with the words "U.S.A.," or "U.S.A. Pat. _____" or "U.S. Pat. _____" or packages, containers, display devices or guarantee forms in inventory as of said date imprinted with those words.

It is further ordered, That the foregoing shall be without prejudice to the rights of respondents (a) to seek a ruling from the Commission pursuant to § 3.61 of the Commission's Rules with respect to the use of push pin components in excess of the foregoing numbers, or (b) to seek advice from the Commission regarding the use in their products of parts thereof made in a foreign country.

It is further ordered, That the Initial Decision of the hearing examiner be, and it hereby is, vacated.

It is further ordered, For purposes of the reports of compliance to be filed in this matter that the country of origin or fabrication of the leather components of watchbands made in the United States from foreign skins (including alligator, sea turtle, seal, etc.) shall be deemed to be the country where such skins are finished but acceptance of such reports of compliance may be rescinded pursuant to § 3.61(d) of its Rules if the Commission subsequently determines that the country where the skins were taken and/or tanned are material facts and that they should be disclosed in the public interest; and in such event, the respondents shall be afforded 180 days after notice of such determination within which to comply therewith.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein 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 this order.

IN THE MATTER OF

THE SEEBURG CORPORATION

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

*Docket 8682. Complaint, Apr. 22, 1966—Decision—Apr. 10, 1969**

Order requiring a Chicago, Ill., manufacturer of vending machines to

*Paragraph D of order modified pursuant to a decision of the Court of Appeals, Sixth Circuit, 425 F.2d 124 (8 S.&D. 1146), December 10, 1970, 77 F.T.C. 1540.

divest itself of a Chattanooga, Tenn., company in the same business, and refrain for a period of 10 years from acquiring any domestic vending equipment supplier without prior Commission approval.

COMPLAINT

The Federal Trade Commission has reason to believe that The Seeburg Corporation, a corporation, has acquired the assets of Cavalier Corporation, a corporation, in violation of Section 7 of the Clayton Act (15 U.S.C. Sec. 18), as amended, and therefore, pursuant to Section 11 of said Act (15 U.S.C. Sec. 21), it issues its complaint, stating its charges in that respect as follows:

I

Definitions

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

(a) "Vending machine" means any coin-operated electronic or mechanical device which dispenses a product.

(b) "Bottle vending machine" means any vending machine which dispenses bottled soft drinks.

II

The Seeburg Corporation

2. The Seeburg Corporation, respondent herein, is a corporation, organized and existing under the laws of the State of Delaware with its principal office located at 1500 North Dayton Street, Chicago, Illinois.

3. Respondent, directly or through its subsidiaries, is principally engaged in the manufacture and sale of coin-operated phonographs, various types of vending machines, background music systems, hearing aids, electronic organs and coin-operated amusement games. For the fiscal year ended October 31, 1963, respondent had sales of $54,581,306, assets of $36,258,288 and net income of $2,484,483.

4. Respondent, directly or through its subsidiaries, operates manufacturing plants located in Chicago and Niles, Illinois; Windsor Locks, Connecticut; Minneapolis, Minnesota; Haverhill, Massachusetts; Laconia, New Hampshire; and Chattanooga, Tennessee.

5. In 1958, respondent entered the vending machine manufacturing industry through the acquisition of certain assets of a

cigarette vending machine manufacturing company. The growth and expansion of respondent's line of vending machines have to a substantial extent been attributable to a series of acquisitions of all or part of the assets or stocks of other vending machine manufacturers. Respondent's sales of vending machines have grown from approximately $3.2 million in 1959 to over $23 million in 1963.

6. At the time of the challenged acquisition respondent was the fourth largest manufacturer of bottle vending machines. For the fiscal years ended October 31, 1960, through October 31, 1963, respondent's shipments of bottle vending machines were as follows:

Year	*Units*	*Dollar value*
1960	6,300	$3,114,000
1961	7,561	3,589,000
1962	10,016	5,537,000
1963	11,722	5,290,000

7. At all times relevant herein, respondent was a corporation subject to the jurisdiction of the Federal Trade Commission and engaged in commerce, as "commerce" is defined in the Clayton Act.

III

Cavalier Corporation

8. Prior to December 3, 1963, Cavalier Corporation (Cavalier) was a corporation organized and existing under the laws of the State of Tennessee with its office and principal place of business located at 1100 East 11th Street, Chattanooga, Tennessee.

9. At the time of the acquisition, Cavalier was principally engaged in the manufacture and sale of bottle vending machines and was the second largest manufacturer of such machines. For the years 1961, 1962 and the ten-month period ending October 31, 1963, Cavalier had sales of bottle vending machines as follows:

Year	*Units*	*Dollar value*
1961	22,152	$7,518,000
1962	17,658	6,441,000
1963	24,111	8,607,000

10. At all times relevant herein, Cavalier was a corporation engaged in commerce, as "commerce" is defined in the Clayton Act.

IV

Acquisition

11. On or about December 3, 1963, respondent acquired all of

the assets and business of Cavalier for a consideration of approximately $11,813,000.

V

The Nature of Trade and Commerce

12. The vending machine manufacturing business in the United States is substantial. In 1963, the dollar value of shipments of vending machines amounted to approximately $162,815,000.

13. Vending machines are the indispensable means of distribution for the automatic merchandising industry. There are nc substitutes for vending machines in the performance of this function.

14. The demand for vending machines has increased sharply in recent years as the sale of goods through vending machines has expanded from an estimated $600 million in 1946 to $3.2 billion in 1963. At the same time, concentration in the manufacture of vending machines has substantially increased, in large part as a result of many mergers and acquisitions. In 1963, the four largest companies accounted for approximately 60% of the total dollar value of industry shipments of vending machines.

15. In 1963, respondent accounted for approximately 14.2%, and Cavalier for approximately 5%, of the total dollar value of shipments of vending machines in the United States.

16. Bottle vending machines are the most important single category, in terms of units and dollar value of shipments, in the vending machine manufacturing industry. In 1963, there were about twelve companies engaged in the manufacture and sale of bottle vending machines with total shipments of 131,296 units having a dollar value of approximately $50,572,000. In that year four companies accounted for over 84% of the total shipments of such vending machines.

17. Prior to the acquisition, respondent and Cavalier were substantial actual and potential competitors in the sale of bottle vending machines. In 1963, respondent accounted for approximately 9%, and Cavalier for approximately 18% of the total shipments of such machines.

18. As a result of the challenged acquisition respondent is now the second largest manufacturer of bottle vending machines and concentration has increased to the point where the two largest firms account for approximately 68% of the total shipments of such machines. At the same time, respondent has substantially enhanced its overall position in the vending machine

manufacturing industry and concentration has increased to the point where the two largest companies account for approximately 45% of the total dollar value of industry shipments.

VI

Violation of Section 7 of the Clayton Act

19. The effect of the acquisition of Cavalier Corporation by The Seeburg Corporation may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of vending machines of all types and in the manufacture and sale of bottle vending machines, in the United States, in the following ways, among others:

(a) Substantial actual and potential competition between respondent and Cavalier has been eliminated.

(b) Cavalier has been eliminated as a substantial independent competitive factor.

(c) Concentration in the manufacture and sale of vending machines and bottle vending machines has been substantially increased.

(d) Respondent has substantially enhanced its competitive position to the detriment of actual and potential competition.

(e) The entry of new competitors into the manufacture and sale of vending machines and bottle vending machines may be inhibited or prevented.

Now, therefore, the acquisition of Cavalier Corporation by The Seeburg Corporation, as above alleged, constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18).

Mr. Raymond L. Hays, Mr. Montgomery K. Hyun, Mr. William E. Barr, Mr. A Roy Lavik supporting the complaint.

Mr. Frederick M. Rowe, Mr. James M. Johnstone and *Mr. A. Paul Victor* for respondent.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

MAY 22, 1967

CONTENTS

FINDINGS OF FACT—Continued

STATEMENT AND HISTORY OF PROCEEDINGS

The complaint herein was issued by the Federal Trade Commission on April 22, 1966, and challenges the legality under § 7 of the amended Clayton Act (15 U.S.C. § 18) of The Seeburg Corporation's acquisition of Cavalier Corporation in December 1963.

Specifically the complaint alleges that the acquisition's effect "may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of vending machines of all types and in the manufacture and sale of bottle vending machines, in the United States" by (1) the elimination of "substantial actual and potential competition between" Seeburg and Cavalier, (2) the elimination of Cavalier "as a substantial independent competitive factor," (3) substantially increasing "concentration in the manufacture and sale of vending machines and bottle vending machines," (4) substantially enhancing Seeburg's "competitive position to the detriment of actual and potential competition," and (5) inhibiting or preventing "the entry of new competitors into the manufacture and sale of vending and bottle vending machines" (Complaint, par. 19).

By its answer, filed May 31, 1966, as amended August 4, 1966,

Seeburg denied the material allegations of the complaint, including particularly all of the alleged adverse competitive effects claimed to flow from the challenged acquisition (Answer, pars. 5, 6, 17, 19).

In addition, as an affirmative defense, Seeburg challenged the Commission's jurisdiction on the grounds that the complaint's issuance "was based on procedures violative of the letter and spirit of the Administrative Procedure Act, the Freedom of Information Act of 1966, and the canons of administrative due process of law" (Ans., par. 20). On July 15, 1966, Seeburg filed a Motion to Vacate the Commission's Complaint on these same grounds. Respondent's Motion to Vacate the Complaint certified to the Commission by the hearing examiner on August 4, 1966, was denied by the Commission on October 25, 1966. Respondent's court action seeking an injunction and declaratory relief was dismissed on November 28, 1966, by the United States District Court for the Eastern District of Tennessee (Western Division). Respondent's appeal from the District Court's said order is now pending before the U.S. Circuit Court of Appeals for the Sixth Circuit (*The Seeburg Corp.* v. *FTC*, appeal docketed, No. 17,606, 6th Cir., Dec. 12, 1966).

Beginning on June 16, 1966, and continuing until the hearings commenced on December 6, 1966, a total of eight prehearing conferences were held before the hearing examiner. During these conferences, conducted in part pursuant to agendas agreed upon by the parties beforehand, numerous preliminary matters were accomplished to facilitate the actual hearings and to make for an orderly proceeding.

For example, each party filed pretrial briefs (counsel supporting the complaint on June 30, 1966; Seeburg on August 12, 1966) and served upon the other side their proposed exhibits and a list of proposed witnesses. Both parties had ample opportunity to, and did, file objections in advance of trial to many of the proposed exhibits disclosed by the other side. Moreover, Seeburg conducted discovery of third parties by means of subpoenas issued by the hearing examiner.

Finally, underlying documents in support of sales data intended to be relied upon by the parties were made available for mutual verification in advance of trial, eventually enabling the parties to stipulate on January 11, 1967, as to certain sales data for Seeburg and other third party vending machine manufacturers (CX 247; RX 417). These stipulations obviated the necessity for

detailed statistical proof, including the testimony of six statistical witnesses originally scheduled by counsel supporting the complaint.

In addition, the parties entered into a number of stipulations during the prehearing proceedings which facilitated the hearings. Thus, stipulations were obtained as to the genuineness of documents to be offered in evidence from the files of Seeburg and certain other companies in the vending industry (Tr. 12–14), to encourage a summarization of statistical data in the form of tables, graphs, etc., insofar as possible and as to the availability of underlying data for examination by opposing counsel (Tr. 14–15). Finally, the parties agreed that the "relevant geographic market in which to assess the alleged competitive effects of the acquisition challenged in this proceeding is the United States as a whole" (Tr. 15).

Pursuant to the hearing examiner's direction, both parties filed categorical allocations of evidence reflective of the theory of their case, indicating categorically the purpose of the documentation to be relied upon, prior to the trial commencement of their respective cases (complaint counsel on November 9 and 10, 1966, revised on December 29, 1966; Seeburg on February 20, 1967). These categorical allocations contributed considerably to an organized presentation by the parties, and enabled the hearing examiner to more readily understand the purpose of the testimony and exhibits received in evidence.

The hearings in this case commenced on December 6, 1966. During the hearings, complaint counsel introduced approximately 118 exhibits which were received in evidence and adduced the testimony of 27 witnesses, all except two of whom were, or had been associated with companies that are, or were, in various segments of the vending industry.[1] The remaining two witnesses

[1] The 27 witnesses and the pages at which their testimony appears in the transcript were: P. L. Hockman, president, Victor Products Corporation (Tr. 695–714, 744–76, 783–857; RX 461); Roy M. Small, executive vice president, Victor Products Corporation (Tr. 1254–1320; RX 418); Justin Funkhouser, chairman of the board, Victor Products Corporation (Tr. 1320–50); Robert O. McNearney, secretary, UMC Industries, Inc. (Tr. 1397–1412); Thomas B. Donahue, vice chairman of the board, UMC Industries, Inc. (Tr. 1413–48); Glenn I. Carbaugh, secretary and legal Counsel, Vendo Company (Tr. 1454–74, 1488–91); John L. Burlington, vice president, Sales and Marketing, Vendo Company (Tr. 1493–1509; 1515–30); Paul F. Selzer, vice president, Sales, Vendo Company (Tr. 1541–61); George W. Hansen, vice president in charge of engineering and vice president for Vendo International (Tr. 1562–77, 1580–1603); William F. Swingler, vice president, Canteen Corporation (Tr. 1616–40); Richard J. Mueller, vice president, Rowe Manufacturing Division, Canteen Corporation (Tr. 1651–83); Frank Newman, secretary, Canteen Corporation (Tr. 1683–86); Charles H. Brinkmann, formerly of Westinghouse Electric Corporation's Automatic Merchandising Division (Tr. 1699–1723); William A. Ebner, vice president, Sales, LaCrosse Cooler Company (Tr. 1728–34, 1742–46, 1758–64); Emmert T. Jansen, vice president in charge of International Operations

were members of trade associations connected with the vending industry.[2]

These industry witnesses explained the competitive realities of the vending industry, and particularly on the rapid changes developing therein in the years preceding and subsequent to the acquisition of Cavalier.

Also, during the hearings the examiner directed complaint counsel to make available to Seeburg's counsel certain correspondence in the Commission's files that may be "explanatory of some of the evidence adduced or which may be adduced" (Certification to the Commission, etc., Dkt. 8682, p. 2 (Feb. 3, 1967)). After complaint counsel declined to comply with the hearing examiner's direction, the matter, on February 3, 1967, was certified to the Commission, which by order of March 27, 1967, directed that the pertinent documentation be produced (Order Directing Production and Ruling on Request for Plenary Consideration of Certification, Dkt. 8682 (March 27, 1967)).

On February 8, 1967, complaint counsel rested their case-in-chief.

Immediately thereafter, Seeburg made an oral motion to dismiss this proceeding on the grounds that complaint counsel had failed to "prove a prima facie case of the charges alleged in the Commission's complaint" (Tr. 2274). Pursuant to Rule § 3.6 (e), the hearing examiner reserved decision on this motion pending completion of respondent's case-in-chief and the filing of proposed findings of fact and conclusions of law (Tr. 2275).

Thereafter, on February 15, 1967, Seeburg's counsel notified the hearing examiner and complaint counsel of respondent's decision not to present extended oral testimony in their defense "inasmuch as we believe that virtually all of the evidence which we originally contemplated in support of our defense, * * * has

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and secretary, Cornelius Company (Tr. 1765–72); Harold Teeter, president, Selectivend Inc. (Tr. 1776–97); Roy S. Steeley, vice president and general manager, Dixie-Narco Corp. (Tr. 1828–45); Frederic Dean, vice president, Castle Rubber Co. (Tr. 1904–19); J. E. Graham, vice president, Sales, Cavalier Division, Seeburg Corp. (Tr. 1945–79); Max Miller, president, Choice-Vend Division, Seeburg Corp. (Tr. 1983–2004); Robert J. Jordan, vice president, Sales, Choice-Vend Division, Seeburg Corp. (Tr. 2005–30); William J. Raoul, president, Cavalier Division, Seeburg Corp. (Tr. 2052–85); Delbert W. Coleman, chairman of the board, Seeburg Corp. (Tr. 2086–2115); William F. Adair, president, Seeburg Sales Corp. and executive vice president, Seeburg Corp. (Tr. 2116–46); Richard W. Funk, legislative counsel, National Automatic Merchandising Assn. (stipulated) (Tr. 2147–51); Dwight Reed, assistant executive vice president, National Soft Drink Assn. (Tr. 2163, 2172); Edward G. Doris, executive vice president, Rock-Ola Manufacturing Company (Tr. 2192–2210).

[2] The two witnesses were: Dwight Reed and Richard W. Funk. The testimony of Mr. Reed was stricken by the hearing examiner as irrelevant and immaterial to the issues in the case (Tr. 2220–22).

been brought out during the case-in-chief, by direct testimony and cross-examination * * * ," and of respondent's intentions of "rounding out the record in those areas where the evidence may warrant some corroboration and amplification" (Letter to the undersigned hearing examiner, Feb. 15, 1967).

Accordingly, Seeburg began its defense on March 1, 1967, consisting of a total of 171 exhibits which were received in evidence.

There being no rebuttal evidence adduced by complaint counsel, both sides rested their case on March 3, 1967.

On March 31, 1967, the hearing examiner granted motions requesting the examiner to permit the parties to supplement the record by the addition of certain documents.

The transcript of the entire proceedings totals 2,533 pages and 289 exhibits.

The hearing examiner has carefully considered the proposed findings of fact and conclusions supplemented by briefs and reply briefs of complaint counsel and counsel for respondent, and such proposed findings and conclusions if not herein adopted, either in the form proposed or in substance, are rejected as not supported by the record or as involving immaterial matters.

FINDINGS OF FACT*

I. Nature of the Business of Respondent

The Seeburg Corporation

1. The Seeburg Corporation, respondent herein, is a corporation organized and existing under the laws of the State of Dela-

*In view of the clarity of a substantial amount of uncontradicted evidence, and in view of the accuracy of certain findings, the hearing examiner has adopted a considerable number of respondent's proposed findings with some amendments, as well as some proposed findings of complaint counsel. In doing so, the examiner makes the observation that the purpose of requiring proposed findings is so that they may be ruled upon specifically. The adoption, deletion, or amendment, therefore, constitutes such a ruling. The following cases clearly hold that their adoption does not detract from the weight to be given to them provided the findings are adequate: *United States* v. *Crescent Amusement Co.*, 323 U.S. 173 (1944); *Edward Valves, Inc.* v. *Cameron Iron Works, Inc.*, 289 F.2d 355 (5th Cir. 1961), *cert. denied*, 368 U.S. 833 (1961); *Kinnear-Weed Corp.* v. *Humble Oil & Ref. Co.*, 259 F.2d 398 (5th Cir. 1958), *cert. denied*, 361 U.S. 903 (1959); *Penn-Texas Corp.* v. *Morse*, 242 F.2d 243, 247 (7th Cir. 1957).

The proposed findings of complaint counsel were rather limited in scope since complaint counsel apparently believe that a considerable number of the evidentiary facts received in evidence which have been proposd as findings by the respondent are immaterial even though complaint counsel made no objection thereto and in most instances offered the evidence themselves. However, it is observed that in filing a reply brief, complaint counsel did not seem to contest the accuracy of respondent's proposed findings, which in any event are supported by the record in every detail. The essential differences in the proposed findings filed are that complaint counsel appear to advocate resolution by means of abstract principles or rules of law unassociated with all of the specific market facts evidenced, as distinguished from

ware, with its principal office located at 1500 North Dayton Street, Chicago, Illinois (Cplt., par. 2; Ans., par. 2).[3]

2. Seeburg, directly or through its subsidiaries, is principally engaged in the manufacture and sale of coin-operated phonographs, various types of vending machines, background music systems, hearing aids, electronic organs, coin-operated amusement games and various string and band musical instruments (Cplt., par. 3; Ans., par. 3).

3. As of May 1964, Seeburg's subsidiary corporations and affiliated corporations were as follows:

Subsidiaries:

The Seeburg Sales Corporation, Chicago, Illinois.
Seeburg International, Inc., Chicago, Illinois.
International Bally Coffee Vending Co., Niles, Illinois.
The Seeburg Real Estate Corporation, Chicago, Illinois.
Seeburg Music Library, Inc., Chicago, Illinois.
American Sound Products, Inc., Minneapolis, Minnesota.
Universal Music Company, Ltd., St. James, Manitoba, Canada.

Subsidiaries of Seeburg Music Library:

Beatrice Music Co., Chicago, Illinois.
Fremont Music Co., Chicago, Illinois.

Affiliated companies:

Seeburg Automatic Products Pty. Ltd., Australia.
Serose Holding, Ltd., Switzerland.

Wholly owned subsidiaries of Serose Holding, Ltd.:

Seeben, S.A., Belgium.
Seerome, S.P.A., Italy.
Seevend, G.m.b.h., Germany.
Phoenix Apparate, G.m.b.h., Germany.
Seeburg Limited, England.

(CX 2A–B *in camera.*)

4. Seeburg manufactures vending machines at three separate locations. The Chicago division located in Chicago, Illinois, manufactures under the "Seeburg" trade name all vending machines which Seeburg sells with the exception of bottle vending machines and can vending machines. The Choice-Vend Division, located

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respondent's counsel who asserts that all of the market facts are material to resolution. The issues, therefore, emanate mostly from disagreement as to legal theory rather than from disagreement as to the evidentiary facts.

[3] Seeburg is the successor in interest to a corporation which was incorporated in 1906 under the name Fort Pitt Brewing Co. In 1956, Fort Pitt Brewing Co. purchased the operating assets of J. P. Seeburg Corp., a manufacturer of coin-operated phonographs, and in 1958 changed its name to The Seeburg Corporation, a Pennsylvania corporation. On March 30, 1962, the Pennsylvania corporation was merged with its Delaware subsidiary corporation and became The Seeburg Corporation, a Delaware corporation.

in Windsor Locks, Connecticut, manufactures bottle vending machines and can vending machines; and the Cavalier Division, located in Chattanooga, Tennessee, also manufactures bottle vending machines and can vending machines (Adair, Tr. 2118, 2119, 2122, 2128–30, 2132, 2133; Miller, Tr. 1983; Raoul, Tr. 2054, 2055; CX 35B; CX 40, pp. 7, 9; CX 39, p. 8; CX 41A–C; RX 83).

5. The vending machines manufactured at the Chicago plant are marketed by The Seeburg Sales Corporation, a wholly owned sales subsidiary, through a nationwide network of distributors. For 1965, sales of vending machines by Seeburg Sales Corporation were approximately $14 million (CX 41A–C; CX 40, pp. 7, 9; CX 37A–C; CX 247, p. 2 *in camera*; Adair, Tr. 2118, 2119, 2122, 2129–40).

6. Bottle vending machines and can vending machines manufactured by Seeburg's Choice-Vend Division are sold under the "Choice-Vend" trade name, directly to customers throughout the United States. During 1965, sales of such vending machines by the Choice-Vend Division were approximately $8,130,000 (Jordan, Tr. 2009; CX 40, pp. 7, 9; CX 41A; CX 247, p. 2 *in camera*).

7. Bottle vending machines and can vending machines manufactured by Seeburg's Cavalier Division are sold under the "Cavalier" trade name, directly to customers throughout the United States. During 1965, sales of such vending machines by the Cavalier Division were approximately $9,248,000 (Graham, Tr. 1955–58, 1960, 1961; CX 40, pp. 7, 9; Raoul, Tr. 2054–55; CX 247, p. 2 *in camera*).

8. Products manufactured by Seeburg's various divisions and subsidiaries are sold to customers outside the United States and Canada by a wholly owned subsidiary, Seeburg International, Inc. (CX 41A).

9. Seeburg sells coin-operated vending machines to vending operators through The Seeburg Sales Corporation and to soft drink bottlers through its Choice-Vend and Cavalier Divisions (CX 40, pp. 7, 9–10).

10. For the period 1960–1965, Seeburg's net sales, assets and net income were as follows:

Year ended 10/31	Net sales	Assets	Net income
1960	$29,900,000	$20,000,000	$1,200,000
1961	35,200,000	27,500,000	1,100,000
1962	54,600,000	30,400,000	2,500,000
1963	59,900,000	36,300,000	2,800,000
1964	82,300,000	73,200,000	4,000,000
1965	89,700,000	85,900,000	600,000

(CX 7, pp. 7–9; CX 8, pp. 7–9; CX 9, pp. 9–11; CX 10, pp. 3–5; CX 33, pp. 13–15; CX 39, pp. 11–13.)

11. During the fiscal year ending October 31, 1963, the last fiscal year prior to the challenged acquisition, Seeburg's net sales of all products manufactured totaled $54,581,306, and the dollar value of its assets was $36,258,288 (CX 10, pp. 3–4). During that year, Seeburg's sales of all coin-operated vending machines sold in the United States amounted to 41% of Seeburg's total net sales of all products (CX 247; CX 10, p. 3).

12. Seeburg entered the vending industry in 1958 when it acquired the "bankrupt" Eastern Electric Company Inc.'s cigarette machine (Coleman, Tr. 2087).

13. Seeburg continued to expand its line of vending equipment, adding coffee machines, soft drink cup and bottle machines, and candy and pastry machines to its line as part of a program of diversification and, as also indicated by the testimony, "[i] n order to get competitive and compete, we found that we had to have a fuller line so as to satisfy the customer's requirements" (Coleman, Tr. 2092). In this connection, Seeburg made the following vending machine acquisitions, other than the one challenged by the instant complaint, between 1959 and 1964:

Year	Company	Product
1958	Eastern Electric Co., Inc.	Cigarette vending machine.
1959	Bert Mills Corporation	Batch brew coffee machine.
1959	Lyon Industries, Inc.	Cup vending machine.
1960	Choice-Vend Corporation	Bottle vending machines.
1961	Refrigeration Division, Brewer-Titchner Corp.	Manual selector cold drink vendor.
1961	Lion Manufacturing Corp. and subsidiary Bally Vending Corp.	Single cup coffee machine.[4]
1963	Pick-A-Pac, Vend-O-matic Sales, Inc.	Nonfood all-purpose merchandiser.
1964	Arthur H. DuGrenier, Inc.	Candy, pastry, snack, cigarette, cigar, cigarillo, laundry supply machines.[5]

(CX 11, pp. 8–9; Coleman, Tr. 2086–95, 2096–2100.)

14. Seeburg's diversification included the acquisition, in February 1960, of substantially all the assets of Choice-Vend Corporation, which manufactured bottle and can vending machines. As Delbert W. Coleman, chairman of the board of The Seeburg Corporation, testified "[w]e viewed the bottle vending industry as an adjunct to vending and envisioned something—that some day the bottler would be moving into full-line vending. And this would give us an opportunity to sell our equipment as well as the equipment Choice-Vend was making. Choice-Vend at the time was a very small company" (Coleman, Tr. 2094).[6]

[4] Purchase price approximately $3 million.

[5] Purchase price approximately $1,072,000.

[6] Purchase price approximately $1,016,000. Sales of Choice-Vend in the year prior to its acquisition were $1,600,000. Following its acquisition, the Choice-Vend Division moved into a new and substantially expanded plant with modernized production facilities at Windsor Locks, Connecticut. The expenditure for the construction and outfitting of the Windsor Locks plant was approximately $1.5 million.

15. None of the foregoing acquisitions are challenged by the instant complaint (Cplt., par. 19).

16. On December 3, 1963, Seeburg acquired all the assets and business of Cavalier Corporation for a consideration approximating $11.8 million (Cplt., par. 11; Ans., par. 11; CX 15 A–Z–36; 10, p. 8). It is this acquisition which is challenged.

17. Seeburg is engaged in interstate commerce and is a corporation subject to the jurisdiction of the Federal Trade Commission (Cplt., par. 7; Ans., par. 7).

II. Status of Cavalier Corporation Prior to Its Acquisition by The Seeburg Corporation

18. Prior to December 3, 1963, Cavalier Corporation was a corporation organized and existing under the laws of Tennessee, with its office and principal place of business located at 1100 East Eleventh Street, Chattanooga, Tennessee (Cplt., par. 8; Ans., par. 8).

19. At the time of the challenge acquisition in 1963, and for some years prior thereto, Cavalier was engaged in the manufacture of bottle and convertible bottle/can vending machines exclusively for sale to the company-owned and contract bottlers of Coca-Cola. In prior years, Cavalier had also manufactured certain furniture products and electric space heaters. Cavalier had discontinued these manufacturing activities by the time of the challenged transaction in 1963 (Graham, Tr. 1946–47; Raoul, Tr. 2053–61, 2064; CX 25; RX 83).

20. As of December 31, 1962, the last full year prior to the challenged acquisition, Cavalier reported net sales of $8,408,823 (CX 15Y) and assets totaling $7,199,070 (CX 21B).

21. Cavalier had been a supplier of "coolers" to the company-owned and contract bottlers of Coca-Cola since at least 1934, and had established a close relationship with the Coca-Cola parent syrup company over the years (Raoul, Tr. 2057–58, 2066). Cavalier's only attempt to sell to other than Coca-Cola bottlers, the so-called "trade" bottlers, which began in 1955, was unsuccessful, and it abandoned its efforts to sell to those bottlers in 1957, after two years (Graham, Tr. 1971–72; Raoul, Tr. 2066–75).

22. In November 1963, Cavalier, which was a defendant in a lawsuit alleging patent infringement instituted by The Vendo Co., settled this litigation out of court for $800,000 (CX 15–Z5).

23. Prior to the challenged acquisition in 1963, and at all times