

and hardware products to divest itself of all assets of a Rockford, Ill., manufacturer of certain hardware products, and not to acquire for a period of ten (10) years any firm engaged in the manufacture and sale of cabinet hardware without prior approval of the Federal Trade Commission.

Complaint

78 F.T.C.

COMPLAINT

The Federal Trade Commission has reason to believe The Stanley Works, respondent herein, has violated the provisions of Section 7 of the Clayton Act (U.S.C., Title 15, Section 18) and Section 5 of the Federal Trade Commission Act, (U.S.C., Title 15, Section 45) by its contract, combination and merger with Amerock Corporation, and therefore issues this complaint, stating its charges in that respect as follows:

I

Definitions

1. *Hardware* includes contract and residential hardware such as hinge, latch, hanger, door, furniture, closet and cabinet hardware intended for use in residential and commercial building and remodeling, and distributed principally to furniture, cabinet, door and window manufacturers, builders' suppliers, and hardware stores and departments.

2. *Cabinet hardware* includes pulls, knobs, hinges, latches, and catches and related products designed primarily for residential, commercial and architectural cabinet work, principally kitchen cabinets. (Corresponds to Census Product Code 34294-61, excluding cabinet locks.)

II

The Stanley Works

3. The Stanley Works (hereafter "Stanley") is a corporation organized and existing under the laws of the State of Connecticut, with its principal office and place of business at 195 Lake Street, New Britain, Connecticut.

4. In 1966, Stanley's sales and earnings totaled \$198.3 million and \$9.4 million, respectively. It had assets of \$126 million, and a cash flow of \$15 million in that year.

5. Stanley is one of the nation's leading producers of a full line of hardware and related products. In 1964, hardware products accounted for about one-fourth of Stanley's sales and represented national market penetration in particular hardware products as follows: cabinet hardware, 4.5%; hinge hardware, 47%; folding and sliding door hardware, 16%; blind, screen and sash hardware, 17%; and furniture hardware, 6.5%. Stanley is also a leading producer of artisan's hand and power tools, and manufactures steel, steel strap-ping and component parts.

6. At all times relevant herein, Stanley sold and shipped products in interstate commerce and engaged in "commerce" within the meaning of the Clayton Act and Federal Trade Commission Act.

III

Amerock Corporation

7. Amerock Corporation (hereafter "Amerock") is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at 4000 Auburn Street, Rockford, Illinois.

8. Amerock had demonstrated consistently increasing sales and earnings in the years prior to its acquisition by Stanley. Between 1963 and 1965, its sales increased from \$24.4 million to \$32.9 million, and its earnings grew from \$1.7 million to \$2.8 million. In 1965, its assets totaled \$28.3 million and its cash flow generated \$3.6 million.

9. Amerock held the dominant national position in cabinet hardware, ranked second in national acceptance of its functional furniture hardware, and was a significant producer of a number of other hardware products.

10. At all times relevant herein, Amerock sold and shipped products in interstate commerce, and was engaged in "commerce" within the meaning of the Clayton Act and Federal Trade Commission Act.

IV

Trade and Commerce

11. Cabinet hardware represents up to one-third of the total hardware dollars in home construction. Growth of cabinet hardware sales has been significantly in excess of hardware sales generally, increasing up to 65% during the years 1957-1963.

12. The manufacture of cabinet hardware is highly concentrated in both national and local markets. In 1963, two firms were estimated to account for half of the nation's \$21 million in domestic cabinet hardware sales, of which Amerock alone held nearly 36%. Stanley ranked fifth in the manufacture of cabinet hardware in that year, with approximately 4.8% of domestic cabinet hardware sales. Of the remaining 52 industry firms, 7 of every 10 accounted for less than 1% of cabinet hardware sales.

13. Local market concentration is significantly greater; as in Rochester, New York where Stanley and Amerock held more than three-fifths of retail hardware display space, ranking first and third, respectively, in 1964.

Background of the Violation

14. Beginning in 1963, with the development of "Operation G.A.P." (Growth through Acquisition Program), Stanley has engaged in acts and practices pursuant to a policy which substitutes acquisition or merger for internal development and expansion in competing and compatible hardware and related products selected for substantial entry or sales increases by Stanley.

15. In 1963, Stanley reappraised its position in the cabinet hardware business and formulated a long range plan to increase substantially Stanley's share of the cabinet hardware market. Cabinet hardware is a natural component of Stanley's hardware lines, and Stanley's marketing contacts and skills enable it to reach the major portions of the market by bringing multi-divisional strengths to bear, a resource giving it the ability to offer a more complete line of hardware products than competing firms.

16. Stanley recognized its ability to overcome past limitations and re-establish a large position in the cabinet hardware industry through a program of internal development, but determined to acquire Amerock, the dominant firm in the cabinet hardware industry. Stanley believed a strong entry via product development could be expected to accentuate industrywide decline in prices and profits, while a strong entry by acquisition could reverse a downward trend in prices and profits. Stanley focused on Amerock as its first acquisition target to obtain the dominant position in cabinet hardware manufacturing and distribution, to avoid the slow course of internal development, and to knock out the largest competitor, among other reasons.

17. After Amerock initially declined interest in merger, Stanley took steps to strengthen internally its position in cabinet hardware. New product development began in hinge, catch and pull, and knob cabinet hardware products. In 1964 and 1965, it planned greatly expanded new product development efforts and advertising stressing Stanley's full hardware line capabilities. Declining cabinet hardware sales were substantially arrested in 1965, and in 1966 Stanley embarked on a program designed to increase sales and profits. Stanley's 1966 cabinet hardware marketing plans called for the introduction of more new cabinet hardware products and more promotions and advertising than in any year in its recent history.

Complaint

VI

Merger Charged

18. Pursuant to an agreement and plan of merger dated June 2, 1966, Amerock was merged into Stanley, effective August 1, 1966, in a transaction valued at \$32 million.

VII

Effects of the Merger Charged

19. The effects of the contract, combination and merger of Amerock and Stanley may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of hardware, generally, and cabinet hardware in particular, throughout the United States and in sections thereof, in violation of Section 7 of the Clayton Act (U.S.C., Title 15, Section 18); and to create an unreasonable restraint of trade in commerce, or to hinder or have a dangerous tendency to hinder competition unduly in the manufacture and sale of hardware, generally, and cabinet hardware, in particular, in violation of Section 5 of the Federal Trade Commission Act, U.S.C., Title 15, Section 45, in the following, among other, ways:

(a) Substantial actual and potential competition has been, or may be, eliminated;

(b) The substitution of Stanley, with its multi-divisional manufacturing and marketing strengths, tends unduly to increase barriers to the entry of new competition and to deprive smaller limited-line rivals of an equal opportunity to compete; cumulatively entrenching Stanley in its acquired dominant and monopolistic position;

(c) Members of the purchasing public and the ultimate consumer have been, or may be, denied the benefits of free and open competition; and

(d) The cumulative effect of the merger charged has been, or may be, to accelerate an increasing level of concentration by encouraging tendencies toward combination and merger by actual and potential competitors.

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

21. The acts and practices by respondent, as alleged above, including, without limitation, Paragraphs 14 and 16-18, constitute unfair

methods of competition in violation of Section 5 of the Federal Trade Commission Act.

Mr. Alan D. Reffkin and Mr. Harold Brandt supporting the complaint.

Mr. John W. Douglas, Wash., D.C., *Mr. Robert A. MacFarlane*, New Britain Conn., *Mr. Daniel M. Gribbon* and *Mr. Bingham B. Leverich*, Wash., D.C., for respondent.

INITIAL DECISION BY ELDON P. SCHRUP, HEARING EXAMINER

NOVEMBER 7, 1969

INDEX

	Page.
STATEMENT OF THE PROCEEDINGS.....	1029
(1) The issues (as stipulated).....	1029
(2) The United States relevant product market (as stipulated).....	1030
(3) The United States relevant geographic market (as stipulated).....	1030
(4) The United States relevant product market sales universe (as stipulated).....	1030
(5) The United States relevant product market share of Stanley (as stipulated).....	1030
(6) The United States relevant product market share of Amerock (as stipulated).....	1030
(7) Table of witnesses testifying.....	1030
FINDINGS OF FACT.....	1032
I. Amerock Corporation.....	1032
(1) Products inclusive of cabinet hardware manufactured and shipped in interstate commerce.....	1032
(2) Financial size, sales, assets, and net earnings.....	1032
II. The Stanley Works.....	1033
(1) Products inclusive of cabinet hardware manufactured and shipped in interstate commerce.....	1033
(2) Financial size, sales, assets, and net earnings.....	1033
III. The Relevant Product and Geographic Market.....	1033
(1) Amerock and Stanley sales of cabinet hardware and market percentage shares in United States cabinet hardware market.....	1033
(2) Tabulation ranking in sales volume various type suppliers of cabinet hardware in United States cabinet hardware market as compiled from respondent's Exhibits Nos. 4 and 5.....	1034
IV. The Competitive Effect of the Acquisition and Merger.....	1034
(1) Cabinet hardware by residential and architectural type and distribution channels for each.....	1036
(2) Pre-merger sales competition between Amerock and Stanley in residential and architectural type cabinet hardware.....	1039
(3) Stanley's internal expansion to promote architectural type cabinet hardware.....	1042, 1046

	Page
(4) Stanley's pre-merger sales of residential type cabinet hardware.....	1040
(5) Stanley's dilemma of acquisition v. internal expansion to promote residential type cabinet hardware sales.....	1041
(6) Analysis of the pre-merger concentration in the United States cabinet hardware market of suppliers of various type cabinet hardware, ranked in order of sales volume as shown on tabulation compiled from respondent's Exhibits Nos. 4 and 5.....	1046
(7) Stanley's potential ability to internally expand and achieve on its own a significant market position in the sale of residential type cabinet hardware.....	1042-1045, 1046-1048
(8) The competitive effect of the acquisition and merger of Amerock by Stanley is not reflected solely by their combined market share percentages of the United States cabinet hardware market.....	1048-1050
V. Conclusions.....	1051
VI. Foreword to Order.....	1051
ORDER.....	1053

STATEMENT OF PROCEEDINGS

The complaint herein alleges the acquisition and merger of the Amerock Corporation by The Stanley Works to violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The complaint was issued April 30, 1968 and following a motion for a more definite statement filed May 20, 1968 and oral argument thereon June 18, 1968, answer was filed June 28, 1968.

Prehearing conferences were held on July 29, September 24 and 25, October 11 and 30, November 21, December 19, 1968, and January 3, 27, 1969.¹ Evidentiary hearings were held on January 27,¹ 28, 29, 30, February 25, March 12, April 15, 22, 29, 30, May 1, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 22, 23, 26, 27, 28, June 3, 18, 1969. The record for the reception of evidence was closed June 25, 1969.

The parties on November 21, 1968, entered into a record stipulation of issues and facts² later amended on April 10, 1969,³ which recites:

1. The only issues for resolution in this proceeding are as follows: (1) Whether the effect of the contract, combination and merger of Amerock and Stanley may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of cabinet hardware throughout the

¹ Stipulation negotiations between trial counsel both as to the specific issues to be resolved and the allowable introduction into evidence of the numerous proposed exhibits, plus the many third-party discovery subpoenas and the accompanying *in camera* problems raised on the materials being returned account for this spacing of the prehearing conferences.

² Tr. 225-231, prehearing conference of November 21, 1968.

³ Tr. 925-927, Resp. Ex. 160 (revising the figures in Paragraph 5 of the stipulation) copied into record of the hearing on April 15, 1969.

United States in violation of Section 7 of the Clayton Act; (2) whether the effect of the contract, combination and merger of Amerock and Stanley may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of cabinet hardware throughout the United States in violation of Section 5 of the Federal Trade Commission Act, (3) if said contract, combination and merger constituted a violation of the aforesaid Section 7 of the Clayton Act or Section 5 of the Federal Trade Commission Act or both, whether Stanley should be compelled to divest itself of Amerock and/or whether and to what extent the Commission should order any other relief, including possible restraint for a stated period of time of any future acquisition by Stanley, without the prior approval of the Commission, of any firm engaged in the manufacture of hardware products (as defined in the complaint) within the United States.

2. Cabinet hardware is the relevant product market in this case. It includes pulls, knobs, hinges, latches, catches, and related products, including drawer slides and shelving hardware designed primarily for residential, commercial and architectural cabinet work, principally kitchen cabinets. There are no relevant submarkets of cabinet hardware. Cabinet hardware sales in the United States in 1965 were approximately \$76,000,000 to \$80,000,000. Sales of cabinet hardware have increased annually since 1962.

3. The only relevant geographic market in the case is the United States and there are no relevant geographic submarkets.

4. Stanley's sales of cabinet hardware in 1965 were approximately \$800,000, representing 1% of all cabinet hardware sales in the United States in that year. Stanley's percentage share of the cabinet hardware market in 1964 and 1966 was neither significantly greater nor significantly less than in 1965. Its percentage share of the market in 1964 declined slightly from its share in 1963.

5. Amerock's sales of cabinet hardware in 1965 were approximately \$18,218,474, representing between 22% and 24% of all cabinet hardware sales in the United States in that year. Amerock's percentage share of the total cabinet hardware market in each of the years 1963, 1964 and 1966 was neither significantly greater nor significantly less than in 1965. In each of these years Amerock was the largest manufacturer of cabinet hardware in the United States.

6. In 1967 and 1968 Stanley's percentage share of the total cabinet hardware market was neither significantly greater than nor significantly less than its share in 1965. In 1967 and 1968 Amerock's percentage share of the total cabinet hardware market was neither significantly greater than nor significantly less than its share in 1965. Complaint counsel does not concede that the foregoing facts in this paragraph are relevant or material.

7. (deals only with evidentiary questions regarding proposed exhibits not here necessary of delineating)

8. The facts stipulated herein shall prevail over any conflicting evidence.

The names and occupations of the various witnesses and the transcript locations of their testimony are as follows:

CASE-IN-CHIEF

Charles C. Hager, Vice President of Finance

Hager Hinge Company, 139 Victor Street, St. Louis, Missouri, Tr. 420-472.

1023

Initial Decision

Ross Escalette, Marketing Vice President

Ajax Hardware Corporation, 825 South Ajax Avenue, City of Industry,
California, Tr. 474-723.

DEFENSE

Norris A. Aldeen, President

Amerock Corporation, 4000 Auburn Street, Rockford, Illinois, Tr. 982-1051.

John Bosworth, General Sales Mgr.

Amerock Corporation, 4000 Auburn Street, Rockford, Illinois, Tr. 1053-1265.

Roger S. Lindereth, Executive V. Pres.

Amerock Corporation, 4000 Auburn Street, Rockford, Illinois, Tr. 1267-1309.

Francis E. Hummel, Director of Marketing

Consumer Divisions, The Stanley Works, 195 Lake Street, New Britain,
Conn. Tr. 1312-1798.

Donald W. Davis, President

The Stanley Works, 195 Lake Street, New Britain, Conn., Tr. 1801-1860.

John F. Bates, Vice President and General Manager

Hardware Division, The Stanley Works, 195 Lake Street, New Britain,
Conn., Tr. 1862-1921.

R. J. Becker, Controller

The Stanley Works, 195 Lake Street, New Britain, Conn., Tr. 1924-1962.

Richard Hudnut, Product Standards Coordinator

Builders Hardware Manufacturers Association, 60 East 42nd Street, New
York, New York, Tr. 1965-2017.

Gerald Eklund, Vice President

National Lock Company, Rockford, Illinois, Tr. 2020-2068.

Fred Moore, Hardware Buyer

American Wholesale Hardware, 1500 W. Anaheim Street, Long Beach,
California, Tr. 2070-2093; 2387-2393.

Garland Hedgepeth, Executive V. Pres.

Scheirich Hardware, 250 Ottawa Street, Louisville, Kentucky, Tr. 2095-2143.

E. Eugene Thomas, President

Frederick Trading Company, 225 East 8th Street, Frederick Maryland,
Tr. 2146-2178.

William Mashaw, Executive Director

National Retail Hardware Assoc., 964 North Pennsylvania Street, Indi-
anapolis, Indiana, Tr. 2180-2196.

Howard W. Price, President and General Manager

Salt Lake Hardware Company, 105 North 3rd West, Salt City, Utah,
Tr. 2201-2251.

John Gibson, President

McKinney Manufacturing Co., 820 Davis Street, Scranton, Pennsylvania,
Tr. 2261-2306.

Robert Haaf, President and Gen. Mgr.

Cabinet Hardware Supply, 4514 Hollis Street, Emeryville, California,
Tr. 2308-2342.

Jack L. Nelson, Vice President—Marketing

Ekco Building Products Co., 1250 Bedford Avenue, S.W., Canton, Ohio,
Tr. 2345-2377.

REBUTTAL

Ralph Gordon, Secretary-Treasurer

Jaybee Manufacturing Company, 2734 Oakhurst Avenue, Los Angeles,
California, Tr. 2397-2423.

Initial Decision

78 F.T.C.

The record, in addition to such testimony, embraces a substantial number of documentary and physical exhibits, all of which have been considered in this initial decision. Pursuant to a joint request by counsel for an extension of time granted by the Commission upon certification, proposed findings of fact, conclusions and briefs were filed by respective trial counsel September 5, 1969, and replies thereto were filed October 3, 1969.

Proposed findings of fact and conclusions as submitted by counsel and not hereinafter adopted or found in substance or form are rejected. Following a thorough review of the record in this proceeding and based upon both observation of all witnesses testifying and consideration of their overall testimony, the following Findings of Fact, Conclusions and Order are hereby made and issued:

FINDINGS OF FACT

I. Amerock Corporation

1. On August 1, 1966, Stanley merged with the Amerock Corporation, an Illinois corporation with principal place of business in Rockford, Illinois, pursuant to an Agreement And Plan Of Merger dated June 2, 1966, in a transaction valued at \$32,000,000.⁴

2. At the time of the merger, Amerock was engaged in the manufacture and sale of certain hardware products, consisting principally of a broad line of cabinet hardware products for use primarily in kitchens, as well as certain window, appliance, furniture and general household hardware products. At all times relevant to this proceeding, Amerock sold and shipped products in interstate commerce and was engaged in commerce within the meaning of the Clayton Act and the Federal Trade Commission Act.⁵

3. Amerock's domestic sales, total assets and total earnings for the years 1963, 1964, 1965, 1966 were as follows:⁶

[In millions of dollars]

Year	U.S. sales	Total assets	Net earnings
1963 ¹	23.8	21.7	1.9
1964 ¹	26.4	23.1	2.4
1965 ¹	29.4	25.1	2.8
1966 ¹	30.7	20.0	

¹ Fiscal year ending November 30.

⁴ RPF 3 (Respondent's Proposed Finding No. 3).

⁵ RPF 4.

⁶ CPF 46 (Complaint counsel's Proposed Finding No. 46).

II. The Stanley Works

4. The Stanley Works is a Connecticut corporation, with its principal place of business in New Britain, Connecticut, Stanley manufactures and sells hand and power tools, hardware products, steel and steel strapping, and component parts and at all times relevant to this proceeding sold and shipped products in interstate commerce and engaged in commerce within the meaning of the Clayton Act and the Federal Trade Commission Act.⁷

5. Stanley operates numerous production facilities including plants located at Pittsburgh, California; New Britain, Connecticut; Farmington, Connecticut; North Miami, Florida; Newark, New Jersey; New Bern, North Carolina; Windsor, Ohio; Chattanooga, Tennessee; Stockbridge, Vermont, and Rockford, Illinois.⁸

6. Stanley's domestic sales, total assets and total income for the years 1963 thru 1966 were as follows:

[In millions of dollars]

Year	U.S. sales	Total assets	Net earnings ¹
1963.....	94	95	4.2
1964.....	104	106	4.6
1965.....	123	126	6.6
1966.....	177	174	

¹ After income taxes.⁹

III. The Relevant Product and Geographic Market

7. Cabinet hardware includes pulls, knobs, hinges, latches, catches, and related products, including drawer slides and shelving hardware designed primarily for residential, commercial and architectural cabinet work, principally kitchen cabinets. Cabinet hardware is the relevant product market in this case and there are no relevant submarkets of cabinet hardware. Cabinet hardware sales in the United States in 1965 were approximately \$76,000,000 to \$80,000,000. The only relevant geographic market in the case is the United States and there are no relevant geographic submarkets.¹⁰

8. Amerock was a highly successful, profitable company with good growth record.¹¹ Amerock's sales of cabinet hardware in 1965 were approximately \$18,218,474, representing between 22% and 24% of all

⁷ RPF 1, 2.

⁸ CPF 10, in part.

⁹ CPF 24.

¹⁰ Record stipulation between the parties.

¹¹ RPF 16 A.

cabinet hardware sales in the United States in that year. Amerock's percentage share of the total cabinet hardware market in each of the years 1963, 1964, 1966, 1967 and 1968 was neither significantly greater nor significantly less than in 1965. In each of these years Amerock was the largest manufacturer of cabinet hardware in the United States.¹²

9. Stanley's sales of cabinet hardware in 1965 were approximately \$814,000, representing 1% of all cabinet hardware sales in the United States in that year. Stanley's percentage share of the cabinet hardware market in 1964 and 1966 was neither significantly greater nor significantly less than in 1965. In 1967 and 1968 Stanley's percentage share of the total cabinet hardware market was neither significantly greater than nor significantly less than its share in 1965.¹³

10. Based upon figures contained in the returns on third-party subpoenas *duces tecum* issued at respondent's request and the figures for Amerock and Stanley in respondent's possession, tabulations were prepared and introduced into evidence as respondent Exhibits Nos. 4 and 5. Compiled from respondent's aforesaid tabulations is the following tabulation with accompanying explanatory footnotes. The tabulation shows, among other matters, the total 1965 sales of cabinet hardware by the 14 suppliers listed thereon in numerical ranking according to the cabinet hardware sales total of each supplier. The total cabinet hardware sales of these 14 suppliers during 1965 add to approximately \$53,791,808. Based upon the stipulated total cabinet hardware sales for 1965 in the United States of approximately \$76,000,000 to \$80,000,000, the cabinet hardware sales of these 14 suppliers account for roughly 70% of the first figure of \$76,000,000 and 68% of the second figure of \$80,000,000, being the stipulated total of 1965 cabinet hardware sales in the United States.

IV. The Competitive Effect of the Acquisition and Merger

11. The record stipulation¹⁴ between the parties recites that the only issues in this proceeding are as follows:

(1) Whether the effect of the contract, combination and merger of Amerock and Stanley may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of cabinet hardware throughout the United States in violation of Section 7 of the Clayton Act;

(2) Whether the effect of the contract, combination and merger

¹² RPT 29.

¹³ Record stipulation between the parties.

¹⁴ See fn. 2, *supra*.

Initial Decision

	1965			1966		
	Cabinet hardware sales in United States	Total sales in United States	Total assets	Cabinet hardware sales in United States	Total sales in United States	Total assets
Amerock Corp.	18,218,474	29,440,464	25,133,914	18,881,231	30,742,188	20,026,358
National Lock Co. ¹	11,409,445	49,486,724	37,992,215	12,487,464	54,280,927	39,449,484
Alax Hardware Corp.	6,798,000	7,120,726	3,335,412	7,560,000	8,228,846	4,561,002
Knappe and Vogt Mfg. Co.	6,013,304	13,404,666	7,968,450	6,195,007	14,165,396	10,023,647
Jaybee Mfg. Corp.	3,988,763	3,732,201	1,710,989	2,998,397	3,615,473	1,645,828
Grant Pulley & Hardware Corp.	2,988,897	6,277,310	2,366,165	2,685,952	7,223,743	2,562,680
David Allison Co., Inc. ²	1,900,000	---	1,500,000	1,750,000	---	1,750,000
Tassell Industries, Inc. ³	1,408,000	6,301,029	2,483,424	1,702,958	6,523,654	3,012,359
Hyver Hardware Mfg. Corp.	1,344,464	1,371,202	524,452	1,527,275	1,556,697	8,523,267
Stanley Hardware Division ⁴	844,000	23,100,000	125,926,000	916,000	25,300,000	174,337,000
Cardinal of Adrian	888,000	1,232,860	577,861	735,450	1,416,980	174,898,675
Bassick-Sack ⁵	203,000	140,863,118	100,884,696	206,855	161,764,361	107,453,287
Florenta of California, Inc.	148,997	148,997	45,240	180,837	180,837	50,671
Advanced Affiliates, Inc. ⁶	28,554	42,876	56,312	137,501	206,459	72,151
Faultless Caster Co. ⁷	---	---	---	31,151	105,324,000	53,453,000
Leslie Metal Arts Co., Inc.	---	---	---	14,203	3,966,602	3,532,189

¹ Cabinet hardware sales figures include estimated two or three million dollars of furniture trim hardware (Tr. 2032). National Lock is a subsidiary or division of Keystone Consolidated Ind. Inc. Total 1965 sales of Keystone were \$153,396,412 and assets \$134,062,482. For 1966 corresponding figures were \$141,605,982 and \$131,818,172.

² Does not manufacture but imports for resale in United States. Figures are estimates agreed upon by trial counsel (Tr. 900-901).

³ Subsidiary or division of Gulf & Western Ind. Inc. Total 1965 sales of Gulf & Western were \$177,777,000 and assets \$104,096,000. For 1966 corresponding figures were \$309,152,000 and \$294,239,000.

⁴ Total 1965 product sales of Stanley were \$123,247,000 and assets \$125,926,000. For 1966 corresponding figures were \$176,777,000 and \$174,337,000.

⁵ Subsidiary or division of Stewart-Warner Corporation. Total 1965 sales of Stewart-Warner were \$140,863,118 and assets \$100,884,696. For 1966 corresponding figures were \$161,764,361 and \$107,453,287.

⁶ Does not manufacture but imports for resale in United States.

⁷ Subsidiary or division of Bliss & Laughlin Ind. Inc. Total 1965 sales of Bliss & Laughlin were \$105,324,000 and assets \$53,453,000.

of Amerock and Stanley may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of cabinet hardware throughout the United States in violation of Section 5 of the Federal Trade Commission Act;

(3) If said contract, combination and merger constituted a violation of the aforesaid Section 7 of the Clayton Act or Section 5 of the Federal Trade Commission Act or both, whether Stanley should be compelled to divest itself of Amerock and/or whether and to what extent the Commission should order any other relief, including possible restraint for a stated period of time of any future acquisitions by Stanley, without the prior approval of the Commission, of any firm engaged in the manufacture of hardware products (as defined in the complaint) within the United States.

12. The business judgment good or bad by Amerock and Stanley leading to the acquisition and merger here in question is not believed necessary of discussion for it would not serve as a legal excuse if the competitive effect of the acquisition and merger is found to be in violation of law.¹⁵

13. Cabinet hardware used in residences, both houses and apartments, is generally referred to as "residential cabinet hardware," and is different in nature from the cabinet hardware used in commercial or institutional buildings such as office buildings, schools, churches, airports and recreational buildings, which is generally referred to as "architectural" or "institutional" cabinet hardware. The differences in these two basic types of cabinet hardware may be briefly described as follows:

A. *Residential cabinet hardware* is highly stylized and is offered in an extremely wide variety of styles, designs and finishes to go with or accent the various styles and motifs of today's kitchen and bathroom cabinets. Virtually all residential knobs and pulls are now made by the die-cast method because of the intricate designs and styling which this method of manufacture permits. However solid brass cabinet knobs and pulls, which are more expensive than the die-cast variety, are occasionally still used in the construction of extremely expensive homes in the \$100,000 and up category. Residential cabinet hinges are made of metal stampings but are styled, designed and finished to match the knobs and pulls with which they are sold as a set.

B. *Architectural cabinet hardware* is not highly stylized. On the contrary, it is designed to have the clean, functional lines of the

¹⁵ This would dispose of RPF 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20; CPF 95, 96, 97, 98, 99, 100.

institutional buildings in which it is used. Architectural cabinet hardware is rarely made by the die-cast method. It is almost always made of bronze, brass, aluminum or steel, which is more durable than die-cast material, so that it can better withstand the heavier wear to which it is subjected in an institutional building. Architectural cabinet hinges are generally made of a heavier gauge metal than residential cabinet hinges. As a result, architectural cabinet hardware is generally heavier and more expensive than residential cabinet hardware.¹⁶

14. Cabinet hardware is sold through six channels of distribution: (1) full-line wholesalers, (2) specialty wholesalers, (3) national accounts, (4) OEM manufacturers of residential cabinets, (5) OEM manufacturers of institutional cabinets, (6) contract hardware distributors. Each of the six channels is described briefly below.

A. *Full-line wholesalers* sell a wide variety of products, including builders' hardware, paints, heating and plumbing supplies, electrical appliances and supplies, hand and power tools, toys, sporting goods and housewares, to retail hardware stores, lumber yards, department stores and, to a small extent, local builders and contractors. A few full-line distributors also have a separate contract hardware department which performs the services of a contract hardware distributor, as described in F below.

B. *Specialty wholesalers* are wholesalers which specialize in a given field of products. Wholesalers specializing in cabinet hardware may also carry some related items such as fasteners, adhesives, abrasives, wood finishers and paints. Specialty wholesalers of cabinet hardware sell primarily to cabinet shops and, to a lesser extent, to lumber yards and retail stores. Cabinet shops are small companies with from five to fifty employees which build cabinets and sell them in finished form, with the hardware attached, to local builders and contractors. Some cabinet shops produce residential cabinets for installation in homes and apartment buildings. Others produce institutional cabinets for use in institutional buildings such as schools, churches, office buildings and the like. Cabinet shops producing residential cabinets purchase residential cabinet hardware, whereas shops which produce institutional cabinets purchase institutional or architectural cabinet hardware. There are no cabinet shops which produce both residential and institutional cabinets.

C. *National Accounts* are large chain store companies, such as Sears, Montgomery Ward, K-Mart, Penny and the like. These companies purchase cabinet hardware directly from the cabinet hard-

¹⁶ RPF 34.

ware manufacturers and sell it through their chains of outlets, usually under a private label.

D. *OEM manufacturers of residential cabinets* are large companies engaged in the manufacture of finished residential kitchen and bathroom cabinets, with the cabinet hardware attached, for sale to builders and contractors of homes and apartments. Original Equipment Manufacturers (OEM) of residential cabinets are differentiated from the residential cabinet shops primarily by size. They are large companies, usually automated, which employ a large number of people and sell their cabinets in a much broader geographic area than the cabinet shops. Some sell nationwide. As a result, they purchase their cabinet hardware direct from the suppliers rather than through the specialty distributors. The cabinet hardware which they purchase is residential cabinet hardware.

E. *OEM manufacturers of architectural cabinets*, also sometimes referred to as architectural millwork houses, are large companies engaged in the manufacture of finished institutional cabinets, with the cabinet hardware attached, for sale to contractors putting up institutional buildings. They are differentiated from the institutional cabinet shops primarily by size, in that they are larger, usually automated companies which sell in a broader geographic area than the cabinet shops. As a result, the OEM institutional cabinet manufacturers purchase their cabinet hardware direct from the suppliers rather than through specialty distributors. The cabinet hardware which they purchase is institutional or architectural cabinet hardware. There are no OEM cabinet manufacturers which manufacture both residential and institutional cabinets.

F. *Contract hardware distributors* are wholesalers which sell architectural builders' hardware products, including architectural cabinet hardware, to contractors who are building institutional buildings. These items are sold to the contractors on a bid basis for each building project, so that the contract hardware distributor which submits the lowest bid on a particular building will receive the award to supply all the builders' hardware needed for that building. Occasionally a contract hardware distributor will also be asked to supply the hardware, including cabinet hardware, needed in residential buildings such as high-priced homes in the \$100,000 and up category or suburban doctor's offices. In such cases the contract hardware distributor may supply the contractor with residential cabinet hardware. However, approximately 95% of the typical contract hardware distributor's business is selling architectural hardware products for use in institutional buildings. Thus approximately

95% of the cabinet hardware sold by contract hardware distributors is architectural cabinet hardware. Contract hardware distributors do not sell to retail outlets of any kind, although there are a very few which have a separate retail outlet of their own.¹⁷

15. In the year prior to the merger, 1965, Stanley had total cabinet hardware sales of \$814,000, representing approximately 1% of the total cabinet hardware market of \$76,000,000-\$80,000,000.

A. Of Stanley's total \$814,000 of cabinet hardware sales, \$200,000 was of residential cabinet hardware and the remaining \$614,000 was in architectural cabinet hardware. Amerock, on the other hand, had \$200,000 in sales of architectural cabinet hardware, and approximately \$18,000,000 of residential cabinet hardware.

B. Of Stanley's \$200,000 of residential cabinet hardware, approximately \$191,959 was sold through full-line wholesalers for resale to retail hardware and lumber outlets or direct from Stanley to certain hardware and lumber companies with more than one retail outlet. The remaining \$8,041 was sold to one national account, Montgomery Ward & Co.

C. Of Stanley's \$614,000 of architectural cabinet hardware sales, between 90% and 95%, or approximately \$570,000, was sold through contract hardware distributors or through the contract hardware departments of certain full-line wholesalers. Amerock's sales of architectural cabinet hardware through contract hardware distributors totaled about \$40,000.

D. The remainder of Stanley's \$614,000 of architectural cabinet hardware sales, or approximately \$44,000 was accounted for by sales to OEM manufacturers of institutional cabinets. Amerock's sales of architectural cabinet hardware to OEM manufacturers of institutional cabinets totaled approximately \$160,000.

E. The channels for distribution through which both Stanley and Amerock sold cabinet hardware were (a) the full-line wholesalers, (b) the contract hardware distributors, (c) the OEM manufacturers of institutional cabinets and (d) national accounts for resale under private labels.¹⁸

16. Approximately two-thirds of Amerock's cabinet hardware sales are made to OEM manufacturers of residential cabinets and specialty distributors selling to residential cabinet shops. The remaining third goes to full-line wholesalers and national accounts for resale at the retail level.¹⁹ The key to selling decorative residential cabinet

¹⁷ RPF 35.

¹⁸ RPF 63, 64 in part; CPF 16; CX 13 A.

¹⁹ RPF 67 in part. Included in Findings Nos. 15 and 16 above are CX Nos. 12 and 13 A, which are to be read to obtain the full Stanley-Amerock competitive picture in the pre-merger stage. Further, see Tr. 1067-1068.

Initial Decision

78 F.T.C.

hardware to wholesalers, national accounts and OEM manufacturers of residential cabinet hardware is style and design. Consumers purchasing in retail stores select the style which appeals to them most, regardless of the name of the manufacturer, and cabinet manufacturers likewise seek to select styles and designs which will appeal to the homeowner. As a result, residential cabinet hardware has become an extremely fashion-oriented business, with rapidly changing styles and designs and a trend towards increasingly more ornate styles and designs. In order to be successful, a manufacturer of decorative residential cabinet hardware must therefore have or hire a competent staff of designers to keep abreast of and lead the changing trends in style.²⁰

17. In order to compete successfully for sales of decorative residential cabinet hardware, a company must offer die-cast knobs and pulls. Stamped knobs and pulls are a thing of the past and, with the exception of the traditional black colonial-style sets, are simply not used on today's cabinets. The reason is that it is not possible to produce stamped knobs and pulls of the highly stylized nature which today's market demands at prices which are competitive with the prices of die-cast knobs and pulls.²¹

18. The only residential cabinet hardware items which the Stanley Hardware Division sold prior to the merger (\$200,000 worth in 1965) were sold through wholesale hardware distributors for resale to retail outlets. The division offered three uni-racks of cabinet hardware items. An example of one was introduced as RX 102-5 and pictures of the other two are shown at pages 243 and 256 of the Stanley Hardware Catalog, a copy of which was introduced as CX 61. RX 102-5 is a line of "contemporary" cabinet hardware of which the Division purchases the knobs and pulls from Jaybee (at an average annual cost of \$9,000) because it does not have the die-casting facilities necessary to produce them. The second uni-rack consists of a line of black-strap, non-die cast colonial cabinet hardware and the third consists of four cabinet catches. These three uni-racks accounted for approximately \$100,000 in sales in 1965. Poly bag packs of the same items shown on these three uni-racks, plus a few miscellaneous items, accounted for the remaining \$100,000 of the division's total \$200,000 residential cabinet hardware sales in 1965.²²

19. A witness from the Jaybee Manufacturing Company from which Stanley purchased the die-cast cabinet hardware items de-

²⁰ RPF 39.

²¹ RPF 41.

²² RPF 101.

scribed in Finding 18 above testified herein at Tr. 2397-2423. In summary part, this witness testified that the machinery necessary to manufacture die-cast hardware is obtainable from various sources in the United States and that people knowledgeable in the operative technology are either available or trainable, and that outside professional designers of cabinet hardware products can be employed if found necessary.

20. In 1963 a Stanley Hardware Division preliminary task force report recommended that the Division's long-range objectives for cabinet hardware should be to attain \$2,500,000 gross sales and \$225,000 pre-tax profit by the end of 1969 and that the task force should present a final report analyzing in detail two alternative ways in which these objectives might be achieved:

Alternate 1: Acquire a cabinet hardware manufacturer with established distribution and with the knowledge of the art and experience in die-cast manufacturing, finishing and design.

Alternate 2: Procure die-cast and die-cast finishing facilities supported with appropriate engineering, design and marketing staff, with a complete product and market development program.²³

Stanley instead of updating its cabinet hardware products in a residential cabinet hardware line proposed in Alternate 2, as distinguished from the architectural cabinet hardware line in which Stanley met no such manufacturing problem, eventually chose to go the merger route proposed in Alternate 1 above.

21. In 1964 a Stanley Hardware Division final task force report with reference to Alternate 1 in Finding No. 20 above recommended acquisition of Ajax or Jaybee (see tabulation of competitors in preceding Finding No. 10) as the only way in which the Division could achieve its long-range objectives for cabinet hardware of \$2,500,000 in gross sales and \$225,000 in pre-tax profits.

With reference to Alternate 2 in Finding No. 20 above, it recommended that the second alternative of internal development into die-cast cabinet hardware be dropped, since the task force's analysis of this alternative showed that it would require a minimum investment of \$600,000 to attain the \$2,500,000 sales goal by the end of 1969.²⁴

²³ RPF 159. With reference to above Alternate 2 it is noted that there are substantial sales areas in the stipulated United States market for cabinet hardware not requiring die-cast facilities. For example, Knape & Vogt and Grant Pulley and Hardware Company, ranked No. 4 and No. 6 on the tabulation in preceding Finding No. 10, produce and sell drawer slides which are cabinet hardware products used extensively in household cabinets (Tr. 505-506, 627, 1723-1724, 1901-1902).

²⁴ RPF 166 A, citing CX 87 G-H. With regard to Alternate 1 above and the recommended acquisition by Stanley of Ajax or Jaybee in that order, CX 87 States—This assumes a bona fide attempt has been made and failed to interest Amerock, since Amerock is really our first choice.

22. In a 1964 meeting held by the Stanley Hardware Division management and Stanley corporate management represented by Donald W. Davis (now president of Stanley and a witness in this proceeding) the Hardware Division further recommended against Alternate 1 in Finding No. 21 above for reasons as alleged in RPF 173. The Hardware Division was told to speed up their timetable for a new line of architectural cabinet hardware and according to RPF 178, Mr. Davis further stated that pending development of an expanded architectural line, the door should be left open in the event a decision was subsequently made to acquire die-casting facilities and develop a residential cabinet hardware line, and further that the sales goal of \$2,500,000 was too low and the objective should be \$4,500,000 at the end of the five years.

23. As a result of the meeting in Finding No. 22 above, the Hardware Division immediately began to expand its efforts in product development of architectural cabinet hardware and it was decided not to pursue the possibility of acquiring a short line manufacturer of architectural cabinet hardware. Management of the Hardware Division decided that it could easily develop the necessary architectural items internally since architectural cabinet hardware is not made on die-casting equipment and that it would be preferable to develop its own line rather than take over a line by acquisition.²⁵

24. Stanley and Amerock have well established nationwide sales organizations. The name Stanley related to a hardware product has been long associated in the trade with a reputation for reliability and quality. Tr. 2124-2125 discloses the following testimony from an OEM or kitchen cabinet manufacturer called as a witness by respondent:

Q. You indicated that Scheirich was one of the leading cabinet manufacturers in terms of sales. Would you consider yourself to be one of the leading purchasers of decorative cabinet hardware items for use on kitchen cabinets?

A. Yes.

* * * * *

Q. Mr. Hedgepeth, if the Stanley Works, in your opinion, decided to venture into the manufacture and supply of decorative kitchen cabinet hardware items, would you consider their particular product line as a serious subject of purchase?

A. Yes, if they came to us, we would certainly give them consideration. We would have to examine all the factors.

Another of respondent's witnesses, a full line wholesaler of hardware products with annual sales of around 7 million dollars, testified to the following at Tr. 2154-2156:

²⁵ RPF 180 in part.

1023

Initial Decision

Q. If Stanley were to develop a new line of residential cabinet hardware and attempt to sell it to you, would they, in order to sell it to you, have to do more in order to persuade you to take that line than they would have had to do if they had never sold you cabinet hardware in the past?

A. To a degree, they would have to do more, because they had a bad experience, and anybody that experiences this kind of thing does have to put their best foot forward to convince somebody that they are now out in front.

HEARING EXAMINER SCHRUP: Would you consider that an impossible task?

THE WITNESS: No, sir.

* * * * *

Q. Why do you purchase your cabinet hardware from Amerock?

A. Well, we are purchasing from Amerock because we like the products; it is excellent design; it is splendid eye-appeal. I think one of the major factors in buying from Amerock is the type of people who represent the company, people that come into our place from Amerock. They are the type of people we like to see come in our front door. It is an excellent distributor relationship. They have a policy that supports the distributor's type of operation, in that they do not go direct to the consuming public. To me, it is just a fine company to do business with.

At Tr. 2170 this wholesaler testified his company to have carried Stanley hardware since 1936 or 1937. When asked his opinion of Stanley as a manufacturer and distributor of hardware, the witness answered as follows:

THE WITNESS: I have considered Stanley as one of the leading manufacturers in the country. In fact, I am aware of the fact that they are one of the oldest manufacturers in the country and they are also considered by the hardware industry as the toolbox of the world.

25. Commission Exhibit 30, a Stanley press release, states the merger "brings together two companies whose products and means of distribution are compatible. Amerock and Stanley see the move as two companies joining together to complement and reinforce each other and to better serve the trade and the ultimate consumer."²⁶

Under cross-examination at Tr. 1037, Norris A. Aldeen, president and chief executive of Amerock and a director of Stanley, testified to the following:

Q. Is it true that Stanley uses Amerock customer lists and Amerock uses Stanley customer lists?

A. We have knowledge in the trade of our various customer lists, yes.

HEARING EXAMINER SCHRUP: That answer isn't quite clear to me as I gather the import of the question. Are you implying or asking whether there is an exchange of customer lists between Amerock and Stanley?

MR. REFFKIN: Since the merger, yes.

²⁶ CPF 34. At Tr. 1843 the president of Stanley testified:

"We would see no advantage in transferring the architectural cabinet hardware business to Amerock because they would add nothing to that. This is the area in which Stanley has strength and Amerock doesn't."

Initial Decision

78 F.T.C.

HEARING EXAMINER SCHRUP: Would you answer that question?

THE WITNESS: Yes. We have knowledge of their customers and they have knowledge of our customers in certain markets.

In this connection a veteran in the hardware industry and the vice president of finance for the Hager Hinge Company testified his company to have been in existence since 1849 and that he had been associated with it since 1946 and for ten years had formerly acted as vice-president of sales. At Tr. 435 this witness testified:

Q. Who, in your view, would be the leading company, as far as your competition was concerned?

A. At that time?

Q. In cabinet hardware, yes.

A. Stanley Works was the leading distributor of architectural cabinet hardware at that time. And I believe the Amerock Corporation was the leader and distributor of wholesale cabinet hardware to distributors.

At Tr. 445 the witness testified:

Q. Is there any advantage to a company producing hardware products, in general, also to product cabinet hardware products, in particular?

A. Yes, sir.

Q. What advantage would there be?

A. The distribution system that that company would already have.

Q. In what respect?

A. The sales force calling on the same customer that could use his products, or would distribute it.

At Tr. 455-456 the witness testified:

Q. Mr. Hager, is there a distinct advantage for the Hager Company in selling cabinet hardware products in connection with its hardware line?

A. Yes, sir.

Q. In what respect?

A. If we are talking of one class of cabinet hardware, architectural or commercial cabinet hardware, the advantages that we would supply a distributor for that particular job, the full breadth of cabinet and hinge hardware required for that job, for that specific building or office or structure, the advantage, if it were a wholesale distributor, would be that he could purchase a full line from one manufacturer. I think there are advantages to him in that.

In response to the question of whether Hager as a competitor was concerned with the Stanley-Amerock merger, the witness replied at Tr. 463-464:

THE WITNESS: We did have a concern with the resulting merger, that the distributors presently for Amerock of cabinet hardware and our line of other builders hardware might be encouraged to discontinue buying our other line of builders hardware and buy Stanley.

As shown on the tabulation in preceding Finding No. 10, the Stanley Hardware Division had sales of \$23,100,000 in 1965 and \$25,300,000 in 1966. The principal product line which the Stanley

Hardware Division manufacturers is hinges, primarily architectural and residential door hinges, as well as general farm and utility hinges and a variety of other hinges including those suitable for use as cabinet hardware.²⁷ The Hager Hinge Company also manufactures such hinges for competitive resale on a nationwide scale.²⁸

26. John C. Bosworth, general sales manager of Amerock, at the hearing on April 30, 1969 testified to the following at Tr. 1140-1141:

Q. You said "key competitor." What did you mean by that?

A. I think in Kitchen Business, which is one of the trade magazines in our industry, this past March or April or February, they listed, I think, 97 competitors in kitchen cabinet hardware. So, when I say "key competitors," it is staying down with the first 10 or 20.

The witness from Ajax, the third ranking manufacturer and seller of cabinet hardware in the United States shown on the tabulation in preceding Finding No. 10, testified at Tr. 505-506:

HEARING EXAMINER SCHRUP: I would like to get this record pretty clear on this point.

Now, you are talking about competitor, and you are talking about the competitor in the sales of cabinet hardware, sir?

THE WITNESS: Competitors, yes, sir.

HEARING EXAMINER SCHRUP: Who are they?

THE WITNESS: There are, in my mind, eight competitors. I would establish these as Amerock, National Lock, Jaybee, Hyer, David Allison, Tassel, Liberty Hardware, and Stanley.

HEARING EXAMINER SCHRUP: Why do you restrict yourself to these particular eight firms?

THE WITNESS: They are the ones that are most active and the ones we encounter most often in our product lines.

There are some others in specific product areas that are competitors in those areas.

HEARING EXAMINER SCHRUP: Who would they be?

THE WITNESS: Such as in the drawer slide area, Knappe & Vogt, Hardware Designers, Grant Pulley & Hardware Company—

At Tr. 511-512 the witness further testified to the following:

HEARING EXAMINER SCHRUP: Are you familiar with Kitchen Business Magazine?

THE WITNESS: Yes, sir.

HEARING EXAMINER SCHRUP: What is it?

THE WITNESS: It is the trade magazine servicing the kitchen industry, with its editorial primarily directed to the kitchen cabinet dealer, the man who would sell a kitchen cabinet, complete kitchen, to a homeowner, remodeling or—

HEARING EXAMINER SCHRUP: This exhibit states there are fifty-five manufacturers of cabinet hardware. Have you any knowledge about that situation?

²⁷ CPF 5, 6, 7 and RPF 86.

²⁸ Tr. 425-431. RX 6 shows Hager overall hardware sales in the United States to have been \$10,648,264 in 1965 and \$11,561,108 in 1966. See further, Tr. 1067-1068.

Initial Decision

78 F.T.C.

THE WITNESS: I have seen that list, sir, and it includes people who make one product in the cabinet hardware field.

For example, a manufacturer that would only make a cabinet catch and no other products.

Upon further questioning as to the various suppliers of cabinet hardware shown on the said exhibit and the possible significance of such an overall large number of suppliers, the witness responded at Tr. 517:

THE WITNESS: Well, there are several things that I think affect this list.

Number one, to the best of my knowledge, that list included importers as well as domestic manufacturers.

Secondly, it includes people who, as I previously explained, make perhaps one product that could be considered, or that is considered cabinet hardware.²⁹

27. In the premerger year 1965, according to the tabulation in preceding Finding No. 10, the sales of cabinet hardware by Stanley and Amerock totaled \$19,032,474. The next three leading competitors of Stanley and Amerock accounted for \$24,310,749, or a combined total with Stanley and Amerock of \$43,343,223, which was 57% of the stipulated total of \$76,000,000 and 54.2% of the stipulated total of \$80,000,000 of cabinet hardware sales in the United States. Adding to this total the sales of the next five leading competitors of Stanley and Amerock, each over the \$1,000,000 mark, shows a combined total of \$52,821,357 for these few leading suppliers in the cabinet hardware market. This represents 69.5% of the stipulated United States total sales cabinet market of \$76,000,000, and 66% of the total United States cabinet sales market of \$80,000,000. The combined total for the next four supplier competitors of Stanley and Amerock shown on the tabulation for 1965 total but \$970,451. The two new supplier competitors shown on the tabulation for the year 1966 had sales of only \$31,151 and \$14,203, respectively. While overall sales by all these cabinet hardware competitors show annual increasing sales volume (with the exception of Jaybee), the market share of Stanley and Amerock in the annually increasing sales volume of cabinet hardware has not significantly varied over the years according to the stipulation of record between the parties.³⁰

28. Stanley had early recognized and determined that the United States cabinet hardware market was large and important to Stanley.³¹ It took affirmative internal steps to advance its sales position in architectural cabinet hardware. In 1965 the Hardware Division developed a number of new architectural cabinet hardware products

²⁹ See and compare CX 18 B and CX 85 Z-34, Z-35. Also see, Tr. 1072-1075, 2065-2067.

³⁰ See footnote 23, *supra*, and Finding No. 31, *infra*.

³¹ CPF 79.

1023

Initial Decision

and the expanded line of architectural cabinet hardware was announced in 1965 by a division letter to the trade introducing the new line, accompanied by a brochure illustrating and describing it. A copy of said letter and brochure were introduced as RX 84 and CX 64, respectively. It also developed sets of two architectural cabinet hardware display boards for its salesmen to use in attempting to sell the products to contract hardware distributors and OEM manufacturers of institutional cabinets. Examples of these two display boards were introduced as RX 103-2 and RX 103-3. In 1966 the division spent between \$50,000 and \$60,000 in trade advertisements and promotions to introduce its new architectural cabinet hardware line to the trade.³²

29. In 1964 the Stanley Hardware Division management conveyed certain conclusions with reference to its cabinet hardware situation to Donald W. Davis then executive vice president of Stanley and acting general manager of the Hardware Division. The report stated in part:

The Division should hire a new marketing manager for cabinet hardware who had experience in both the field of architectural cabinet hardware products and in residential die-cast cabinet hardware products, in case it should be decided to move into the die-cast field at a later date. It was also recommended that the Division hire an industrial designer to help the engineering department develop the proposed new cabinet hardware items.³³

Stanley sought to employ the vice president for marketing of Ajax, a manufacturer and seller of both architectural and residential cabinet hardware on a nationwide basis.³⁴ Ajax as shown on the tabulation in preceding Finding 10 was the third ranking supplier of cabinet hardware in the United States with sales for 1965 of \$6,798,000 and for 1966 of \$7,560,000. The vice president for marketing of Ajax, a former employee of Stanley, testified in pertinent part to the following at Tr. 526-528:

Q. Did you indicate at that time whether you would accept the position at Stanley?

A. I was interested in the position. We discussed salary; I indicated what it would take to interest me enough to make the move, and he stated that he was considering it and would let me know further.

Q. What was your interest in the position?

A. Well, I saw a great opportunity to become a major factor in the cabinet hardware industry, on the part of Stanley, and consequently to put myself in a very responsible managerial position. Stanley had the resources in terms of

³² RPF 192 and RPF 193 in part. See also, Tr. 2025.

³³ RPF 176 subpart B. See RPF 235 as to the ability of the Stanley Hardware Division to accomplish significant internal development of new products and to achieve substantial new product sales.

³⁴ RPF 180 in part.

Initial Decision

78 F.T.C.

financial ability, manufacturing capabilities, and sales force to really sell a product of this type.

Q. Would you explain what you mean by resources?

A. Well, Stanley is a large, well-financed company. To the best of my knowledge, they would be capable of buying necessary equipment, the die casting equipment, to purchase the design, to hiring people internally to do it, or hiring outside designers, and they have the manufacturing capability already on hand to make the rest of the product line, to the best of my knowledge.

Q. What did you mean by sales forces?

A. Well, Stanley has a directly employed sales force. These are employees of Stanley, and not manufacturers representatives, to the best of my knowledge. These are men who are already calling on the types of customers who would buy cabinet hardware. I don't know the size of their sales force, but what would be sufficient to sell their present product lines must be sufficient to sell cabinet hardware.

30. The Stanley Works on August 19, 1966, filed with the Securities and Exchange Commission a Registration Statement, which at pages 15, 16 and 17 of the document, describes the business of the company. At page 15 the following statement appears:

With the merger of Amerock Corporation, the Company entered the field of die cast hardware. Amerock adds to the Company's products a complete line of cabinet hardware, including handles, pulls, knobs, backplates, catches, drawer slides, latches and a variety of hinges. Amerock manufactures lines of window, appliance, furniture and general household hardware products. Product styling is an important competitive factor in cabinet hardware, and the Company now believes it is a leader in product styling and in the manufacture of cabinet hardware.³⁵

It is not only reasonably probable but realistic to except that in response to the demands of the marketplace, absent the Stanley-Amerock "marriage" announced in CX30, that Stanley sooner or later would have taken the necessary steps on its own to become a leader in product styling and in the manufacture of cabinet hardware in the stipulated United States relevant product market.³⁶ Instead and to more readily achieve such end, Stanley chose a \$32,000-000 transaction by way of the acquisition and merger of Amerock. Stanley's contention that it had made a prior irrevocable decision not to enter on its own the decorative residential cabinet hardware segment of the said market is rejected.

31. The Stanley-Amerock marriage takes on more competitive significance than reflected solely by the combined market shares of each shown on the tabulation in preceding Finding No. 10 herein. The tabulation on its face does not show, aside from the fact that

³⁵ CX 24 Q.

³⁶ For example, see the proposed Sales Strategy for the Stanley Hardware Division at CX 87 Z-12, 13 and 14.

two suppliers are importers and not domestic manufacturers of cabinet hardware, the principal types of cabinet hardware products sold by the various leading suppliers and the actual and potential sales and entry barriers which may be present or raised in the sales areas for such products in the stipulated United States relevant product market of cabinet hardware.³⁷

For example, Stanley was able to establish itself as a significant domestic manufacturer and substantial supplier in the sales area occupied by purchasers of architectural cabinet hardware. With strong financial resources, a well-known, good reputation and industrywide acceptance of its many other hardware products plus an established nationwide sales force, Stanley chose acquisition rather than internal expansion in order to more readily establish itself as a significant substantial manufacturer and supplier in the sales area of major importance in the stipulated United States cabinet hardware market, that occupied by purchasers of residential cabinet hardware.³⁸

Further, Stanley on the basis of the returns on subpoenas *duces tecum* issued at its instance, prepared and introduced into evidence RX 5 which shows the year of entry and the sales progress of six suppliers in the stipulated United States cabinet hardware market. This tabulation discloses Cardinal of Adrian to have entered the market in 1963 and to have reached annual sales of \$901,079 in 1967. The record testimony discloses Cardinal of Adrian to be both a manufacturer and importer of cabinet hardware for resale in the United States market. Cardinal of Adrian sells primarily in the OEM market, and introduced a self-closing cabinet hardware hinge, an innovation and recognized factor in the cabinet hardware market. It is to be noted that die-cast manufacturing facilities are not necessary for the production of residential or architectural type cabinet hardware hinges.³⁹ Advanced Affiliates entered the market in 1965 and shown on RX 5 to be an importer with cabinet hardware sales in the United States market of but \$383,008 in 1967.

Florenta of California is shown on RX 5 to have entered the market in 1963 and to have reached cabinet hardware sales of only \$180,837 by 1966. Leslie Metal Arts is shown on RX 5 to have entered the market in 1966 with cabinet hardware sales of but \$134,015 in 1967. Faultless Caster, a division of Bliss & Laughlin Industries Inc., is shown on RX 5 to have entered the market in 1966 with sales

³⁷ See footnote 23, *supra*. See also, Tr. 1089, 1157-1163, from the testimony of the general sales manager of Amerock. See further, Tr. 2055-2059, 2065-2067, from the testimony of the vice president of National Lock, ranked No. 2 on the tabulation in preceding Finding No. 10 herein.

³⁸ Tr. 2265-2266.

³⁹ Tr. 1090, 1178, 1186.

Initial Decision

78 F.T.C.

of only \$31,151 and \$55,451 for 1966 and 1967, respectively. Finally, Bassick-Sack, a division of Stewart-Warner Corporation, is shown on the tabulation to have entered the market way back in 1954 and to have had an annual top sales accomplishment in cabinet hardware amounting to only \$216,491 in 1967. Both Faultless Caster and Bassick-Sack had die-cast facilities.⁴⁰ The record also reflects testimony as to other manufacturers and suppliers of cabinet hardware in the stipulated United States cabinet hardware market but the sales figures testified to by the various witnesses were merely estimates or approximations inadequate to provide a basis for findings of actual fact thereon.

Finally, it will be recognized that the possession or obtaining of die-cast manufacturing facilities and acceptance design features, without more, does not necessarily promote or provide easy entry into the decorative residential United States cabinet hardware market, and insure that the necessary distribution channels to would-be-purchasers will be secured, and that significant substantial and profitable sales will result.⁴¹

32. The tabulation in preceding Finding No. 10 discloses that there are but few significant substantial suppliers of cabinet hardware in the stipulated United States cabinet hardware market as a whole. The acquisition and merger of Amerock the leading independent domestic manufacturer and seller by Stanley increased this high level of concentration and may result in a substantial lessening of competition in the said cabinet hardware market because of the elimination of Stanley as a reasonably probable, potentially capable and significant domestic manufacturer and seller in the residential cabinet hardware segment of the said market, and particularly in the decorative residential cabinet hardware sales area of the said market. The removal of Amerock the leading independent domestic manufacturer and seller of cabinet hardware in the United States from the aforesaid cabinet hardware market may have the cumulative effect of encouraging tendencies toward acquisition, combination and merger by actual and potential competitors in the said market, and further, may raise barriers to dissuade significant potential entrants and act to discourage and stifle the sales progress of actual manufacturers and sellers competitively engaged in the said United States cabinet hardware market.

⁴⁰ See Tr. 991-993, 1185-1192, 2263.

⁴¹ Tr. 1173-1192, 1203-1209, 2263, 2269, 2273, 2374-2375.

V. Conclusions

1. The effect of the acquisition and merger of Amerock by Stanley may be substantially to lessen competition or tend to create a monopoly in the manufacture and sale of cabinet hardware throughout the United States.

2. The said acquisition and merger of Amerock by Stanley constitutes a violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act.

3. The prior substantial, actual and potential competition in the manufacture and sale of cabinet hardware throughout the United States should be restored and an appropriate order to such effect should issue.

VI. Foreword to Order

33. The Stipulation of Issues and Facts entered into by the parties to this proceeding states in Paragraph 1, subparagraph (3), the following:

(3) if said contract, combination and merger constituted a violation of the aforesaid Section 7 of the Clayton Act or Section 5 of the Federal Trade Commission Act or both, whether Stanley should be compelled to divest itself of Amerock and/or whether and to what extent the Commission should order any other relief, including possible restraint for a stated period of time of any future acquisitions by Stanley, without the prior approval of the Commission, of any firm engaged in the manufacture of hardware products (as defined in the complaint) within the United States.

According to the record, Amerock following the acquisition and merger by Stanley has not undergone any substantial physical integration with the plant and manufacturing facilities of Stanley. Under the merger agreement, Amerock stockholders exchanged their shares of Amerock stock for shares of Stanley stock, with the result that former Amerock stockholders became the holders of 27% of the total outstanding Stanley stock. Members of the Aldeen family alone became the owners or beneficial owners of approximately 10% of the outstanding Stanley stock and the family thus became the largest individual stockholder in Stanley. The holders of the other 17% are small in number and are close to and influenced by the Aldeen family. Three former Amerock shareholders, Norris Aldeen, Reuben Aldeen and Roy Liljedahl, became members of the Stanley board of directors.⁴²

⁴² RPF 13.

Amerock after the acquisition and merger by Stanley continued to operate under Amerock's prior management. Mr. Aldeen, president and chief executive officer of Amerock and largest stockholder now of Stanley, in response to questions concerning possible divestiture of Amerock by Stanley testified:

Q. If the Amerock-Stanley merger were undone, what would happen to Amerock's position in cabinet hardware?

A. There would be no change. We were the leaders before the merger, we would be leaders if we have to divest.⁴³

The order in the proposed Findings of Fact, Conclusions and order submitted by complaint counsel contains a provision in Paragraph II of the proposed order not included in the order set forth in the Notice of the Complaint as issued and served upon respondent Stanley. This proposed provision by complaint counsel reads:

In accomplishing divestiture ordered in Paragraph I of this Order Stanley shall require a provision to be contained in an agreement of divestiture, providing that prior approval of the Commission would be required for a period of ten (10) years in any transaction whereby the divested company is either divested, transferred, combined, or merged into, or with, or in any way becomes part of, any other company.⁴⁴

Amerock is not named as a respondent in the complaint and the above provision of the proposed order by complaint counsel would seek to and is intended to bind Stanley in divesting and Amerock after it is divorced by Stanley and again becomes a strictly independent corporate entity. Complaint counsel would argue that the Commission's remedy should not be limited to types of orders entered in prior antitrust cases and state that there is need of the "extraordinary relief requested" in their proposed order. This is doubtful legal procedure at best and is not being followed herein.

The Notice of the Complaint as issued and served upon respondent Stanley recites the form of order which the notice states the Commission has reason to believe should issue if the facts are found to be as alleged in the complaint. Paragraph II of this order provides:

The divestiture ordered in Paragraph I of this Order shall not be effected, directly or indirectly, to any person who at the time of the divestiture is an officer, director, employee or agent of, or otherwise under the control or influence of, Stanley or any of Stanley's subsidiary or affiliate companies, or who owns or controls, directly or indirectly more than one (1) percent of the outstanding stock of Stanley.

The above provision of the order in the Notice of the Complaint might preclude various former officers, directors and stockholders of

⁴³ CPF 101. See further, Tr. 1005A-1010.

⁴⁴ Page 46, Proposed Findings of Fact, Conclusions of Law and Order submitted by complaint counsel.

Amerock now officers, directors and stockholders of Stanley from again becoming officers, directors and stockholders of Amerock upon divestiture by Stanley. Under the circumstances of record herein and in the effort of avoiding the raising of possible undue or unforeseen hardship questions, and not to act so as to prevent a return to the status quo existing in the stipulated United States cabinet hardware market prior to the acquisition and merger of Amerock by Stanley, Paragraph II of the order set forth in the Notice of the Complaint is being eliminated in the order hereinafter entered.

Based upon the entire record in this matter, the proposed findings, conclusions, legal briefs and replies thereto by the parties, and the preceding findings of fact and conclusions thereon, the following order is being entered.

ORDER

I

It is ordered, That respondent, the Stanley Works (hereinafter referred to as "Stanley"), through its officers, directors, agents, representatives and employees, shall divest within two (2) years from the effective date of this order, absolutely, and in good faith, of all right, title and interest and all assets, properties, rights and privileges, tangible and intangible, including without limitation, all manufacturing plants, equipment and operating facilities, machinery, inventory, customer lists, trade names, trademarks and good will obtained by Stanley as a result of its merger with Amerock Corporation, together with all additions and improvements thereto of whatever description and all earnings therefrom (hereafter "assets") to a purchaser approved by the Federal Trade Commission.

II

In effectuating Paragraph I of this order, respondent Stanley shall complete divestiture in the following manner and subject to the following conditions:

A. Beginning promptly on the effective date of this order, and for a period of six (6) months thereafter, Stanley shall make diligent efforts in good faith to effectuate the divestiture required by Paragraph I of this order.

B. If Stanley fails to effectuate such divestiture within that period, Stanley shall, within thirty (30) days thereafter, submit a plan in form and substance acceptable to the Commission, for the formation of a new and separate corporation (hereinafter "New Amerock"), to enable the restoration of Amerock Corporation as a viable competitive factor in the hard-

ware and cabinet hardware industries in substantially the manner and form it would have attained had it not been merged with Stanley. Such plan shall contain provision for:

1. Transfer to New Amerock of all assets required to be divested by Section I of this order;
2. Distribution of the capital stock of New Amerock to the public or to the stockholders of Stanley;
3. A provision that any direct or indirect holder of more than one (1) percent of the outstanding capital stock of Stanley shall divest all stock interest in New Amerock within six (6) months from the date of incorporation of New Amerock; and
4. Distribution of the capital stock of New Amerock within not more than two (2) years from the effective date of this order.

III

Within thirty (30) days from the effective date of this order, and every thirty (30) days thereafter until it has fully complied with this order, Stanley shall submit in writing, to the Federal Trade Commission, a verified report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with this order. All compliance reports shall include without limitation a specification of the steps taken by Stanley to make public its desire to divest the assets or stock required to be divested pursuant to Paragraphs I and II of this order, including, without limitation, a list of all persons, partnerships or corporations, and brokers, bankers and management consultants to whom this notice of sale has been given; a summary of all discussions and negotiations, together with the identity of all such potential purchasers or intermediaries, and copies of all recommendations, reports, offers and counteroffers and communications concerning divestiture.

IV

Stanley shall forthwith cease and desist from acquiring, directly or indirectly, by any device or through subsidiaries or otherwise, the whole or any part of the stock, share capital or assets of any firm engaged in the manufacture or sale of cabinet hardware products or other hardware products as defined in the complaint in this matter without the prior approval of the Federal Trade Commission. Within thirty (30) days following the effective date of this order, and annually thereafter, Stanley shall furnish a verified written report setting forth the manner and form in which it intends to comply, is complying, or has complied with this paragraph.

Opinion

OPINION OF THE COMMISSION

MAY 17, 1971

By JONES, *Commissioner*:

I

This case is before the Commission on appeal from the initial decision of the hearing examiner in which he found that the acquisition of Amerock Corporation by respondent, the Stanley Works, violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18 (1964) and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (1964).¹

The complaint in this case issued on April 30, 1968. It charged that the merger between the respondent and Amerock Corporation tended to "lessen competition or to tend to create a monopoly in the manufacture and sale of hardware, generally, and cabinet hardware, in particular, throughout the United States and in sections thereof, in violation of Section 7 of the Clayton Act . . .; and to create an unreasonable restraint of trade in commerce, or to hinder or have a dangerous tendency to hinder competition unduly in the manufacture and sale of hardware, generally, and cabinet hardware, in particular, in violation of Section 5 of the Federal Trade Commission Act." The complaint further alleged that the merger had these proscribed effects by reason of the fact that:

- (a) Substantial actual and potential competition has been, or may be, eliminated;
- (b) The substitution of Stanley, with its multi-divisional manufacturing and marketing strengths, tends unduly to increase barriers to the entry of new competition and to deprive smaller limited-line rivals of an equal opportunity to compete; cumulatively entrenching Stanley in its acquired dominant and monopolistic position;
- (c) Members of the purchasing public and the ultimate consumer have been, or may be, denied the benefits of free and open competition; and
- (d) The cumulative effect of the merger charged has been, or may be, to accelerate an increasing level of concentration by encouraging tendencies toward combination and merger by actual and potential competitors.

The hearing examiner found that Stanley was engaged in the business of the manufacture and sale of hand and power tools, hardware products, steel and steel strapping, and component parts. (4) He also

¹The following abbreviations will be used for citations: Transcript of proceedings, "Tr."; complaint counsel's exhibits, "CX"; respondent's exhibits, "RX"; complaint counsel's proposed findings, "CPF"; respondent's proposed findings, "RPF"; Examiner's Initial Decision, "I.D." In the text, the examiner's findings will be cited by parenthesized numbers. Briefs of either the respondent (Res.) or complaint counsel (C.C.) will be cited as follows: Brief on appeal, "App. Br."; answering brief, "Ans. Br."; and reply brief, "Rep. Br."

found that Amerock at the time of its acquisition by Stanley was engaged in the manufacture and sale of certain hardware products, consisting principally of a broad line of cabinet hardware products for use primarily in kitchens, as well as certain window, appliance, furniture and general household hardware products.²

The parties stipulated that the relevant product market was cabinet hardware, and that the geographic market was nationwide. (I.D., p. 1030.)³ The hearing examiner found that Amerock was the largest manufacturer of cabinet hardware with 22% to 24% of the industry's sales (10); that the four leading firms in this market, including Amerock, accounted for approximately 49% to 51% of total industry sales (10);⁴ and that the balance of the sales in the market was accounted for by at least 50 companies, many of which were either importers or small companies that produced only a limited line or only a single product in the cabinet hardware field. (CX 87 n; CX 85 Z-34.) Stanley's sales of cabinet hardware in 1965 were approximately \$814,000, representing 1% of the total cabinet hardware market of \$76,000,000 to \$80,000,000. (9)

The examiner found that the cabinet hardware market was concentrated, and that significant barriers to entry existed. (32) He also found that the merger between Stanley and Amerock led to increased concentration in the already concentrated cabinet hardware market, as well as eliminating Amerock as the leading independent producer of cabinet hardware and eliminating Stanley as a reasonably probable entrant into the market. Thus, the examiner found that respondent's acquisition of Amerock lessened competition be-

² Cabinet hardware includes pulls, knobs, hinges, latches, and related products, including drawer slides, and shelving hardware. (7)

³ Although the parties stipulated that there were no relevant submarkets, and that the "facts stipulated . . . shall prevail over any conflicting evidence" (I.D. 1030), there has been a considerable amount of argument on appeal dealing with alleged product differences. Specifically, respondent urges that there are significant distinctions between residential cabinet hardware, a highly stylized product that is made primarily by die casting processes and is offered in a variety of styles, and architectural cabinet hardware, which is more durable and is produced from solid steel, aluminum, or brass. (Res. App. Br. at 25-26).

It may well be true that, absent the stipulation, respondent could have demonstrated that residential and architectural cabinet hardware are definable economic submarkets. However, we need not reach this question because, as indicated below, the record in the present case convincingly demonstrates that the merger of Stanley and Amerock had sufficient anticompetitive effects in the stipulated cabinet hardware market, taking account of the product differences urged by respondent, to invoke the statutory sanction.

⁴ The respondent has argued, we think correctly, that "the percentages in Finding 10 disregard Footnote 1 to the table in that finding, which states that the sales figure given for National Lock Company includes an 'estimated two or three million dollars of furniture trim hardware.'" (Res. App. Br. at 13.) If the two or three million dollars are not included, the 1965 market shares for the four largest companies would represent 52%-53% of the \$76 million figure and 49%-51% of the \$80 million figure. We have used these latter market share figures.

cause (1) absent the merger Stanley would probably have entered the cabinet hardware market on its own (31, 32); (2) the elimination of Stanley as a potential competitor had the effect of increasing the barriers to entry (31, 32); and (3) Stanley, as a potential competitor, had an influence on the performance of the cabinet hardware market. (32)

On the basis of these findings, the hearing examiner concluded that the effect of the merger may be to substantially lessen competition in the cabinet hardware market in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. (I.D. Conclusions of Law 1 and 2.)

In this appeal respondent challenges the examiner's conclusion that the 50% market share of the four leading companies amounts to concentration, and disputes the examiner's further findings respecting the entry barriers created in this industry by product differentiation and the difficulties of procuring adequate distribution channels. (Res. App. Br. at 11-13, 20-21; Res. Ans. Br. at 13-15, 10-12.) Respondent also denies that it was a likely entrant into the residential segment of the cabinet hardware market, contending instead that it did not have adequate resources or know-how to enter on its own and that after study and deliberation it had made a firm decision not to enter the residential segment of the cabinet hardware market. (Res. App. Br. at 34-43; Res. Ans. Br. at 19-22.) Finally, respondent asserts that even if it were a potential entrant, its acquisition of Amerock did not lessen competition because of the continued existence of other potential entrants into this market. (Res. App. Br. at 18; Res. Ans. Br. at 10.)

We have carefully considered all of respondent's arguments in the light of the record and the initial decision and have concluded, for the reasons stated below, that the examiner's findings and conclusions are fully supported by the evidence and by the applicable case law and, except to the extent noted, are hereby adopted by us. We also adopt the order prepared by the examiner, with several modifications noted below.

II

The Stanley-Amerock Merger

Stanley was a long-time, well-established participant in the cabinet hardware market with sales in 1965 of \$814,000, which accounted for 1% of the United States market. (9) Of Stanley's \$814,000 sales, \$616,000 were concentrated in architectural cabinet hardware. Architectural cabinet hardware comprises approximately 5% to 10% of

the total cabinet hardware market. [(15); Res. App. Br. at 29.] Its remaining \$200,000 cabinet hardware sales consisted of residential cabinet hardware. (15)

In the mid 1940's and '50's, Stanley had sought unsuccessfully to expand its cabinet hardware line in residential cabinet hardware. [(24); Res. App. Br. at 40-42.] In 1963, Stanley's management undertook a comprehensive review of the respondent's position in the cabinet hardware and related builders' hardware markets, with a view toward substantially improving the company's performance.⁵ The first of a series of management reports, dated February 8, 1963, strongly urged that Stanley should be a major participant in the cabinet hardware market, setting forth the following reasons:

1. Cabinet hardware is a basic part of the hardware industry and represents over 15% of the total builders hardware potential.
2. Cabinet hardware is a basic element in the home building market and represents up to 1/3 of the total hardware dollars in the house.
3. Cabinet hardware is a natural adjunct to other products Stanley has under development.
4. Stanley can effectively reach the major portions of the market. (CX 85 E-F.)

Other factors noted in this report which supported Stanley's ability to expand its position in the cabinet hardware market included Stanley's existing orientation to the building market; Stanley's resources in being able to offer a variety of products and services which the competition would be unable to match; and finally, the overall profitability of the cabinet hardware business "as evidenced by the D&B [Dun & Bradstreet] reports of other cabinet hardware manufacturers." (CX 85 Z-9.)

The report also enumerated some of Stanley's past difficulties and described some of the problems which would confront the company if it attempted to expand its own participation in the market. The report then concluded:

Considering all that will be necessary in order for Stanley to achieve its proper status in the kitchen [i.e. cabinet hardware] market suggests the possibility of acquisition as a bold first step * * *

Amerock is the major factor in this as well as the other markets and therefore is the logical first choice. There are, however, two other manufacturers[,] Ajax and Jaybee, that do a large volume of business with the [Retailing Cabinet] Shops. (Tassell is another manufacturer worth considering from a manufacturing standpoint, but their distribution is practically all direct to hardware and building supply retailers.) [CX 85 Z-14 to Z-15.]

⁵ Builders' hardware is the larger product market which includes both cabinet hardware and such related items as hinges, latches, and door and closet hardware. See generally CX 78.

A subsequent management memorandum, dated March 12, 1963 (CX 41A), reaffirmed the conclusion that Stanley should remain in the cabinet hardware market, and briefly canvassed the alternatives which were available to expand the company's cabinet hardware sales. Three principal choices were evaluated: expansion of Stanley's present line, purchase of cabinet hardware from other manufacturers for resale under the Stanley name, and acquisition of a successful smaller company. The memorandum concluded that the latter alternative was preferable because of the following specific advantages to Stanley:

- a) Would provide immediate additional sales, distribution and profit.
- b) Would provide manufacturing, marketing and sales and engineering know-how (especially stylists).
- * * * * *
- d) Would provide immediate trade acceptance and contacts.
- e) Would be a dramatic step which could be used to sell Stanley as a progressive corporation.
- f) *Would knock out a competitor.* [CX 41-C (emphasis added).]

The firms under consideration for a possible acquisition were still Amerock, Ajax, Jaybee, and Tassell.

A more detailed comparison of the attributes of these four companies was made in a Stanley management report dated April 29, 1963. (CX 85 Z-21.) This report concluded that Amerock should be deemed the prime candidate for acquisition, reasoning that "[e]ven though its size is slightly larger than what might normally be considered for purchase, there is good reason in this instance to recommend that consideration be given to *the dominant industry position* this acquisition would provide." (CX 85 Z-21 to Z-22; emphasis added.) In support of this conclusion the report enumerated fifteen factors which favored the acquisition of Amerock; in addition to reiterating the five factors quoted in the preceding paragraph, this report pointed out that acquiring Amerock would enable Stanley:

- 1) To add profitable sales of over 13 million * * *
- 2) To strengthen our position in the home-building market.
- 3) *To obtain a dominant role in the cabinet hardware market.*
- 4) To obtain the major position of trade distribution (U.S. and Canada).
- 5) To obtain the large Cabinet Mfg. market * * *
- * * * * *
- 9) To avoid the slow course (likely unprofitable) of creating our own line.
- * * * * *
- 11) To obtain a modern strategically located plant. [CX 85 Z-29; emphasis added.]

Two management memoranda dated June 20, 1963, endorsed this conclusion, and elaborated the Stanley management's thinking about

expansion in the cabinet hardware market. The first memorandum stated:

Although our present line of cabinet hardware has not proven profitable, *Stanley should remain in the cabinet hardware business* since cabinet hardware is an important segment of the basic hardware and homebuilding industries which we serve. . . .

Acquisition of an existing successful cabinet hardware manufacturer *provides the quickest, most certain course* of action to obtain profitable cabinet hardware sales." [CX 39A: emphasis in original.]

The second memorandum pointed out that merger with Amerock should be given priority over acquisition of either Ajax or Jaybee because "[b]rand acceptance for Amerock would make this [acquisition of a smaller company] a long, uphill road. It is possible but requires much added time and sales effort. We would be fighting the 'leader' all the way." (CX 40 C.)

On September 25, 1963, Stanley's management formed a Cabinet Hardware Task Force containing representatives from various departments of the Stanley Works to give more thorough consideration to the question of respondent's future in the cabinet hardware market. (CX 83 C.) On December 9, 1963, the Task Force issued a status report which carefully surveyed Stanley's current capabilities and posited both short- and long-range company goals in the cabinet hardware market. As a long-range objective, the report concluded, Stanley should "[o]btain 10% of the total cabinet hardware, business at a pre-tax profit of 10% on Net Sales by 1969." (CX 83 J.) Two general methods of achieving this goal were deemed practicable by the Task Force at this time: either acquisition of an established cabinet hardware manufacturer, or internal expansion through procurement of die-casting facilities "supported with appropriate engineering, design and marketing staff, with a complete product and market development program." (CX 83 K.) The Task Force resolved to evaluate these alternatives and report by June of 1964. (*Id.*)

Another interim management report dealing with the possibility of acquiring a cabinet hardware manufacturer was issued on March 25, 1964. (CX 86.) The investigation underlying this report had been limited in scope to full line cabinet hardware manufacturers, but the authors recommended that a separate project be undertaken to evaluate the possibility of acquiring a smaller "short line producer" of cabinet hardware. (CX 86 C.) The report further asserted that acquisition was preferable to internal expansion:

* * * Stanley can trace its faltering position in the cabinet hardware business to several definable weaknesses. *Undoubtedly these weaknesses could be over-*

come internally. However, such an internal development program involves time, money and considerable risk. [CX 86B; emphasis added.]

Once again, the prime candidates for acquisition were Amerock, Ajax, and Jaybee; other full-line cabinet hardware manufacturers, such as National Lock and Washington, were rejected out of hand "because they are both subsidiaries of other companies and assumed not to be for sale." (CX 86 C.)

Finally, on June 10, 1964, the Cabinet Hardware Task Force issued its report. (CX 87.) In this report the Task Force recommended that the company not expand internally by procuring die-cast facilities:

[T]his alternative could require a \$600,000 investment to attain our \$2,500,000 sales goal. The predicted spread between selling price and standard product cost would, however, be 20-25% of sales, which is not sufficient to cover full overhead and recover our initial investment, let alone achieve the 10% pre-tax profit which we seek.

* * * * *

Finally, it is felt that a strong Stanley entry via product development could be expected to accentuate industry-wide declines in prices and profits. A strong properly oriented Stanley entry into the market via acquisition could, on the other hand, be designed to contribute to a reversal in the downward trend in prices and profits. [CX 87 G, 87 L; emphasis added.]

In dealing with the possibility of acquisition, the Task Force encountered problems with respect to each of the three leading contenders. Preliminary contacts had apparently been made with Amerock, and the Task Force reported that "we understand they indicated no interest." Similarly, "Ajax appears to be a successful going concern, with little reason to entertain ideas of merger. Jaybee, we have reason to suspect, is tied up with estate problems due to its owner's death * * *" (CX 87 G.) Nevertheless, the Task Force recommended that further efforts be made to effect a merger with Amerock, Ajax or Jaybee, and, failing this, that the company investigate other methods of expanding its cabinet hardware operations, such as acquiring a short line cabinet and specialty hardware manufacturer, procuring injection molded plastic manufacturing equipment for internal expansion in the market, continuing with its current "modest" product development program, or, finally, discontinuing the manufacture of cabinet hardware altogether. (CX 87 H-I; see also CX 42.) On June 18, 1964, there was issued a supplemental management memorandum, documenting the conclusion of the Cabinet Hardware Report that prices in the market had been declining over recent years. (CX 43 A.)

After discussing the Task Force Report, Stanley's Hardware Di-

vision Management Committee made recommendations to Donald W. Davis, the company's executive vice president and acting division manager (Tr. 1929). According to the testimony of Stanley's corporate controller:

We recommended that we not go ahead with the acquisition route, and also recommended that we do nothing as far as die casting facilities because the return was just not there. And that we hold that open for another look at some later and indefinite date. (*Id.*; see also Tr. 1430.)

Later, in December of 1964, the Hardware Division received a report which had been prepared by an independent management consulting firm that had been retained to investigate growth opportunities in the hardware field (CX 72). This report "could not find any really new product areas that the hardware division had not already considered and turned down" (Tr. 1430), and so another meeting was held on January 8, 1965, again chaired by Mr. Davis. At this meeting, according to the testimony of Francis Hummel, who was then general marketing manager of the Hardware Division (Tr. 1313), Stanley's management decided "that we would not go into styled diecast decorative cabinet hardware. We would instead concentrate solely by internal development on our line of architectural cabinet hardware" (Tr. 1431). Hummel also testified that the strategy adopted at this meeting was to "concentrate on our existing product lines to build strength in them, to build new products and to increase our profits in this manner" (Tr. 1496).⁶

After the January 1965, meeting, the Hardware Division was required to prepare a long range plan for all of its product lines, and this plan was submitted in June of 1965 (Tr. 1510). The general "marketing strategy" set forth in this plan stated that "[p]rimary attention will be given to strengthening profitable market opportunities outside of traditional lines" (CX 69-W). The marketing plan developed in conjunction with the long-range plan (see CX 69-A) gave more detail on projections for the cabinet hardware line. In part, it stated:

2. *New Product Development*—The greatly expanded efforts aimed at the contract [architectural] market will be continued and stepped-up. * * *

* * * * *

4. *Acquisition*—Explorations will continue in the direction of acquiring a short line cabinet and specialty hardware manufacturer oriented to the contract market.

⁶ Mr. Davis corroborated this account, testifying that it was decided at the January 8, 1965, meeting that Stanley would focus its growth efforts in the cabinet hardware market around existing product lines. See Tr. 1822.

5. *Long Range Plan*—The development of manpower and programs designed to increase substantially Stanley's share of the cabinet hardware market.⁷

Shortly thereafter, in the fall of 1965, Stanley's top level management learned that the Amerock Company had reversed its earlier position, and was then interested in undertaking negotiations looking toward a possible merger (Tr. 1802). Negotiations began soon after this contact, and were concluded by the summer of 1966.⁸

III

The Competitive Effects of the Amerock Acquisition

Because of Stanley's long but low-level participation in the cabinet hardware market, the instant controversy does not fit neatly within the established categories of "horizontal" or "product extension" mergers,⁹ and the concomitant analytical constructs of actual and potential competition.

This case presents instead a mingling of the effects which are traditionally cognizable under the discrete categories of actual and potential competition. Stanley's contemplated expansion in cabinet hardware would have dramatically changed its competitive status from the level of possessing a minor market share to the rank of being a major competitor. Yet, at the same time, there is no doubt that the resources and expertise of Stanley and Amerock reflected some degree of overlap. Within the broad cabinet hardware market, Amerock was already a strong full-line producer of cabinet hardware, whereas Stanley was a leading manufacturer of architectural cabinet hardware and a minor producer of residential products. At the same time, however, a repeated theme of Stanley's management reports on the cabinet hardware market was the necessity of developing a full line of cabinet hardware products in order to reach

⁷ CX 70F-3. Of similar effect is CX 68, which was described (Tr. 1515) as working papers from which the long-range plan was formulated.

"Cabinet hardware can be considered to serve two different end markets: residential and non-residential. Of the two, the residential market requires more frequent styling changes. It also relies heavily on die casting.

Our initial plan is to improve and expand our offering for non-residential construction. During the latter part of the period [1965-70], we will give increasing attention to the residential market. [CX 68P.]

* * * Substantial growth will require a broad attack on the Residential, Consumer and OEM market." (CX 68R.)

⁸ Donald W. Davis, Stanley's Executive Vice President, described his actions after learning of Amerock's change of heart in the following terms:

[A]fter I . . . returned to New Britain, I naturally discussed this with the then president of the company, Mr. John Cairns, and we decided that we should in the best interests of Stanley proceed with these negotiations.

Q. When were these negotiations with Amerock concluded?

A. They were concluded in May of 1966.

⁹ Cf. *FTC v. Procter & Gamble Co.*, 386 U.S. 568, 577-78 (1967).

the desired level of competitive effectiveness;¹⁰ and it is clear that Santley's determination to move significantly into the complete spectrum of products constituting the cabinet hardware market would have put it into the position of challenging the leading industry members on their own ground as a full-line producer. In this sense, therefore, Stanley can be regarded both as an actual and potential competitor in the stipulated market. The precise label attached to its status is of little importance. What is significant for the purposes of this case is that irrespective of whether Stanley should be considered a "new" entrant in the cabinet hardware market, there is little doubt that its intention was to become a major competitive factor in the industry on a scale not previously attained. Viewing the case in this light, and within the general confines of the established analytical framework relating to actual and potential competition, we are convinced from the present record that the examiner was correct in concluding that the merger of Stanley and Amerock had significant anticompetitive consequences proscribed by Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

Respondent denies that the cabinet hardware industry is concentrated or that major barriers to entry exist and argues that the one percent increase in market shares of the four leading firms resulting from the merger could have only minimal impact on the ability of the more than fifty other cabinet hardware companies to compete or on the ability of companies outside the market to enter, and that therefore the instant merger escapes the statutory prohibition. (Res. App. Br. at 14-16; 20-23; 23-25; Res. Ans. Br. at 13-15; 10-12.)¹¹ It further maintains that it neither could nor would have expanded internally in this market and that its eventual acquisition of Amerock, therefore, could not be regarded as the elimination of any potential competition in this industry. (Res. App. Br. 34-42; Res. Ans. Br. at 19-22.)

¹⁰ This factor was succinctly summarized in the Final Report of Stanley's Cabinet Hardware Task Force:

It is generally agreed that in order for Stanley to become a profitable and growth factor in this market we must do two things:—

1. We must have a complete, balanced and competitive line [of products] * * * CX 87K; see also CX 87 Z11; CX 68Q; CX 40A; CX 41B; CX 85 G, O-P, Z-9.

¹¹ Respondent argues that the market shares involved in the present case are smaller than those which formed the basis for finding violations of Section 7 in several important cases, and that the precedents are otherwise factually distinguishable. See, e.g., *FTC v. Procter & Gamble Co.*, 386 U.S. 568 (1967); *United States v. Aluminum Co. of America*, 377 U.S. 271, 278 (1964); *United States v. Philadelphia National Bank*, 374 U.S. 321 (1963); *General Foods v. FTC*, 386 F. 2d 936 (3d Cir. 1967); Merger Guidelines of the Department of Justice, 1 *CCH Trade Reg. Rep.* ¶4430 at 6683-6684. However, the cases make it clear that there is no single, simple test for determining whether a market is concentrated for purposes of Section 7, and there is strong economic authority supporting the conclusion that the cabinet hardware market is concentrated. See note 12, *infra*.

Our analysis of the record compels us to disagree.

Economic analysis supports the examiner's conclusion that the cabinet hardware market is concentrated.¹² We also agree substantially with the examiner's findings as to the entry barriers presented in the industry. In discussing barriers to entry, the examiner stated:

The Stanley-Amerock marriage takes on more competitive significance than [is] reflected solely by the combined market shares of each shown . . . [in] Finding No. 10 herein. The tabulation in its face does not show * * * the principal types of cabinet hardware products sold by the various leading suppliers and the actual and potential sales and entry barriers which may be present or raised in the sales area for such products * * *

For example, Stanley was able to establish itself as a significant domestic manufacturer and substantial supplier in the sales area occupied by purchasers of architectural cabinet hardware. With strong financial resources, a well-known, good reputation and industry-wide acceptance of its many other hardware products plus an established nationwide sales force, Stanley chose acquisition. . . .

* * * * *

Finally, it will be recognized that the possession or obtaining of die-cast manufacturing facilities and acceptable design features, without more, does not necessarily promote or provide easy entry into the decorative residential United States cabinet hardware market, and insure that the necessary distribution channels to would-be purchasers will be secured, and that significant substantial and profitable sales will result. (31)

The examiner found that "[i]n order to compete successfully for sales of decorative residential cabinet hardware, a company must offer die-cast knobs and pulls * * * The reason is that it is not possible to produce stamped knobs and pulls of the highly stylized nature which today's market demands at prices which are competitive with the prices of die-cast knobs and pulls." (17)

He also observed that, according to Stanley's own estimates, entering the die-cast line of cabinet hardware products by internal expansion would have required an investment of \$600,000 to attain the company's long-range sales goal. (21) This \$600,000 estimate is broken down as follows: \$400,000 incremental costs for acquiring die-casting machinery and other capital equipment, which would be added to Stanley's substantial existing facilities; \$100,000 for in-

¹² See, e.g., K. Kaysen & D. Turner, *Antitrust Policy: An Economic and Legal Analysis* 72 (1959) ("tight oligopoly" defined as a market in which eight firms share at least 50% of the market and the largest firm has at least 20%); J. Bain, *Industrial Organization* 14-41 (2d ed. 1968) ("Type III oligopoly" is one which has "high-moderate concentration," where the top four firms control roughly 50-65% of the market and the total number of firms is large). Bain states that this level of concentration "is still certainly enough to produce a substantial degree of interdependence among the few largest firms . . ." Similarly, several commentators have urged that any horizontal acquisition involving a firm with more than 20% of the relevant market should be deemed illegal. See K. Kaysen & D. Turner, *supra*, at 133; Stigler, *Mergers and Preventive Antitrust*, 104 U. Pa. L. Rev. 176, 182 (1955).

vestment in design and engineering; and \$100,000 for advertising and sales promotion.¹³

Respondent argues that product differentiation is not a significant barrier to entry in the cabinet hardware market, because advertising at the consumer level is unimportant and consumers exhibit little brand preference. (Res. App. Br. at 20-21.) While advertising at the consumer level may be small, however, there is a considerable amount of promotional effort devoted to trade publications. For example, the examiner found that when Stanley introduced a new architectural cabinet hardware line to the trade in 1966, it spent between fifty and sixty thousand dollars for trade advertisements and promotions (28); also, the record indicates that respondent spent about \$70,000 in hardware promotions during 1965 (Tr. 1373-74; Res. Rep. Br. at 3). Stanley also estimated that if it were to enter the residential cabinet hardware field by internal expansion, an additional \$100,000 of advertising and promotional expenditures would be required. (CX 87 Z-27.) Moreover, as noted above, Stanley's management recommended that a possible merger with Ajax or Jaybee be given secondary priority because "[b]rand acceptance for Amerock would make this a long, uphill road." (CX 40 C.)

In addition, there are other forms of product differentiation which are important in the cabinet hardware market. For example, firms can differentiate their products by offering a fuller line of product styles than their competitors, by changing styles periodically, and by providing services with the product such as continuity of delivery. Stanley considered these capabilities a requirement for successful entry (CX 40b), and also recognized that in order to sell to the large companies that produce finished cabinets for sale to builders, a "heavy investment" in these forms of product differentiation is required. (CX 85-o.) As the examiner put it, "residential cabinet hardware has become an extremely fashion-oriented business, with rapidly changing styles and designs and a trend toward increasingly more ornate styles and designs. In order to be successful, a manufacturer of decorative residential cabinet hardware must therefore have or hire a competent staff of designers to keep abreast of and lead the changing trends in style." (16)

The quotation from Finding 31, set forth previously, reflects the

¹³ It should also be noted that Stanley considered it necessary to procure high-level management talent familiar with die-casting in order to expand internally in the cabinet hardware market in a significant fashion, and that the only qualified candidate they could find for the position of marketing manager for cabinet hardware, Escalette, demanded a salary that was \$1,500 per year more than Hummel, the marketing manager for the entire Hardware Division, was then making. (Tr. 1479; *see also* Tr. 1471.)

examiner's conclusion that another barrier to entry is the difficulty of securing adequate channels of distribution. (*See also* Finding 14.) While there is evidence supporting this finding, however, the record indicates that this barrier is not particularly troublesome to surmount. (*See, e.g.*, Tr. 2123-2136, 2323-2324.)

Moreover, the record demonstrates—we believe conclusively—that Stanley itself was fully aware that its acquisition of Amerock would have important competitive repercussions in the market. These repercussions become significant because of the concentration already existing in this industry and Amerock's position as one of the leading four producers. The evidence is clear that the very reasons leading Stanley to acquire Amerock are the same reasons which support the charge in this case that the merger will have significant anticompetitive effects. Stanley acquired Amerock precisely because it *was* the dominant company in the market (CX 85 G and Z-23), and because it believed that the acquisition would further entrench Amerock's already dominant position,¹⁴ while any other course designed to achieve Stanley's goals in the cabinet hardware market—internal expansion by Stanley or acquisition of a smaller company in the industry—would only stir up competition.

The record reveals that Stanley's management was fully aware of these market conditions. An official of the Hardware Division studied price trends in the cabinet hardware market and returned the following report to his superiors in June of 1964:

I have reviewed the price lists of Amerock, Ajax, National Lock and McKinney. Though Ajax's prices have not changed in the past four years, it should be noted that their prices were considerably low to begin with relative to the other three which have had reductions in price for their major cabinet items during this period.

Of the 114 cabinet items that Amerock designates as * * * "most popular" in its 1957 price list * * * 40 of them were reduced in price from the previous price list, while only 4 items were increased * * * [I]n their 1960 price list * * *, of their 109 most popular items listed, 63 were reduced in price, while only 15 were increased.

* * * * *

I think it is safe to conclude from the above that the impact of low-priced competition over the past seven years is being reflected in the downward price adjustment of Amerock and other well established cabinet hardware manufacturers. The general price level has unquestionably moved downward. [CX 43 A-B (emphasis added).]

¹⁴ *See e.g.*, statements in Stanley management reports quoted earlier to the effect that "there is good reason to expect that the Amerock line, if joined to ours, would more than maintain its present share of the cabinet hardware market" (CX 85 Z-24) and that the acquisition of Amerock could "contribute to the reversal of the downward trend in prices and profits" which the cabinet hardware industry was experiencing. (CX 87 1.)

In graphic contrast to this description of industry conditions is the following marketing strategy developed in mid-1965 as part of Stanley's long-range plan for the Hardware Division:

As the largest firm in the industry, the Hardware Division must continue to show leadership in the important area of pricing policy. *As conditions warrant, we must continue to take the initiative and corresponding risks of being the first within the industry to raise prices and attempt to keep them at such higher levels.* Also, since our pricing policy establishes industry levels (with competitors generally selling under Stanley Hardware prices) we must offer sufficient customer benefits to justify a higher price structure. On many products, in order to be competitive, negotiations must be conducted as a way of business life. [CX 69 W-69 X (emphasis added).]

Stanley's tendency to act as this kind of a "price leader" for every hardware product line in which its market strength permitted it to do so¹⁵ was certainly enhanced by its acquisition of the dominant producer of residential cabinet hardware.

We also cannot ignore the fact that even though an industry is concentrated, the possibility always exists that market forces may so operate as to maintain some degree of competition and to contribute to some degree of deconcentration. Thus, it is not the 1% increase in market share brought about by the Stanley-Amerock merger by itself which posits the anticompetitive aspect of this merger. It is, in our view, the fact, as the hearing examiner pointed out, that the acquisition solidified Amerock's already entrenched industry position and rendered any deconcentration in this industry even less likely. In our judgment, any artificial manipulation of market forces or any action which interferes with these forces—as Stanley's merger designedly did—can be of even more crucial anticompetitive significance in a market already characterized by concentration than in a less concentrated market. *United States v. Philadelphia National Bank*, 374 U.S. 321, 365 n. 42 (1963).

Given the condition in this industry of some degree of price instability, the degree of concentration which existed, and Stanley's own estimate of the impact of this merger, we agree with the examiner's findings and his conclusion that Stanley's acquisition did or could contribute to the degree of lessening of competition prohibited by the statute.

There are other aspects of this case which also support the ex-

¹⁵ It should also be noted that before the merger Stanley had significant market strength in the architectural segment of the cabinet hardware market (*see* text accompanying note 24, *infra*); at the same time, according to respondent's own studies of the market, Stanley's "prices are set at about the highest levels possible in relation to the industry" (CX 85 Z-8), and "[i]t is well known that Stanley's prices for cabinet hinges are the highest in the industry" (CX 43 B.) *See also* CX 68 n.

aminer's conclusions on the likely anticompetitive impact of this merger which relate to the competition which Stanley itself might have had added to this industry had it not chosen the merger route as its method to achieve the expansion which its management had determined on.

Respondent argues that this aspect of the merger is of significance only if it could have expanded internally, and since in respondent's view it did not have this capability and its management had made a firm decision not to use this method of expansion, it did not and could not ever have become a competitive factor in its own right. Therefore, respondent concludes that its acquisition of Amerock is a neutral competitive factor in this sense. Specifically, respondent asserts that whatever thought it had given to internal expansion in the cabinet hardware field became irrelevant in January of 1965 when the Stanley management made a decision not to expand their cabinet hardware line into residential cabinet hardware but rather elected to concentrate on their existing architectural lines. (Res. App. Br. at 36-39, Res. Ans. Br. at 20.) Respondent also points to Stanley's poor record and allegedly bad reputation in cabinet hardware resulting from the company's failure to expand its market share in the mid 1940's and 1950's,¹⁶ as well as to certain internal weaknesses in the Stanley organization. (Res. App. Br. at 39-42, Res. Ans. Br. at 20-21.)

At the outset, it should be noted that Stanley's 1965 determination to base its primary growth efforts on existing product lines and on new products closely related to its traditional lines was, in fact, a decision to try to expand internally in the cabinet hardware market. The circumstances preceding and following this decision demonstrate that Stanley elected to concentrate its growth efforts around existing product lines because the more attractive alternatives of acquiring a leading manufacturer of die cast cabinet hardware or procuring die casting facilities and expertise did not appear to be available in the short run: Stanley's preferred merger candidates had expressed no interest in serious negotiations, and efforts to recruit high-level management personnel with experience in die casting had proved unavailing (Tr. 1464-65, 1471-72, 1480, 1820). There is no persuasive indication in the record that respondent irrevocably abandoned either of these alternatives in January of 1965, and, indeed, Stanley's top-level management responded with alacrity a few months later

¹⁶ It should be noted that Stanley's marketing manager for the Hardware Division testified emphatically that Stanley's "poor track record" in cabinet hardware applied only to residential products, and did not extend to Stanley's architectural product lines (Tr. 1414-1415).

when it became apparent that one of the leading merger candidates might be available.

In addition, the record of Stanley's own statements and activities refutes respondent's contentions that internal expansion into the production of residential cabinet hardware was not a practicable alternative. The record demonstrates convincingly that Stanley had the strength to expand in this industry. It had adequate financial resources, a strong marketing department, a strong sales force, effective merchandising, adequate research and development capability, and the available manufacturing capacity and skill. (FX 85g.) Moreover, the entire series of management reports detailed in the preceding section compels the conclusion that Stanley was firmly committed to increasing its sales position in the cabinet hardware market on a large scale, and that the likely segment of the market in which to achieve this expanded position was in residential cabinet hardware.

Stanley's own management consistently discounted the significance of the weaknesses in the Stanley organization enumerated by respondent and maintained that they could in fact be overcome internally, even though this would involve time and some risk. (CX 86 d, 87y and Z-22.) Moreover, it is also significant that Stanley's careful, and repeated consideration of all of the factors—pro and con—bearing on whether it should expand its cabinet hardware position by various methods including internal expansion took place against the background of its own prior unsuccessful attempt to expand in this market. Clearly, if this experience had been regarded by Stanley as irrevocably ruling out internal expansion in the future, the company's management would not have devoted such detailed and continuing study to the possibility of future internal expansion; instead, it would have confined its analysis to the possibility of expansion through acquisition alone. This it did not do. Indeed, the evidence is suggestive that Stanley elected not to expand internally not because of any inability to do so, but because a large-scale Stanley entry through internal expansion would have had the "undesirable" result of shaking up the market by adding a spur to price competition.¹⁷

We also have another difficulty with this aspect of respondent's argument as to weight to be given to the Stanley decision to move

¹⁷ As Stanley's task force put it, internal expansion "could be expected to *accentuate* industrywide decline in prices and profits." (CX 87 1; emphasis added.) By contrast, a "strong properly oriented" Stanley entry through acquisition could "be designed to contribute to a reversal in the downward trend in prices and profits." (CX 87 1.)

Opinion

1023

by acquisition rather than by internal expansion. To accept such an internal management decision as conclusive proof that the company would not expand internally would confer upon companies a virtually complete defense to any merger challenge, a defense which would be based solely on management's subjective thinking as to what was possible. Evaluating such a subjective defense becomes especially troublesome when management knows that the record of such a decision in their files would have the effect of immunizing their subsequent entry by acquisition. Given the objective factors indicating such a strong ability on the part of Stanley to expand internally, it would be manifestly unrealistic to treat these factors as irrelevant because of management's decision to adopt some other mode of market entry or expansion. Weighing both the objective factors of Stanley's ability and interest in internal expansion as well as its decision in 1965 not to pursue the internal route to an expanded market position, we do not believe that it is possible to conclude that Stanley would never have expanded internally in the cabinet hardware market if other entry routes were blocked to it. Accordingly, we conclude that the fact of its entry by acquisition eliminated the substantial possibility that Stanley itself would become a significant competitor in the cabinet hardware market, with all of the increase in competitive vitality which Stanley's presence would have implied.¹⁸

Even if respondent's argument that Stanley would not have internally expanded its position in the cabinet hardware market were supported by the evidence, it does not deny the fact that Stanley could have entered the market by a toehold acquisition—the acquir-

¹⁸ The respondent further contends that even if it is deemed a potential entrant, its removal as a potential entrant did not significantly affect competition because there were a number of potential entrants into the cabinet hardware market from the furniture trim hardware market, and consequently the elimination of Stanley from this group will not substantially lessen competition. (Res. App. Br. at 18, 43.) In support of this theory, respondent asserts that furniture trim companies have the die-casting facilities, the experience, and the know-how to produce for a style-oriented business. They also sell through the same channels of distribution. (Res. App. Br. at 18.)

While the evidence establishes that manufacturers of decorative furniture trim can generally be considered potential entrants (Tr. 1262-43, 1098-1102, 1106-08, 2032, 1721, 1723, 1726, 2297, 2116-17), it is also clear that there are only a few furniture hardware manufacturers who can be considered potential entrants into the residential line of cabinet hardware. A report by Stanley's market research department indicated that during the time period presently relevant, there were only *three* furniture hardware manufacturers who possessed sufficient die-cast equipment and know-how to enter the cabinet hardware market (CX 82 G-1)—a requirement the respondent considered important in classifying the furniture trim manufacturers as potential entrants. (Res. App. Br. at 18). Thus, as of the time of the merger, Stanley must be considered one of a small group of companies which were highly likely to enter (and several of which subsequently *did* enter) [(31) and Res. App. Br.] the relevant market.

ing of a small non-dominant company in the cabinet hardware market. Although the hearing examiner did not address himself specifically to the possibility of a toehold acquisition,¹⁹ it is a factor which clearly cannot be ignored in the instant case.

The evidence on the likelihood of Stanley expanding its position in the cabinet hardware market by toehold acquisition absent the Amerock merger is strong and persuasive. [See, e.g., (21, n. 24); CX 86; CX 87; CX 41; Tr. 1428, 1442, 1454.] Stanley's prime acquisition candidates after Amerock were Ajax and Jaybee, and the evidence clearly demonstrates that Stanley would have provided these companies with the working capital, distribution channels, and merchandising outlets that they needed. (E.g., CX 86N-M, 87 Z-8.) Stanley recognized the competitive significance of its acquisition of either of these two companies, however, and rejected this expansion route for precisely these reasons—that bolstering either of these companies' competitive potential through its acquisition would have stirred up competition in the industry. Yet this is the precise reason—the strengthening of the capabilities of smaller companies in order to erode existing dominance—for channeling a potential entrant, such as Stanley, into toehold acquisitions.

As we recently stated in *Bendix Corp.*, FTC Docket No. 8739 (June 18, 1970) (slip op. at 16) [77 F.T.C. 731, 807]:

We think it clear that Congress was concerned in Section 7 with the preservation of new and potential competition in any form: that new entry, if beneficial and procompetitive, is to be encouraged regardless of its form, and that a merger with a leading firm, especially in a concentrated industry, which eliminates the likelihood of such desirable entry through a toehold acquisition is embraced within the prohibitions of the statute.

The particular acquisition route chosen by respondent is competitively important because Stanley itself recognized barriers to entry which argue heavily in favor of either (1) maintaining at the edge of this concentrated market the disciplining effect of a likely potential entrant either by internal expansion or by toehold acquisition, or (2) encouraging actual entry through internal expansion or small company acquisition by a large firm like Stanley.

For all of these reasons and those enunciated by the examiner in his initial decision, we conclude that respondent's acquisition of Amerock may have the effect of substantially lessening competition in the cabinet hardware market.

¹⁹ The hearing examiner did not develop this point. He merely pointed out that Stanley had expressed an intent to acquire Ajax or Jaybee if the merger with Amerock fell through. (21, n. 24)

IV

Procedural Objections

Respondent argues that the hearing examiner erred by refusing to strike the testimony of complaint counsel's only two witnesses, Hager and Escalette, because respondent was required to conduct its cross-examination of these witnesses before it had completed its discovery.

The record indicates that the problem of discontinuity in the hearings arose primarily because of "[s]tipulation negotiations between trial counsel both as to the specific issues to be resolved and the allowable introduction into evidence of the numerous proposed exhibits, plus the many third-party discovery subpoenas and the accompanying *in camera* problems raised on the materials being returned" (I.D. at 1029 n. 1); in addition, the examiner encountered difficulty in finding hearing dates which were consistent both with expeditious disposition of the case and with other commitments of busy trial counsel (*see, e.g.*, Tr. 271-282). As a result, respondent had not received all of the subpoena returns by the time that Hager, the first witness, was called to testify.

At the conclusion of complaint counsel's direct examination of Hager, respondent requested permission to have the witness recalled at a later time, after the completion of discovery (Tr. 464-465). Respondent's counsel then described the documents which he believed were necessary for cross-examination; the examiner expressed serious doubt that the described documents could furnish a basis for cross-examination which would be encompassed within the scope of the direct examination, and concluded: "If you make a showing to me [that] it is necessary to call this witness [for cross-examination at a later time] on the basis of the returns [from the subpoenas], the witness will be recalled." (Tr. 467.) Respondent declined the opportunity to conduct cross-examination following Hager's direct testimony (Tr. 470).

A similar exchange took place with respect to the testimony of Escalette, the only other witness called by complaint counsel. The examiner again ruled that respondent would be entitled to recall the witness for cross-examination later if relevant information emerged from discovery, remarking that "[m]ost of the direct examination was confined to documents now in evidence and general industry practice." (Tr. 569.) Respondent then proceeded to conduct extensive cross-examination of Escalette (Tr. 569-709, 716-723).

On March 12, 1969, respondent filed alternative motions with the hearing examiner to strike all testimony by the witnesses Escalette

and Hager, to recall these witnesses for further cross-examination, and to strike all testimony relating to a particular management survey prepared for the Ajax Company. On March 20, 1969, the examiner entered an order denying the first two motions, granting the third, and setting forth the reasons for this action. Among other factors affecting his denial of the first two motions, the hearing examiner pointed out:

Practically all of the documentary exhibits admitted into evidence during the case-in-chief were those identified in the first stipulation of September 4, 1968, and the need of the preparation of any intended defense thereto by counsel for respondent became apparent at such time * * * [T]he testimony of Messrs. Hager and Escalette [was] identified on the record by complaint counsel as far back as the prehearing conference of July 29, 1968 * * *

* * * Counsel for respondent at the time of the cross-examination of the witness Escalette had the sales figures of respondent Stanley and the acquired Amerock already at hand. The absence of the sales figures now shown * * * [for] Ajax and National Lock * * * did not preclude the respondent from appropriate full cross-examination in the light of the disclaimers of knowledge by the witness of the sales figures of competitors and the fact that he was testifying only as to his opinion based on marketing sales experience alone.

We have determined that it is unnecessary to reach the question of whether this ruling was within the permissible scope of the examiner's discretion. *Compare Loesch v. FTC*, 257 F. 2d 882, 885 (4th Cir.), *cert. denied*, 385 U.S. 883 (1958) *with Pacific Molasses Co. v. FTC*, 356 F. 2d 386 (5th Cir. 1966); *see also Koppers Company, Inc.*, Docket No. 8755 (Order and Opinion Remanding Proceedings to Hearing Examiner, Dec. 18, 1970) [77 F.T.C. 1675]. As will be developed more fully below, we conclude that the testimony of the two witnesses in question constitutes only a minor portion of complaint counsel's case, which rested almost exclusively on documentary exhibits, and that if this testimony is treated as stricken and all direct and indirect reliance on it avoided, there still remains ample probative evidence in the record as a whole to support the findings and conclusions set forth above.

The record indicates that the parties themselves placed scant reliance on the testimony of Hager and Escalette; of the 346 proposed findings presented to the hearing examiner, only about thirty contain any reference to the relevant transcript pages,²⁰ and in the vast

²⁰ See CPF 52, 59, 65, 70-76, 82-87; RPF 39, 40, 44, 46, 53, 55, 58, 59, 61, 72, 129, 132, 161, 180, 201, 206, 242.

In addition, five exhibits were introduced into evidence during the testimony of Hager and Escalette (CX 121, 122; RX 1, 2, 3). None of these exhibits was directly relied upon by the examiner, or by us. These exhibits were cited in only nine proposed findings (RPF 34, 39, 44, 46, 55, 58, 59, 122, 129), and of these proposed findings, only the first two were cited by the examiner (*see* I.D. at 1037, n. 16, 1040, n. 20). Both of those proposed findings are fully supported by the independent evidence cited in them.

majority of these proposed findings there is substantial independent evidence cited in support of the proposition urged. Moreover, only five of the 32 findings contained in the Initial Decision contain any reference to the affected testimony, either directly or through citation of proposed findings which rely upon these witnesses' testimony. Pursuant to Rule 3.54 of the Rules of Practice,²¹ we shall examine each of these findings in turn.

Finding 20 quotes from Stanley's 1963 preliminary task force report to the effect that the principal alternatives for action in the cabinet hardware market then being considered by the Stanley management were acquisition of an existing cabinet hardware manufacturer or procurement of die casting facilities. In an explanatory footnote to this quotation, the examiner points out that "there are substantial sales areas in the stipulated * * * market for cabinet hardware not requiring die-cast facilities." As an example of this proposition, the examiner cites two companies which had previously been found to rank among the top ten firms in cabinet hardware sales and which "produce and sell drawer slides which are cabinet hardware products used extensively in household cabinets." In support of this latter finding, the examiner cites four separate portions of the record, the first two of which are taken from the testimony of Escalette; however, it is clear that the remaining two citations offer sufficient support for the proposition quoted, which is in any event not crucial of the examiner's analysis of the case, or ours.

Finding 23 of the Initial Decision, which is to the effect that in the latter part of 1964 Stanley decided to concentrate its growth efforts in the cabinet hardware market around its existing architectural cabinet hardware lines, is based upon "RPF 180 in part." (I. D. p. 1042 n. 25.) Respondent's proposed finding No. 180 is subdivided into three parts, and it appears likely that the examiner in Finding 23 was relying upon subsections A and B, neither of which cites the testimony in question.²² In any event, as Part II of this

²¹(a) Upon appeal from or review of an Initial Decision, the Commission will consider such parts of the record as are cited, or as may be necessary to resolve the issues presented and, in addition, will, to the extent necessary or desirable, exercise all the powers which it could have exercised if it had made the Initial Decision.

(b) In rendering its decision, the Commission will adopt, modify, or set aside the findings, conclusions, and rule or order contained in the Initial Decision * * *

²²The only citation of the affected testimony occurs in subsection C of RPF 180, which reads as follows:

C. The marketing manager of the division, Mr. Hummel, began looking for and interviewing candidates for the job of cabinet hardware marketing manager. However, he found only one man with the qualifications he was looking for—Mr. Ross Escalette, the marketing manager of Ajax and a former Stanley employee with whom he discussed the job at the Los Angeles contract hardware show in October of 1964.

Since Ajax did a substantial amount of business with contract hardware distributors

opinion indicates, the essential facts regarding Stanley's cabinet hardware decisions in 1964 and early 1965 are amply documented in other portions of the record; moreover, to the extent that there is any dispute regarding the decisions made by Stanley's management during this period, it concerns the inferences to be drawn from the facts, and not the facts themselves. Finally, it is clear that Escalette's testimony has only the most indirect bearing upon either the facts or inferences concerning Stanley's decisions during the relevant time period, and thus it is clear that Finding 23 of the Initial Decision retains its validity wholly apart from the affected testimony.

Finding 25 relies more extensively on the testimony of Hager and Escalette. It begins by noting that Stanley's press release describing the merger asserted that Stanley and Amerock had compatible products and means of distribution, and that the merger would allow the two companies to "complement and reinforce each other." The finding then quotes the testimony of Amerock's president to the effect that since the merger Stanley and Amerock have exchanged customer lists. Next, the finding quotes portions of Hager's testimony where it is asserted that Amerock was the industry leader in the production of residential cabinet hardware, and that Stanley was "the leading distributor of architectural cabinet hardware at that time." Clearly, Amerock's dominant position in residential cabinet hardware is beyond dispute; among other things, it was a repeated theme of the Stanley management reports detailed above in Part II. However, Stanley's position in architectural cabinet hardware is not so clearly demonstrated, and it seems that, on the basis of the record as a whole, the assertion that Stanley was "the leader" would not be supported by substantial evidence. For example, Stanley's strengths and weaknesses are canvassed in a 1964 management report, where it is stated:

Stanley's distribution of cabinet hardware is extremely limited. The report of the task force states that 43% of sales of * * * (cabinet hinges, pulls, knobs, catches, latches and ornamental hardware) are made to contract [architectural²³] hardware distributors. Sales of this line to wholesalers, lumber yards,

and also offered an extensive line of die-cast cabinet hardware, Escalette had the necessary experience not only in architectural cabinet hardware but also in residential die-cast hardware, in case Stanley should reverse its initial decision not to move into this field. However, Escalette wanted a larger salary than Stanley was prepared to offer and he accordingly was not offered the job. (Hummel, 1470-1480, 1743-1744; *Escalette*, 492, 521-523, 531, 573-576, 634; CX 90 A-E; RX 3.) [Emphasis added.]

²³ See Tr. 1330 (testimony of Francis Hummel):

Q. Are the terms "contract hardware" and "architectural hardware" used interchangeably in the trade?

A. Yes, they are. And we use them interchangeably in the Stanley Works.

Q. Do they mean the same thing?

A. They mean the same thing. And "contract hardware" is the old-fashioned term and "architectural hardware" is the more modern terminology.

See also RPF 90.

building materials distributors and hardware retailers amount to 41% of the total * * *.

J. F. Moseley's 1963 Cabinet Hardware Report indicates that 15% of all cabinet hardware is sold through contract hardware distributors * * *.

It is obvious that Stanley is strongest in cabinet hardware in the smallest portion of the market.²⁴

This report and other evidence²⁵ indicate that while it is established that Stanley was a strong force in architectural products, the record falls short of demonstrating dominance in this market segment. In any event, as the foregoing sections of this opinion make clear, a finding that Stanley "dominated" the industry in architectural cabinet hardware is in no way essential to the conclusion that this merger had a proscribed anticompetitive effect since, *inter alia*, residential products comprised from 90-95% of the stipulated cabinet hardware market. (*See, e.g.*, Res. App. Br. 29.)

The next portion of Finding 25 consists of three more brief quotations from the testimony of the witness Hager, all of which support the proposition that it is beneficial for a producer of cabinet hardware to be a producer of general hardware as well because of advantages rising from having an existing system of distribution. As indicated earlier in this opinion, we have concluded that the examiner overestimated the difficulty of securing adequate channels of distribution, and that "this barrier is not particularly troublesome [for a new entrant] to surmount." (*Cf.* Res. Rep. Br. 11-12.)

The final reference to the affected parts of the record in this finding occurs in footnote 28, where a portion of Hager's testimony is cited, together with other evidence, for the proposition that the Hager Hinge Company manufactures hinges comparable to those made by Stanley "for competitive resale on a nationwide basis." Two Hager catalogs which were introduced into evidence²⁶ amply demonstrate that this company, like Stanley, manufactures a wide variety

²⁴ CX 86 D-E. The same report summarized Stanley's marketing position in cabinet hardware by saying that it was a "[r]elatively strong factor in distribution through contract accounts, and to a lesser extent through retailers * * *" (*Id.*)

²⁵ *See, e.g.*, CX 85 Z-6 (Cabinet Hardware Rept., Feb. 8, 1963), where there are listed 13 companies "in the contract market." The report further states that "Stanley is listed with this group because of the predominance of sales to contract accounts. Of the others listed, only Hager, McKinney and Soss make hinges." Similarly, in CX 68 P (working papers for Stanley Hardware Division's 1965-70 Long Range Plan) it is stated that Stanley is a "[r]elatively strong factor in distribution [of cabinet hardware] through Contract Accounts and Residential Hardware Distributors * * *" *See also* Tr. 1369-70, where respondent's witness Hummel testified that Stanley was in substantial competition with several other firms in architectural cabinet hardware, and CX 72 Z-52, where an independent market study commissioned by respondent found that Stanley was a distant second to Amerock in percentage of cabinet hardware brands carried by the wholesalers and retailers interviewed.

²⁶ RX 51, CX 119; *Cf.* CX 61 (Stanley catalog).

of hinges, ranging from ornamental cabinet hinges to heavy-duty ball bearing hinges for large doors in public buildings. (*Cf.* Tr. 1324.) Similarly, the respondent's witness Hummel testified that Hager Hinge was Stanley's "major competitor" in architectural cabinet hardware. (Tr. 1369-1370; *see also* CX 85 Z-34.) Thus, it can fairly be concluded that this portion of the examiner's finding also retains its essential validity, apart from the challenged testimony.

Finding 26, which relies extensively upon Escallette's testimony, generally concerns competitive relationships among firms in the cabinet hardware market. The finding begins with a brief excerpt from the testimony of Amerock's general sales manager, where it is stated that the "key competitors" in the industry are the first ten or twenty large firms. The remainder of the finding consists of quotations from Escallette's testimony, in which it is stated that (1) the list of some 55 cabinet hardware manufacturers in the trade publication *Kitchen Business Magazine* contains a number of firms which make only one product in the market; (2) the *Kitchen Business* list also contained the names of importers as well as domestic manufacturers; and (3) the primary competitive forces in the industry are Amerock, National Lock, Jaybee, Hyer, David Allison, Tassell, Liberty Hardware, and Stanley.

The *Kitchen Business* listing referred to in this testimony is incorporated in the record as CX 18; on its face, it clearly breaks down the companies by the product lines they manufacture, and designates which ones were importers. With respect to the categorization of "major competitors," the record indicates, as might be expected, that although the names of several companies are regularly given as leading competitors in the field, the number and ranking of major competitors depends upon the judgment and opinion of the individual who is making the listing.²⁷ In any event, Finding 10 of the Initial Decision sets forth the market shares of the leading firms in the cabinet hardware market, and this is of much more importance for present analytical purposes than the subjective ranking which the witnesses accorded their competitors.

²⁷ For example, Amerock replied to a Commission letter by listing 16 "major competitors for hinges and cabinet hardware combined:" Ajax, Engineered Products, Hager, Hyer, H. B. Ives, Jaybee, Knappe & Vogt, Lawrence Bros., McKinney, National Lock, National Mfg. Co., Shelby Metal Products, Tassell, Washington, Westlock, and Yoder. (CX 13E.) Later, Amerock's general sales manager, Bosworth, testified that Amerock's principal pre-merger competitors in cabinet hardware were National Lock, Jaybee, Hyer, Knappe & Vogt, Tassell, Cardinal, David Allison, Grant Pulley, Robin Hardware, Penn-Akron, Hardware Designers, Harris and Liberty (Tr. 1072-1073). For Stanley's evaluations of its major competitors in the relevant market, *see* CX 49 E-F, CX 49 I; CX 68 N; CX 85 F-4 to F-8; CX 85 F-34.

The only other finding to rely on the questioned testimony in any way is Number 29, which describes Stanley's efforts to recruit Escalette in order to obtain the benefit of his experience in dealing with die cast cabinet hardware.²⁸ The essential facts of this negotiation are by no means in dispute, and are amply described by independent testimony²⁹ and documentary evidence:³⁰ in sum, Stanley was unable to lure Escalette away from his current job because respondent's management was not willing to pay as much as he asked.

Therefore, we conclude that even if the respondent's due process objection to the testimony of Hager and Escalette is well founded, this evidence is of minimal probative value in the context of the record as a whole, and that those findings in the Initial Decision which purport to rely upon it, as herein modified, are amply supported by independent evidence. Clearly, this claim by the respondents provides no basis for reversing the Initial Decision, or for remanding for any further proceedings.

Respondent further contends that the examiner made insufficiently detailed finding of fact and provided inadequate precedential support for his conclusions. As indicated in the preceding sections of this opinion, we conclude that the examiner's findings, as herein modified, are sufficient and adequately supported by the record, and that the conclusions of law herein adopted are consistent with governing authority.³¹

V

Scope of the Order

Respondent urges that the cease and desist order entered by the hearing examiner is defective or unjustified in several respects. First, respondent asserts that the provisions of the order requiring Stanley to make a six-month effort to divest Amerock to a purchaser approved by the Commission before attempting other divestiture plans are unduly restrictive, insofar as they preclude respondent

²⁸ Footnote 34 to Finding 29 cites "RPF 180 in part," which in turn relies in part upon the testimony of Escalette (*see* note 22, *supra*); in addition, the Finding contains a rather lengthy quotation from Escalette's testimony, to the effect that he was interested in the offer from Stanley because he thought that the company could become a major factor in cabinet hardware. (I.D. pp. 1047-48.)

²⁹ *See* Tr. 1470-1480.

³⁰ CX A-E.

³¹ We think that the examiner was amply justified in concluding that the instant merger violated Section 5 of the Federal Trade Commission Act, as well as Section 7 of the Clayton Act. *See, e.g., Dean Foods Co., OCH Trade Reg. Rep.* 1965-1967 *Transfer Binder*, ¶17,765 (1966) [70 F.T.C. 1146]; *The Bendix Corp.*, Docket No. 8739 (Opinion of the Commission, June 18, 1970. [77 F.T.C. 807])

Final Order

78 F.T.C.

from exploring alternative means of divestiture during this initial six-month period. We conclude that the record in this proceeding does not indicate that this limitation on the means of divestiture is required, so long as the respondent obtains prior Commission approval for any proposed divestiture, and we have modified Section I of the order accordingly.

Respondent's second exception to the examiner's order is that the phrase in Section I requiring Stanley to divest "all earnings" of the acquired Amerock is either vague or punitive. We have revised the language in Section I to make more explicit the kinds of assets that Stanley is required to divest, and have eliminated the phrase to which the respondent objected.

We have also accepted the respondent's contention that the record in this proceeding does not establish the need for extending the ban on future acquisitions without Commission approval from the cabinet hardware market to hardware products in general; thus, the scope of Section IV of the order has been narrowed in this respect. Finally, we agree with respondent's assertion that the unlimited duration of the ban against acquisitions without prior approval of the Commission goes beyond the reasonable demands of the public interest, and accordingly Paragraph IV of the order has been modified to incorporate the ten-year ban proposed by complaint counsel. (CPF at 51.) In all other respects, the order entered by the hearing examiner is adopted by the Commission.

FINAL ORDER

This matter having been heard by the Commission upon respondent's appeal from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and

The Commission, having rendered its decision determining that the initial decisions issued by the examiner should be modified in accordance with the views and for the reasons expressed in the accompanying opinion and, as modified, adopted as the decision of the Commission;

It is ordered, That the initial decision by the examiner be modified by striking footnotes 23 and 25, and findings 25, 26 and 29, and substituting therefore the following:

"²³ RPF, 159. With reference to 'Alternate 2' quoted above, it should be noted that there are substantial sales areas in the stipulated

United States market for cabinet hardware not requiring die-cast facilities. For example, Knap & Vogt and Grant Pulley and Hardware Company ranked No. 4 and No. 6 in the industry on the tabulation in Finding 10, produce and sell drawer slides which are cabinet hardware products that are not produced by die-casting. (Tr. 1723-1724, 1901-1902.)"

* * * * *

"²⁵ See, e.g., RPF 180A, 180B."

* * * * *

"25. Commission Exhibit 30, a Stanley press release, states the merger 'brings together two companies whose products and means of distribution are compatible. Amerock and Stanley see the move as two companies joining together to complement and reinforce each other and to better serve the trade and the ultimate consumer.'²⁶

"Under cross-examination at Tr. 1037, Norris A. Aldeen, president and chief executive of Amerock and a director of Stanley, testified to the following:

Q. Is it true that Stanley uses Amerock customer lists and Amerock uses Stanley customer lists?

A. We have knowledge in the trade of our various customer lists, yes.

HEARING EXAMINER SCHRUP: That answer isn't quite clear to me as I gather the import of the question. Are you implying or asking whether there is an exchange of customer lists between Amerock and Stanley?

MR. REFFKIN: Since the merger, yes.

HEARING EXAMINER SCHRUP: Would you answer that question?

THE WITNESS: Yes. We have knowledge of their customers and they have knowledge of our customers in certain markets.

"Amerock was clearly the dominant firm in the cabinet hardware market, with 22 and 24% of the industry's sales. (See, e.g., Finding 10.) At the same time, Stanley was a strong competitive factor in the production and sale of architectural cabinet hardware. (See CX 86 D-E; CX 85 Z-6; CX 68 P; Tr. 1369-1370.)

"As shown on the tabulation in preceding Finding No. 10, the Stanley Hardware Division had sales of \$23,100,000 in 1965 and \$25,300,000 in 1966. The principal product line which the Stanley Hardware Division manufactures is hinges, primarily architectural and residential door hinges, as well as general form and utility hinges and a variety of other hinges including those suitable for use

²⁶ CPF 34. At Tr. 1843 the President of Stanley testified:

'We would see no advantage in transferring the architectural cabinet hardware business to Amerock because they would add nothing to that. This is the area in which Stanley has strength and Amerock doesn't.'

Final Order

78 F.T.C.

as cabinet hardware.²⁷ The Hager Hinge Company also manufactures such hinges for competitive resale on a nationwide scale.²⁸

* * * * *

"26. John C. Bosworth, General Sales Manager of Amerock, testified to the following at Tr. 1140-1141:

Q. You said "key competitor." What did you mean by that?

A. I think in Kitchen Business, which is one of the trade magazines in our industry, this past March or April or February, they listed, I think, 97 competitors in kitchen cabinet hardware. So, when I say "key competitors", it is staying down with the first 10 or 20.

The 'Kitchen Business' listing referred to by the witness was introduced into evidence as CX 18, it indicates that many of the companies in the industry produce a relatively limited line of products, and that a few companies are importers. Although the record reflects a variety of opinion on the issue of which firms in the industry may be deemed 'major' or 'leading' competitors, it appears that the companies with the largest market shares, as set forth in Finding 10, are most frequently perceived by the industry as 'leading competitors.' See generally CX 13E; Tr. 1072-1073; CX 49 E-F; CX 49 I; CX 68 N; CX 85 F-4 to F-8; CX 85 F-34."

* * * * *

"29. In 1964 the Stanley Hardware Division management conveyed certain conclusions with reference to its cabinet hardware situation to Donald W. Davis, then executive vice-president of Stanley and acting general manager of the Hardware Division. The report stated in part:

The Division should hire a new marketing manager for cabinet hardware who had experience in both the field of architectural cabinet hardware products and in residential die-cast cabinet hardware products, in case it should be decided to move into the die-cast field at a later date. It was also recommended that the Division hire an industrial designer to help the engineering department develop the proposed new cabinet hardware items.³³

"Stanley sought to employ Escalante, the vice-president for marketing of Ajax, a manufacturer and seller of both architectural and residential cabinet hardware on a nationwide basis. As shown in the tabulation in Finding 10, Ajax was the third ranking supplier of cabinet hardware in the United States, with sales for 1965 of \$6,798,000 and for 1966 of \$7,560,000. Although Escalante expressed

²⁷ CPF 5, 6, 7 and RPF 86.

²⁸ See generally RX 51; CX 119; CX 61; CX 85 Z-6, Z-34; Tr. 1369-1370. RX 6 shows Hager overall hardware sales in the United States to have been \$10,648,364 in 1965 and \$11,561,108 in 1966. See further, Tr. 1067-1068."

³³ RPF 176 subpart B. See RPF 235 as to the ability of the Stanley Hardware Division to accomplish significant internal development of new products and to achieve substantial new product sales."

1023

Final Order

interest in the possibility of coming to work for Stanley, respondent did not meet the salary figure which Escalette demanded as a condition of employment. Tr. 1470-1480; CX 90 A-E.

It is further ordered, That Sections I and IV of the order to cease and desist issued by the hearing examiner be, and they hereby are, modified to read in full as follows:

I

"It is ordered, That Respondent, The Stanley Works (hereinafter referred to as 'Stanley'), through its officers, directors, agents, representatives, employees, successors and assigns, within two (2) years from the date this order becomes final, shall divest absolutely and in good faith, all stock, assets, properties, rights and privileges, tangible or intangible, including but not limited to all properties, plants, machinery, equipment, trade names, contract rights, patents, trademarks, and good will, obtained by Stanley as a result of its merger with the Amerock Corporation, together with all plants, machinery, buildings, land, improvements, equipment and other property of whatever description that has been added to or placed on the premises of the former Amerock Corporation, so as to restore Amerock Corporation as a going concern and effective competitor in the manufacture and sale of cabinet hardware.

It is further ordered, That pending divestiture, respondent shall not make any changes in any of the plants, machinery, buildings, equipment or other property of whatever description of the former Amerock Corporation which shall impair its present capacity for the production, sale and distribution of cabinet hardware, or its market value.

It is further ordered, That by such divestiture, none of the assets, properties, rights or privileges described in the first paragraph of this order, shall be sold or transferred, directly or indirectly, to any person or persons who are not approved in advance by the Federal Trade Commission."

* * * * *

IV

"For the period beginning on the date this order becomes final and ending ten (10) years after the date of divestiture of Amerock is effectuated, Stanley shall cease and desist from acquiring, directly

Complaint

78 F.T.C.

or indirectly, by any devise or through subsidiaries or otherwise, the whole or any part of the stock, share capital or assets of any firm engaged in the manufacture or sale of cabinet hardware products without the prior approval of the Federal Trade Commission. Within thirty (30) days following the effective date of this order, and annually thereafter, Stanley shall furnish a verified written report setting forth the manner and form in which it intends to comply, is complying, or has complied with this paragraph."

* * * * *

It is further ordered, That the hearing examiner's initial decision and order to cease and desist, as above modified and as modified by the accompanying opinion, be and they hereby are, adopted as the decision and order of the Commission.