
IN THE MATTER OF
SWINGLINE INC.

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

Docket No. 8759. Complaint, Apr. 1, 1968—Decision, Oct. 9, 1969

Order requiring a Long Island City, N.Y., manufacturer of stapling, tacking and riveting devices to divest itself to an eligible company, approved by the Commission, of all the assets, patents, and equipment of an acquired company (Speedfast, Inc.); to cause its wholly-owned subsidiary (Spot-nails, Inc.) to grant a royalty-free license to said eligible company; to refrain for a period of 10 years from acquiring any competitor without

Complaint

76 F.T.C.

prior approval of the Federal Trade Commission; and take other steps to restore competition in the industry as provided in the order.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated Section 7 of the Clayton Act, as amended, 15 U.S.C., Section 18, by virtue of its acquisition of the assets of Spotnails, Inc., and that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

I

Definitions

1. For the purposes of this complaint, the following definitions shall apply:

(a) "Portable industrial pneumatic staplers, nailers and tackers" are tools which utilize compressed air to drive various types of metallic fasteners to attach wood, fabric, sheet metal and other substances to each other. They do not include tools used for closing corrugated containers.

(b) "Fasteners" are metallic staples, tacks, brads, nails, corrugated clips and pins used in the machines described in subparagraph 1(a).

II

Swingline Inc.

2. Respondent, Swingline Inc. ("Swingline"), 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 32-00 Skillman Avenue, Long Island City, New York.

3. Swingline is a manufacturer and seller of home, business and industrial stapling, tacking, and riveting devices and fasteners used therein, adhesives, commercial stationery, office record keeping and other miscellaneous office equipment. For its fiscal year ending August 31, 1966, Swingline had net sales of \$60,316,414, total assets of \$39,349,087, and net income of \$5,821,916.

4. Swingline had its origin in a business founded in 1925 by Mr. Jack Linsky, which engaged in the distribution of stapling

machines and staples. By 1930 the business (which had since been incorporated) had begun its own manufacture of such products. In 1939 the corporation was replaced by a partnership, Speed Products Co., of which Mr. and Mrs. Jack Linsky were the sole partners. In 1946 the present corporation was incorporated under the laws of the State of New York, under the name of Speed Products Co., Inc., to succeed to the business of the partnership. In 1956 the corporation changed its name to Swingline Inc., and continued to be wholly owned by Mr. and Mrs. Jack Linsky, who also were, and are now, officers and directors of Swingline. In 1960 Swingline became a publicly held corporation when Mr. and Mrs. Jack Linsky sold approximately 29% of the outstanding stock in a public offering.

5. In 1957 a wholly owned subsidiary of Swingline acquired all the assets of Ace Fastener Corporation, a manufacturer of staplers and staples, for \$1,533,000. In 1959 Swingline became the controlling shareholder of Wilson Jones Company, a manufacturer of a diversified line of commercial stationery and office record keeping materials. In 1963 the operations of Wilson Jones Company were consolidated into Swingline. In 1966 respondent acquired the Marson Corporation and Marson Fastener Corporation for Swingline stock valued at about \$4 million. Marson made rivets and rivet setting tools and various adhesives.

6. Swingline sells its products throughout the United States and is, and for many years has been, engaged in "commerce" within the meaning of the Clayton Act.

III

Speedfast Corporation

7. In 1954 Mr. and Mrs. Jack Linsky formed a corporation under the name Swingline Industrial Corp. ("Industrial") to engage in the development and sale of a line of portable pneumatic staplers, nailers and tackers for industrial purposes, together with the fasteners required for such equipment. These products were purchased or manufactured for and sold to Industrial by Swingline. Mr. and Mrs. Jack Linsky owned all the voting stock of Industrial.

8. In 1960 Industrial changed its corporate name to Speedfast Corporation ("Speedfast"). At about the same time, Speedfast established its own offices and manufacturing facilities in premises leased from Swingline, where it commenced the manufacture of

Complaint

76 F.T.C.

its own portable industrial pneumatic staplers, nailers and tackers and supplies therefor. Mr. and Mrs. Jack Linsky continued to own all of Speedfast's voting stock. All the non-voting stock in Speedfast was owned by members of Mr. and Mrs. Jack Linsky's family.

9. In the year ending December 31, 1964, Speedfast had total sales of \$2,602,158 and net income of \$77,868. For the eight months ending August 31, 1965, Speedfast had total sales of \$2,121,870 and net income of \$125,932. On August 31, 1965, Speedfast's total assets were \$1,847,387. The company employed about 200 people.

10. At all times relevant herein, Speedfast sold its products in interstate commerce throughout the United States.

IV

Spotnails, Inc.

11. Prior to its acquisition by a newly organized subsidiary of respondent on August 16, 1965, Spotnails, Inc. ("Spotnails"), was a corporation organized and existing under the laws of the State of Illinois with its office and principal place of business located at 1100 Hicks Road, Rolling Meadows, Illinois.

12. Prior to its acquisition, Spotnails was a leading producer of portable industrial pneumatic staplers, nailers and tackers and fasteners used therein. Spotnails' plants were located in Illinois, California and New Jersey. For its fiscal year ending October 31, 1964, total sales of Spotnails were \$7,067,000, total assets were \$3,373,000 and net income was \$250,000. About 400 people were employed by Spotnails.

13. On September 1, 1965, Swingline, through a new subsidiary also named Spotnails, Inc., acquired all the outstanding stock of Speedfast from Mr. and Mrs. Jack Linsky and members of their family for \$2,500,000.

14. At all times relevant herein, Spotnails sold its products throughout the United States and is, and for many years has been, engaged in "commerce" within the meaning of the Clayton Act.

V

Trade and Commerce

15. Portable industrial pneumatic staplers, nailers and tackers are utilized principally in the manufacture of furniture, the light

construction industry including both residential and commercial buildings, the mobile home industry and woodworking industry. The devices are capable of substantially higher output than hand driven tools, greatly reduce worker fatigue, and are thus especially desirable where high volume production is encountered. The market for these products is expanding.

16. Portable industrial pneumatic staplers, nailers and tackers and fasteners were manufactured, distributed and sold in the United States by approximately 20 domestic companies in 1964. The seven largest companies, including Spotnails and Speedfast, accounted for about 90% of all such domestically-produced devices sold in the United States in 1964. In 1964, Spotnails and Speedfast accounted for approximately 15% and 5%, respectively, of the total United States production and sale of portable industrial pneumatic staplers, nailers and tackers and fasteners.

17. Prior to August 16, 1965, Spotnails and Speedfast were substantial competitors in the sale of portable industrial pneumatic staplers, nailers and tackers and fasteners.

VI

Violation Charged

18. On August 16, 1965, Swingline, through a subsidiary now known as Spotnails, Inc., acquired all the assets of Spotnails in exchange for 75,428 shares of Swingline common stock having an approximate market value of \$3,100,000. At the time of the acquisition of Spotnails, Mr. and Mrs. Jack Linsky owned approximately 41% of Swingline's common stock, were officers and directors of Swingline, and owned all the voting stock of Speedfast.

19. By virtue of the common ownership of Swingline and Speedfast stock by Mr. and Mrs. Linsky, the effect of the acquisition of Spotnails may be substantially to lessen competition or to tend to create a monopoly throughout the United States in violation of Section 7 of the Clayton Act, in that:

(a) Substantial, actual and potential competition between Speedfast and Spotnails in the production, distribution and sale of portable industrial pneumatic staplers, nailers and tackers and fasteners has been eliminated.

(b) Concentration in the production, distribution, and sale of portable industrial pneumatic staplers, nailers and tackers and fasteners has been increased.

Complaint

76 F.T.C.

(c) New entry into the manufacture, distribution and sale of portable industrial pneumatic staplers, nailers and tackers and fasteners may be inhibited or prevented.

(d) Consumers have been denied the benefits of free and open competition in the sale and distribution of portable industrial pneumatic staplers, nailers and tackers and fasteners.

Mr. William A. Arbitman and Mr. William S. Farmer, Jr., supporting the complaint.

Hogan & Hartson by Mr. George W. Wise, and Mr. Timothy J. Bloomfield, Washington, D.C., *Mr. Sandor C. Schweiger*, Long Island City, New York, for respondent.

INITIAL DECISION BY ANDREW C. GOODHOPE, HEARING EXAMINER

JULY 30, 1969

The Federal Trade Commission issued its complaint against respondent on April 1, 1968, charging it with violation of Section 7 of the Clayton Act, as amended (38 Stat. 731; 15 U.S.C. 18). The respondent filed an answer in which it admitted certain allegations of the complaint but denied that it had violated Section 7 of the Clayton Act.

The complaint charged that a violation of Section 7 of the Clayton Act resulted from the acquisition by respondent, Swingline, through a subsidiary, of all the assets of a corporation known as Spotnails, Inc. Subsequently Swingline, through a subsidiary, acquired all the outstanding stock of a competitor of Spotnails, Inc., Speedfast Corporation. The voting stock of Speedfast was owned by Mr. and Mrs. Jack Linsky, who owned approximately 41% of the common stock of Swingline. The complaint charged that as a result of the control of respondent Swingline and the ownership of Speedfast by the Linsky family, the acquisition of Spotnails may substantially lessen competition or tend to create a monopoly.

This matter has been before the Commission on two previous occasions as a result of certifications by the examiner of motions to withdraw the matter from adjudication in attempts to settle the case without trial. On both occasions the Commission has rejected the settlement proposals. Now after lengthy negotiations between counsel in support of the complaint and counsel for respondent, the matter is before the hearing examiner on the basis of a stipulation of facts and a stipulated order. Counsel for both

parties have agreed to and have signed the stipulation of facts containing a stipulated order and have filed a joint memorandum setting forth their reasons in justification of the stipulated order. The stipulation is made solely for the purpose of disposing of this matter without trial.

The record before the hearing examiner consists of the complaint, respondent's answer thereto, the stipulation of facts containing stipulated order and joint memorandum in support of the agreed upon order.

The hearing examiner, having considered the entire record outlined above, makes the following findings of fact, conclusions drawn therefrom, and issues the following order.

FINDINGS OF FACT

1. Respondent, Swingline Inc. ("Swingline"), 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 32-00 Skillman Avenue, Long Island City, New York (Para. 2 of Comp.; Admitted Para. 1 of Answer).

2. Swingline is a manufacturer and seller of home, business and industrial stapling, tacking, and riveting devices and fasteners used therein, adhesives, commercial stationery, office record keeping and other miscellaneous office equipment.¹ For its fiscal year ending August 31, 1966, Swingline had net sales of \$60,316,414, total assets of \$39,349,087, and net income of \$5,821,916. (Paras. 1 and 3 of Comp.; admitted Para. 1 of Answer; Stip. CX 1 A-B.)

3. Swingline had its origin in a business founded in 1925 by Mr. Jack Linsky, which engaged in the distribution of stapling machines and staples. By 1930 the business (which had since been incorporated) had begun its own manufacture of such products. In 1939 the corporation was replaced by a partnership, Speed Products Co., of which Mr. and Mrs. Jack Linsky were the

¹ For the purposes of this initial decision, the following definitions shall apply:

(a) "Portable industrial pneumatic staplers and nailers" are tools which utilize compressed air to drive various types of metallic fasteners to attach wood, fabric, sheet metal and other substances to each other.

(b) "Fasteners" are staples, nails, brads, pins and corrugated clips which are used in the machines described in subparagraph 1(a).

(c) The term "heavy-duty" when used in conjunction with the fasteners defined in subparagraph 1(b) shall describe staples, nails and corrugated clips having a gauge measurement of eighteen (18) or less, and pins and brads having a gauge measurement of sixteen (16) or less. When used in conjunction with the machines described in subparagraph 1(a), the term "heavy-duty" shall mean that such machines are designed to drive heavy-duty fasteners.

sole partners. In 1946 the present corporation was incorporated under the laws of the State of New York, under the name of Speed Products Co., Inc., to succeed to the business of the partnership. In 1956 the corporation changed its name to Swingline Inc. and continued to be wholly owned by Mr. and Mrs. Jack Linsky, who also were, and are now, officers and directors of Swingline. In 1960 Swingline became a publicly held corporation when Mr. and Mrs. Jack Linsky sold approximately 29% of the outstanding stock in a public offering (Para. 4 of Comp.; admitted Para. 1 of Answer).

4. In 1957 a wholly owned subsidiary of Swingline acquired all the assets of Ace Fastener Corporation, a manufacturer of staplers and staples, for \$1,533,000. In 1959 Swingline became the controlling shareholder of Wilson Jones Company, a manufacturer of a diversified line of commercial stationery and office record keeping materials. In 1963 the operations of Wilson Jones Company were consolidated into Swingline. In 1966 respondent acquired the Marson Corporation and Marson Fastener Corporation for Swingline stock valued at about \$4 million. Marson made rivets and rivet setting tools and various adhesives (Para. 5 of Comp.; admitted Para. 1 of Answer).

5. Swingline sells its products throughout the United States and is, and for many years has been, engaged in "commerce" within the meaning of the Clayton Act (Para. 6 of Comp.; admitted Para. 1 of Answer).

6. Heavy-duty portable industrial pneumatic staplers and nailers are used primarily in the furniture making industry, residential construction industry and the mobile home manufacturing industry to obtain higher output and greater efficiency than is yielded by hand powered tools, such as hammers and hand operated staplers. These heavy duty staplers and nailers are especially desirable for high volume production. The use of these tools is increasing substantially, with the result that the manufacture and sale of the tools and fasteners used therein is also expanding (Stip. CX 1 B-C).

7. Heavy-duty industrial pneumatic staplers and nailers are technically sophisticated, and they are generally manufactured under patents. These tools, furthermore, are constantly being refined and improved through research and development and these advancements are quite often patented themselves (Stip. CX 1 B-C).

8. During 1965 there were only about seven domestic producers of heavy-duty portable industrial pneumatic staplers and nailers. Spotnails, Inc. (an Illinois corporation hereinafter referred to as Spotnails), was a leading producer of such machines and Speedfast Corporation (hereinafter referred to as Speedfast) was a substantial competitor of Spotnails in this industry. Respondent Swingline was not engaged in the production, distribution or sale of heavy-duty portable industrial pneumatic staplers, nailers or fasteners until respondent's acquisition of Spotnails and Speedfast as described below (Stip. CX 1 C).

9. On August 16, 1965, Swingline, through its newly formed subsidiary, Spotnails, Inc., acquired all the assets of Spotnails in exchange for 75,428 shares of Swingline common stock having an approximate value of \$3,100,000. At the time of the acquisition of Spotnails, Mr. and Mrs. Jack Linsky owned approximately 41% of Swingline's common stock and were officers and directors of Swingline (Stip. CX 1 C).

10. Prior to its acquisition by a newly organized subsidiary of respondent on August 16, 1965, Spotnails, Inc., was a corporation organized and existing under the laws of the State of Illinois with its office and principal place of business located at 1100 Hicks Road, Rolling Meadows, Illinois (Para. 11 of Comp.; admitted Para. 1 of Answer).

11. Prior to its acquisition, Spotnails was a leading producer of portable industrial pneumatic staplers, nailers and tackers and fasteners used therein. Spotnails' plants were located in Illinois, California and New Jersey. For its fiscal year ending October 31, 1964, total sales of Spotnails were \$7,067,000, total assets were \$3,373,000 and net income was \$250,000. About 400 people were employed by Spotnails (Par. 12 of Comp.; admitted Para. 1 of Answer).

12. On September 1, 1965, Swingline, through a new subsidiary also named Spotnails, Inc., acquired all the outstanding stock of Speedfast from Mr. and Mrs. Jack Linsky and members of their family for \$2,500,000 (Para. 13 of Comp.; admitted Para. 1 of Answer; Stip. CX 1 D).

13. In 1954 Mr. and Mrs. Jack Linsky formed a corporation under the name Swingline Industrial Corp. ("Industrial") to engage in the development and sale of a line of portable pneumatic staplers, nailers and tackers for industrial purposes, together with the fasteners required for such equipment. These products

were purchased or manufactured for and sold to Industrial by Swingline. Mr. and Mrs. Jack Linsky owned all the voting stock of Industrial. (Para. 7 of Comp.; admitted Para. 1 of Answer.)

14. In 1960 Industrial changed its corporate name to Speedfast Corporation (Speedfast). At about the same time, Speedfast established its own offices and manufacturing facilities in premises leased from Swingline, where it commenced the manufacture of its own portable industrial pneumatic staplers, nailers and tackers and supplies therefor. Mr. and Mrs. Jack Linsky continued to own all of Speedfast's voting stock. All the non-voting stock in Speedfast was owned by members of Mr. and Mrs. Jack Linsky's family (Para. 8 of Comp.; admitted Para. 1 of Answer).

15. In the year ending December 31, 1964, Speedfast had total sales of \$2,602,158 and net income of \$77,868. For the eight months ending August 31, 1965, Speedfast had total sales of \$2,121,870 and net income of \$125,932. On August 31, 1965, Speedfast's total assets were \$1,847,387. The company employed about 200 people (Para. 9 of Comp.; admitted Para. 1 of Answer).

16. At all times relevant herein, both Spotnails and Speedfast sold their products throughout the United States and are, and for many years have been engaged in "commerce" within the meaning of the Clayton Act (Para. 10 and 14 of Comp.; admitted Para. 1 of Answer).

17. By virtue of their positions as founders, dominant stockholders, officers (Mr. Linsky being president and Mrs. Linsky being treasurer of Swingline) and directors (Mr. Linsky being chairman of the board) of Swingline, Mr. and Mrs. Linsky were in a position to influence the conduct and direction of respondent's business. At the same time, Mr. and Mrs. Linsky were also sole owners of Speedfast's voting stock and thereby controlled that corporation (Stip. CX 1 D).

18. Prior to the acquisition of Speedfast, Inc., by respondent's new subsidiary Spotnails, Inc., in 1965, Speedfast and Spotnails were totally unrelated and distinct organizations. After the acquisition and merger of these two organizations into the new corporation called "Spotnails, Inc.," a total integration of all of the various functions and facilities of both corporations occurred and the original Speedfast Corp. was dissolved. Among the changes made in the corporations to avoid duplication of functions and in-

sure that only the best features of the respective operations of these companies would continue are these:

(a) The Spotnails manufacturing plant and facilities of Clark, New Jersey, were shut down and its operations transferred to the Long Island City plant of Speedfast.

(b) Previous Speedfast manufacturing activities were shifted to the Rolling Meadows plant operated by Spotnails in Illinois. The result has been that the Rolling Meadows plant largely manufactures and assembles Spotnails and Speedfast machines and the Long Island City operations primarily produces fasteners for such machines.

(c) The products formerly sold by the two companies have been consolidated into one product line utilizing only the "Spotnails" trade name and trademark.

(d) There are no longer two independent research and development functions and all research and development work is consolidated.

(e) A number of changes were made in supervisory personnel with certain shifts between the two corporations subsequent to the acquisition. This is also true in the Executive Departments of both companies. Very few of the Spotnails of Illinois executives remained with the new company, and a number of new executives have been hired.

(f) Prior to the acquisition of Spotnails had a direct sales distribution system employing salesmen dealing directly with the user companies. Speedfast had independent distributors and did not deal direct. Subsequent to the merger, both of these methods were combined so that today Spotnails has a mixture of distributors and direct salesmen. The sales force today is composed almost entirely of persons hired by the new company.

(g) Spotnails today is a part of a large group of companies, of which Swingline is the parent. The respondent Swingline performs a number of important corporate functions for Spotnails and its other subsidiaries for which they are charged and the subsidiaries have no personnel to perform these functions. For example, the comptroller of respondent's Swingline exercises financial management and control over Spotnails, including cost control and money management. The international activities of Spotnails are directed by Swingline's director of international operations and is in charge of developing all foreign business for the company.

Initial Decision

76 F.T.C.

Consequently, there has been virtually a complete integration and scrambling of the assets, operating personnel, research and development operations and sales and distribution facilities of the two corporations. (See affidavit of Marvin Libby, executive vice president of Spotnails, Inc., of New York and a vice president of Swingline Inc., attached to the joint memorandum in support of the agreed upon order filed by counsel for both parties.)

CONCLUSION

The effect of respondent's acquisition of Spotnails and Speedfast may be substantially to lessen competition or to tend to create a monopoly throughout the United States in violation of Section 7 of the Clayton Act, as amended, in that:

(a) Substantial actual and potential competition between Speedfast and Spotnails in the production, distribution and sale of heavy-duty portable industrial pneumatic staplers and nailers and fasteners has been eliminated.

(b) Concentration in the production, distribution and sale of heavy-duty portable industrial pneumatic staplers and nailers and fasteners has been increased (Stip. CX 1 D-E).

ORDER TO CEASE AND DESIST

Preliminary Statement

Counsel in support of the complaint and counsel for respondent have submitted a memorandum in support of agreed upon order to cease and desist. This memorandum is in the record as Commission Exhibit 2 A-I.

As found above, the theory of the complaint is that common ownership of Swingline and Speedfast stock by the Linskys made Swingline's acquisition of Spotnails anticompetitive since it subjected both Speedfast and Spotnails to common control. While the complaint is cast in terms of total sales of all types of portable industrial pneumatic staplers and nailers and fasteners therein, the stipulation and order to cease and desist are directed to heavy-duty tools and fasteners. It was in this market that the effect of the acquisition was direct and immediate. This is true since all of Spotnails sales were in the heavy-duty field, while only about half of the Speedfast sales were in the heavy-duty line. Consequently, both counsel for the parties agreed that it is the heavy-duty line wherein injunctive relief should be effected.

Counsel urge that the agreed upon order would accomplish the same objective as the order called for by the original complaint and probably provide a more effective remedy than the entry of such order after litigation.

The hearing examiner agrees that the proposed and agreed upon order is the best possible relief under the circumstances of this matter.

As found above, the complete integration of Speedfast and Spotnails subsequent to the merger would make it virtually impossible to put Spotnails back in a position where it could be a viable corporation with some hope of success after divestiture.

The respondent and its counsel have undertaken the duty as provided in the order to present for approval by the Commission a completely new company obliged to enter the heavy-duty portable industrial pneumatic stapler, nailer and fastener industry. Respondent must satisfy the Commission that the new company will have financial resources sufficient to make a substantial entry into the industry in terms of manufacturing space, production facilities and working capital.

The order bans respondent from making any further acquisitions in the broad industrial nailing, stapling and tacking field for ten years. This was also provided for in the original order in the complaint.

The respondent, in order to insure the success of the new company, has undertaken, as provided by the order, a number of duties. As found above, patents and patent protection in the industry is essential. With adequate patent rights, the new entrant should find it relatively easy to become a manufacturer and seller of these products. Fabricators to make the components of the machines are readily available to manufacture the parts for easy assembly by a patent holder. Also the manufacturing machines themselves can readily be purchased. Plant space can be leased and methods of distribution developed if adequate customers are available to it. The order provides that the respondent will give the new entrant not only a royalty-free license under all patents held by Spotnails and Speedfast at the time of the acquisition but also provides for licensing the new entrant under several patents relating to the heavy-duty line which have been developed since the acquisition, plus any such patents which are issued, filed or acquired by respondent for three years.

In addition, the order requires respondent to supplement its patent licensing by providing technical assistance, know-how,

blueprints, designs, etc., relating to the heavy-duty staplers, nailers and fasteners.

Respondent's current inventory of Speedfast heavy-duty tools is being divested to enable the new company to immediately begin selling a line of heavy-duty machines and all orders for these Speedfast tools will be forwarded to the new company as well as orders for Speedfast fasteners. The new company will also acquire respondent's entire inventory of Speedfast parts and be able to service the current users of Speedfast tools and supply them with fasteners.

In addition, respondent will provide access to its suppliers of components for Spotnails heavy-duty guns, plus a list of all substantial customers of these guns. Consequently, the new company will be able to sell fasteners and parts to the present users of Spotnails line of heavy-duty tools in addition to the users of Speedfast heavy-duty tools.

Respondent will also provide technical assistance. The new company will be able to produce fasteners for Spotnails heavy-duty machines and the machines themselves. Respondent also agrees to purchase substantial volumes of fasteners from the new company for three years at respondent's distributor prices for such fasteners. This will give the new company a foothold in the industry during the time required to develop and market its own line of heavy-duty tools and fasteners.

The new company will also have the use of the "Speedfast" trade name and trademarks.

The effect of the order will assure the presence of two competitors in the heavy-duty market, the new entrant and respondent. The new entrant should be on a relatively stable basis since it would have the benefit of all of respondent's present patents in the heavy-duty field, plus new patents for three years. In addition, the new company would have the use of a royalty-free license in the corrugated aspect of the industry at least lessening respondent's present dominance in this corrugated field. The order will also open a large number of Spotnails gun users to new competition since the new company will be able to service their machines, supply fasteners for them, and know who these customers are.

The examiner believes that the entry of the following order to cease and desist will effectively insure a new competitor in the heavy-duty fastener field and will be more effective than an order

407

Initial Decision

to cease and desist after trial since the respondent has now undertaken the duty of cooperating in organizing the new entrant and insuring that it will at least have a reasonable opportunity for success which the respondent would be reluctant to do after litigation.

ORDER

I

For the purposes of this order, the following definitions shall apply:

(a) "Portable industrial pneumatic staplers and nailers" are tools which utilize compressed air to drive various types of metallic fasteners to attach wood, fabric, sheet metal and other substances to each other.

(b) "Fasteners" are metallic staples, nails, brads, pins, and corrugated clips, which are used in the machines described in subparagraph I(a).

(c) The term "heavy duty," when used in conjunction with the fasteners defined in subparagraph I(b), shall describe staples, nails and corrugated clips having a gauge measurement of eighteen (18) or less, and pins and brads having a gauge measurement of sixteen (16) or less. When used in conjunction with the machines described in subparagraph I(a), the term "heavy duty" shall mean that such machines are designed to drive heavy duty fasteners.

II

It is ordered, That respondent shall as soon as practicable, but in no event in excess of one (1) year from the date this order becomes final, present a financially sound and eligible company (hereinafter referred to as "eligible company") and a contract between respondent and said eligible company, both subject to Commission approval. Said contract shall provide that the eligible company will within one (1) year following Commission approval, enter into business as a producer and seller of heavy duty portable industrial pneumatic nailers and staplers, and as a manufacturer and seller of fasteners therefor.

III

It is further ordered, That respondent, in connection with the

requirements of Paragraph II of this order, will present an eligible company with sufficient capital resources and financial capability to assure, to the satisfaction of the Commission, that said eligible company can provide for itself the following:

1) manufacturing space suitable for the operation of a heavy duty portable industrial pneumatic nailer, stapler, and fastener plant with capacity to produce annually a minimum of \$2,000,000 of said fasteners and \$500,000 of said nailers and staplers;

2) such machinery, equipment, facilities and other property as may be necessary to make such plant a sound and going concern for the manufacture and sale annually of \$2,000,000 of heavy duty fasteners, and such machinery, equipment, facilities and other property as may be necessary to make such plant a sound and going concern for the finishing, assembling and selling annually of a minimum of \$500,000 of heavy duty portable industrial pneumatic nailers and staplers;

3) adequate working capital for the opening and early expansion of the business above described for a period of three (3) years beginning with the opening of the plant for business.

IV

It is further ordered, That respondent shall within one year from the date this order becomes final divest itself to eligible company absolutely and in good faith of all the following assets, properties, rights and privileges, tangible or intangible, acquired by said respondent as a result of its acquisition of the stock of Speedfast, Inc., relating to the production, distribution and sale of all heavy duty portable industrial pneumatic nailers and staplers manufactured and sold by Speedfast prior to its acquisition by respondent; all inventory in stock of said nailers and staplers and of parts therefor; names of suppliers of said nailers, staplers and parts; a list of all customers to which Speedfast products have been sold, prior to and since September 1, 1965; and all plans, drawings, blueprints, tooling, patents, trademarks and trade names both domestic and foreign, which relate to the production distribution and sale of the said heavy duty portable industrial pneumatic nailers and staplers. Each of said heavy duty portable industrial pneumatic nailers and staplers is listed in Ap-

pendix A hereto, and each of said patents, trademarks and trade names is listed in Appendix B hereto.

V

It is further ordered, That respondent shall cause its wholly owned subsidiary Spotnails, Inc., to grant a royalty-free license to eligible company, if such license is desired by said company, under any or all of said Spotnails' patents, patent applications and know-how existing at the date of said divestiture and relating to the manufacture, use or sale of all heavy duty portable industrial pneumatic nailers and staplers which were or are produced, distributed or sold by Spotnails. Each of said heavy duty portable industrial pneumatic nailers and staplers is listed in Appendix C hereto, and each of said presently existing patents and patent applications to be licensed is listed in Appendix D hereto.

VI

It is further ordered, That respondent shall cause to be granted to eligible company a license for a reasonable royalty, if such license is desired by said company, under any and all future patents, patent applications and know-how issued, filed or acquired by respondent or any of its subsidiaries and, to the extent that it has the right to do so, by any of its officers, directors, agents, representatives and employees within a period of three years from the date of divestiture relating to the manufacture, use or sale of heavy duty portable industrial pneumatic staplers and nailers: *Provided,* That the first Spotnails round-head nailer shall be included under such license regardless of when the patent for such nailer shall issue.

VII

It is further ordered, That pending divestiture, respondent shall not take any action with respect to any of the assets, properties, rights and privileges of the former Speedfast, Inc., required to be divested hereby, which may impair their usefulness for the manufacture, sale or distribution of heavy duty portable industrial pneumatic nailers and staplers, or their market value.

VIII

It is further ordered, That, in accomplishing the aforesaid divestiture, respondent shall not sell or transfer the assets, proper-

Initial Decision

76 F.T.C.

ties, rights or privileges described in Paragraph IV of this order, directly or indirectly, to any person who, at the time of such divestiture, is a stockholder, officer, director, employee, or agent of, or otherwise directly or indirectly connected with or under the control or influence of respondent, or to a subsidiary or affiliated corporation of respondent, or to any person who is not approved in advance by the Federal Trade Commission.

IX

It is further ordered, That respondent shall agree to purchase from the eligible company, for a period of three (3) years after opening of its plant, heavy duty fasteners, or to assign customers' orders therefor to said eligible company, in the following amounts: Two Hundred Fifty Thousand Dollars (\$250,000) during the first year; Three Hundred Fifty Thousand Dollars (\$350,000) during the second year; and Two Hundred Thousand Dollars (\$200,000) during the third year. Respondent shall agree to assign to said company all orders for heavy duty fasteners previously manufactured and sold by Speedfast, and not manufactured and sold by Spotnails prior to August 16, 1965, which are ordered under the trade name or trademark "Speedfast." The purchases or assignments of customers' orders required by the first sentence of this Paragraph shall be reduced by the dollar amount of customers' orders assigned to eligible company pursuant to the second sentence of this Paragraph.

X

It is further ordered, That respondent shall assign to the eligible company all orders received for Speedfast heavy duty portable industrial pneumatic nailers and staplers and parts therefor, which have been and are currently sold under the Speedfast trade name or trademark.

XI

It is further ordered, That respondent's contract with the eligible company for purchase and/or assignment of customers' orders under Paragraph IX will be in form approved by the Commission with prices to be paid to the eligible company by respondent equal to the lowest Spotnails' prices to distributors for the items, or items of like kind, and with prices on any and all assigned orders billed directly by the eligible company to the

customers or distributors at the price set forth in such assigned orders. The fasteners to be purchased or orders assigned therefor as provided in Paragraph IX shall be manufactured to respondent's specifications or to the specifications stated on the assigned orders. Said contract may, upon the agreement of both parties, also provide that the eligible company may consider any such assigned business which it has been directly servicing with the customers as its own continuous volume at the risk of holding against competitors other than respondent. Such purchases by respondent from eligible company shall consist of fasteners which said eligible company informs respondent it has the capability of supplying, but in no case shall such purchases exceed actual orders by respondent.

XII

It is further ordered, That respondent shall cause Spotnails to supply the eligible company, for a period of six months from the date said company commences selling heavy duty portable industrial pneumatic staplers and nailers or fasteners therefor, to the extent that said company so requests, with fasteners suitable for use in the Speedfast heavy duty portable industrial pneumatic staplers and nailers listed in Appendix A, at a price of 50% of the list price published by Spotnails for such fasteners.

XIII

It is further ordered, That respondent shall provide the eligible company with a current list of all customers to whom its wholly owned subsidiary Spotnails, Inc., is selling. This list shall contain an appropriate designation of those customers who purchased in significant volume.

XIV

It is further ordered, That, for a period of one year from the date of divestiture hereunder, respondent shall cause Spotnails to furnish at its cost to the eligible company such technical assistance as may be necessary to enable said company to commence to engage in the manufacture of the Speedfast heavy duty portable industrial pneumatic nailers and staplers listed in Appendix A hereto and of fasteners therefor. In the event that said company elects under Paragraphs V and VI of this order to acquire a license under Spotnails patents and know-how: *And provided* That

Initial Decision

76 F.T.C.

said company shall in fact engage in the manufacture of Spotnails heavy duty portable industrial pneumatic staplers and nailers and fasteners therefor, respondent shall cause Spotnails for a period of not more than one year from the date of such license to furnish at its cost to said company such technical assistance as may be necessary to enable said company to commence to engage in the manufacture of Spotnails heavy duty portable industrial pneumatic staplers and nailers and fasteners therefor.

XV

It is further ordered, That, upon the grant of licenses described in Paragraph V of this order, and if requested by eligible company in writing, respondent and its officers, directors, agents, representatives and employees shall, in writing (with a copy to said company), authorize its vendors to supply to the eligible company, for a period of three years from the date of disposition of the assets, properties, rights and privileges ordered divested hereunder, and upon terms and conditions comparable to those afforded to Spotnails, the components which are made by such vendors to Spotnails' specifications and which are used to assemble the heavy duty portable industrial pneumatic nailers and staplers listed in Appendix C hereto. In the event that, during said three year period, said vendors' ability to supply any of such components shall become impaired so that any of said vendors shall become unable to supply sufficient quantities of any such components to satisfy the requirements of both Spotnails and eligible company, the respondent shall cause Spotnails to authorize any such vendor to divide its supply of such components between Spotnails and the eligible company in a manner that reasonably reflects the past purchases by each.

XVI

It is further ordered, That respondent shall cause Spotnails, if eligible company requests, to notify employees of Spotnails that said company is interested in hiring personnel, and, in addition, shall cause Spotnails to release any and all Spotnails personnel who desire to work for said company from their employment obligations and from any obligations and confidentiality relating to heavy duty portable industrial pneumatic staplers and nailers, saving any and all rights to confidentiality relating to any products not subject to divestiture or license.

XVII

It is further ordered, That for a period of ten (10) years from the date this Order becomes final, respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Federal Trade Commission, the whole or any part of the share capital or assets of any concern, corporate or noncorporate, engaged in the production, distribution or sale of portable industrial pneumatic staplers, nailers or tackers or fasteners therefor. For the purposes of this Paragraph, the definitions in the complaint shall apply.

XVIII

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this order, and every ninety (90) days thereafter until respondent has fully complied with the provisions of this order, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which respondent intends to comply, is complying, or has complied with this order. All compliance reports shall include, among other things that are from time to time required, a summary of all contacts and negotiations with persons relating to carrying out the provisions of this order, and copies of all written communications to and from such persons.

XIX

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating subsidiaries and divisions.

APPENDIX A

SPEEDFAST HEAVY DUTY
PORTABLE INDUSTRIAL PNEUMATIC STAPLER
AND NAILER MODEL NUMBERS

I. *Staplers*

Model 201	Model 251
Model 201-1	Model 271
Model 231	Model 301

II. *Nailers*

Model 281 -----	T-Nailer
Model 281-3 -----	T-Nailer
Model F-281-3 -----	Finishing Nailer
Model F-281-5 -----	Finishing Nailer
Model 281-4 -----	V-Nailer

Initial Decision

76 F.T.C.

II. *Nailers* cont.

Model 281-2	-----	T-Nailer
Model 281-6	-----	T-Nailer
Model 290	-----	T-Nailer

APPENDIX B

SPEEDFAST HEAVY DUTY
PORTABLE PNEUMATIC STAPLER AND NAILER
PATENTS AND TRADEMARKS

I. *Patents*

No.	Description	Date of issue
2,854,953	Fluid-actuated fastener-applying machine	Oct. 7, 1958
2,960,067	Single stroke air hammer	Nov. 15, 1960
3,037,207	Pneumatic nailer	June 5, 1962
3,106,134	Fluid actuated hammer and nailer	Oct. 8, 1963
3,252,641	Safety device for fluid actuated fastener driving machines	May 24, 1966
Des. 191,802	Pneumatic power tool for applying fasteners	Nov. 21, 1961

II. *Trademarks*

No.	Description	Date of expiration
646,770	Design trademark	June 11, 1977
669,504	Design trademark	Nov. 11, 1978
670,188	Design trademark	Nov. 25, 1978
725,800	"Speedfast"	Jan. 2, 1982
726,222	"Speedfast"	Jan. 9, 1982
761,301	"Speed Fastener"	Dec. 10, 1983
766,592	"Speed Fastener"	Mar. 17, 1984
776,455	"Speed"	Sept. 8, 1984
796,706	"Speed"	Sept. 28, 1985

The trademark "Speedfast" in the following foreign countries:

Canada	France	Italy	Spain
Finland	Holland	Japan	West Germany

APPENDIX C

SPOTNAILS HEAVY DUTY
PORTABLE INDUSTRIAL STAPLER AND
NAILER MODELS

I. *Staplers*

7400 Series	-----	EA, EAX, V, VL Models
7500 Series	-----	EA, EAX, V, VL Models
7600 Series	-----	EA, EAX, EAPX, EANX, EBX, V, VL Models
3800 Series	-----	EA Models
2600 Series	-----	V Models
1600 Series	-----	V Models
1400 Series	-----	V Models

407

Initial Decision

APPENDIX C—CONTINUED

II. Nailers

EAS	Models -----	400 Series, V, VL Models
EASX	Models -----	600 Series, V, VL Models
EAT	Models -----	800 Series, VL Models
EATX	Models -----	
EAF	Models -----	
EAFX	Models -----	
EBT	Models -----	
EBF	Models -----	

III. Pin Guns

EAX	-----	150
EAV	-----	150
EAX	-----	300, 400, 500, 912, 1400

IV. Brad Guns

E	-----	150
EAX	-----	150
EAV	-----	150

V. Corrugated Fastener Gun [*Pre-Merger Spotnails Gun*]

V	-----	130, 104
---	-------	----------

APPENDIX D

SPOTNAILS HEAVY DUTY
PORTABLE INDUSTRIAL PNEUMATIC
STAPLER AND NAILER PATENTS
AND PATENT APPLICATIONS

I. Patents

No.	Description	Date of issue
2,729,198	Pneumatic nailer	Jan. 3, 1956
2,818,570	Pneumatic stapler	Jan. 7, 1958
2,837,743	Feed mechanism for stapling machines	June 10, 1958
2,875,664	Wing head fastener	Mar. 3, 1959
2,880,480	Sash pin with groove	Apr. 7, 1959
2,907,038	Fastener driving machine	Oct. 6, 1959
2,928,094	Pneumatic stapling machine	Mar. 15, 1960
2,928,142	Divergent chisel staple	Mar. 15, 1960
2,942,267	Corrugated fastener strip	June 28, 1960
2,983,255	Machine with driving piston and means associated with the piston for absorbing shocks and vibrations	May 9, 1961
2,994,879	Fastener driving device	Aug. 8, 1961
3,027,560	Dimpler mechanism for fastener driving machines	Apr. 3, 1962

Final Order

APPENDIX D—CONTINUED

<i>No.</i>	<i>Description</i>	<i>Date of Issue</i>
3,056,964	Pneumatically operated fastener driving machine	Oct. 9, 1962
3,056,965	Safety mechanism for pneumatic fastener driving machines	Oct. 9, 1962
3,112,489	Pneumatically operated driving machine for fasteners	Dec. 3, 1963
3,172,124	Pneumatic nailer or stapler	Mar. 9, 1965
3,232,511	Pneumatically operated fastener positioning and driving machine	Feb. 1, 1966
3,234,572	Means for making brads	Feb. 15, 1966
3,255,674	Pneumatic fastener and like driving machine	June 14, 1966

II. *Patent Applications*

<i>Serial No.</i>	<i>Filing date</i>	<i>Subject matter</i>
D-211,207	June 29, 1967	Design patent on new round headed nailer.
699,986	Jan. 2, 1968	Air return system for round headed nailer.
Not yet issued	Oct. 9, 1968	Magazine, etc. for round headed nailer.
729,113	May 14, 1968	Round headed nail assembly.
457,924	May 24, 1965	Valve mechanism used in round headed nailer.
731,364	May 17, 1968	Trapped air return system for round headed nailer.
695,538	Dec. 14, 1967	Round headed nailer.

FINAL ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.51 of the Commission's Rules of Practice (effective July 1, 1967), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the time within which respondent shall begin submitting the compliance reports ordered in paragraph XVIII of the Order, as set forth in the initial decision, shall commence with the service of this order upon respondent.

Complaint
IN THE MATTER OF
CENTURY FABRICS, INC., ET AL

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION AND THE TEXTILE FIBER
PRODUCTS IDENTIFICATION ACTS

Docket C-1592. Complaint, Oct. 10, 1969—Decision, Oct. 10, 1969

Consent order requiring a Chicago, Ill., converter and jobber of drapery and upholstery fabrics, and an importer of Italian tapestry fabrics to cease falsely advertising and misbranding its textile fiber products, and using the word "Looms" or any other word implying that it mills or manufactures the textiles it sells.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Century Fabrics, Inc., a corporation, doing business under its own name and as Grant Looms, hereinafter referred to as respondent, has violated the provisions of the said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification 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 Century Fabrics, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 345 West Chicago Avenue, Chicago, Illinois. Century Fabrics, Inc., does business under its own name and as Grant Looms.

Respondent Century Fabrics, Inc., is a converter and jobber of cut-orders of drapery and upholstery fabrics and also imports tapestry fabrics from Italy.

PAR. 2. Respondent is now and for some time last past has been, engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the importation into the United States of textile fiber products; and has sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products which have been advertised or offered for sale in commerce; and has sold, offered