

advertising price.

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
ENDICOTT-JOHNSON CORP.

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

Docket C-1009. Complaint, Oct. 29, 1965—Decision, Oct. 29, 1965

Consent order requiring one of the Nation's largest shoe manufacturers with its principal place of business located in Endicott, N. Y., to cease and desist from acquiring any interest in any domestic concern engaged in manufacturing shoes and footwear for the next 20 years, without the prior approval of the Commission.

COMPLAINT

1. The Federal Trade Commission, having reason to believe that the party respondent named above, and hereinafter more particularly designated and described, has violated and is now violating provisions of Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. § 45 (a) (1)), and of section 7 of the Clayton Act, as amended, (15 U.S.C. §18), and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint charging as follows:

Endicott-Johnson Corporation

2. Respondent, Endicott-Johnson Corporation (hereinafter sometimes referred to as Endicott-Johnson) is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 1100 East Main Street, Endicott, New York.

Complaint

68 F.T.C.

3. Endicott-Johnson is engaged in commerce as "commerce" is defined in the Clayton Act, as amended, and in the Federal Trade Commission Act.

4. Endicott-Johnson is engaged principally in the manufacture, sale and distribution of men's, women's and children's shoes and footwear. Endicott-Johnson produces most of its own leather and other shoe raw materials and components. It presently produces shoes in over two dozen shoe manufacturing plants. Of the shoes produced by Endicott-Johnson, approximately one-third are sold to mail order houses and large chain stores, approximately one-third are sold to small independent shoe retailers, and approximately one-third are retailed through the approximately 550 retail shoe outlets owned and operated by Endicott-Johnson itself.

5. In 1963, Endicott-Johnson had total dollar sales in excess of \$118,000,000, and assets of over \$85,000,000. In that year, Endicott-Johnson was the fourth largest manufacturer of shoes in the United States when measured by the number of pairs of shoes manufactured, and the fifth largest company when measured in terms of dollar sales.

6. Endicott-Johnson sells men's, women's and children's shoes under various trade names, including the following: "Johnsonian," "Guide Step," "Dobie's," "E-Jay," "Cool Notes," "Ranger," "Fashion 10," and "High Society."

Nobil Shoe Company

7. The Nobil Shoe Company (hereinafter sometimes referred to as Nobil) was a corporation organized and existing under the laws of the State of Ohio, and its office and principal place of business was located at 750 East Talmadge Avenue, Akron, Ohio.

8. Nobil operated 121 retail shoe outlets consisting of retail, family type shoe stores, or of leased shoe departments. Nobil's stores were located in Ohio, Michigan, Indiana, Pennsylvania, Wisconsin and Illinois. Nobil did not own or operate any shoe manufacturing facilities. In 1964 Nobil had sales of approximately \$17,000,000, and assets of \$6,564,000.

Trade and Commerce

9. Although domestic shoe manufacturing is spread among many companies, a small number of companies occupy a commanding position in the shoe industry. There are between 700 and 1,000 manufacturers of shoes in the United States, but just a few large companies control a sizeable segment of total industry production, while the balance is divided among hundreds of smaller companies

having only very tiny shares. In 1962 the four largest companies accounted for 23.6% of total industry production, the fifty largest companies accounted for 52.5% of total industry production.

10. Endicott-Johnson is one of the few large companies controlling a comparatively large segment of the total market. In 1962 Endicott-Johnson produced over 28,000,000 pairs of shoes, which made it the fourth largest manufacturer of shoes in the United States, with a total market share exceeded only by International Shoe Company, Brown Shoe Company and Genesco.

11. In 1963 "shoe stores," or stores and retail outlets which deal primarily in the sale of shoes, accounted for more than 50% of the total market for shoes sold and distributed in the United States. A very large proportion of shoe stores in this country are "factory owned" or owned and operated by companies manufacturing shoes.

12. Furthermore, there has been a definite trend since 1945 for shoe manufacturers, particularly the largest shoe manufacturers, to acquire retail outlets. International Shoe Company, the leading producer in the industry had no retail outlets in 1945, but by 1956 had acquired 130 retail outlets, and today is estimated to have over 700 retail units. Genesco had only 80 retail outlets in 1945, while today it is estimated to have more than 1,000 retail outlets. Shoe Corporation of America during this same period increased its retail outlets from 301 to approximately 350. Melville Shoe Company has increased its retail outlets from 526 to about 1,275. And Brown Shoe Company with no retail outlets of its own prior to 1951, is estimated to have in excess of 715 outlets today. In addition, between 1950 and 1956 nine independent shoe store chains operating 1,114 retail shoe stores were found to have become subsidiaries of these large firms, and to have ceased their independent operations.

13. There also exists a definite trend for the parent manufacturers of such acquired shoe outlets to supply a large and increasing proportion of the retail outlets' needs, thereby foreclosing other shoe manufacturers, particularly independent producers, from competing for the business of these retail stores.

14. Since 1953 Endicott-Johnson has made four acquisitions of companies operating retail shoe stores. In 1953 Endicott-Johnson acquired Liberty Shoe Stores, Inc., for a consideration of \$300,000. Liberty Shoe Stores, Inc. operated nine shoe stores in the Buffalo, New York area. In 1955 Endicott-Johnson acquired Slaters Boot Shops for approximately \$800,000. Slaters Boot Shops operated 11 stores in Louisiana and Florida. In 1958 Endicott-Johnson acquired

Complaint

68 F.T.C.

Rival Shoe Co., Inc. for approximately \$356,000. Rival Shoe Co., Inc. operated 11 retail shoe stores in New York City and Philadelphia. In 1962 Endicott-Johnson acquired Brasley-Cole Shoe Co. Ltd., for a consideration of \$2,700,000. Brasley-Cole Shoe Co., Ltd. operated 83 retail shoe stores in California, New Mexico and Texas.

15. It is estimated that there are twenty-three companies in the United States that own 100 or more retail shoe outlets. Endicott-Johnson ranked seventh among these companies in number of retail outlets, while Nobil ranked twentieth. Endicott-Johnson and Nobil combined rank sixth.

16. These twenty-three companies, each of which operated over 100 retail shoe outlets, had in the aggregate, about 9,000 retail shoe outlets. Of these twenty-three companies, fourteen were shoe manufacturers as well as retailers, while nine were retailers only. Of the approximately 9,000 shoe stores owned by this group of companies, the fourteen manufacturer-retailers owned 75% of all the stores, while the retailer group accounted for only 25% of such stores. Nobil was the ninth ranking non-manufacturing shoe retailer. The addition of the Nobil stores to the manufacturer-retailer group lowers the number of units operated by the non-manufacturing retailers with over one hundred stores by nearly 6%. Nobil was a substantial independent shoe retailer, and accounted for an appreciable part of the independent shoe retailer business.

17. Endicott-Johnson operated retail shoe stores in all of the states in which Nobil operated retail stores. The stores operated by Endicott-Johnson which were located in the same States as were Nobil stores, had total sales, in 1963, of \$12,389,000.

18. There were twenty-six cities, in five States, in which both Endicott-Johnson and Nobil operated retail outlets. Those cities were Altoona, Erie, New Kensington, Pittsburgh, and Scranton, Pennsylvania; Alliance, Cleveland, Lorain, Mansfield, Massillon, Mount Vernon, Sandusky, Stow, and Youngstown, Ohio; Anderson, Indianapolis, and Marion, Indiana; Aurora, Illinois; Ann Arbor, Battle Creek, Bay City, Benton Harbor, Detroit, Lincoln Park, Muskegon, Port Huron and Saginaw, Michigan. Endicott-Johnson operated 52 retail shoe store outlets with aggregate sales of \$2,400,000, and Nobil operated 39 retail shoe outlets with aggregate sales of \$5,400,000 in the 26 cities named above.

Violations Charged

In September 1965, Endicott-Johnson Corporation acquired all

of the stock of Nobil Shoe Company for a consideration of \$9,400,000.

A. Violation of Section 7 of the Clayton Act.

19. The effect of the aforesaid acquisition of Nobil Shoe Company by Endicott-Johnson Corporation may be substantially to lessen competition and to create a monopoly in the manufacture and sale of shoes and footwear in the United States as a whole in the following ways among others:

(1) Competition between Endicott-Johnson and other manufacturers of shoes and footwear has been eliminated or restricted;

(2) An independent purchaser of shoes and footwear has been eliminated;

(3) A portion of the market for shoes and footwear has been acquired by Endicott-Johnson thereby foreclosing other manufacturers of shoes and footwear from effectively competing for the business of the acquired company;

(4) In an industry already characterized by the existence of a trend toward vertical integration between manufacturers and retailers, the acquisition has further reduced the number of available independent purchasers of shoes;

(5) The trend towards vertical integration between manufacturers and retailers has been, or may be, encouraged or stimulated;

(6) The level of integration between the shoe and footwear manufacturing industry and shoe and footwear retailing has been increased;

(7) The entry of new competitive entities into the manufacture and sale of shoes and footwear has been made more difficult.

20. A further effect of the aforesaid acquisition of Nobil Shoe Company by Endicott-Johnson Corporation may be substantially to lessen competition or to tend to create a monopoly in the sale of shoes at retail in the United States as a whole, and in that area of the country which consists of all or any part of the States of Pennsylvania, Ohio, Indiana, Illinois, and Michigan, in the following ways among others:

(1) Actual or potential competition between Endicott-Johnson and Nobil has been eliminated;

(2) Nobil has been eliminated as an independent competitive factor;

(3) Concentration has been increased;

(4) The members of the consuming public will be denied the benefit of free and unrestricted competition.

Decision and Order

68 F.T.C.

21. The acquisition of Nobil Shoe Company constitutes a violation of Section 7 of the Clayton Act (15 U.S.C. § 18), as amended.

B. Violation of Section 5 of the Federal Trade Commission Act.

22. The combination by which Endicott-Johnson and Nobil undertook to merge Nobil into Endicott-Johnson is an unreasonable restraint of trade and commerce in the retail sale of shoes and footwear, throughout the United States or certain sections thereof, in violation of Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. § 45(a)(1)).

23. The acquisition of Nobil, and the previous acquisitions by Endicott-Johnson, taken as a whole, have hindered, and have a dangerous tendency to hinder, competition unduly, and constitute unfair acts and practices, in commerce, in violation of Section 5 of the Federal Trade Commission Act.

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 with violation of the Federal Trade Commission Act, 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 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 Endicott-Johnson Corporation is a corporation organized, existing and doing business under the laws of the State of New York with its office and principal place of business located at 1100 East Main Street, Endicott, New York.

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

Complaint

ORDER

It is ordered, That for a period of twenty years after the service upon it of this Order, Endicott-Johnson Corporation shall cease and desist from acquiring, directly or indirectly, through subsidiaries, or otherwise, the whole or any part of the share capital, or assets (other than products sold or purchased in the course of business), of, or any other interest in, any domestic concern, corporate or non-corporate, engaged principally or as one of its major commodity lines at the time of such acquisition, in any State of the United States or the District of Columbia, in the business of manufacturing or selling shoes or footwear, without the prior approval of the Federal Trade Commission.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.
