

Complaint

73 F.T.C.

IN THE MATTER OF

AMERICAN BRAKE SHOE COMPANY*

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF
THE CLAYTON ACT*Docket 8622. Complaint, May 12, 1964—Decision, April 10, 1968*

Order requiring a large manufacturer of friction materials and related products with headquarters in New York City, to divest itself of an Ohio manufacturer of sintered metal friction materials within 6 months and not to acquire any producer of such material for the next 10 years without prior Commission approval.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named above has violated and is now violating the provisions of Section 7 of the Clayton Act (U.S.C., Title 15, Section 18), as amended, through respondent's acquisition of The S. K. Wellman Company, hereby issues its complaint pursuant to Section 11 of the aforesaid Act (U.S.C., Title 15, Sec. 21) charging as follows:

I

Definitions

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

(a) "Friction materials" are substances used to oppose the relative motion of two bodies in contact, including but not limited to organic friction material, sintered metal friction material and paper friction material.

(b) "Organic friction materials" are those made from asbestos and other materials bonded under heat and pressure with an organic resin.

(c) "Paper friction materials" are those produced by rolling a pulp made from a blend of ingredients into a material resembling heavy cardboard.

(d) "Sintered metal friction materials" are those produced by blending various metallic and nonmetallic powders. The ingredients are then compressed and sintered to a steel or other backing under high pressure and temperature.

*Now known as Abex Corporation.

II

American Brake Shoe Company

2. Respondent, American Brake Shoe Company (Brake Shoe), is a corporation organized and existing under the laws of the State of Delaware with its office and principal place of business at 530 Fifth Avenue, New York, New York.

3. Brake Shoe is a large, diversified manufacturer, distributor and seller of friction materials, castings and forgings, and railroad and hydraulic products. In 1962 Brake Shoe had total sales of \$194,892,000 and its total assets as of December 31, 1962, were \$150,101,000.

4. Prior to and since April 16, 1963, Brake Shoe operated friction material plants at Cleveland, Ohio, and Winchester, Virginia. The Cleveland plant manufactures sintered metal friction materials and the Winchester plant manufactures organic friction materials.

5. At all times relevant herein, Brake Shoe sold its products, including friction materials, in interstate commerce throughout the United States.

III

The S. K. Wellman Company

6. Prior to its acquisition on April 16, 1963, The S. K. Wellman Company (Wellman) was a corporation organized and existing under the laws of the State of Ohio with its office and principal place of business at 200 Egbert Road, Bedford, Ohio.

7. At the time of its acquisition, Wellman was engaged principally in the manufacture, distribution and sale of sintered metal friction materials. It operated one plant at Bedford, Ohio. Its 1962 total sales were \$12,421,239, and its total assets as of December 31, 1962, were \$8,210,331.

8. Prior to, and at the time of its acquisition, Wellman sold its products, including friction materials, in interstate commerce throughout the United States.

IV

Trade and Commerce

9. The relevant product markets for the purposes of this complaint are the production, distribution and sale of friction materials in general, and sintered metal friction materials in particular, exclusive of friction materials used by the railroad industry.

10. The relevant geographical market for the purposes of this complaint is the United States as a whole.

11. The three major types of friction materials are organic, sintered metal, and paper. Other materials such as cork and wood are also used as friction materials, but comprise only a minor portion of the market.

12. Sintered metal friction materials are especially adapted for use under severe operating conditions, where for example, heavy loads or high temperatures are encountered. Sintered metal is one of the newest friction materials and represents a rapidly growing segment of the friction materials industry.

13. The entire friction materials industry in the United States consists of approximately thirty-two companies. In 1961 the total sales of friction materials by all companies were approximately \$159,000,000. In that year the five largest producers of friction materials accounted for 55% of total sales; the ten largest firms accounted for 84% of total sales. In 1961, Brake Shoe and Wellman ranked approximately sixth and eighth, respectively, as friction material producers.

14. Sintered metal friction materials are presently manufactured, distributed and sold by approximately six companies.

15. At the time of Brake Shoe's acquisition of Wellman, Brake Shoe and Wellman were substantial actual and potential competitors in the sale of friction materials and sintered metal friction materials.

16. As a direct result of respondent's acquisition of Wellman, respondent is now the second ranking producer of friction materials and the leading producer of sintered metal friction material in the United States.

V

Violation of Section 7 of the Clayton Act

17. On April 16, 1963, Brake Shoe acquired all of the stock of Wellman in exchange for 223,656 shares of Brake Shoe's stock having an approximate market value of \$12,468,822.

18. The effect of the acquisition of Wellman by Brake Shoe may be substantially to lessen competition or to tend to create a monopoly in the production, distribution and sale of friction materials and sintered metal friction materials throughout the United States in the following ways, among others:

(a) Actual and potential, substantial competition between Brake Shoe and Wellman in the production, distribution and sale of friction materials and sintered metal friction materials has been eliminated;

(b) Concentration in the production, distribution and sale of friction materials and sintered metal friction materials has been substantially increased;

(c) The combination of Brake Shoe and Wellman may so increase respondent's manufacturing and distribution facilities, technology, financial and market strength as to provide Brake Shoe with a decisive competitive advantage in the sintered metal friction materials industry and the friction materials industry to the detriment of actual and potential competition;

(d) New entrants into the friction materials and sintered metal friction materials industries may be inhibited or prevented;

(e) An environment has been created fostering a trend toward mergers and acquisitions on the part of other and less diversified companies in the friction materials and sintered metal friction materials industries.

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

Mr. V. Rock Grundman, Jr., and *Mr. Hugh J. Kelly* supporting the complaint.

Mr. Earl W. Kintner, Mr. Ralph S. Cunningham, Jr., Mr. Mark R. Joelson, Mr. Jack L. Lahr, Mr. George R. Kucik, Mr. Stanley D. Heckman, Arent, Fox, Kinter, Plotkin & Kahn, Washington, D.C., and *Mr. Carson M. Glass, Clifford & Miller*, Washington, D.C., for the respondent.

INITIAL DECISION BY ELDON P. SCHRUP, HEARING EXAMINER

AUGUST 19, 1966

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STATEMENT OF PROCEEDINGS

The Federal Trade Commission on May 12, 1964, issued its complaint charging the respondent American Brake Shoe Company, a corporation, with violation of Section 7 of the Clayton Act as amended.¹ The complaint alleges the respondent with total sales of over \$194,000,000 in 1962 to be a large, diversified manufacturer of various products, including organic and sintered metal friction materials sold in interstate commerce throughout the United States. It is further alleged that respondent on April 16, 1963, acquired all the corporate stock of The S. K. Wellman Company, a corporation, with 1962 sales in excess of \$12,000,000 and also engaged in the manufacture of sintered metal friction materials sold in interstate commerce throughout the United States.

The complaint alleges the entire friction materials industry in the United States to consist of approximately thirty-two companies in 1961 and the total sales of all said companies to have been approximately \$159,000,000. The five largest companies are alleged to have accounted for 55% of total sales, and the ten largest companies to have accounted for 84% of total sales. The American Brake Shoe Company is alleged to have ranked sixth and The S. K. Wellman Company to have ranked eighth in sales among these thirty-two companies in 1961.

Sintered metal friction materials are alleged in the complaint to be manufactured, sold and distributed by approximately six companies. At the time of the acquisition it is further alleged that the American Brake Shoe Company and S. K. Wellman were substantial, actual and potential competitors in the sale of friction materials and of sintered metal friction materials and that as a direct result of the acquisition, respondent American Brake Shoe Company is now the second ranking producer of friction materials and the leading producer of sintered metal friction materials in the United States.

The complaint in conclusion alleges the foregoing acquisition by respondent American Brake Shoe Company may be to substantially lessen competition or tend to create a monopoly in the production, distribution and sale of friction materials in general, and sintered metal friction materials in particular, throughout the United States.

¹ "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."

Respondent on August 18, 1964, filed answer to the complaint admitting some and denying other of its allegations. Respondent's answer denies the allegations of the complaint with respect to the relevant product market for friction materials and the relevant product sub-market of sintered metal friction materials therein set forth, and further states respondent to be without knowledge or information sufficient to form a belief as to the complaint's allegations relative to the number of companies, their sales and respective rank in the friction materials industry. Respondent's answer denies the effect of the acquisition as alleged in the complaint and that such acquisition constituted a violation of Section 7 of the Clayton Act as amended.

Following a series of formal and informal prehearing conferences, the hearing for the presentation of the case-in-chief commenced in Washington, D.C., on October 25, 1965, and ended November 10, 1965.² The presentation of the defense commenced in Washington, D.C., on January 4, 1966, and ended April 5, 1966. No rebuttal hearing was held and the record for the reception of evidence was closed on April 8, 1966. The transcript of record consists of 4,811 pages. Complaint counsel presented the testimony of 29 witnesses and respondent presented the testimony of 61 for a total of 90 witnesses. Received in evidence are some 123 documentary and physical exhibits submitted by complaint counsel and 165 submitted by respondent for a total of 288 exhibits.

Respective counsel were afforded full opportunity to be heard, to examine and cross-examine all witnesses and to introduce such evidence as is provided for under Section 3.14(b) of the Commission's Rules of Practice for Adjudicative Proceedings.

Proposed findings of fact, conclusions, supporting briefs, and replies thereto were filed by respective counsel, and counsel supporting the complaint submitted a proposed order to cease and desist. Oral argument thereon by respective counsel was held before the hearing examiner on July 15, 1966. Proposed findings and conclusions submitted and not adopted in substance or form as herein found and concluded are hereby rejected.

After carefully reviewing the entire record in this proceeding as hereinbefore described, and based on such record and the observation

² The lengthy and involved procedural history of this matter before the hearing examiner, the Commission and the Courts chiefly relates to respondent's requested avenues of discovery both prior to and during the course of the hearing. See, for example, *American Brake Shoe Co. v. Schrup, et al.*, Civil No. 3091 (D. Del. 1965) [7 S. & D. 1357]. All the requested discovery procedures, both as denied and as subsequently in part granted by the hearing examiner, are a matter of record herein and a detailed further recital would unnecessarily burden this statement of the proceedings.

Initial Decision

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of the witnesses testifying herein, the following Findings of Fact and Conclusions therefrom are made, and the following Order issued:

FINDINGS OF FACT

I. *American Brake Shoe Company*

1. Respondent American Brake Shoe Company³ (Brake Shoe) is a corporation organized and existing under the laws of the State of Delaware, with office and principal place of business at 530 Fifth Avenue, New York, New York. Brake Shoe is a diversified manufacturer of friction materials, hydraulic products, railroad products, castings and forgings, and at all times relevant herein, sold its products in interstate commerce throughout the United States.⁴

2. In pre-merger year 1962 Brake Shoe had total shipments of all products in the amount of \$194,892,299 and total assets of \$150,101,628 at year end.⁵ In 1963 following the acquisition of The S. K. Wellman Company total shipments of all products rose to \$214,669,000 and year end to total assets were \$160,350,613.⁶ Brake Shoe's sales of friction materials in 1963 were 15% of overall sales. Sales of friction materials in merger year 1963 were \$31,500,000 in comparison to \$17,700,000 for pre-merger year 1962.⁷

3. Brake Shoe's 1963 Annual Report with reference to the marketing of its friction products states in part as follows:

Brake Shoe's friction products have a wide variety of uses. In the automotive field they include brake lining for passenger cars, trucks and buses. Our heavy duty materials are used in clutches and transmissions for trucks and military vehicles.

For aircraft, the company supplies special braking materials to meet the requirements of almost any type of plane from small craft to large commercial and military jets.

Industrial applications include friction materials for clutches, transmissions and brakes on tractors, materials-handling trucks, mining and earth-moving equipment and numerous types of industrial machines.

Brake Shoe enjoys a sizeable volume of sales in friction products to the car and truck manufacturers and the builders of industrial equipment and farm machinery.

4. Brake Shoe's 1961 Annual Report⁸ has this to say in part about

³ American Brake Shoe Company changed its name to Abex Corporation on April 26, 1966 (Resp. proposed findings of fact No. 1).

⁴ Admitted. Resp. Answer, Pars. 2, 3, 5.

⁵ Comm. Ex. No. 7, Brake Shoe's 1962 Annual Report.

⁶ Comm. Ex. No. 8, Brake Shoe's 1963 Annual Report.

⁷ Comm. Ex. Nos. 7, 8, above.

⁸ Comm. Ex. No. 6, Brake Shoe's 1961 Annual Report.

