

Syllabus

69 F.T.C.

APPENDIX D

State and City	Acquired Company	Year of acq.	No. of stores acq.	Sales of acquired stores in 12 mos. prior to acquisition	Acquired sales as est. % of food store sales*	National's % of city market	
						1954	1958
<i>MINNESOTA</i>							
Minneapolis	Gamble-Skogmo	1951	2	\$ 854,068	0.54	19.2	13.1
Grand Rapids	"	1951	1	271,568	7.13	31.8	17.3
International Falls	"	1951	1	149,477	4.88	41.5	64.1
<i>NORTH DAKOTA</i>							
Grafton	"	1951	1	173,747	10.23	22.3	11.7
<i>SOUTH DAKOTA</i>							
Aberdeen	"	1951	1	453,941	6.75	21.3	12.9
<i>MINNESOTA</i>							
Duluth	Piggly-Wiggly	1952	6	2,927,000	9.25	17.9	15.3
<i>MICHIGAN</i>							
Detroit	H. A. Smith	1955	1	n.a.	n.a.	1.7	2.8
Mt. Clemens	"	1955	1	n.a.	n.a.	12.4	8.5
<i>MINNESOTA</i>							
Worthington	Tolerton	1957	1	298,743	8.28	8.1	16.5
<i>SOUTH DAKOTA</i>							
Brookings	"	1957	1	548,667	20.07	23.1	29.4
Madison	"	1957	1	266,503	10.29	8.3	14.0
Mitchell	"	1957	1	412,579	11.41	5.4	10.8
Watertown	"	1957	1	482,503	8.24	16.4	15.3
<i>ILLINOIS</i>							
Chicago	Del Farm	1958	12	18,377,687	1.64	9.6	11.1
<i>MICHIGAN</i>							
Kalamazoo	Kalamazoo Mkt.	1958	3	2,158,000	5.65	7.2	9.9
<i>INDIANA</i>							
Indianapolis	Guidone	1958	1	5,200,000	2.98	20.6	20.8
<i>IOWA</i>							
Fort Dodge	Slim's	1958	1	891,023	8.29	10.6	7.5

SOURCE: CX 395-397, 479.

*See note, Appendix B.

IN THE MATTER OF

GENERAL FOODS CORPORATION

ORDER, OPINIONS, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 7 OF THE CLAYTON ACT*Docket 8600. Complaint, September 30, 1963—Decision, March 11, 1966*

Order requiring General Foods Corporation, one of the Nation's largest manufacturers of packaged grocery products with headquarters in White Plains, N.Y., to divest itself within one year of all assets and properties of the S.O.S. Company of Chicago, Ill., the dominant manufacturer and distributor of household steel wool, to a purchaser not connected in any way with the respondent or any of its affiliates or subsidiaries.

COMPLAINT

The Federal Trade Commission has reason to believe that the above-named respondent has acquired the assets of another corporation in violation of Section 7 of the amended Clayton Act (15 U.S.C. Section 18); and, therefore, pursuant to Section 11 of said Act, the Commission issues this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. (a) Respondent, General Foods Corporation, is a corporation organized and existing under the laws of the State of Delaware, with its principal offices located at 250 North Street, White Plains, New York.

(b) Respondent, directly and through its various completely owned subsidiaries, is now and had been for many years prior to December 31, 1957, engaged principally in the manufacture or processing, sale and distribution of packaged grocery products, which are sold by respondent under numerous advertised brand names to retail and wholesale grocery and food outlets, particularly supermarkets.

(c) In the course and conduct of its business, respondent is now and was prior to December 31, 1957, engaged in commerce (as commerce is defined in the Clayton Act, as amended), selling, delivering and shipping its numerous products from its plants and other facilities located in various States of the United States to food stores, supermarkets, restaurants, institutions, and other purchasers located in States other than the State in which such sales and shipments originated.

PAR. 2. (a) Prior to December 31, 1957, The S.O.S. Company (S.O.S.) was a corporation organized on November 9, 1927, doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 7125 West 65th Street, Chicago, Illinois.

(b) S.O.S. was engaged in the manufacture, distribution and sale of household steel wool (the line of commerce involved herein). Said product was sold nationally under the name "S.O.S." for use primarily as a household scouring and cleansing aid. "S.O.S." household steel wool is a high volume, rapid turnover packaged grocery product. S.O.S. also manufactured and sold household steel wool for resale by other companies under their own private label. In addition, S.O.S. produced and sold a small amount of steel wool for commercial use.

(c) In the course and conduct, of its business, S.O.S. was en-

gaged on or about December 31, 1957, and for many years prior thereto, in commerce (as commerce is defined in the Clayton Act, as amended), having sold and delivered or shipped household steel wool from its plants and facilities located in the State of Illinois to food stores, supermarkets, and other purchasers located in States other than the State of Illinois.

(d) On or about December 31, 1957, in exchange for 349,410 shares of its common stock, valued at approximately \$17,500,000, respondent acquired all of the assets of The S.O.S. Company, including its wholly owned subsidiary, Tuffy of Canada, Limited. As of July 31, 1957, the book value of the assets of S.O.S. amounted to approximately \$6,000,000.

Pursuant to the acquisition agreement, respondent acquired the exclusive right to the trademark "S.O.S." Following the acquisition, The S.O.S. Company was dissolved and the production and distribution of "S.O.S." household steel wool has been continued through a newly formed division of respondent.

PAR. 3. Respondent is one of the leading packaged grocery products manufacturers in the United States. Directly and through its completely owned subsidiaries, respondent maintains and operates more than 30 plants for the manufacture, processing and distribution of its products in the United States. In addition, respondent engages in foreign manufacturing and marketing of packaged grocery products similar to those manufactured and marketed in the United States.

PAR. 4. During the fiscal year ending March 31, 1957, the last complete fiscal year prior to the acquisition challenged in this complaint, respondent's net sales were \$985,953,000. As of said date, respondent had total assets of \$410,000,000. By the year ending March 31, 1962, respondent's net sales had increased to approximately \$1,189,000,000 and its total assets to approximately \$602,000,000.

In the ten year period from 1953 to 1962, respondent increased its net sales, net earnings and net assets approximately as follows:

	1953	1962
Net Sales	\$701,055,000	\$1,189,483,000
Net Earnings	24,807,000	72,244,000
Net Assets	200,031,000	418,755,000

PAR. 5. A large number of respondent's present products were acquired through the acquisition by respondent of the assets or stock of existing producers of such products. Between the date of

its incorporation and March 31, 1962, respondent made about 69 such acquisitions including that of the S.O.S. Company.

PAR. 6. Respondent manufactures and sells a broad line of packaged grocery products. Based on the 1954 Census of Manufacturers, respondent accounted for the following percentages of total United States value of shipments in the following product classifications:

A. Over Fifty (50) Percent:

Baking Power (consumer) Powdered beverage bases, desserts (ready-to-mix)

Concentrated coffee (powdered with added carbohydrates)

Coconut

Pectin

Edible Gelatins, (excluding ready-to-mix desserts)

Bluing

B. Twenty-five—Fifty (25–50) Percent:

Frozen beans

Frozen broccoli

Frozen cauliflower

Frozen peas

Other frozen vegetables

Wheat breakfast foods

Desserts (ready-to-mix, cornstarch base)

Other ready-to-mix desserts

Sweetening syrups and molasses

Concentrated coffee (powdered, pure coffee extract)

Other frozen vegetables and prepared foods

C. Ten—twenty-five (10–25) percent of fourteen additional products.

PAR. 7. At the time of its acquisition, and for many years prior thereto, S.O.S. was the largest producer and marketer of household steel wool in the United States, and "S.O.S." household steel wool was a well-known and accepted item in the American home. S.O.S.'s sales of household steel wool were \$14,571,758 in 1957, which represented approximately 51% of all household steel wool sold in the United States.

As of December 31, 1957, in addition to S.O.S. there were only four other producers of household steel wool in the United States. In 1957, the number two producer had sales of \$13,628,606 amounting to approximately 47.6% of the market, the number three producer had sales of \$343,800 amounting to approximately 1.2% of the market, the number four producer had sales of \$63,-

850 amounting to approximately 0.2% of the market, and the fifth producer had sales of \$160 which amounted to less than .05% of the market.

For the year ending December 31, 1957, S.O.S. spent approximately \$2,100,000 in advertising household steel wool. The number two producer of household steel wool was the only other producer that advertised its product to any significant degree. Also, prior to the acquisition of S.O.S., consumer promotions were not used to any significant degree by any producer in the household steel wool industry.

Since the acquisition, respondent has increased materially the amount of advertising devoted to "S.O.S." household steel wool. Additionally, respondent has re-oriented the methods and media used in advertising "S.O.S." household steel wool; particularly through substantially greater use of television, and the commencement of the use of consumer promotions on a large scale.

PAR. 8. By virtue of the acquisition of S.O.S., respondent has entered a market in which it was not a customer, supplier or competitor. In so doing, respondent replaced the dominant factor in the household steel wool industry and immediately became the largest producer and marketer of household steel wool in the United States. Also, respondent, with annual net sales of over one billion dollars, has entered into an industry which at the time of the acquisition, was comprised of five relatively small companies, none of whom had annual sales of over seventeen million dollars.

Additionally, "S.O.S." household steel wool now has the backing of respondent's substantial financial resources, economic power, and demonstrated merchandising expertise and ability to advertise, promote and sell high volume, rapid turnover packaged grocery products. Said acquisition has upset and realigned adversely, and threatens to upset and realign further, the competitive structure of the household steel wool industry. Through its economic power, merchandising prowess and extensive advertising and promotion respondent has increased the "S.O.S." share of the household steel wool market substantially, from approximately 51% at the date of the acquisition to approximately 57% as of December 31, 1961. Thus, to the detriment of competition, respondent has further substantially enhanced the dominant position it acquired as the largest manufacturer and marketer of household steel wool in the United States.

PAR. 9. Respondent is a recognized leader in the merchandising of high volume, rapid turnover, packaged grocery products. The vast majority of respondent's products and "S.O.S." household

steel wool are sold in grocery stores and supermarkets. Consumer acceptance of said products, which is vital in order to obtain critically short and valuable shelf space in retail grocery stores and supermarkets, is obtained largely through extensive advertising and promotion. In 1956, respondent was the sixth largest advertiser of all products in the United States. In 1957, the year prior to said acquisition, respondent spent approximately \$69,000,000 for advertising, including various consumer promotions which respondent utilized successfully in promoting the sale of its packaged grocery products. Subsequent to the acquisition, respondent has employed consumer promotions extensively in promoting the sale of S.O.S. household steel wool.

By 1962, respondent had become the third largest advertiser in the United States, spending approximately \$105,000,000 and utilizing all media to advertise and promote its products. By virtue of these vast expenditures, respondent receives substantial discounts in the placement of its advertising.

As a result of the acquisition, "S.O.S." household steel wool now has the benefit of respondent's ability to acquire valuable and difficult to obtain grocery store shelf space which is to the disadvantage of other household steel wool producers, none of whom possesses the expansive line of packaged grocery products that are so widely advertised, promoted and sold by respondent.

PAR. 10. In the following ways, among others, the effect of respondent's acquisition of S.O.S. has been, or may be, substantially to lessen competition or to tend to create a monopoly in the manufacture, distribution and sale of household steel wool, the relevant line of commerce involved herein, throughout the United States, the relevant geographical market involved herein:

1. Actual and potential competition generally in the production and sale of household steel wool has been or may be substantially lessened.

2. Potential competition in the production and sale of household steel wool has been eliminated by reason of respondent's acquisition of the dominant producer, with whom it would have had to compete had it entered the household steel wool business through internal development rather than through acquisition.

3. The S.O.S. Company has been permanently eliminated as an independent competitive factor in the household steel wool industry.

4. The dominant producer and marketer of household steel wool has been absorbed into and combined with one of the na-

tion's largest producers and marketers of packaged grocery products which is also one of the largest advertisers and merchandisers in the United States.

5. Other household steel wool producers, as well as potential producers, have been, or may be precluded from competing with respondent due to any one, or more, or all of the following factors:

- (a) Respondent's dominant market position;
- (b) Respondent's financial resources and economic power;
- (c) Respondent's advertising ability and experience;
- (d) Respondent's merchandising and promotional ability and experience;
- (e) Respondent's comprehensive line of packaged grocery store products;
- (f) Respondent's ability to command consumer acceptance of its products and of valuable grocery store shelf space;
- (g) Respondent's ability to concentrate on one of its products or on one selected section of the country, the full impact of its advertising, promotional and merchandising experience and ability.

6. Concentration in the production and sale of household steel wool, which was already high, has been, or may be further increased.

7. Respondent has acquired the manufacturing facilities and the dominant market position, which, when combined with its own overwhelming economic power, give it the capacity and ability to monopolize or tend to monopolize the household steel wool market.

8. Competition between and among brokers, wholesalers and retailers of household steel wool has been, or may be, substantially lessened or eliminated.

9. Entry into the household steel wool industry has been or may be discouraged and inhibited.

PAR. 11. The foregoing acquisition, acts and practices of respondent, as hereinbefore alleged and set forth constitute a violation of Section 7 of the Clayton Act (U.S.C., Title 15, Sec. 18) as amended and approved December 29, 1950.

Mr. David J. McKean, Mr. James A. Morgan supporting the complaint.

Covington & Burling, by Mr. Gerhard A. Gesell, Mr. Roberts B. Owen, Mr. Thaddeus Holt, Mr. Franklin J. Okin, Washington, D.C.; Mr. Albert L. Cuff and Mr. Kendall Cole, White Plains, N.Y. for respondent.

INITIAL DECISION BY ANDREW C. GOODHOPE, HEARING EXAMINER

DECEMBER 18, 1964

Statement of Proceedings

On September 30, 1963, the Commission issued its complaint against the respondent charging it with violation of Section 7 of the Clayton Act, as amended.¹

A copy of the complaint and notice of hearing was served upon respondent, and respondent thereafter appeared by its counsel and filed an answer admitting certain of the allegations of the complaint but denying that it had violated Section 7 of the Clayton Act, as amended.

Hearings were thereafter held at which time testimony and documentary evidence were offered in support of and in opposition to the allegations of the complaint. At the close of all the evidence and pursuant to leave granted by the examiner, proposed findings of fact, conclusions of law, briefs and proposed orders were filed by counsel supporting the complaint and counsel for the respondent.

Proposed findings not herein adopted either in the form or substance proposed are rejected as not supported by the evidence or as involving immaterial matters. Having reviewed the entire record in this proceeding, including the proposed findings, conclusions and briefs submitted by both parties, the examiner, based upon the entire record, makes the following:

FINDINGS OF FACT

1. The respondent General Foods Corporation (hereafter called General Foods) is a Delaware corporation with its principal office and place of business located at 250 North Street, White Plains, New York. (Paras. One and Two of Complaint and Answer.)

2. General Foods manufactures and sells its products to wholesale and retail grocery food outlets throughout the United States and is and has been for many years engaged in commerce as that term is employed in the Clayton Act. General Foods is the largest packaged food products manufacturer in the United

¹ The Act, as amended, provides in pertinent part as follows:

Sec. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or . . . 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. (38 Stat. 731; 15 U.S.C.A., Sec. 18)

States, with net sales in the year 1957 (fiscal) ² of \$985,953,000 and in 1963 of \$1,054,650,737. (Respondent's Proposed Finding I.1; Counsel for Commission's Proposed Finding 2.) ³

3. On December 31, 1957, General Foods acquired all of the assets of The S.O.S. Company, a Delaware corporation with its principal office in Chicago, Illinois. The S.O.S. Company was engaged primarily in the manufacture and sale throughout the United States of two scouring devices for household use, "S.O.S." soap pads and "Tuffy." The acquisition was accomplished by an exchange of General Foods shares for assets of The S.O.S. Company, followed by liquidation of The S.O.S. Company and distribution of the General Foods shares to the former S.O.S. stockholders. By virtue of this arrangement, the owners of S.O.S. received 349,410 shares of General Foods common stock, which then had an approximate market value of \$17,500,000. (RPF I.2)

The S.O.S. Company manufactured and sold its products to wholesale and retail grocery food outlets throughout the United States, and at the time of the merger and for many years prior thereto had been engaged in commerce as that term is employed in the Clayton Act. (Answer, Para. Two.)

GEOGRAPHIC MARKET INVOLVED

4. Counsel supporting the complaint and counsel for respondent are in agreement that the entire United States is the proper geographic market in which to measure the effects of this acquisition. The examiner agrees and so finds. (CPF 46; RPF p. 173.)

THE ORGANIZATION OF GENERAL FOODS

5. In the United States, General Foods consists of five operating divisions. These are:

1. Birds Eye Division
2. Jell-O Division
3. Kool-Aid Division (of which S.O.S. became a part)
4. Maxwell House Division
5. Post Division

In addition, these operating divisions are supported by an Institutional Food Service Division, a Distribution-Sales Service Division, and the General Foods Technical Center. (CX 149, pp.

² Respondent's fiscal year for 1957 and subsequent years runs from April 1 to the following March 31. Most of the statistical information concerning respondent is on this fiscal basis, and such figures will be used hereafter unless otherwise noted.

³ Hereafter "RPF" refers to Respondent's Proposed Finding, and "CPF" refers to Counsel for Commission's Proposed Finding. "CRB" refers to Counsel for Commission's Reply Brief.

30-31) Each of these divisions is managed by a general manager who is responsible to the corporation for the manufacturing, marketing, and promotion of the products made or sold within his division. Each operating division general manager has his own marketing, research, advertising staff, and controller, and reports to an operating executive vice president who is a member of the corporate staff. (Tr. 471)

6. The respondent is basically a manufacturer of packaged grocery food products numbering some 250 items and sold under at least 30 well-known brand names. (CX 40, p. 5; CX 41, back cover; CX 149, p. 32) Over the years, the respondent has made some 69 acquisitions (including foreign companies) as a result of which it has obtained the majority of its products. (Answer, Para. Five) These products are sold to the grocery trade consisting of approximately 300,000 retail grocers throughout the United States. (Tr. 557) Approximately 35,000 of these 300,000 retail grocery stores account for 70 per cent of all retail food store sales. (Tr. 557, 750)

7. The operating divisions of General Foods, with the exception of the Kool-Aid Division, sell their divisional products by means of their own separate division sales force. The Kool-Aid Division sells its products to the grocery trade throughout the United States by means of food brokers located in seventy marketing areas of the United States. (Tr. 707) In supervising the sales of the Kool-Aid Division products, the division manager is assisted by a staff consisting of regional and district sales managers. These managers have no direct selling responsibility but function to supervise and assist the efforts of the brokers through whom the products are actually sold. (Tr. 707-711)

8. At the time of the acquisition, The S.O.S. Company sold S.O.S. soap pads nation-wide through grocery stores, and steel wool soap pads' sales to these accounts amounted to approximately 97 per cent of the total sales of S.O.S. (CX 7, p. 22) The grocery stores to whom S.O.S. sold its soap pads accounted for 95 per cent of all grocery sales in the United States. (RPF III.1) Its products were distributed through selected brokers from public warehouses located throughout the United States, and its products were intensively advertised in various media, including network television, with an annual advertising budget of nearly \$2,000,000. The company was competently managed, had shown a steady growth, and was operating at a profit. (RPF III.1; CPF 43, 43)

9. As a result of the acquisition of The S.O.S. Company, General Foods entered a market in which it was not an actual or potential customer, supplier, or competitor. General Foods had not considered the possibility of expanding on its own to the household cleaning product market. Its only non-food product of any kind other than those acquired from The S.O.S. Company was an ironing aid which it purchased from an outside firm and resold. (RPF II.1-2) General Foods, while it had never been a manufacturer or seller of any household cleaning products such as soap, detergents, bleaches or other products, was a substantial and well-entrenched manufacturer of low-cost, rapid turnover food items sold through the grocery trade throughout the United States to the consuming public consisting almost entirely of housewives. (RPF II.2) The soap pad business into which General Foods entered was a similar type of business, since soap pads are a comparatively low-cost item selling in the most popular sizes of 10 (S.O.S.) and 12 (Brillo) pads to a box at 27 to 29 cents, with a rapid turnover and sold through brokers to the grocery trade.

10. Shortly after the acquisition, The S.O.S. Company was Incorporated into the Kool-Aid Division (formerly Perkins Division). (Tr. 483, 502-504) All of the products of the Kool-Aid Division were sold through brokers to the grocery trade rather than direct by respondent's own sales forces as the other General Food products are sold. (Tr. 503) The products of the Kool-Aid Division are as follows:

1. Kool-Aid
2. Twist
3. S.O.S.
4. S.O.ettes
5. Tuffy
6. LaFrance
7. Satina
8. Open Pit Barbecue Sauce
9. Good Seasons Sauce and gravy mixes (Tr. 484)

LINE OF COMMERCE

11. Both counsel in support of the complaint and for the respondent agree that industrial steel wool should not be considered as a part of the relevant product line in this matter. (CPF 50; RPF p. 174) The examiner agrees and so finds. The reasons for this are that industrial steel wool consists of an entirely separate market having different uses, is sold in a different market at dif-

ferent prices, and is not, except to an insignificant degree, competitive with household steel wool.

12. While the parties are agreed, and the examiner finds, that the relevant geographic market in this matter is the national market, they disagree as to the scope of products which must be considered as constituting the relevant functional market or "line of commerce." Commission counsel content that the line should be limited solely to household steel wool. This market, it is urged, consists of steel wool pads which are impregnated with soap in the manufacturing process and commonly called soap pads, and plain household steel wool pads with or without a separate piece of soap. (CPF 47) Counsel for respondent, on the other hand, contend that the relevant product market consists of all household scouring devices which, it is urged, compete as close substitutes for soap pads in the principal function of soap pads; namely, scouring dirty pots, pans and cooking utensils. (RPF V.1-11) While there are a number of other products such as soap and detergents which can conceivably be used to clean dirty pots, pans and cooking utensils, respondent does not contend that they should be included as a part of the relevant product line, but that such line should include all products which have an abrasive surface consisting of a ball or pad of a size to fit a housewife's hand, and which can be used for scouring either along or in conjunction with soap, detergent, or some abrasive material. (RPF V.1-11)

13. The examiner finds that the relevant product line of commerce in which to measure the effects of the acquisition here involved consists of household steel wool. In making this finding, the examiner is relying upon the evidence of record and the decision of the Supreme Court in *Brown Shoe Company v. U.S.* 370 U.S. 294 (1964) in which the Court stated at page 315:

The outer boundaries of a product market are determined by the reasonable interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it. However, within this broad market, well defined submarkets may exist which, in themselves, constitute product markets for antitrust purposes. *United States v. E. I. duPont de Nemours & Co.* 353 U.S. 586, 593-595 . . . The boundaries of such a submarket may be determined by examining such practical indicia as industry or public recognition of the submarket as a separate economic entity, the product's peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors. Because Section 7 of the Clayton Act prohibits any merger which may substantially lessen competition "in any line of commerce" (emphasis supplied), it is neces-

sary to examine the effects of the merger in each such economically significant submarket to determine if there is a reasonable probability that the merger will substantially lessen competition. If such a probability is found to exist the merger is proscribed.

This explicit statement makes it clear that while the "outer boundaries" of a product market are determined by the reasonable interchangeability of use or the cross-elasticity of demand between the product itself and its substitutes, well-defined submarkets may exist within this broad market, which, in themselves, constitute product markets for antitrust purposes. This and other decisions involving Section 7 recognize that, though a broad product market could conceivably be broken down into many submarkets, only those submarkets which are economically significant in terms of effective competition are relevant "lines of commerce" within the meaning of Section 7.

14. In the largest sense, the market here involved could include all household cleaning aids. Products such as detergents, liquid cleansers, certain types of dish cloths and certain types of brushes are all used in various ways to clean pots and pans and to do other scouring chores in the kitchen. These products are in the same broad market in that they can be used alone or in combination for the same general purposes. While such products might be included to define the outer limits of the market, such a market would be far too broad for purposes of measuring the probable competitive consequences of the acquisition under consideration. Consequently, these products must be disregarded.

15. The problem becomes more difficult when the types of products which respondent contends must properly be considered within the "line of commerce" are reached. The respondent asserts that they compete directly with steel wool pads in their principal function, scouring dirty pots, pans and cooking utensils. In support of its contention, counsel for respondent has offered and the record contains physical examples of such products. (RX 1-6; RX 1A-6A) ⁴ These products can be described as follows:

(a) 14 are steel wool pads which counsel in support of the complaint agree are properly includable in the "line of commerce," whether soap impregnated or not.

(b) 13 items are plastic mesh balls or pads, some of which have a sponge inside the ball or mesh, but none of which are soap impregnated. Respondent's product "Tuffy" is in this group.

⁴ RX 1-6 are six large display boards affixed to which are 50 samples of scouring aid products. RX 1A-6A are photographs of these boards in the exhibit binder.

(c) 14 items are basically plastic or cellulose sponges with an abrasive surface joined to one side of the sponge. Minnesota Mining and Manufacturing Company's "Rescue" is in this group and is soap impregnated.

(d) 7 items are pads of metal mesh made of metal other than steel wool, but none of which are soap impregnated.

(e) 2 items are fiber dish cloths coated with an abrasive substance, neither of which is soap impregnated.

16. A study of the physical characteristics of these products and the testimony concerning them in the light of the *Brown Shoe Company* case compels the examiner to conclude that these products must likewise be excluded from the relevant "line of commerce" in this matter, except for the 14 steel wool products described above.

17. Household steel wool pads are produced by a shaving process in which a specially manufactured steel wool wire is drawn through a machine containing a series of cutting knives. As the wire is drawn against the knives, strands of steel wool with triangular cross-sections are shaved off and collected in ribbons. Thereafter, these ribbons are formed into balls or pads, the majority of which are impregnated with soap, dried, and packaged for sale. (Tr. 826-827) The steel wool cutting machines are comparatively large, complicated machines, not generally available on the open market, but are custom-made to the manufacturer's specifications. (Tr. 847, 888-890, 908-909) A German manufactured machine is available but cannot produce steel wool as efficiently as American-made machines. (Tr. 847-848) The technology of steel wool production is complex and requires considerable "know-how" not readily available. (CX 7, pp. 11, 23, 75) These steel wool cutting machines can be used for no other function than the production of steel wool. Wool manufactured from materials other than steel are impractical because of the high cost of the raw materials. (Tr. 828-829)

18. Steel wool pads make a particularly effective abrasive. The three exposed cutting edges perform much in the same manner as a knife abrading by cutting or shaving the surface to which the steel wool is applied. (Tr. 432, 628-629, 839, 939, 978-979) As a result, the metal surfaces are polished, particularly the surfaces of aluminum pots and pans. With the addition of soap to facilitate its abrasive action, steel wool makes a highly effective scouring and cleaning agent. (Tr. 839, 978-979) The steel wool pad is soft and pliable, lends itself well to almost any surface, and is

