2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent The American Rolex Watch Corporation, a corporation, and its officers, directors, employees, agents, and representatives, directly or through any corporate or other device, in, or in connection with, the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Clayton Act, as amended, of watches, watch bracelets, watch accessories and other products, do forthwith cease and desist from:

> Paying or contracting for the payment of anything of value to or for the benefit of any customer as compensation or in consideration for any services or facilities consisting of advertising or other publicity in a catalog, newspaper, broadcast, or telecast or in any other advertising medium, furnished or distributed, directly or through any corporate or other device, by such customer, in connection with the processing, handling, sale, or offering for sale of any products manufactured, imported, sold, or offered for sale by respondent, unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the distribution of such products.

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

IN THE MATTER OF

FORSTER MFG. CO., INC., ET AL.

ORDER, OPINIONS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(a) OF THE CLAYTON ACT

Docket 7207. Complaint, July 23, 1958—Decision, July 23, 1965

Order, pursuant to remand by the Court of Appeals, First Circuit, dated July 29, 1964, 335 F. 2d 47, 7 S.&D. 943, modifying an earlier order, dated March 18, 1963, 62 F.T.C. 852, which prohibited a Farmington, Maine, manufacturer of woodenware products from discriminating in price between its competing customers selling at retail by specifically enumerat-

ing the items incuded in "woodenware products" as "woodenware skewers, clothespins, ice cream spoons, and other wooden products sold by respondents."

Opinion on Remand

On January 3, 1963, this Commission, with one member dissenting, concluded that respondents had engaged in discriminatory pricing in violation of Section 2(a) of the amended Clayton Act, 15 U.S.C. 13(a), and issued a proposed order to cease and desist.[1] On March 18, 1963, the Commission rejected respondents' objections to that proposed order for the reasons set forth in an accompanying opinion,[2] and issued its final order.

It was found that respondents had violated Section 2(a) in their discriminatory pricing of three separate woodenware products, wooden meat skewers, wooden clothespins, and wooden ice cream spoons. In the sale of their skewers, respondents were found to have unlawfully discriminated in favor of three customers, Armour, MCA, and Hantover. In the sale of their clothespins, respondents were found to have unlawfully discriminated in favor of 17 customers, all located in the Pittsburgh area. In the sale of their wooden ice cream spoons, respondents were found to have unlawfully discriminated in favor of two buyers, Pet and Sealtest.

On July 29, 1964, the Court of Appeals for the First Circuit handed down its opinion and order remanding the matter to the Commission for further proceedings in regard to respondents' proffered defense that, in some of the discriminatory transactions, they were discriminating "to meet the equally low price of a competitor" as provided in Section 2(b) of the Act, 15 U.S.C. 13(b), and for possible clarification or modification of the order to cease and desist. *Forster Mfg. Co.* v. *Federal Trade Commission*, 335 F. 2d 47 (1st Cir. 1964).

On August 25, 1964, respondents petitioned the court for a rehearing, their principal contentions being that the court "appears not to have recognized the differing standards of proof which have been firmly established by the courts in 'primary-line' and 'secondary-line' cases," and that the court had allegedly overlooked several of respondents' contentions in regard to their discriminatory sales of one of the products, wooden ice cream spoons. This petition for rehearing was denied on September 1, 1964. On March 1, 1965, the Supreme Court denied respondents' petition for certiorari. Thereafter, respondents petitioned the Commission for leave to brief

[1] *In the Matter of Forster Mfg. Co., Inc.*, 62 F.T.C. 852, CCH Trade Reg. Rep. (1961-1963 Transfer Binder) Par. 16,243.

[2] CCH Trade Reg. Rep. (1961-1963 Transfer Binder) Par. 16,342 [62 F.T.C. 852,924].

one of the issues remanded by the court of appeals (the meeting competition question). This was granted, together with leave to brief the other remand issue (clarification and modification of the order), and such briefs have now been received.

The principal issue remanded to us by the court involves the question of "meeting competition" under Section 2(b). Specifically, the court has sent the case back "for application to the evidence of the standard of the 'reasonable and prudent person' in the situation of the respondents with respect to their sales of skewers to Armour & Co. and their sales of clothespins in the Pittsburgh area." 335 F. 2d at 56. There is thus no further issue as to the illegality of respondents' discriminatory sales of ice cream spoons to Pet and Sealtest[3] nor as to the illegality of respondents' discriminatory sales of skewers to two other customers, MCA and Hantover.[4] It is thus settled that respondents have violated the statute in their discriminatory sales of two different products involving four different customers.

Two distinct factual situations are involved in the "meeting competition" problem returned to us by the court. One, as noted, involves respondents' sales of their wooden clothespins to 17 customers in the Pittsburgh area at a 10% lower price than they were

[3] The "meeting competition" defense was not asserted as to these transactions, and the court expressly affirmed our finding as to their discriminatory and injurious character.

[4] The only defense really proffered by respondents here was their contention that MCA (a group of meat packers, organized as a "buying group" with headquarters in Chicago) and Hantover, a Kansas City, Missouri, distributor, performed a "function" that automatically justified the 5% lower price they received, irrespective of whether it injured competition, was unjustified by reason of cost savings, and so forth. The court squarely rejected this argument, pointing out that Section 2(a) "does not sanction 'functional' discounts as such," requiring them to meet the same tests as all other discriminatory low prices. Respondents' contention on this point also suffered from the fact that *other* meat packers and distributors did *not* get that 5% lower price.

Respondents made no serious effort to sustain their contention that this discriminatory low price was extended to MCA to "meet competition." It had been given long *before* any of the competitive prices pointed to by respondents. Further, it was a regular and *systematic* discriminaiton, always fixed at 5% and granted without regard to what competing sellers were charging. "But §2(b) does not concern itself with pricing *systems* or even with all the seller's discriminatory prices to buyers. It speaks only of the seller's 'lower' price and of that only to the extent that it is made 'in good faith to meet an equally low price of a competitor.' The Act thus places emphasis on individual competitive situations, rather than upon a general system of competition." *Federal Trade Commission* v. *A.E. Staley Mfg. Co.*, 324 U.S. 746, 753 (1945) (emphasis added). See also *Standard Motor Products, Inc.* v. *Federal Trade Commission*, 265 F.2d 674, 677 (2d Cir. 1959): "A lowered price is within §2(b) only if it is made in response to an individual competitive demand, and not as part of the seller's pricing system * * *."

As to respondents' discriminatory sales of skewers to Phil Hantover, the favored distributor in Kansas City, Missouri, respondents conceded even before our hearing examiner that these sales were indefensible under Section 2(b). See Tr. 3394. As a matter of fact, this favored buyer got his regular, systematic 5% discount from respondents' "list" price even after the latter had been plunged below cost. For example, Hantover bought skewers from Forster for *$6.56* on January 8, 1957 (CX 39) when even Armour, buying at respondents' then below-cost list price, was paying $6.90. When asked whether he knew what Forster was referring to when it wrote him about allegedly lower prices from competing sellers, Hantover replied: "I do not." Tr. 1980.

charging other customers located in other geographical areas. The other factual situation involves respondents' sales of skewers to a single large customer, Armour & Co., at the discriminatory and below-cost price of $6.90 per case when other buyers were paying $8.20 per case.

The ultimate legal question is whether respondents have sustained their burden of affirmatively establishing that, when they granted these discriminatory prices to those favored customers and thus caused the adverse competitive effects found by the court, they were acting "in good faith to meet an equally low price of a competitor," as Section 2(b) requires, that is, whether respondents have sustained their burden of showing "the existence of facts which would lead a reasonable and prudent person to believe that the granting of [those] lower price[s] would in fact meet the equally low price of a competitor." *Federal Trade Commission* v. *A. E. Staley Mfg. Co.*, 324 U.S. 746, 759-760 (1945).

Turning to the Pittsburgh clothespin situation first, the critical facts are these. In May and June of 1957, a small manufacturer of clothespins—Penley Bros. of Paris, Maine—entered the Pittsburgh clothespin market for the first time. Its sales there were handled by a local food and merchandise broker, a Mr. Mander. His Pittsburgh sales force consisted of himself and his son.

Mander, Penley's broker, naturally encountered sales resistance from the Pittsburgh clothespin buyers. "They told me that I had no advantage," that "Forster had as good a deal as I did and they also had merchandise available through a local warehouse."[5] In an obvious effort to get the "advantage" he needed to start getting "some distribution around the area," the Penley broker, in May and June of 1957, made three sales[6] at what was, in effect, an approximately 10% lower price than respondents were then charging: for every 10 cases purchased at the then-current price, one additional case was given to the customer "free." Penley's three sales at this "special" price—each of the three to a different customer, and each made on a different date, namely, May 13, June 4, and June 24, 1957—amounted to 60 cases "sold" and six cases given

[5] Tr. 2964.

[6] Those three sales were: (1) On May 13, 1957, Penley's broker sold 10 cases of clothespins (each case contains 48 retail "boxes," and each box contains 30 individual clothespins, for a total of 1,440 clothespins per case) to Irwin Wholesale Company, of Irwin, Pennsylvania, at Forster's then-current price, but gave the customer one additional case "free." (2) On June 4, 1957, Penley's broker sold 30 cases to Fayette Feed Company, of Charlerois, Pennsylvania, giving the customer an additional three cases "free." (3) On June 24, 1957, the Penley broker sold 20 cases to Caplan Grocery Company, Ambridge, Pennsylvania, giving two additional cases "free."

away "free," the aggregate sales price, for all three sales, being $318.50.

Penley made no further sales at this special price. On July 29, 1957—just over two months after its first sale in the Pittsburgh market—Penley wrote a letter to its broker, Mander, flatly refusing to fill a fourth order except at the full price, sans any concessions.[7] During the rest of 1957, Penley sold a total of 55 cases in the Pittsburgh area. The next year, 1958, it sold 59 cases there.

Respondent Forster had been the dominant factor in the Pittsburgh clothspin market for many years. Its Pittsburgh broker, a Mr. Fisher of National Brokerage Company, testified that, while it would be "a pretty broad statement" to say Forster had 90% of the Pittsburgh clothespin market, "perhaps we have 70 percent of the business."[8] His sales force of 15 to 20 salesmen called on the area's roughly 125 clothespin buyers approximately once in every two-week period, and Fisher himself calls on those customers about once a month. The salesmen submit written reports of their calls daily, including in those reports information concerning competitive prices encountered.

This broker of respondents testified that, in the early part of 1957, his salesmen began to report to him that "Penley [was] quoting one free with ten."[9] While the written reports by his salesmen had been destroyed prior to the trial, the broker testified that eight to ten customers had given reports to him and his salesmen "to the effect that Penley was offering one case free with ten."[10]

On the basis of this information, Forster's Pittsburgh broker informed the home office in Maine that Penley was cutting prices in the area.[11] Forster's sales manager, a Mr. Lovejoy, who was going to Pittsburgh for other reasons anyway, went in to investigate. According to the broker, he and Forster's sales manager made a call on one customer from whom they "received an absolute report" that "Penley [was] offering one free with ten."[12] The broker says he then turned the Forster sales manager "over to a salesman and they made several calls."

Discussing the results of their investigation that evening, the broker and the sales manager concluded "that we had to do something."

[7] CX 331.

[8] Tr. 2927.

[9] Tr. 2892.

[10] Tr. 2895.

[11] "Morris Fisher [the Pittsburgh broker] advised me that the competition Penley was offering, one free case of round clothespins with ten in his market, or his territory through the Penley broker, which at that time was the A.R. Manders Co." Tr. 2772.

[12] Tr. 2907-2908.

What they did was this. "We covered the market, the entire market on the basis of one free with ten. We didn't pick out specific customers."[13]

The record shows that 17 Pittsburgh buyers took advantage of respondents' area-wide offer of the 10% lower price. Altogether these discriminatory sales totaled 1,980 cases, or almost $10,000. This amounted to 95,040 retail "boxes" containing 30 clothespins each, a saturation of the Pittsburgh area with 3,136,320 clothespins. The lower price was continued until about August 1, 1957, "until we found evidence that the other [Penley's offer] was withdrawn."

Penley, the small competitor who had provoked this retaliation, was virtually repulsed from the market. As noted, after its third sale at the lower price on June 24, 1957, its sales for the remainder of 1957 amounted to only 55 cases, and its total sales for the following year, 1958, amounted to only 59 cases. For a period of about nine months—September 1957 to May 1958—Penley made no sales in the Pittsburgh area at all. In addition, as discussed in our earlier opinion, respondents' only substantial competitor, Diamond, suffered a decline in its Pittsburgh sales as a result of the "stocking up" by the local buyers during the period of respondents' discriminatory pricing.

As we understand it, respondents' only claim here is that, when they granted the 10% lower price, they entertained a good faith belief that such a price was "generally available" in the Pittsburgh area, not that they believed it had actually been *offered* to those *particular* 17 customers. But assuming such a claim is now made, we find no reasonable basis for it in this record. All we have here is the testimony of respondents' own officials that no more than 10 of the approximately 125 clothespin buyers in the Pittsburgh area "reported" that Penley was "quoting" or "offering" a 10% price concession; nowhere in that testimony do we find a suggestion that any of those 10 "reporting" buyers claimed to have received such a competitive offer *himself*. Since respondents knew they had the burden of proof under the statute, the natural inference from the vague generality of this testimony is that none of those buyers had in fact made such a claim. If so, respondents could have

[13] *Id.* The broker testified further:

Q. You made the offer regardless of whether or not any particular prospective customer had or had not received any specific offer from Penley or anybody else as to one free case with ten?

A. I said that before.

Q. That's correct?

A. That's correct. Tr. 2936-2937.

readily resolved all doubt in their favor by simply calling those buyers to the stand. Under these circumstances, the failure to do so "is itself persuasive that their testimony, if given, would have been unfavorable to [respondents]. The production of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse * * * Silence then becomes evidence of the most convincing character." *Interstate Circuit, Inc.* v. *United States*, 306 U.S. 208, 226 (1939).

Respondents would apparently have us infer that a competitive price concession is automatically "available" to a buyer once he "hears" about it. Their reasoning, we suppose, is that the buyer can always get that concession for himself by simply calling the supplier in question and saying, "I want to buy clothespins from you at the 10% lower price I hear you are offering." But this ignores the possibility that the seller, even if he has actually sold to one or a few buyers at the rumored lower price, may not be *capable* of sustained selling to all buyers in the area on those particular terms. It also ignores the fact that he might be *unwilling* to extend a price he has given to only 2 or 3 buyers in an area to another 100 or more in that market. Sellers who are both willing and able to offer special low prices or other concessions are generally at some pains to communicate that fact to customers and potential customers. Indeed, this desire of sellers to keep their buyers fully informed as to any particularly favorable terms of sale being "generally" offered is so universal that a seller's failure to notify all of his customers of special terms accorded only to a few is considered "tantamount to concealment" and thus a purposeful effort to preclude "those [uninformed buyers] from participating in them." *Fred Meyer, Inc.*, Dkt. 7492, p. 16 (March 29, 1963) [63 F.T.C. 1, 37]; Hickey, "The Fred Meyer Case," 9 *Antitrust Bulletin* 255, 261 (Mar.-Apr. 1964). As we understand the price discrimination law, a price or other special concession is not "available" to a particular customer until he has been affirmatively notified of that fact by a willing seller. See, e.g., *Vanity Fair Paper Mills, Inc.* v. *Federal Trade Commission*, 311 F. 2d 480 (2d Cir. 1962).

The equivocal testimony of respondents' officials as to what they were told by these 10 buyers they allegedly interviewed, together with their failure to call any of those buyers to the stand, raises another adverse inference as well. Nothing in our experience suggests that buyers who "hear" about price concessions of this magnitude are slow in checking on such rumors; they frequently

call the various suppliers of the article in question and demand the rumored price. Here, for example, we would suppose that at least some of the 10 Pittsburgh buyers who allegedly reported the lower competitive offer to respondents would have taken the trouble to get on the phone and *ask* the various suppliers whether the rumored concession was "generally available." Respondents have given us no hint as to whether any such calls were reported to them and, if they were, what the inquiring buyers were told by either the Diamond Gardner or Penley representatives.[14] Respondents' silence in this regard can only be construed as an admission that no such calls were reported to them or that, if they were, the inquiring buyers reported that neither Diamond nor Penley was willing to sell to them at the 10% lower price.

Nor were these 10 buyers the only source of information available to respondents. As noted above, their salesmen call on each of the area's approximately 125 clothespin buyers every two weeks. If Penley's lower price had in fact been "widespread" throughout the area, it seems reasonable to suppose those salesmen would have encountered numerous buyers claiming to have actually received it. Yet not one such buyer was presented here.

Respondents themselves conceded in their original brief before the court of appeals that the Section 2(b) defense does not permit a seller to blanket an entire area with a discriminatory price when he has reason to believe the competitive offer he purports to be meeting is not "general," but limited: "Obviously, if a seller's investigation of a competitive offer indicated that it was made to only a limited number of customers, the seller would not be acting in good faith if he 'met' the offer with a counter-offer to all customers in a wide area."[15] We believe that is precisely what respondents have done here. We think it a fair inference from the ambiguous testimony they presented, and from the buyer testimony they failed to present, that they well knew the Penley price had not been offered either to the 17 particular customers to whom they gave the 10% lower price or to the trade "generally" in Pittsburgh. Certainly they have failed to carry their burden under the statute of showing they had any reasonable basis for believing otherwise. We conclude that their discriminatory pricing in Pittsburgh was an aggressive slash designed to repel that small competitor from the market—that it was, as the court summed it up,

[14] Several of respondents' customers identified Penley as the seller allegedly making the lower offer, and some of them apparently identified A. R. Manders as Penley's local (Pittsburgh) broker. See n. 11, *supra*.

[15] Brief on Behalf of Petitioners, p. 76.

"such a violent reaction to Penley's rather feeble and tentative attempt to enter the market that it could not be said that respondents' equally low price was made in good faith." 335 F. 2d at 55.

Turning to the discriminatory sales of skewers to Armour, the critical facts are these. Respondents, with approximately 58% of the country's skewer production and, as the court and the Commission found, a predatory desire to get the rest, first instituted a series of nondiscriminatory, across-the-board price cuts designed to put out of business its principal competitor, Farmington Dowel, a company that had approximately 22% of the national market in the relevant period, 1957.[16] This predatory price cutting culminated in a price respondents conceded to be below their own costs. For example, on the basic size skewer (and other sizes accordingly), respondents first plunged the price from $9.50 to $7.50, a drop of 20%, on June 8, 1956. After several months of selling at that low price, respondents tried to buy Farmington out. Rebuffed on that proposal, they then dropped the price to $6.90 (January 2, 1957), the latter price being admittedly below respondents' costs.[17] It remained in effect for approximately six weeks. On February 13, 1957, respondents raised their price to $8.20, well above costs.

Armour, having enjoyed this below-cost price of $6.90 for six weeks, was naturally unhappy when the price was raised to $8.20. Its purchasing agent wrote to respondents on March 11, 1957, as follows:

> We wish to acknowledge receipt of your price quotation on skewers, dated February 23.
>
> Upon review of this price-list, we regret to report that the volume of business formerly extended to your concern will be sharply reduced because of the introduction of these new prices. As we have mentiond in conversation and correspondence, competition is becoming very keen, and in view of *interesting offers made by your competition,* we feel that the volume of orders from Armour and Company will be considerably reduced.
>
> Should the foregoing information prompt your organization to review their list further, we would appreciate hearing from you.[18] (Emphasis added.)

A few days later, March 21, 1957, respondents wrote to the Armour buyer, saying "we have reviewed the matter thoroughly and are adjusting our prices to you" from the existing level ($8.20)

[16] The country's four other skewer manufacturers and their respective market shares in 1957 were as follows: Diamond, 11%; Morgan, 7%; Hardwood, 1%; and Ranger, 1%.

[17] See, *e.g.,* CX 206. Respondents' total delivered costs at St. Louis, Missouri—including production, selling, administrative, brokerage, warehousing, and freight costs (freight from Maine to St. Louis)—were $7.23 for the standard size skewer, a net loss of $.47 at the $6.76 price charged ($6.90 less 2%—$.14—cash discount).

[18] RX 14.

to $6.90. This letter referred to the Armour buyer's letter, quoted above, and to a conversation between him and a Forster sales official on the matter, concluding: "We trust that you will find these prices to be attractive and hope that we may continue to supply your requirements for these items."[19]

The hearing examiner had found, and we agreed, that when respondents extended that discriminatory price of $6.90 to Armour on March 21, 1957, the lowest "offer" Armour had in *fact* received from any competing seller of skewers was $7.00.[20] Even this "offer," however, had no real commercial significance to Armour, since it came not from a manufacturer, but from a small distributor (Wood Specialty) who in turn bought from a skewer manufacturer with less than 1% of the industry's sales, the C. H. Ranger Company. Armour's buyer, a Mr. Betz, made it quite clear that he attached no real significance to the Wood Specialty/Ranger "offers" and that the "interesting offers" he was referring to in his March 11, 1957, letter to respondents was not the $7.00 price quoted by Wood Specialty, *but Farmington Dowel's offer of $7.70.*[21]

The Armour buyer testified that he had been contacted by a Farmington representative who said he "was interested in our skewer business * * *. I seem to recollect his prices were interesting at that time." Thereafter, "I believe that Forster Manufacturing Company's representative was in; I believe they told us that their volume was decreasing or shrinking somewhat, and at this time I told him that there were *more interesting offers* being offered to us, and we would like to have them take a look at their prices if they are interested in competing * * *. [I]t was one of these seesaw propositions, *Farmington had a price and then Forster asked about it;* we told them to review their prices again, and, as a matter of

[19] CX 316.

[20] Respondents contended that Armour had received an even lower offer from the seller that bid the $7.00 figure, an offer of $6.80. As we discussed at some length in our earlier opinion of January 3, 1963, p. 29, n. 75 [62 F.T.C. 852, 910], this claim was refuted by the fact that all of Armour's actual purchases from that competitor were at $7.00 until some two months *after* respondents' discriminatory price of $6.90, and that, even then, Armour's purchases at the $6.80 price were trifling in amount ($26.66 on June 4, 1957 (RX 37), and $6.66 on June 17, 1957 (RX 52)).

[21] He emphasized that, in selecting suppliers, you pick those who can handle your requirements properly, that an important consideration is "whether their source or whether their production was sufficient to take care of your requirements at all times." Tr. 2002. Asked if the fact that Wood Specialty was merely a distributor, not a manufacturer, would "influence the size" of the orders he would give it, he replied: "Well, the question would be in my mind whether or not he could handle an order that large, whether he could make delivery on it." Tr. 2039-2040. While he later insisted that Wood Specialty's prices "could" have been "one" of the "interesting offers" refered to in his letter to respondents, his testimony left no doubt that the lowest price really available to him *for any substantial part of his requirements* on March 21, 1957, was Farmington Dowel's price of $7.70 per case.

fact, I wrote a letter to the Forster people * * *. I wrote them a letter and told them that under the circumstances their business would be sharply reduced in view of this. In the event that at any time they felt like they would like to review their prices and *come up with something more interesting*, we would consider going along with them on more business."[22]

The Armour buyer testified that he "switched" a substantial part of Armour's business to respondents on the basis of that discriminatory, $6.90 price extended to Armour alone on March 21, 1957. The record bears this out. During 1956, Farmington had overtaken respondents in the competition for Armour's business, selling that important customer $1,382 worth of skewers in *December* of that year, as compared to respondents' sales of only $843 to Armour that month. In the next year, 1957, however—the year the discriminatory, below-cost price of $6.90 was given to Armour by respondents—that buyer purchased $14,804 worth of skewers from respondents and only $4,111.16 worth from Farmington. Then Farmington went out of business in February 1958. That year, 1958, respondents' skewer sales to Armour amounted to $17,289 (75% of Armour's total skewer requirements). The following year, 1959, respondents' skewer sales to Armour totaled $22,245 (82% of Armour's skewer requirements).[23]

The next month after its major competitor, Farmington, went out of business, respondents raised their "list" prices (to the trade as a whole) from $8.20 to $8.90. A few months later, in November, 1958, they raised them again, this time to $9.00.

Since respondents' discriminatory, below-cost price of $6.90 successfully took almost all of Armour's business away from their competitors and contributed substantially to the elimination of Farmington ,their most important competitor, it is clear that, when respondents gave that discriminatory price to Armour on March 21, 1957, they were not, *in fact*, merely "meeting" competition, but were "beating" it.

[22] Tr. 2009-2011 (emphasis added). He further testified:

Q. As a matter of fact, it was the fact that you were buying or had started buying from Farmington Dowel that really prompted that letter, wasn't that true?

A. Yes, sir. [Tr. 2023.]

Q. However, if you look at Respondents' Exhibit 15, it would appear that Wood Specialties has a lower price than Farmington, does it not, and I would like to have you explain why you agreed that Farmington's pricing would have prompted that letter?

A. I believe you will recollect, Mr. McCarty, that I stated that price is not the only factor involved in purchasing. There are many factors, several factors that are very important: Whether or not a company is able to service you adequately; whether they have the outlets, the distribution that other companies have, that a similar competitor has * * *. [Tr. 2043.]

[23] In each of the years 1957-1959, Armour also bought approximately $5,000 worth of skewers from a third seller, Morgan Company.

The ultimate legal issue, however, is not whether respondents were in fact meeting competition, but whether they have shown, under the standard laid down in *Staley, supra*, 324 U.S. at 759-760, "the existence of facts which would lead a reasonable and prudent person to *believe*" the granting of that discriminatory price "would in fact meet the equally low price of a competitor." (Emphasis added.)

We find that respondents have made no such showing here. In addition to the letter from the Armour buyer (quoted above) telling them about "interesting offers made by your competition" and that, unless respondents should see fit, "to review their [price] list further," their "volume of orders" from Armour would "be sharply reduced," respondents relied upon the testimony of one of their sales officials as to a conversation he had had with the Armour buyer about the matter of competitive prices.

According to the Forster representative, the Armour buyer had told him "that the main reason that our sales had decreased was because our prices were not in line with competition." Asked if the Armour buyer had told him what price he would have to quote "to be competitive," the Forster representative replied: "Not in actual dollars and cents, but he referred to this increase in price of ours of February 13th, in saying that the prices we would need to be in line with would be the ones we had in effect right after January 1st [the below-cost price of $6.90]."[24]

The Armour buyer denied this, however: "We never inform any suppliers of what prices are being extended by anybody else."[25] There was nothing further. Shortly thereafter respondents "came up with a new price list," the discriminatory, below-cost figure of $6.90, and that quotation, as noted, caused Armour to "switch"[26] a greatly increased portion of its business (75% in 1958) to respondents.

From all of these circumstances, respondents could reasonably have concluded that Armour had, in fact, received from some competitor an offer of a lower price than respondents' own then-current price of $8.20. Armour's purchases from them had started to drop, an indication that the Armour buyer was telling the truth when he said he had more interesting offers from other sellers. But

[24] Tr. 2849, 2850. He testified further:

Q. Now, when you spoke to Mr. Betz it is true, is it not, that the offers made by no particular company for any particular type of skewer was mentioned?

A. No, nothing in that detail * * *.

Not in any specific competitor or price. [Tr. 2855, 2859.]

[25] Tr. 2046.

[26] Tr. 2048-2049.