway Bearing Company to cancel the distributorship of respondents' competitor, Industrial Bearings Company. Shortly thereafter, Mr. Bruening, president of the respondent company in Cleveland, joined the effort by writing to Rollaway Bearings Company, Inc., himself, suggesting that they should have just one bearings distributor in New Orleans, and that he would like for that distributor to be Dixie Bearings, Inc. Soon thereafter Rollaway made the requested change of distributors.

31. The evidence also shows that respondents' officials endeavored to persuade Fafnir Bearings, Inc., to prevent its authorized distributors, other than respondents, from shipping Fafnir bearings to unauthorized distributors competing with respondents in the Louisiana area. Excerpts from correspondence between respondent Raymond and officials of Fafnir reveal very clearly the respondents' efforts to eliminate this type of competition. On May 4, 1953, respondent Raymond wrote to Fafnir, attention of Ray M. Page, in part as follows:

Week before last I was in Louisiana working with Dixie Bearings, Inc., at New Orleans and Baton Rouge. It "burns me up" when I learn of the loose

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distribution that Fafnir has in the South, and I think something should be done about it immediately.

* * * * *

Will you please check into this situation immediately and see that Bearings Chain and Supply stop "bootlegging" Fafnir bearings into New Orleans and Baton Rouge territories.

On May 8, 1953, respondent Raymond again wrote to Fafnir, as follows:

Thanks very much for your letter of May 6, in reply to the carbon copy of our letter of May 4, regarding the "bootlegging" of Fafnir bearings in Baton Rouge.

We appreciate your support in this matter, and you can count on us to carry this thing through to some conclusion.

This letter (Commission's Exhibit 78) bears the hand-written notation: "Did Ray Page answer? J.M.B.". This notation by respondent Bruening, especially, as well as the testimony of respondent Raymond, shows that respondents were working together as corporations and individuals in following a planned common course of action designed to eliminate competition. On June 29, 1954, Mr. Page of Fafnir wrote to J. M. O'Connell of corporate respondent Dixie Bearings, Incorporated, of New Orleans, Louisiana, as follows:

Thanks for your letter of June 22nd calling to our attention that Baton Rouge is doing an infinitely better job for Fafnir on radial bearings for the first five months of this year as against the same period last year. Naturally, we are pleased to see this increase, * * *.

Please be assured that we will immediately go to work on drying up Louisiana Bearings' source on Fafnir bearings.

These exhibits prove beyond question that respondents were making a joint and concerted effort to eliminate competition.

XIII. Conclusions on Count I

32. From such evidence, we must find that from time to time, respondent Bearings, Inc. (Delaware), acting individually or through its wholly owned subsidiaries, has engaged in acts and practices for the purpose and with the objective of monopolizing, or attempting to monopolize, the sale and distribution of bearing products, and of eliminating or suppressing, or attempting to eliminate or suppress, the competition of others engaged in the sale and distribution of the same or similar products, and of otherwise furthering the leading and dominant position of the corporate respondents in the sale and distribution of bearing products in commerce.

33. We further find that respondents have coerced, intimidated, or otherwise compelled certain manufacturing suppliers of the afore-

said bearing products (a) to refuse to deal with or otherwise supply such bearing products to some of the corporate respondents' competitors; (b) to cancel certain franchises given by such manufacturing suppliers to some of the corporate respondents' competitors; and (c) to refrain from offering or giving such franchises to some of the corporate respondents' competitors, resulting in unlawful restraint, lessening or elimination of competition in the sale and distribution of bearing products in commerce, in violation of § 5 of the Federal Trade Commission Act.

XIV. Summary and Conclusions on Count II

34. As heretofore pointed out, Count II charges that the corporate respondents, acting through their corporate officers, conspired to pursue and did pursue a planned common course of action between and among themselves, for the purpose of restraining, lessening or eliminating competition and creating in themselves a monopoly in the sale and distribution of bearing products, in violation of § 5 of the Federal Trade Commission Act.

35. The evidence shows that during the period of time here involved, there was a continuous exchange of business information between the officers of the respondents' subsidiary corporations and those of the parent corporation, with the officers of the parent corporation directing the overall policies and practices of all the respondent corporations. The evidence shows, moreover, that the officers of the parent corporation were specifically informed by Mr. Brown, vice president of respondent Dixie Bearings, Inc., and by Mr. John F. Raymond, vice president of respondent Kentucky Ball & Roller Bearing Co., of competitive problems in their areas. There is also evidence that there were exchanges of information concerning such problems, and their efforts to eliminate objectionable competition, between Mr. Brown and Mr. Raymond, as well as between them and Mr. Bruening, president of the parent corporation. All of the respondents, individuals as well as corporations, followed a common pattern of business and a common policy designed to hinder or eliminate certain competitors. The Supreme Court, in *United States v. Paramount Pictures, Inc., et al.*, 334 U.S. 131, stated:

It is not necessary to find an express agreement in order to find a conspiracy. It is enough that a concert of action is contemplated and that the defendants conform to the arrangement.

36. The fact that respondents are a close-knit group does not immunize them against their responsibility for intra-enterprise conspiracy which they create, just as their manufacturer-suppliers and

their competitors were not immunized against the injurious result of such conspiracy. The Supreme Court found conspiracy within the so-called "single enterprises" in the "movie cases". In *United States v. Crescent Amusement Company*, 323 U.S. 173 (1944), and in *United States v. Griffith*, 334 U.S. 100 (1948), the conspiracies included affiliated corporations and their officers. In *Chine Chain Theaters v. United States*, 334 U.S. 110 (1948), the conspiracy was found to exist between parent and subsidiary corporations, together with their officers, the Court stating in part as follows:

* * * The concerted action of the parent company, its subsidiaries, and the named officers and directors in that endeavor was a conspiracy which was not immunized by reason of the fact that the members were closely affiliated rather than independent.

37. The above decisions are exactly in point when considered in conjunction with the facts of the present proceeding, and we are therefore compelled to conclude that the corporate respondents, acting through their corporate officers, entered into, maintained, and effectuated an understanding, agreement, combination and conspiracy to pursue, and they have pursued, a planned common course of action between and among themselves to adopt and adhere to certain practices and policies to restrain, lessen, and eliminate competition between themselves and with others in the sale and distribution of the aforesaid bearing products, in commerce; and otherwise to further the leading and dominant position of the corporate respondents in the sale and distribution of the aforesaid products in commerce.

38. We further find that the acts and practices, as hereinbefore set forth, have had and now have the tendency and capacity unlawfully to restrain, lessen and eliminate competition in the sale and distribution of the aforesaid products, in commerce; unreasonably to restrain competition among the manufacturing suppliers of such products; to coerce such suppliers to deal on respondents' terms; and to prevent the corporate respondents' competitors from obtaining in commerce, at competitive and nondiscriminatory prices, supplies of certain nationally recognized popular lines of the aforesaid bearing products, all in violation of § 5 of the Federal Trade Commission Act.

39. Individual respondent John F. Raymond has moved that the complaint be dismissed as to him because he has not, since January 16, 1958, been associated with any of the other respondents herein, nor has he, since that time, participated in the acts and practices herein found to be violative of law. His participation with the other respondents in the past, however, and the existing reasonable possi-

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bility of a resumption of such acts and practices by him in the future, require that his motion be, and it hereby is, denied.

40. It is obvious that in the interest of the public, the practices herein found to be violative of law should be terminated, and their repetition prohibited. Accordingly,

It is ordered, That respondents Bearings, Inc. (Delaware), Balanrol Corp., Dixie Bearings, Incorporated, Kentucky Ball & Roller Bearing Co., Tennessee Bearings, Inc., and Carolina Bearings, Inc., all corporations, and their respective officers, agents, representatives and employees; Joseph M. Bruening and William J. Scully, individually and as officers of said corporations; John F. Raymond, individually and as a former officer of corporate respondents Bearings, Inc. (Delaware) and Kentucky Ball & Roller Bearing Co.; and Edward F. Brown, individually and as an officer of corporate respondent Dixie Bearings, Incorporated, directly or through any corporate or other device, in connection with the purchase, resale and distribution of ball, roller, anti-friction, anti-thrust, and thrust bearings, transmission units, bearing specialties, accessories, and other related bearing products, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Coercing, intimidating, or otherwise compelling, or attempting to compel, manufacturing suppliers of the aforementioned bearing products:

- a. To refuse to deal with or otherwise supply such bearing products to respondents' competitors;

- b. To cancel franchises given by such manufacturing suppliers to respondents' competitors to sell, distribute, or otherwise market such bearing products;

- c. To refrain from offering or giving such franchises to respondents' competitors;

2. Preventing, or attempting in any way to prevent, their competitors from obtaining, in commerce, at competitive and non-discriminatory prices, supplies of certain nationally-recognized, popular lines of the aforesaid bearing products;

3. Devising, entering into, continuing, cooperating in, or carrying out any planned common course of action, mutual agreement, understanding, combination, or conspiracy between and among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the acts and practices prohibited by Paragraphs 1 and 2 hereof.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed insofar as it relates to respondent, the former corporation, Bearings, Inc. (Maryland).

OPINION OF THE COMMISSION

By DIXON, *Commissioner*:

The respondents are charged with violating Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (1958), 38 Stat. 719 (1914), as amended, 52 Stat. 111 (1938), and they have appealed from an order to cease and desist entered by the hearing examiner.

The complaint charges the respondents with using their purchasing power as an economic weapon against various bearings manufacturers to prevent the establishment of new distributorships and to bring about the cancellation of certain already existing distributorships with which the respondents were required to compete for sales. The respondents are further charged with trying to create a monopoly in the bearings replacement market by excluding and limiting potential and actual competition through the device of employing coercive tactics, such as threats to withdraw their purchases from bearings manufacturers who did not make distribution decisions to the respondents' liking.

In a separate count, the complaint also charges the respondents with engaging in an "intra-enterprise" conspiracy to bring about the results just described. The charge in this count is that the respondents conspired not with bearings manufacturers or with other bearings distributors, but amongst themselves to use economic pressure to suppress competition.

The hearing examiner found that Section 5 had been violated on both the economic coercion and conspiracy charges and entered an order to cease and desist. Respondents base this appeal primarily on the ground that substantial evidence to support the order is lacking in the record.

The complaint in this case was issued on April 29, 1958. Hearings were shortly thereafter scheduled and the first of these was held in Cleveland, Ohio, on September 17, 1958; this was followed by other hearings in several cities around the country. The taking of evidence was completed and the record closed at the final hearing held in Washington, D.C., on November 21, 1961. The hearing examiner then commenced consideration of the record that had been compiled and on March 7, 1962, filed his initial decision and order to cease and desist.

On April 13, 1962, respondents filed a petition for review of the initial decision, which petition we granted on May 10, 1962. Both

sides then filed briefs and we heard oral argument on September 20, 1962.

During the course of our detailed examination of the record on appeal, we could not fail to be impressed by the fact that the vast majority of the evidence has to do with incidents, events and conversations, the most recent of which took place in 1957. Moreover, that portion of the evidence most relevant to the charges of the complaint, upon which the hearing examiner relied and upon which we must also rely if we are to adopt the initial decision, relates to the years 1952-1956.

In effect what we are faced with is a record in which the alleged violations of Section 5 took place as much as fourteen years ago. We have no way of knowing from this record what the current business practices of the respondents are or, assuming *arguendo* that what the respondents did was violative of the Federal Trade Commission Act, whether they have continued their oppressive tactics against their competition. It is also noted that there have been several changes in the corporate organization and relationship of the respondents: of the seven named corporate respondents, one has been dissolved and three are totally inactive, their corporate status being retained solely to protect their trade names. Further, respondent Raymond, who is essentially involved in the alleged violations in this case, has not been connected in any capacity with the other respondents for some six years now. Although named in the order entered by the hearing examiner, Raymond took no appeal from that order. Despite the fact that on March 26, 1962, we entered our own order docketing this appeal also as to Raymond, he has not been represented by the counsel who appeared for the other respondents, nor has he personally taken any part in this appeal.

It is well settled that respondents who appear before this Commission cannot preclude us from entering an order by stating that violations once committed have now been discontinued. If the rule were otherwise, the Federal Trade Commission would be rendered impotent for as soon as a complaint was issued, a respondent could defeat its effect by saying "we stopped yesterday." Therefore, even if the respondents here have in fact ceased their alleged anti-competitive practices, this would not be a defense if the record establishes the violations. However, our decision here does not rest upon the defense of discontinuance, which defense it must be acknowledged the respondents do not strongly press upon us, but rather on our belief that it would serve no useful purpose to make an adjudication on a record composed as this one is of cold and stale evidence.

Lest this opinion be misconstrued, we wish to make it clear that we do not in any way pass on the merits of this case one way or the

other. Should facts later present themselves indicating that the respondents are in violation of any statute administered by this Commission, action on our part will not be slow in forthcoming.

For now we hold only that, because of the lapse of time that has occurred since these alleged violations have taken place, the initial decision of the hearing examiner is hereby set aside and the complaint, insofar as the hearing examiner has not already done so, is ordered to be and is hereby dismissed. Rules of Practice § 3.24(a), (b), 28 Fed. Reg. 7080, 7091 (July 11, 1963).

Commissioner Anderson concurred in the result and Commissioner MacIntyre did not concur.

FINAL ORDER

This matter having been heard by the Commission upon respondents' appeal from the hearing examiner's initial decision, and briefs and oral argument in support of said appeal and in opposition thereto; and

The Commission, for the reasons stated in the accompanying opinion, having rendered its decision ordering that the initial decision and the complaint, insofar as the hearing examiner has not already done so, be dismissed:

It is therefore ordered, That the initial decision and the complaint be, and they hereby are, dismissed.

By the Commission, Commissioner Anderson concurring in the result and Commissioner MacIntyre not concurring.