
IN THE MATTER OF
COLE NATIONAL CORPORATION ET AL.

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

Docket 8701. Complaint, Aug. 4, 1966—Decision, June 30, 1967

Consent order prohibiting a Cleveland, Ohio, wholesaler of replacement keys,
key blanks and key duplicating machines from acquiring any competitor
for a period of 10 years without prior Commission approval.

COMPLAINT

The Federal Trade Commission, having reason to believe that
Cole National Corporation and the Independent Lock Company
have violated the provisions of Section 7 of the Clayton Act and
Section 5(a) (1) of the Federal Trade Commission Act, 15 U.S.C.
§§ 18 and 45(a) (1), by reason of the acquisition of the independ-

* Order amending complaint, p. 1630 herein.

ent Lock Company by Cole National Corporation, and other acts and practices engaged in by respondents, and that a proceeding in respect thereof would be to the interest of the public, issues this complaint, stating its charges as follows:

I. DEFINITIONS

1. For the purposes of this complaint, the following definitions are applicable:

(a) "Key"—a metal instrument which will cause a lock to operate.

(b) "Replacement key"—a duplicate of another key, usually of a key which was originally sold, or otherwise transferred, with the lock which the key operates.

(c) "Key blank"—a milled, cast, and/or stamped piece of metal, which will enter into a lock (in most cases) but will not operate it, and from which a key can be made.

(d) "Key duplicating machine"—(i) a machine which will make a replacement key, or (ii) a device used principally by locksmiths which will produce a key from a given set of numbers or letters.

II. THE RESPONDENTS

A. *Cole National Corporation*

2. Respondent Cole National Corporation ("Cole National") is a corporation organized and existing under the laws of the State of Ohio, with its principal office and principal place of business at 5777 Grant Avenue, Cleveland, Ohio.

3. Cole National operates leased key departments located in department stores, in shopping centers and in the stores of major variety and merchandise chains. Through such leased departments, Cole National sells replacement keys to the public.

4. Cole National also sells key blanks to approximately 40,000 retail customers. Such customers include retail chain stores as well as independent retailers.

5. Key blanks sold by Cole National are either manufactured by it or purchased from outside sources. For a number of years, the Independent Lock Company, the acquisition of which is challenged herein, supplied the bulk of Cole National's requirements of key blanks, pursuant to a long-term contract.

6. Cole National designs and manufactures electric key duplicating machines for use in its own leased departments and for distribution to key duplicating departments operated by others.

Most of the major components are purchased from outside sources.

7. In addition to leased key departments, Cole National operates leased optical and shoe repair departments. The company also sells cutlery, key chains and novelty items and manufactures gift and premium merchandise.

8. Cole National's total sales of key blanks and replacement keys amounted to over \$6 million in 1963, the year prior to the challenged acquisition. The company's overall sales for the first ten months of that year were \$15 million.

9. Cole National is and for many years has been extensively engaged in the purchase, sale and shipment of key blanks and other products across State lines, and it is engaged in "commerce" within the meaning of the Clayton and Federal Trade Commission Acts.

B. Independent Lock Company

10. Respondent Independent Lock Company ("Ilco") is a corporation organized and existing under the laws of the commonwealth of Massachusetts, with its principal office and principal place of business at 35 Daniels Street, Fitchburg, Massachusetts.

11. Ilco has for many years sold and distributed to distributors, jobbers and wholesalers (a) key blanks and replacement keys and (b) key duplicating machines.

12. Prior to the acquisition, Ilco also sold and distributed to retailers a substantial number of (a) key blanks and replacement keys and (b) key duplicating machines. Such sales were made, in part, through Ilco's distribution facilities in Baltimore, Philadelphia, Chicago, Boston and elsewhere. Retail customers of Ilco have included chain stores and lessees of key duplicating departments in retail chain stores. In addition, Ilco sold replacement keys to the public through its own retail facilities.

13. Ilco's (a) key blanks and replacement keys and (b) key duplicating machines are sold and distributed in competition with those sold and distributed by Cole National, except to the extent that such competition has been eliminated by the acquisition subject to this complaint.

14. In addition to key blanks, replacement keys and key duplicating machines, Ilco sells principally door locks, locksets, locksmiths' tools and door-controlling devices.

15. In the year prior to acquisition, Ilco's sales of (a) key blanks and replacement keys and (b) key duplicating machines

amounted to \$2.5 million. The company's overall sales for the first ten months of that year were more than \$13 million.

16. Ilco is and for many years has been extensively engaged in the sale and shipment of key blanks, key duplicating machines and other products across State lines, and it is engaged in "commerce" within the meaning of the Clayton and Federal Trade Commission Acts.

III. THE ACQUISITION

17. On or about March 18, 1964, Cole National acquired all the stock of Ilco in exchange for \$5,750,000 in cash and 12,500 shares of Cole National common stock. Cole National has since continued to operate Ilco as a subsidiary.

IV. THE NATURE OF TRADE AND COMMERCE

A. Key Blanks and Replacement Keys

18. Manufacturers of keys, key blanks and replacement keys sold approximately 145 million key blanks and replacement keys, with a value of \$13 million, in 1963 and approximately 163 million key blanks and replacement keys, with a value of \$15 million, in 1964, exclusive of inter-manufacturer sales. There were approximately 63 such manufacturers who sold key blanks and replacement keys in 1963 and 62 in 1964.

(a) In 1963, the four leading manufacturers accounted for approximately 61% of all key blanks and replacement keys sold by such manufacturers, and the eight leading manufacturers for 79%.

(b) In 1964, the four leading manufacturers accounted for approximately 67% of all key blanks and replacement keys sold by such manufacturers, and the eight leading manufacturers for 82%.

19. Of all manufacturers of keys, key blanks and replacement keys, Ilco and Cole National ranked first and second in sales of key blanks and replacement keys in 1963 with 24% and 20% of total sales, respectively. In 1964, the companies ranked first with a combined share of 43%.

20. With sales of over 19 million key blanks and replacement keys to retailers in 1963, representing approximately 13% of total sales of key blanks and replacement keys by manufacturers in that year, Cole National is a major distributor of key blanks and replacement keys in the United States. With sales of over 4 million key blanks and replacement keys to retailers in 1963, Ilco

was also a major distributor of key blanks and replacement keys in the United States.

21. With sales of over 8 million replacement keys at retail in 1963, representing approximately 6% of total sales of key blanks and replacement keys by manufacturers in that year, Cole National is a major retailer of replacement keys in the United States. Prior to the acquisition, Ilco was also engaged in the sale of replacement keys at retail.

B. Key Duplicating Machines

22. Companies that manufacture or assemble key duplicating machines distributed (by sale or otherwise) approximately 10,000 key duplicating machines in 1963 and 21,000 in 1964, exclusive of inter-manufacturer sales. In 1963 and 1964, there were 11 companies and 10 companies, respectively, who manufactured or assembled key duplicating machines.

(a) In 1963, the three leading manufacturers accounted for approximately 91% of all key duplicating machines distributed by such manufacturers, and the six leading manufacturers for 97%.

(b) In 1964, the three leading manufacturers accounted for approximately 95% of all key duplicating machines distributed by such manufacturers, and the six leading manufacturers for 99%.

23. In 1963, Cole National accounted for approximately 24% of all key duplicating machines distributed by companies that manufacture or assemble such machines, and Ilco accounted for approximately 30%. Their combined share was approximately 60% in 1964.

V. BACKGROUND OF VIOLATIONS AND VIOLATIONS CHARGED

A. Background

24. The continuing relationship between Cole National and Ilco began in 1949. At that time, Ilco acquired a 50% interest in Cole National (then doing business as National Key Shops, Inc.). On August 29, 1957, Ilco sold back to Cole National (then doing business as National Key Company) its 50% interest in Cole National.

B. Violations

25. The effects of Cole National's acquisition of all the capital stock of Ilco may be substantially to lessen competition or to tend

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Order

to create a monopoly in the United States, in violation of Section 7 of the Clayton Act and in violation of Section 5 of the Federal Trade Commission Act, in the following ways, among others:

(a) Competition in the manufacture and sale of key blanks and replacement keys has been eliminated or prevented between Cole National and Ilco;

(b) Competition in the manufacture and distribution of key duplicating machines has been eliminated or prevented between Cole National and Ilco;

(c) Cole National, a major competitive factor in the key blank and key duplicating machine industries, has by merger eliminated the independent competition of Ilco, also a major factor in those industries;

(d) Already high concentration levels in the manufacture, sale and distribution of (i) key blanks and replacement keys and (ii) key duplicating machines may be substantially increased and the possibility of deconcentration lessened;

(e) The restraining influence upon non-competitive behavior in the various sectors of the manufacture, sale and distribution of key blanks, replacement keys and key duplicating machines, which existed by reason of the independent competition of Cole National and Ilco, has been eliminated;

(f) The members of the consuming public may be deprived of the benefits of free and unrestricted competition in the manufacture, sale and distribution of key blanks, replacement keys and key duplicating machines.

ORDER WAIVING RULE 2.4 (d) AND ACCEPTING AGREEMENT
CONTAINING ORDER TO CEASE AND DESIST

This matter is before the Commission on the hearing examiner's certification of the joint motion by respondent and complaint counsel to waive Section 2.4(d) of the Rules of Practice and accept a consent agreement and order. The examiner recommends that the Commission accept the order. Upon consideration of the motion, the Commission has determined to waive Section 2.4(d) of the Rules of Practice. Accordingly,

It is ordered, That the provisions of Section 2.4(d) of the Rules of Practice be, and they hereby are, waived.

Upon consideration of the consent agreement, and the fact that respondent Cole National Corporation has divested itself of all of the outstanding stock of Independent Lock Company acquired by it on or about March 18, 1964, the Commission has determined

that said agreement affords an adequate basis for disposition of this proceeding and should be accepted. The Commission notes that on February 6, 1967, it ordered that the allegations of the complaint relating to violation of Section 5 of the Federal Trade Commission Act be stricken, and that the complaint be dismissed in all respects as to respondent Independent Lock Company.

The consent agreement is hereby accepted and the following jurisdictional findings are made and the following order is entered:

(1) Respondent Cole National Corporation is a corporation organized and existing under the laws of the State of Ohio with its principal offices and place of business at 5777 Grant Avenue, Cleveland, Ohio.

(2) The Federal Trade Commission has jurisdiction over the subject-matter of this proceeding and over the respondent Cole National Corporation.

ORDER

I

It is ordered, That respondent Cole National Corporation, its subsidiaries and affiliates and any successor to substantially all of its assets, for a period of ten (10) years from the effective date of this Order, cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, the whole, or any part, of the assets, stock or other share capital of any firm engaged in the manufacture, production or wholesale distribution of replacement key blanks, replacement keys and key duplicating machines, except for purchases in the ordinary course of business.

II

It is further ordered, That Cole National, within sixty (60) days from the effective date of this Order and at other times as the Commission may require, file with the Commission a report, in writing, setting forth the manner and form in which it has complied with Paragraph I of this Order.

Complaint

IN THE MATTER OF

ALAN LIBMAN DOING BUSINESS AS BRAND STORES

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

Docket C-1234. Complaint, June 30, 1967—Decision, June 30, 1967

Consent order requiring a Boston, Mass., retailer of sewing machines and vacuum cleaners to cease using bait advertisements, deceptive pricing and savings claims, and other deceptive means to sell his merchandise.

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 Alan Libman, an individual, doing business as Brand Stores, hereinafter referred to as respondent, has 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 Alan Libman is an individual doing business as Brand Stores with his principal office and place of business located at 374 Massachusetts Avenue, in the city of Boston, State of Massachusetts.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of sewing machines and vacuum cleaners to the public.

PAR. 3. In the course and conduct of his business, respondent now causes, and for some time last past has caused, his said products, when sold, to be shipped from his place of business in the State of Massachusetts to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his business, and for the purpose of inducing the purchase of his products, respondent has made certain statements and representations in advertisements inserted in newspapers having general circulation and by oral representations to prospective purchasers respecting the bona fide character of the offer, availability of merchandise, prices, savings and financing.

Among and typical, but not all inclusive, of the statements and