

IN THE MATTER OF
FAIRCHILD CAMERA AND INSTRUMENT
CORPORATION ET AL.

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

Docket C-1013. Complaint, Nov. 10, 1965—Decision, Nov. 10, 1965

Consent order requiring a manufacturer of photoengraving equipment and related products with headquarters in Syosset, N.Y., to cease attempting to lessen competition through threatening to breach the guarantees on its equipment, making adjustments on such equipment so that plastic plates of a competitor would cause malfunctions, falsely disparaging competitors' products, and refusing to sell or make timely shipments to customers also buying from competing firms.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. Sec. 41, et seq.) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof, and hereinafter more particularly described, have violated Section 5 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 as follows:

PARAGRAPH 1. (1) Respondent Fairchild Camera and Instrument Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 300 Robbins Lane, Syosset, Long Island, New York.

(2) Respondent Fairchild Credit Corporation, a wholly owned subsidiary of Fairchild Camera and Instrument Corporation, is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 221 Fairchild Drive, Plainview, Long Island, New York.

PAR. 2. (1) Respondents are and for the five (5) years last past or more have been engaged in the manufacture, sale and lease of graphic equipment, including printing presses, teletype setter machines, and electronic engraving machines. Respondents also sell materials for use in conjunction with the above equipment, including plastic engraving plates, and metal engraving styli. This equipment is marketed and serviced throughout the United States through a network of local salesmen, and customer engineers and in conducting this portion of their business respondents operate under the name of Fairchild Graphic Equipment, an unincorporated division of Fairchild Camera and Instrument Corporation.

(2) Fairchild Credit Corporation is and has been engaged in the maintenance of electronic engraving machines leased by Fairchild Camera and Instrument Corporation to users of printing and engraving equipment.

(3) Respondents have the major share of the Electronic engraving machines market. In 1963, Fairchild engravers were installed in more than 40% of the newspapers in the United States. As of January 1963 this market was shared by only three competitors, with a total of 540 machines in use. Prior to about 1960, respondents were virtually the sole suppliers of engraving materials, including engraving plastics, required for use with Fairchild engraving machines. In 1962 Fairchild Camera and Instrument Corporation had gross receipts of \$101,550,000.00.

(4) In or about 1960, two other corporate suppliers of engraving plastics entered the field of manufacturing and selling engraving materials for use with Fairchild engraving machines.

PAR. 3. The respondents in the course and conduct of the aforesaid business sell and transport or cause to be transported the aforementioned engraving materials, including plastic plates and metal engraving styli, required for use with respondents' photoengraving equipment, to their customers in States other than the States in which said engraving materials are manufactured. There has been and is now a continuous and substantial trade in commerce in said engraving materials and products between and among the several States of the United States and the District of Columbia within the intent and meaning of the Federal Trade Commission Act.

PAR. 4. Respondents, in the course and conduct of their businesses, in commerce, as aforesaid, are now and have been at all times mentioned herein, in competition with other corporations, individuals, partnerships and firms likewise engaged in the sale and distribution of similar products as described herein except to the extent that such competition has been hindered, lessened, restricted, restrained and forestalled by the unfair acts and practices and unfair methods of competition herein set forth.

PAR. 5. During the years since 1959, the respondents have been and are now engaged in, and have used and are now using, unfair methods of competition, and unfair acts and practices in commerce, as "commerce" is defined in the Federal Trade Commission Act. Included among and illustrative of such unfair acts and practices are:

(1) Threatening to refuse, and refusing to honor the guarantee and service provisions of their contracts with lessees and owners of respondents' photoengraving machines who had purchased engraving materials from competitors of respondents.

(2) Instructing or causing their salesmen and customer engineers or other employees or agents to remove, or employ coercive or collusive means to effect the removal of, used and new styli from the premises of the users of respondents' photoengraving machines or to destroy such styli for the purpose of, or with the effect of making these products unavailable for use on said engraving machines in connection with plastic plates supplied by or purchased from competitors of respondents.

(3) Falsely disparaging or making false or misleading representations concerning the effectiveness or quality of a competitor's engraving materials by the use of statements disseminated in any

manner to purchasers or prospective purchasers of engraving materials.

(4) Causing the heat on respondents' photoengraving machines to be raised to an unnecessarily high level so that plastic produced and supplied by competitors of respondents, being less resistant to extreme heat, burned, scorched and blistered when used on such machines.

(5) Causing unnecessary adjustments to be made to the "bounce" on the cutter-head of the engraving machine and on the styli on respondents' photoengraving machines, so that styli purchased from or supplied by competitors of respondents tended to engrave distorted and uncertain images.

(6) Threatening to refuse to sell, or refusing to sell, or to make timely shipment of, styli to engraving machine users who had purchased engraving materials and supplies from competitors of respondents.

(7) Furnishing, and instructing, their salesmen and customer engineers to furnish free styli to users of Fairchild plastic while at the same time charging the standard price for the styli to users of plastic purchased from respondents' competitors.

(8) Selling and making contracts or agreements for the sale or lease of respondents' products on the condition, agreement, or understanding that the purchaser thereof shall not purchase or use similar products supplied by any competitor or competitors of respondents.

(9) Enforcing and continuing in effect, requirements, conditions, agreements, or understandings with customers of respondents to the effect that such customers or purchasers shall not purchase or use similar products supplied by any competitors of respondents.

PAR. 6. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, and the acts and practices engaged in and followed pursuant thereof and in furtherance and implementation thereof by respondents as hereinbefore alleged, constitute unfair acts, practices and methods of competition, the effect of which has been, is now, or may be to injure, impair, frustrate, eliminate, or prevent competition between respondents and others engaged in the manufacture, distribution and selling of engraving materials, or to tend to create a monopoly in respondents in the manufacture, distribution and selling of such products or to unduly obstruct, hamper or impede the current of commerce in such products between and among the several states or to deprive members of the public who have purchased, do purchase or may purchase such engraving materials of the advantage

and opportunity to so purchase from manufacturers, distributors or vendors in active and bona fide competition, unimpeded by artificially imposed restraints, or to curtail the breadth of choice of vendors from which such members of the purchasing public may buy, all in derogation of the public interest and 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 Restraint of Trade 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 Fairchild Camera and Instrument Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 300 Robbins Lane, Syosset, Long Island, New York.

Respondent Fairchild Credit Corporation is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 221 Fairchild Drive, Plainview, Long Island, New York.

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 Fairchild Camera and Instrument Corporation, a corporation, and Fairchild Credit Corporation, a

corporation, and respondents' officers, employees, agents, or representatives, successors and assigns, directly or through any corporate or other device, in or in connection with the sale, offering for sale or lease or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of photoengraving equipment and of products (hereinafter referred to as "respondents' products") used in connection with photoengraving equipment, including, but not limited to, plates, plastics and styli, do forthwith cease and desist from:

1. Threatening to breach, or actually breaching provisions of contracts guaranteeing maintenance or otherwise relating to the servicing of photoengraving equipment leased or sold to customers, for the reason that such customers are known to respondents to be, or are believed to be, purchasing or using a competitor's engraving materials.

2. Removing, destroying or employing coercive or collusive means to effect the removal of styli from the premises of the users of respondents' photoengraving machines for the purpose of or with the effect of making these products unavailable for use on said engraving machines in connection with plastic plates supplied by or purchased from competitors of respondents.

3. Falsely disparaging or making false or misleading representations concerning the effectiveness or quality of a competitor's engraving materials sold or distributed in competition with respondents' products by the use of statements disseminated in any manner to purchasers or prospective purchasers of such engraving materials.

4. Interfering with the normal or usual processes or operations of customer photoengraving equipment in order to render competitive products which are otherwise capable of use with such equipment inoperative, defective or inferior in comparison with respondents' products.

5. Threatening to refuse to sell, or refusing to sell, or failing to make timely shipment of, merchandise to customers for the reason that such customers are known to respondents to be, or are believed to be, using engraving materials sold or distributed in competition with respondents' products.

6. Levying charges for merchandise ordered by users of products sold or distributed in competition with respondents' products while supplying the same kind of merchandise without charge to customers using respondents' products exclusively.

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7. Selling or making any contract or agreement for the lease or sale of respondents' products or of respondents' photoengraving equipment on the agreement or understanding that the lessee or purchaser thereof shall not purchase or use products sold or distributed in competition with respondents' products, or enforcing or continuing in operation or effect, any such agreement or understanding.

It is further ordered, That respondent shall, within sixty (60) days after service upon them of this Order, serve by mail a copy of said Order upon all its customers, who have, since January 1, 1960, purchased or leased photoengraving equipment or have purchased respondents' products.

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.
