

under and by virtue of the laws of the state of Pennsylvania with its principal place of business located at 700 Spring Mill Avenue Conshohocken, Pennsylvania 19248. Respondent Hale Products manufactures and sells Mid-Ship Mounted Fire Pumps in the United States, and in 1993 accounted for approximately 50 percent of Mid-Ship Mounted Fire Pump sales in the United States.

Jurisdiction

3. Respondent Hale Products sells and ships Mid-Ship Mounted Fire Pumps from its production facility located in Pennsylvania to customers located throughout the United States. Respondent maintains and has maintained a substantial course of business, including the acts and practices herein alleged, which are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

Mid-Ship Mounted Fire Pump Industry

4. The market for Mid-Ship Mounted Fire Pumps in the United States includes three principal competitors. In addition to Respondent Hale Products, two other companies sell Mid-Ship Mounted Fire Pumps to OEM's in the United States: Waterous Company, Inc. (sometimes referred to as "Waterous"), and W.S. Darley & Company, Inc. (sometimes referred to as "Darley"). These three firms have each sold fire pumps in the United States for over 50 years, and in that time there has been little if any attempted de novo entry into the United States market. Respondent Hale Products and Waterous are the two largest manufacturers and together account for close to or more than 90 percent of Mid-Ship Mounted Fire Pump sales in the United States.

Exclusive Dealing Practices

5. For over 50 years, and until approximately 1991, Respondent Hale Products sold Mid-Ship Mounted Fire Pumps through a network of exclusive OEM's. Respondent Hale Products sold or contracted for the sale of such pumps to OEM's with the understanding that those OEM's would commit to selling only Hale Mid-Ship Mounted Fire Pumps. Waterous also sold on an exclusive basis, but to a different group of OEM's. Thus, prior to approximately 1991, few if any OEM's offered Mid-Ship Mounted Fire Pumps manufactured by more than one fire pump manufacturer, and fire truck buyers were able to choose between Mid-Ship Mounted Fire Pumps manufactured by different firms only by considering different OEM's.

6. Respondent Hale Products believed that continued adherence to the exclusive sales policy by both itself and Waterous would exclude or tend to exclude other competitors and would tend to reduce competition between manufacturers of Mid-Ship Mounted Fire Pumps over price and over non-price terms such as quality differences and delivery times.

7. During the 1980's and until approximately 1991, Respondent Hale Products continued to adhere to its exclusive dealing policy. Hale Products solicited new OEM's on the condition that they deal in Mid-Ship Mounted Fire Pumps manufactured by Hale Products exclusively. Hale Products told prospective OEM's that they must deal exclusively in Mid-Ship Mounted Fire Pumps manufactured by Hale Products, asked newly approved OEM's to sign written acknowledgments of the exclusive term, and threatened to terminate OEM's who failed to honor the exclusive term.

Anticompetitive Effects

8. The acts, practices, and methods of competition of Respondent Hale Products, as alleged in Paragraphs 5 through 7, were and are substantially to the injury of the public in the following ways, among others:

- a. By substantially lessening competition in the sale and marketing of Mid-Ship Mounted Fire Pumps, or by excluding or tending to exclude other actual or potential pump manufacturers from selling Mid-Ship Mounted Fire Pumps to a substantial number of OEM's; and
- b. By facilitating an allocation of customers between Respondent Hale Products and Waterous.

Violation of Law

9. Therefore, the acts, practices and methods of competition of Respondent Hale Products, as herein alleged, were and are all to the prejudice and injury of the public and constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. The acts practices and methods of competition of Respondent, as herein alleged, or the effects thereof, are continuing or could recur in the absence of the relief herein requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission this twenty-second day of November, 1996, issues its complaint against said Respondent.

By the Commission, Commissioner Azcuenaga and Starek dissenting.

Donald S. Clark
Secretary