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usually and customarily sold such products in the recent regular course of his business;

(b) That any of respondent's fur products can be purchased at a substantial discount or saving, off regular prices, when such regular prices do not represent the prices at which respondent has usually and customarily sold such products in the recent regular course of his business.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 25th day of March, 1960, become the decision of the Commission; and, accordingly:

It is ordered. That respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF

NICHOLS & COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS

Docket 7659. Complaint, Nov. 17, 1959—Decision, Mar. 25, 1960

Consent order requiring Boston manufacturers to cease violating the Wool Products Labeling Act by labeling as "80% Camel Hair, 20% Wool," wool stocks composed in part of reprocessed woolen fibers, and by failing to comply in other respects with labeling requirements.

The complaint remains pending as to the individual respondent who performed garnetting of the woolen stocks in question.

Before *Mr. Harry R. Hinkes*, hearing examiner.

Mr. Garland S. Ferguson supporting complaint.

Mr. Edward C. Park, of *Withington, Cross, Park & McCann*, of Boston, Mass., for respondents.

INITIAL DECISION AS TO ALL RESPONDENTS EXCEPT HARRY CARR

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission issued and subsequently served its complaint in this proceeding against the above-named respondents, charging them

with violation of the Federal Trade Commission Act, the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in connection with their sale, offering for sale, delivery and introduction into commerce of certain wool products.

On February 1, 1960 there was submitted to the undersigned hearing examiner an agreement between certain respondents, their counsel and counsel supporting the complaint, providing for the entry of a consent order.

Under the foregoing agreement, Nichols & Company, Inc., a corporation, and Arthur O. Wellman, Arthur O. Wellman, Jr., and John H. Nichols, Jr., erroneously named in the complaint as John N. Nichols, Jr., individually and as officers of said corporation, and Sumner E. Burdette, individually, admitted all of the jurisdictional allegations in the complaint. The agreement provides that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, the signatory respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by such respondents that they have violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for an appropriate disposition of the proceeding as to the signatory respondents, the agreement is hereby accepted, the following jurisdictional findings made and the following order issued:

1. Nichols & Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Massachusetts with its office and principal place of business located at 140 Federal Street, Boston, Massachusetts. Individual respondents Arthur O. Wellman, Arthur O. Wellman, Jr., and John H. Nichols, Jr., are officers of said corporation, and Sumner E. Burdette is manager of the Waste Department of said corporation.

The address of the aforesaid individual respondents is the same as that of the corporate respondent.

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2. The agreement does not dispose of this proceeding as to Harry Carr, who is subject to further proceedings.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Nichols & Company, Inc., a corporation, and its officers, and Arthur O. Wellman, Arthur O. Wellman, Jr., and John H. Nichols, Jr., individually and as officers of said corporation, Sumner E. Burdette, individually, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of woolen stocks or other wool products, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein;

2. Failing to affix labels to such products showing each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Nichols & Company, Inc., a corporation, and its officers, and Arthur O. Wellman, Arthur O. Wellman, Jr., and John H. Nichols, Jr., individually and as officers of said corporation, and Sumner E. Burdette, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the sale or distribution of woolen, or part woolen stocks, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly, misrepresenting the generic names of the fibers of which their products are composed, as such names are defined in the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, or the percentages or amounts thereof, in sales invoices, shipping memoranda, or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 25th

day of March, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Nichols & Company, Inc., a corporation, and Arthur O. Wellman, Arthur O. Wellman, Jr., and John H. Nichols, Jr., erroneously named in the complaint as John N. Nichols, Jr., individually and as officers of said corporation, Sumner E. Burdette, individually, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF
A. G. SPALDING & BROS., INC.

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

Docket 6478. Complaint, Dec. 8, 1955—Decision, Mar. 30, 1960

Order of divestiture requiring the nation's second largest seller of athletic goods to sell a principal competitor—the fourth largest seller prior to the acquisition—which it purchased in 1955 for about \$5.8 million, in violation of Sec. 7 of the Clayton Act.

Mr. James S. Kelaher and Mr. Thomas P. Luscher for the Commission.

Cravath, Swaine & Moore, by *Mr. Albert R. Connelly* and *Mr. John D. Calhoun*, and *Spalding, Shiland & Marangelo*, by *Mr. H. Boardman Spalding*, all of New York, N.Y., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

PRELIMINARY PROCEEDINGS

The Complaint

The complaint in this proceeding was issued on December 8, 1955, charging the Respondent, A. G. Spalding & Bros., Inc. (hereinafter referred to as the Respondent or as Spalding) with violating §7 of the Clayton Act (15 U.S.C., §18) by its acquisition on or about December 6, 1955, of Rawlings Manufacturing Company (hereinafter referred to as Rawlings). The pertinent part of §7 of the Clayton Act which the respondent is charged with violating is as follows:

SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

The Answer

On March 12, 1955, respondent submitted its answer, admitting certain descriptive allegations of the complaint, but denied that it had violated the Clayton Act as alleged, and moved for the dismissal of the complaint.

Stipulation to Preserve the Status Quo

Thereafter, on December 14, 1955, counsel for the Commission applied for an injunction in the United States Court of Appeals for the First Circuit to preserve the status quo of the acquired company, pending final determination by the Commission of the legality of the merger. A stipulation was thereupon executed by counsel supporting the complaint and counsel for the respondent, whereby the respondent agreed, in substance, to maintain the status of Rawlings as at the time of acquisition, and to make no changes therein without advance notice to the Commission. Upon the basis of that stipulation, the injunction proceeding was withdrawn.

Litigation With Respect To Subpoenas *Duces Tecum* Issued to Persons Not Parties to This Proceeding:

Extended litigation contesting the legality of two subpoenas *duces tecum* materially delayed the holding of hearings on the merits of this proceeding. The first of those subpoenas was issued on February 24, 1956, to W. W. Tuttle of the firm of Ernst & Ernst, certified public accountants, directing him to produce certain books and records prepared by his firm for the Athletic Manufacturers Association. The second subpoena was issued on June 25, 1956, to Fred J. Bowman, president, Wilson Athletic Goods Manufacturing Company, Chicago, Illinois, directing him to produce certain records of his company which were deemed relevant to this proceeding. Both persons subpoenaed appeared at a hearing, but respectfully refused to produce the records requested in the subpoenas. Litigation upon the issues thus raised was finally resolved in favor of the Commission in two separate proceedings in the United States Courts of Appeals for the Second and Seventh Circuits. Thereafter both subpoenas *duces tecum* were duly complied with.

Hearings on the Merits

Hearings were held on the merits of this proceeding in Chicago, Illinois; Cincinnati, Ohio; and Washington, D.C. A great number of documents, many of which have been placed in camera, were produced through the cooperation of counsel, and were received in evidence. Upon the completion of the hearings in Washington, D.C., counsel supporting the complaint rested their case, and counsel for the respondent, without offering any evidence, also rested and renewed his motion for the dismissal of the complaint.

Rulings on Proposed Findings

Consideration has now been given to the entire record herein, including numerous proposed findings as to the facts and conclusions presented by both counsel supporting the complaint and counsel for the respondent, and the lengthy briefs and oral argument in support thereof. Each of those proposals which has been accepted is, in substance, incorporated into this initial decision. All proposals not so incorporated are hereby rejected.

The Issue

The broad, controlling issue in this proceeding is whether "in any line of commerce in any section of the country" the effect of the acquisition of Rawlings by Spalding "may be substantially to lessen competition or tend to create a monopoly."

In view of the scope of this issue, we are confronted with a multiplicity of relevant facts. Thus, we must consider the history of the acquiring company and its economic and competitive status; the history of the acquired company and its economic and competitive status; the circumstances surrounding the actual acquisition; the general economic and competitive conditions existing in the athletic-goods industry as a whole; the section of the country in which such conditions obtain; and, most important of all, an analytical survey must be made, defining the specific line of commerce and determining the particular competitive conditions therein between the two principals involved, as well as between the two principals and other competitors; the number of competitors engaged; the ease or difficulty of entry into that line of commerce and survival therein; and any other relevant factors which may show or tend to show the probable effect of the acquisition in question upon competition, both general and specific, within the defined line of commerce.

*The Acquiring Company (Spalding) and its Economic and
Competitive Status*

History

In 1876, two brothers, Albert G. Spalding and J. Walter Spalding, formed a partnership called A. G. Spalding & Bros., for the purpose of selling baseball equipment at wholesale and retail. Two years later a brother-in-law, William T. Brown, joined the firm, and, about the same time, they opened a factory for the manufacture of baseball bats at Hastings, Michigan. In 1885, the Spalding partnership was incorporated in Illinois under the name "A. G. Spalding & Bros." In 1892, A. G. Spalding & Bros. was incorporated in New Jersey, to which corporation was transferred all the capital stock of the following corporations:

1. A. G. Spalding & Bros., the Illinois corporation;
2. Wright & Ditson, a New Jersey corporation engaged in the manufacture of athletic goods, with emphasis on tennis rackets;
3. A. J. Reach Company, originally a partnership incorporated in about 1885, engaged principally in the manufacture of baseballs and baseball mitts and gloves;
4. George Bernard & Company, a New Jersey corporation engaged in the manufacture of uniforms and knit goods;
5. Spalding Manufacturing Company, an Illinois corporation formed to operate the A. G. Spalding & Bros. baseball-bat factory; and
6. Peck & Snyder, a retail store in New York City dealing in sporting equipment.

This reorganized corporation continued its activities, with minor changes, from 1892 until 1934, when it entered upon another period of reorganization which was designed to solve problems resulting from a sharp decrease in sales during the depression years of the 1930s, when the national market for athletic goods declined more than 60%. On May 5, 1939, the present corporate respondent was organized as a Delaware corporation, under its present name of A. G. Spalding & Bros., Inc., with all the assets of the former New Jersey corporation.

As of December 8, 1955, the date of the acquisition of Rawlings, and after a long period of growth and expansion, Spalding had its main factory and executive offices in Chicopee, Massachusetts; one minor manufacturing establishment located in Easley, South Carolina; a wholly owned selling subsidiary, Spalding Sales Corporation, operating sales offices and wholesale distributing offices located

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in Chicopee, Massachusetts, and in the principal cities throughout the United States; one operating division, the Toy Tinkers; one wholly owned foreign subsidiary, A. G. Spalding Products of Canada, Ltd.; and business relations with British and Australian companies operating independently under the Spalding name.

Financial Status

From an original investment of \$800.00 in 1876, the business of Spalding has grown so that immediately prior to its acquisition of Rawlings, its total assets amounted to \$16,665,299.00. Its plant at Chicopee, Massachusetts, is the largest and most complete athletic-goods manufacturing plant in the United States. At the time of its acquisition of Rawlings, Spalding was in sound financial condition.

Athletic Goods Manufactured

Spalding has manufactured and sold a general line of athletic goods since its early history. Its full line consists of more than 1,100 different articles. Particularly, it sells golf, baseball, football, basketball, volley ball, soccer, tennis, badminton and boxing equipment, athletic clothing and related products.

Channels of Distribution

Spalding distributes its products through wholesale distributing depots and sales offices located throughout the United States. Prior to 1952, such facilities were located in Chicopee, Massachusetts; Boston, Massachusetts; New York, N.Y.; Philadelphia, Pennsylvania; Washington, D.C.; Chicago, Illinois; and Los Angeles, California. Subsequent to 1952 Spalding has had distribution offices in Seattle, Washington, Dallas, Texas; Miami, Florida; and Atlanta, Georgia. The comparative importance of Spalding's sales, by customer classes, prior to its acquisition of Rawlings is shown by the following analysis of its total sales of athletic goods for the year 1954:

Dealers	53.9%
Professional golf	30.8%
Professional, others5%
Retail stores (discontinued subsequent to 1955)	3.2%
Private brand, export, baseball leagues, employee commissaries, Government	7.7%
Other manufacturers	3.9%
	100.0%

