

Docket 8435. Complaint, June 16, 1961—Decision, Sept. 23, 1971

Order modifying a cease and desist order of July 29, 1968, 74 F.T.C. 345, which required the nation's largest manufacturer of college fraternity jewelry and its sales subsidiary to cease various anti-competitive practices to also cease monopolizing the sale and distribution of fraternity jewelry and other products, making exclusive contracts with any fraternity, for a period of 5 years making any contract to be effective for over one year, participating as an active member of any interfraternity organization, inducing any fraternity not to deal with a competitor of respondent, and for a period of 10 years not

to merge with a competing company whose sales are 10 percent or more than those of the respondent unless approved by the F.T.C.

The L.G. Balfour Company shall divest itself of its subsidiary corporation, Burr, Patterson & Auld Company, and for 5 years refrain from selling to Burr customers; the respondent shall also cease disparaging the performance of or enticing away the employees of any competing company, and entering into any monopolistic agreement with any high school official or high school class officer concerning the purchase of high school class rings. All charges respecting the person L.G. Balfour are dismissed. This order was modified pursuant to a decision of the Court of Appeals Seventh Circuit, April 5, 1971 [442 F. 2d 1].

FINAL ORDER

The Commission having issued its original order on July 29, 1968, and respondents having appealed from the Commission's decision; and

The United States Court of Appeals for the Seventh Circuit having rendered its decision on April 5, 1971 [442 F. 2d 1], and its judgment on June 1, 1971, modifying the Commission's decision and order; and

The time for filing a petition for a writ of certiorari having expired:

It is ordered, That the previously issued order of the Commission be, and it hereby is, modified to read as follows:

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DEFINITIONS

For the purposes of the order to be issued in this proceeding, the following definitions shall apply:

(a) *Fraternity* shall mean a college social or college professional fraternity or sorority or college honor or college recognition society having more than one chapter;

(b) *Fraternity products* shall mean products bearing the trademark or distinctive insignia of a fraternity (as defined in (a) above); including, but not limited to, such products as standard badges, jeweled badges, pledge buttons or pins, recognition pins, monograms pins, pendants, miscellaneous jewelry items, paddles, beer mugs, processed knitwear, blazers, party and dance favors, stationery, pennants and other novelty-like items;

(c) *Findings* shall mean any product used in the manufacture, fabrication or processing of insignia jewelry, service awards or specialty products including, but not limited to, tie bars, tie tacks, tie chains, cuff links, lapel pins or buttons, key chains, identification bracelets, belt buckles, pendants, compacts, vanities, cigarette lighters, billfolds, jewel or cigarette boxes and pens and pencils.

I

It is ordered, That respondent L. G. Balfour Company, a corporation, and its officers, agents, representatives, employees, subsidiaries, successors and assigns and respondent Burr, Patterson & Auld Company, a corporation, and its officers, agents, representatives, employees, subsidiaries, successors and assigns, in connection with the sale, offering for sale, or distribution of fraternity products in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall terminate all contracts, agreements, understandings or arrangements, written or oral, in effect with any fraternity relating in any manner to the manufacture, sale or distribution of fraternity products. Respondents shall send a written notice of termination to each said fraternity, together with a copy of this order; and a copy of such notice and order, together with a list of the fraternities to which said notice and order has been sent, shall be furnished to the Federal Trade Commission within thirty (30) days thereafter.

II

It is further ordered, That respondent L. G. Balfour Company, a corporation, and its officers, agents, representatives, employees, subsidiaries, successors and assigns and respondent Burr, Patterson & Auld Company, a corporation, and its officers, agents, representatives, employees, subsidiaries, successors and assigns, in connection with the sale, offering for sale, or distribution of fraternity products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Monopolizing, or attempting to monopolize, the manufacture, sale or distribution of fraternity products by utilizing any plan, policy, method, system, program or device which has the purpose or effect of foreclosing competitors from the manufacture, sale or distribution of such products, or utilizing any contract, agreement, understanding or arrangement, written or oral, which has the purpose or effect of unlawfully foreclosing, restricting, restraining, or eliminating competition in the manufacture, sale or distribution of such products;

(2) Entering into, maintaining or utilizing any contract, agreement, understanding or arrangement, written or oral, with any fraternity which designates, appoints, authorizes, grants or entitles respondents, or either of them, to be sole or exclusive supplier, or suppliers, of any or all types of fraternity products to said fraternity, or which requires or obligates said fraternity to purchase all or substantially all of its requirements of any or all types of fraternity products from respondents, or either of them;

(3) For a period of five (5) years, entering into, maintaining or utilizing any contract, agreement, understanding or arrangement, written or oral, with any fraternity which continues in effect for a period longer than one year;

(4) Representing, directly or by implication, that respondents, or either of them, are the sole authorized supplier or suppliers of any or all types of fraternity products to any fraternity;

(5) Holding any office in, making any financial or other contribution of value to, or participating in any manner in the management of the affairs of any organization composed of more than one fraternity, such as, but not limited to, the Interfraternity Research and Advisory Council, National Interfraternity Conference, National Panhellenic Conference, National Panhellenic Council, Professional Interfraternity Council, Professional Panhellenic Association or Association of College Honor Societies.

III

It is further ordered, That respondent L. G. Balfour Company, a corporation, and its officers, agents, representatives, employees, subsidiaries, successors and assigns and respondent Burr, Patterson and Auld Company, a corporation, and its officers, agents, representatives, employees, subsidiaries, successors and assigns, in connection with the manufacture, sale, offering for sale, or distribution of fraternity products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Falsely representing that any competitor has manufactured, distributed or sold any or all types of fraternity products without permission or authorization of any fraternity or fraternities;

(2) Inducing or coercing any fraternity or any officer, member or employee thereof, (a) to refrain from giving fair consideration to offers by respondents' competitors to sell any or all types of fraternity products to any fraternity or any member thereof, or (b) to deny respondents' competitors free and open access to the national offices or chapter houses of any fraternity, or (c) to cancel any existing contract or purchase order of respondents' competitors covering the sale of any or all types of fraternity products to any fraternity or to any member thereof;

(3) During a period of ten (10) years from the date of entry of this order, purchasing, merging or consolidating with, or in any way acquiring any interest in, any competitor engaged in the manufacture, distribution or sale of any or all types of fraternity products whose sales of said fraternity products constitute an amount in excess of

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ten (10) percent of the total sales of such competitor, unless permission to make such merger, consolidation or acquisition is first obtained from the Federal Trade Commission;

(4) Entering into any contract, agreement, understanding or arrangement, written or oral, with any manufacturer or distributor of any fraternity product, or any product intended for sale or distribution to any fraternity, that such supplier shall not sell said product, or products, to any competitor of respondents.

IV

It is further ordered, That respondent L. G. Balfour Company, within one (1) year from the date this order becomes final, shall divest itself, absolutely and in good faith, of all assets, properties, rights and privileges, tangible and intangible, of respondent Burr, Patterson & Auld Company relating in any way to the manufacture, sale or distribution of fraternity products, including patents, trademarks, trade names, firm names, good will, contracts and customer lists. In such divestment no property above mentioned to be divested shall be sold or transferred, directly or indirectly, to anyone who at the time of the divestiture is a stockholder, officer, director, employee or agent of, or otherwise directly or indirectly connected with, or under the control or influence of, respondent L. G. Balfour Company, or to any purchaser who is not approved by the Federal Trade Commission.

Commencing upon the date this order becomes final and continuing for a period of five (5) years from and after the effective date of the divestiture, respondent L. G. Balfour Company shall refrain from selling any fraternity products to any fraternity that was under an official, co-official or sole official jeweler contract with respondent Burr, Patterson & Auld as of June 16, 1961.

V

It is further ordered, That respondent L.G. Balfour Company, a corporation, and its officers, agents, representatives, employees, subsidiaries, successors and assigns and respondent Burr, Patterson and Auld Company, a corporation, and its officers, agents, representatives, employees, subsidiaries, successors and assigns, in connection with the manufacture, sale, offering for sale or distribution of any of their products in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

(1) Falsely imputing to any competitor dishonorable conduct, inability to perform contracts, questionable credit standing, or falsely

disparaging any competitor's products, business methods, selling prices, values, credit terms, policies or services;

(2) Enticing away employees or sales representatives from any competitor with the intent or effect of injuring any competitor or competitors. This provision shall not prohibit any person from seeking more favorable employment with respondents, or either of them, or to prohibit said respondents, or either of them, from hiring or offering employment to employees of a competitor in good faith and not for the purpose of inflicting injury on such competitor;

(3) Entering into any contract, agreement, understanding or arrangement, written or oral, with any supplier of any finding or findings that such supplier shall not sell said finding or findings to any competitor of respondents.

VI

It is further ordered, That respondent L.G. Balfour Company, a corporation, its officers, agents, employees, representatives, subsidiaries, successors and assigns, directly or indirectly, through any corporate or other device, in or in connection with the offering for sale, sale or distribution of high school class rings in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Entering into, establishing, maintaining, enforcing, or continuing in operation or effect beyond the first school year that ends after the effective date of this order, any contract, agreement or understanding with any high school official or high school class with respect to the sale, supply or distribution of high school class rings which fails to set forth all of the terms essential to enable performance of such contract, agreement or understanding, including a description of the ring being ordered and the price thereof;

(2) Entering into, establishing, maintaining, enforcing, or continuing in operation or effect beyond the first school year that ends after the effective date of this order, any contract, agreement or understanding with any high school official or high school class with respect to the sale, supply or distribution of high school class rings which continues in effect for a period longer than one year; *Provided, however*, that respondent L.G. Balfour Company, a corporation, and its officers, agents, representatives, employees, subsidiaries, successors and assigns, may enter into such contract, agreement or understanding for a period not in excess of three (3) years if (i) the manufacture of the high school class rings that are the subject of any contract, agree-

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ment, or understanding requires respondent to construct a complete and original set of dies usable solely for said rings, (ii) the die charges are separately quoted and stated by respondent and (iii) the contract, agreement, or understanding provides that the dies become the property of the high school at the expiration thereof;

(3) Representing, directly or by implication, that special prices, discount prices, term prices, discounts, or rebates are afforded to purchasers of high school class rings unless the price at which such merchandise is offered constitutes a reduction equal to any amount stated, or otherwise directly or by implication represented, from the actual, bona fide price at which such merchandise was offered to high schools on a regular basis during the calendar year in which such representation is made in the regular course of business in the trade area where the representation is made, and unless such regular price and the discount price, discount rate, or rebate terms are clearly set forth in such agreement;

(4) Entering into, establishing, maintaining, or enforcing at any time after the first school year that ends after the effective date of this order, any contract, agreement, or understanding with any high school official or high school class with respect to the sale, supply, or distribution of high school class rings more than sixty (60) days prior to the date upon which the term of such contract, agreement, or understanding is to begin;

(5) Entering into, establishing, maintaining or enforcing at any time after the first school year that ends after the effective date of this order, any contract, agreement, or understanding with any person whereby respondent will alternate, rotate, or otherwise share with any competitor in the sale or supply of high school class rings to any high school class.

VII

It is further ordered, That respondent L. G. Balfour Company and respondent Burr, Patterson & Auld shall, within sixty (60) days from the date of service of this order, submit to the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which they have complied with Parts I, II, III and V of this order; respondent L.G. Balfour Company shall also, within sixty (60) days from the date of such service, submit to the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with Part VI of this order; and respondent L.G. Balfour Company shall also, within sixty (60) days from such date of service and every sixty (60) days thereafter until it has fully

complied with this order, submit to the Commission a detailed written report of its actions, plans and progress in complying with the provisions of Part IV of this order.

VIII

It is further ordered, That all charges respecting respondent L. G. Balfour be, and they hereby are, dismissed.

It is further ordered, That the Commission's decision is hereby modified by striking therefrom the Commission's findings that respondents misrepresented the extent of fraternities' trademark protection and the Commission's findings relating to the manner or motive of Balfour's acquisition of Burr, Patterson and Auld Company and Edwards Haldeman.
