

Docket C-1860. Complaint, Feb. 12, 1971—Decision, Feb. 12, 1971

Consent order requiring a New York City manufacturer of automotive fuel pumps to divest within one year the fuel pump business of an acquired competitor located in Fon du Lac, Wisc., to an FTC approved firm, and refrain from acquiring any other fuel pump business for a period of ten years without Commission approval.

COMPLAINT

The Federal Trade Commission, having reason to believe that United Industrial Syndicate, Inc. has violated the provisions of Section 7 of the Clayton Act, as amended, (15 U.S.C. Section 18), through its acquisition of Wells Mfg. Corporation, hereby issues this Complaint pursuant to Section 11 of said Act (15 U.S.C. Section 21) charging as follows:

I. Definition

1. Wherever the term "fuel pumps" is used in this complaint, such term is defined to mean automotive fuel pumps, is limited solely to mechanical fuel pumps and does not include electrical fuel pumps.

II. United Industrial Syndicate, Inc.

2. Respondent United Industrial Syndicate, Inc. (herein "UIS"), is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 45 Rockefeller Plaza, New York, New York.

3. Respondent UIS is a diversified corporation engaged, through its divisions and subsidiaries, in manufacturing and/or distributing a variety of products including, *inter alia*, automotive replacement parts, machinery and metal products, motion picture projector equipment, textiles, yarns, fabrics, furniture and wood products, glass products, and confectionary products. UIS's 1969 consolidated net sales were approximately \$100,000,000.

4. In the automotive replacement parts field, UIS presently manufactures and sells fuel pumps (both new and rebuilt), water pumps, hydraulics, hydraulic brake parts, water outlets, PCV valves, front end suspension and steering parts, ignition parts, and carburetor repair kits.

5. UIS's 1967 sales of automotive replacement parts were in excess of \$13,380,000. UIS's 1967 sales of fuel pumps for replacement use, made through its Airtex Division located at Fairfield, Illinois, were approximately \$5,900,000.

6. At all times relevant herein, UIS has sold and shipped, and is now selling and shipping its products throughout the United States in interstate commerce, as "commerce" is defined in the Clayton Act.

III. Wells Mfg. Corporation

7. Prior to its acquisition by USI on December 20, 1967, Wells Mfg. Corporation (herein "Wells") was a corporation organized and existing under the laws of the State of Delaware with its principal

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office and place of business at 2-26 South Brooke Street, Fond du Lac, Wisconsin.

8. At the time of its acquisition, Wells was engaged principally in the manufacture and sale of ignition parts and fuel pumps (both new and rebuilt) for replacement use.

9. Wells' total 1967 sales were approximately \$10,420,00, of which replacement fuel pump sales accounted for approximately \$3,535,000.

10. At all times relevant herein, Wells sold and shipped its products throughout the United States in interstate commerce, as "commerce" is defined in the Clayton Act.

IV. Trade and Commerce

11. The relevant geographical market involved in this complaint is the United States as a whole.

12. Manufacturers of fuel pumps for replacement use sell to wholesalers, tire companies, oil companies, replacement parts divisions of the vehicle manufacturers, and direct to certain retailers such as mass merchandisers. These customers in turn supply the repair shops, service stations, vehicle dealers, and other automotive parts retailers, which serve the ultimate consumer (*i.e.*, the vehicle owner).

13. Fuel pumps for replacement use may be either new or rebuilt. The relevant product markets involved in this complaint consist of: (1) the manufacture and sale of new and rebuilt fuel pumps for replacement use, and (2) the manufacture and sale of new fuel pumps for replacement use.

14. Total U.S. combined sales of new and rebuilt fuel pumps for replacement use were approximately \$42,000,000 in 1967. In that year, prior to the UIS-Wells acquisition, the four leading manufacturers accounted for approximately 60 percent of total sales; and the eight leading manufacturers accounted for approximately 73 percent of total sales. In 1967, UIS (through its Airtex Division) ranked second and Wells ranked third, approximately, in combined sales of new and rebuilt fuel pumps for replacement use.

15. Total U.S. sales of new fuel pumps for replacement use were approximately \$26,00,000 in 1967. Such new fuel pumps have been in recent years manufactured and sold by six companies. The four leading manufacturers accounted for approximately 88 percent of total sales in this market in 1967, prior to the challenged acquisition. UIS (Airtex Division) ranked second and Wells fourth, approximately, in this market in 1967.

16. At the time of UIS's acquisition of Wells, UIS and Wells were actual competitors in the manufacture and sale of new and rebuilt fuel pumps for replacement use, as well as new fuel pumps for replacement use.

V. The Acquisition

17. On or about December 20, 1967, UIS purchased all the assets and business of Wells for \$4,490,000 in cash.

18. As a result of UIS's acquisition of Wells, UIS strengthened its position as the second ranking manufacturer and seller of new and rebuilt fuel pumps for replacement use, as well as new fuel pumps for replacement use, and increased its percentage shares of both markets.

VI. Violation

19. The effect of the acquisition of Wells by UIS has been or may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of new and rebuilt fuel pumps for replacement use, as well as new fuel pumps for replacement use, in the United States in the following ways, among others:

- (a) Actual competition between UIS and Wells has been eliminated;
- (b) Concentration has been increased;
- (c) Barriers to the entry of new competitors have been, or may be, increased.

20. The acquisition of Wells by UIS, as alleged above, constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18).

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 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 the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a settlement 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

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The Commission having thereafter considered the matter and having determined that it has reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon provisionally accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having received and duly considered comments from interested members of the public, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 45 Rockefeller Plaza, New York, 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.

ORDER

For the purposes of this Order, "respondent" shall mean United Industrial Syndicate, Inc. and its officers, directors, agents, representatives, employees, subsidiaries, affiliates, successors and assigns.

I

It is ordered, That respondent within twelve (12) months from the effective date of this order, shall divest, subject to the approval of the Federal Trade Commission, all assets, properties, rights and privileges, tangible and intangible, of Wells Mfg. Corp. (formerly Wells Mfg. Corporation) relating to the manufacture and sale of fuel pumps. Among other things such divestiture shall include:

(a) All the equipment and machinery relating to the manufacture and sale of fuel pumps;

(b) At the option of the acquirer, Plant No. 3, located at 305 Taylor Street, Fond du Lac, Wisconsin, said plant to be outfitted with the aforesaid equipment and machinery promptly after acquirer has signed a contract of acquisition and in substantial conformity with plant layout blueprints submitted with respondent's settlement proposal, dated October 16, 1970: *Provided*, The Commission may determine that an acquirer's decision to not acquire Plant No. 3 would adversely affect the competitive viability and effectiveness of the business to be divested;

(c) All inventories, customer lists, trademarks and trade names, including "Capac" and "AMPKO," it being understood that a license to use "AMPKO" in connection with ignition parts will be reserved by respondent, and that respondent will make accessible to the acquirer such records and its employed personnel as may facilitate the acquirer's initial operations of the acquired operations.

II

It is further ordered, That respondent will do all in its power to assure that the business operations to be divested will be properly staffed and, in particular, that all available means will be employed by respondent to assist the acquirer in retaining present management, personnel, and sales representatives of Wells Mfg. Corp. whom the acquirer wishes to employ and engage and that respondent will terminate its own employment of any such persons at the earliest date permitted by any employment contract in effect July 24, 1970, and will refrain from inducing such persons to leave the acquired operations for employment with respondent. The foregoing divestiture shall be achieved in a manner insuring the operation of the divested business by the acquirer as a going concern in the manufacture and sale of fuel pumps.

III

It is further ordered, That such divestiture shall be made to an acquirer approved in advance by the Federal Trade Commission, and in any event shall not be made directly or indirectly: (a) to any concern engaged in the manufacture, sale or distribution of new automotive fuel pumps; or (b) to any concern whose new automotive parts aftermarket sales (excluding sales to the automotive vehicle manufacturers) exceeded \$20,000,000 in 1967; or (c) to any person who is at the time of the divestiture or has been at any time during the one-year period preceding the effective date of this order, an officer, director, employee, or agent of, or under the control or direction of, respondent or any of respondent's subsidiary or affiliate corporations, or anyone who owns or controls, or has owned or controlled, directly or indirectly, more than one (1) percent of the outstanding shares of common stock of respondent.

IV

It is further ordered, That pending divestiture, respondent shall not make or permit any deterioration in any of the plants, machin-

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ery, buildings, equipment or other property or assets of the company to be divested which may impair their present capacity or market value.

V

It is further ordered, That commencing on the effective date of this order and continuing for a period of ten (10) years from and after the date of completing the divestiture required by this order, respondent shall cease and desist from entering into any arrangement by which respondent acquires, directly or indirectly, through subsidiaries, joint ventures or otherwise, without prior approval of the Federal Trade Commission, the whole or any part of the stock, share capital or assets of any concern engaged in the manufacture, sale or distribution of automotive fuel pumps, nor shall respondent enter into any arrangement with any such concern by which respondent obtains the market share, in whole or in part, of such concern in the above-mentioned product line (a) through such concern discontinuing the manufacturing, distribution or sale of automotive fuel pumps under its own trade name or labels and thereafter distributing such products under respondent's trade name or labels or (b) by reasons of such concern discontinuing the manufacture, distribution or sale of such products and thereafter transferring to respondent customer lists or in any other way making available to respondent access to customers or customer accounts, or (c) by any other means.

VI

It is further ordered, That regarding Paragraphs I-IV of this order, respondent shall periodically, within sixty (60) days from the effective date of this order and every sixty (60) days thereafter until respondent has fully complied with the provisions of this order, submit to the Federal Trade Commission a detailed written report of its actions, plans and progress in complying with the provisions of this order and fulfilling its objectives, including such documentation as may be required. Regarding Paragraph V of this order, respondent shall file a report of compliance within sixty (60) days after the effective date of this order and annually thereafter on the anniversary date of this order.

VII

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate

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respondent such as dissolution, assignement or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any change in the corporation which may effect compliance obligations arising out of the order.

VIII

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