

Complaint

76 F.T.C.

IN THE MATTER OF

AMERICAN DENTAL LABORATORIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1588. Complaint, Sept. 10, 1969—Decision, Sept. 10, 1969*

Consent order requiring Affton, Mo., distributors of toothbrush vending machines and supplies to cease misrepresenting that they will furnish profitable locations to purchasers of their vending machines, that they will train such purchasers, that no soliciting will be required, that they are connected with the du Pont Company or any motel chain, and to cease using the word "Laboratories" in their trade name which misrepresents that they operate a laboratory.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that American Dental Laboratories, Inc., a corporation, and Ed Zenthoefler and Ray Kowalskey, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent American Dental Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 9722 Reavis Park Drive, in the city of Affton, State of Missouri.

Respondents Ed Zenthoefler and Ray Kowalskey are officers of said corporation. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of toothbrush vending machines, disposable toothbrushes and supplies used and dispensed thereby to purchasers for installation in commercial establishments such as office buildings, hotels, motels, and restaurants for resale to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their products, when sold, to be transported from their place of business located in the State of Missouri, or from the places of business of their suppliers, to purchasers thereof located in various other States of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers and promotional material with respect to earnings, and business opportunities that can be derived by the purchase of respondents' products.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

applications now being accepted for
PROFITABLE
DUPONT NEW DUPONT
FRANCHISE OPPORTUNITY
MEN or WOMEN

A revolutionary new product developed by DuPont for the mass market is being sold exclusively through automatic merchandising units. This may be exactly the opportunity you've been looking for to provide a profitable, secure future for your family while you build independence.

- * No selling—no experience
- * Dignified work—full or part time
- * We furnish locations!
- * Invest as little as \$998!
- * Investment quickly Returned

Write today for complete details. Of course there is no obligation, but we feel obligated to assign franchises to the first qualified applicants. So don't delay. Write Box D476 Daily Oklahoman for personal interview. Give telephone number in reply.

PART TIME—FULL TIME

If you have two hours or more a week you can service coin-operated dispensers offering the new DU PONT DENTIFRICE COATED NYLON BRISTLE TOOTHBRUSHES. (Just wet and brush *** no toothpaste necessary). Going into motels, office buildings, restaurants, etc. No selling—no competition. Only product of this type on market. We assist in setting up complete operation. Opportunity to earn in excess of \$15,000 yearly. Minimum investment \$600. Write Box 25, Tribune-Star. Give telephone number in reply.

Complaint

76 F.T.C.

PART TIME BUSINESS

If you have 8 to 10 hours a week available you can own a business of your own. Service DU PONT NYLON DISPOSABLE TOOTHBRUSH DISPENSERS on location. No competition. Only product of this type on the market. Your profit 14¢ on every toothbrush unit you replace in dispensers. No selling necessary. We secure locations for you. 6 sales daily per machine on a 20-machine route possible to earn \$100.80 a week. \$500 to \$1,000 inventory investment required. Write M. Finn. DU PONT—Executive House, 4466 W. Pine St., St. Louis, Missouri 63108.

PAR. 5. By and through the use of the above quoted statements and representations, and others of similar import and meaning but not expressly set out herein, separately and in connection with the oral statements and representations of their salesmen and representatives, the respondents have represented, and are now representing, directly or by implication that:

1. Respondents furnish to purchasers of their vending machines satisfactory or profitable sales producing locations for the placing of said vending machines, such as leading restaurants, hotels, motels, cocktail lounges, office buildings and bus terminals.

2. Purchasers investing money in said vending machines and disposable toothbrushes may reasonably expect to earn net profits of approximately \$15,000 per year and that said investment may reasonably be expected to be returned out of net profits in one year or less.

3. The purchasers of said machines will be trained by the respondents as to the operation of the machines and the methods to be used in servicing them.

4. No selling or soliciting will be required.

5. The machines purchased by respondents' customers will average seven vends each per day.

6. Respondents' salesmen are representatives of the du Pont Company.

7. Respondents have agreements with Holiday Inns of America and other large motel and restaurant chains whereby these companies will accept respondents' machines in any of their motels or restaurants.

8. Respondents grant exclusive sales territories in which customers may place their toothbrush vending machines.

9. Respondents will deliver their vending machines and supplies within 30 days after the customer signs the contract.

10. Respondents or any other organization are planning to place national advertising relating to the vending machines or

other supplies, or that respondents will furnish other advertising and promotional assistance.

PAR. 6. In truth and in fact:

1. Respondents do not obtain satisfactory or profitable sales producing locations such as restaurants, hotels, motels, cocktail lounges, office buildings and bus terminals for the placing of the vending machines purchased from them, but such locations as may be secured by respondents are usually undesirable, unsuitable and unprofitable.

2. Purchasers who have invested money in the purchase of said vending machines and supplies do not earn profits approximating \$15,000 per year and do not earn sufficient net profits for the return of the investment in one year or less, but on the contrary, in most instances, persons purchasing said vending machines and supplies make little or no profit from the operation of the machines.

3. Respondents do not train the purchasers of the vending machines in the operation of the machines or the method to be used in servicing the vending machines where installed.

4. The purchasers of respondents' machines are required to do selling and soliciting, since it is frequently necessary to place machines in other locations because of the undesirable, unsuitable and unprofitable nature of the locations selected by the respondents or for other reasons.

5. Vending machines sold to purchasers by respondents do not average as many as seven vends per machine, per day, but on the contrary, few, if any, of said vending machines sold to purchasers by respondents averaged as much as one vend per day, per machine.

6. Since August 1967 neither respondents nor their representatives have had any agreement or any other connection or relationship with the du Pont Company, who, prior to that time, sold to respondents the disposable toothbrush for said vending machines.

7. Respondents do not have an agreement with Holiday Inns of America, or any other motel or restaurant chain whereby individual motels and restaurants will permit respondents' vending machines to be installed on their premises.

8. Respondents do not grant exclusive sales territories to their customers but, in fact sell the machines to any person in any area who has the required investment to pay for respondents' products.

9. Respondents do not deliver their machines to customers within 30 days of the time the contract is signed, but often take up to six months or more before such delivery is accomplished.

10. Neither respondents nor any other company has placed or is planning to place any national advertising concerning respondents' vending machines or products. Nor do respondents furnish any other advertising or promotional assistance.

PAR. 7. Through the use of the word "Laboratories" as a part of respondents' trade name, respondents represent that they operate a laboratory or are engaged in research in connection with their business. In truth and in fact, respondents do not operate a laboratory and do no research in connection with their business. Therefore, the aforesaid statement and representation is false, misleading and deceptive.

PAR. 8. In the course and conduct of their business, and at all times mentioned herein, respondents have been and now are in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of vending machines of the same general kind and nature as that sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements and representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would

charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent American Dental Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 9722 Reavis Park Drive, in the city of Affton, State of Missouri.

Respondents Ed Zenthoefer and Ray Kowalskey are officers of said corporation and their principal office and place of business is located at the above stated address.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents American Dental Laboratories, Inc., a corporation, and its officers, and Ed Zenthoefer and Ray Kowalskey, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of vending machines and vending machine supplies, or any other merchandise,

in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication:

1. That respondents will furnish satisfactory or profitable sales producing locations or misrepresenting, in any manner, the sales potential or character of the locations in which respondents place their vending machines and products at the time of the purchase of the machines.

2. That purchasers of respondents' products will earn any stated amount of gross or net profits or other earnings.

3. The past earnings of respondents' purchasers: *Provided, however*, It shall be a defense in any enforcement proceeding instituted hereunder to establish that the past earnings represented are those of substantial number of purchasers and accurately reflect the average earnings of these purchasers under circumstances similar to those of the purchaser or prospective purchaser to whom the representation is made.

4. That the net profits from the operation of said vending machines will be sufficient to return the investment of the purchaser within one year or misrepresenting any other period of time in which the net profits from the operation of said vending machines will be sufficient to return the investment of the purchaser.

5. That purchasers of respondents' vending machines will be trained by the respondents as to the operation of the machines or the methods to be used in servicing the locations where installed.

6. That no selling or soliciting will be required.

7. That respondents' vending machines will average as many as seven vends per day, per machine, or misrepresenting in any manner, respondents' machines average.

8. That respondents or their representatives are connected with the du Pont Company or otherwise misrepresenting respondents' relationship with du Pont or any other company or the source of their merchandise.

9. That respondents have an agreement with Holiday Inns of America, or any other motel or restaurant chain, to accept respondents' vending machines, or otherwise misrepresenting the class or type of locations available to customers of respondents.

10. That respondents grant exclusive sales territories to their customers: *Provided, however,* It shall be a defense in any enforcement proceeding instituted hereunder to establish that exclusive sales territories are in fact granted by respondents.

11. That respondents' machines or other merchandise will be delivered within thirty (30) days after the contract is signed, or misrepresenting in any manner the amount of time that will transpire between the time the contract is signed and the time the merchandise is delivered.

12. That respondents, or any other organization, are planning to place national advertising respecting the vending machines or other merchandise respondents sell, or misrepresenting in any manner the promotional or advertising assistance respondents will provide for their customers.

B. Using the word "Laboratories" as part of any business name or representing in any other manner, directly or by implication, that a laboratory is operated by or for the said business, or that the said business differs in any manner from its true nature.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products or services, and secure from each such salesman or other person a signed statement acknowledging receipt of said order.

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.

Complaint

76 F.T.C.

IN THE MATTER OF

CURTISS-WRIGHT CORPORATION

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT*Docket 8703. Complaint, Aug. 8, 1966—Decision, Sept. 12, 1969*

Order dismissing a complaint which charged a Wood-Ridge, N.J., distributor of aircraft engine parts with monopolizing the sale of its products and attempting to eliminate competition in the overhaul of its engines for the reason that jet engines are replacing reciprocating piston driven engines in both the civilian and military markets.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Curtiss-Wright Corporation, sometimes hereinafter referred to as respondent or Curtiss-Wright, has violated the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. Section 45), and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in this respect as follows:

PARAGRAPH 1. Respondent Curtiss-Wright is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business at 304 Valley Boulevard, Wood-Ridge, New Jersey.

PAR. 2. (a) Curtiss-Wright is engaged in the sale of various products some of which it produces and some of which are produced for it by others. Respondent's stock is listed on and traded over the New York Stock Exchange and its business is substantial with sales, including those of subsidiaries, in excess of \$200,000,000 for each of the years from 1960 to 1963 inclusive.

(b) Included among the products sold and distributed by Curtiss-Wright are aircraft engines and parts therefor which it sells or has sold to the United States Government for use in military aircraft, and to others, including commercial airlines, both domestic and foreign. Parts for aircraft engines are also sold and have been sold by respondent to parties with which it enters into agreements whereunder such parties are designated as "Approved Overhaul Bases" for specified Curtiss-Wright engines, and

under the terms of which respondent agrees, *inter alia*, to distribute to such bases service manuals and bulletins and to sell thereto spare parts for use in the repair or overhaul of Curtiss-Wright engines. In addition to entering into agreements whereby it appoints others as "Approved Overhaul Bases" for its engines, Curtiss-Wright itself also engages and has engaged in the overhaul or repair of such engines for others who pay respondent for services it renders in this connection.

(c) Sales of aircraft engine parts together with payments to respondent for services it renders itself in connection with the overhaul or repair of such engines aggregated more than half of total dollar sales for each of the years 1960 through 1963. Of this portion of total sales, however, sales of engine parts represented the great bulk thereof in each of such years, substantially exceeding \$100,000,000 in each of three of the four years.

PAR. 3. In the course and conduct of its business of selling and distributing parts for Curtiss-Wright aircraft engines, respondent ships, has shipped or has caused such parts to be shipped from its plant or plants in New Jersey or other States to purchasers of such parts with places of business in States other than those where shipment thereof originates or originated. Similarly, respondent after rendering such services as it performs in connection with the repair or overhaul of Curtiss-Wright engines for others, ships, has shipped or has caused such engines to be shipped from its plant or plants in New Jersey, or other States, where such services were rendered, to purchasers of such services with places of business in States other than those where shipment of such engines originated. Respondent thus is and has been engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent, in the course and conduct of selling and distributing parts for Curtiss-Wright engines and rendering service in connection with the overhaul or repair of such engines in commerce, is and has been engaged in competition with others in the sale and distribution of parts for such engines and in the rendition of services in connection with the overhaul or repair thereof, except to the extent that actual or potential competition has been injured, eliminated or prevented by the acts and practices hereinafter alleged.

PAR. 5. (a) Curtiss-Wright holds or owns, either directly or indirectly, patents or patent rights upon some of the aircraft engine parts it sells and has sold. As to many other engine parts,

respondent asserts or purports to assert proprietary rights stemming from contributions it claims to have made in the development or production of such parts.

(b) Many of the engine parts distributed by Curtiss-Wright are produced for and sold to it by others. As to many, most of all of such parts so produced, respondent enters into agreements with its vendors, utilizes purchase order forms, and imposes legends claiming proprietary rights upon specifications or drawings furnished to such vendors, whereby the latter are restricted from selling parts produced for Curtiss-Wright, or providing information furnished by the latter as to specifications for such parts, to anyone else.

(c) Parts of aircraft engines produced by one manufacturer are not interchangeable with corresponding parts of engines produced by another manufacturer, *e.g.*, a Curtiss-Wright crankshaft could not be installed in a Rolls-Royce engine or vice versa. Similarly, it is economically impractical, if not technically impossible, where an engine produced by one manufacturer has been installed in an aircraft to subsequently substitute therefor an engine produced by another manufacturer.

(d) Because of the absence of interchangeability of aircraft engines and parts therefor, because of the patents, patent rights, and proprietary rights held, owned, asserted or claimed by Curtiss-Wright, and because of the restrictions respondent imposes upon vendors from which it obtains many of the parts for its aircraft engines, Curtiss-Wright is the sole source of supply for most of such engine parts. Thus, those who own or operate aircraft equipped with Curtiss-Wright engines must generally turn to respondent when they seek to purchase parts for the repair or overhaul of such engines.

PAR. 6. Respondent has attempted to monopolize, has monopolized and is monopolizing the sale and distribution of parts for aircraft engines it sells and distributes and has sold and distributed. As part and parcel and in furtherance of such attempt to monopolize and monopolization, respondent has engaged in, or pursued various acts or practices. Included among and illustrative of such acts or practices, although not necessarily limited thereto, were the following:

(a) Selling or offering to sell engine parts at unreasonably low prices approaching or below the cost of production and distribution thereof for the purpose or with the effect of eliminating competition respondent encountered therein.

(b) Subsidizing such low prices by raising prices or charging higher prices for parts as to which respondent encountered little or no competition.

(c) Soliciting customers or potential customers for engine parts to agree to use only parts obtained from Curtiss-Wright or at least to endorse the latter's philosophy that only such parts should be employed in the repair or overhaul of its engines; threatening cancellation of engine parts service adjustment policies extended to such customers if they did not so agree or endorse such philosophy; policing or attempting to police through field representatives the use of any parts obtained through any source other than Curtiss-Wright and attempting to discourage the use of such parts; and representing to customers or potential customers for engine parts that parts obtained from any source other than Curtiss-Wright were "bogus" or otherwise disparaging or attempting to discourage the use of such parts notwithstanding that certification of suitability for the projected use thereof in the form of "Parts Manufacturer Approval" had been or may have been extended to some of such parts by the Federal Aviation Agency or the Civil Aeronautics Administration.

(d) Requiring "Approved Overhaul Bases" to utilize engine parts obtained only from Curtiss-Wright and taking or proposing to take disciplinary action against a base which attempted to obtain parts from another source.

PAR. 7. (a) In addition to monopolizing and attempting to monopolize the sale and distribution of parts for its aircraft engines, respondent has attempted, through misuse and abuse of its monopolistic and dominant position in the sale and distribution of such parts, to eliminate competition it encountered in the overhaul or repair of Curtiss-Wright engines by the method or means, *inter alia*, as hereinafter more particularly described and alleged.

(b) On or about June 8, 1961, the United States Government through the U.S. Army Transportation Material Command issued a request for proposals for the overhaul of Curtiss-Wright engines. Thereafter, in response to such request, proposals were submitted by Curtiss-Wright, Aerodex, Inc., and American Airmotive Corporation, among others. The proposals of both Aerodex, Inc., and American Airmotive were lower than that submitted by Curtiss-Wright either upon the basis of parts being furnished by the Government or by the contractor at commercial list less 25 percent, with Aerodex being the lowest bidder.

Complaint

76 F.T.C.

(c) On or about September 15, 1961, Curtiss-Wright advised the Government that Aerodex and American Airmotive would be sold only at list price although theretofore it had been extending a 25 percent discount from commercial list prices, at least to Aerodex. Curtiss-Wright confirmed this advice by wire of September 18, 1961.

(b) By communication of October 7, 1961, Curtiss-Wright advised the Government that no aircraft engine parts at all would be sold to Aerodex or American Airmotive.

(e) Curtiss-Wright so advised the Government as heretofore alleged in subparagraphs (c) and (d) for the purpose and with the intent of eliminating Aerodex and American Airmotive as competitors for the business of overhauling Curtiss-Wright engines for which a request for proposals was issued as alleged in subparagraph (b).

PAR. 8. The acts, practices and methods of competition engaged in, followed, pursued or adopted by Curtiss-Wright, as hereinbefore alleged, constitute unfair acts, practices and methods of competition, the capacity, tendency or effect of which has been, is now or may be to injure, eliminate or prevent competition between respondent and others engaged in the sale and distribution of parts for Curtiss-Wright aircraft engines and to injure, eliminate or prevent competition between respondent and others engaged in the business of overhauling or repairing Curtiss-Wright aircraft engines, all in derogation of the public interest and in violation of Section 5 of the Federal Trade Commission Act.

ORDER DISMISSING COMPLAINT

This is before the Commission upon the hearing examiner's certification, filed August 15, 1969, of complaint counsel's motion to dismiss the complaint, and respondent's answer supporting such motion.

Complaint counsel assert that the significant lines of commerce covered by the complaint relate to respondent's reciprocating aircraft engine parts and its overhauling activities with respect to reciprocating engines. It appears from an affidavit filed *in camera* by complaint counsel that jet engines have replaced most reciprocating engines used by the commercial airlines and that the military is in the process of replacing reciprocating engines as well. Complaint counsel suggest, because of such changes in the marketplace, that the complaint is no longer appropriate. In light of

382

Order Dismissing Complaint

this and other circumstances which indicate a lack of public interest in pursuing the trial of this proceeding the Commission has determined that the complaint should be dismissed. Accordingly,

It is ordered, That the complaint in this proceeding be, and it hereby is, dismissed.

By the Commission, with Commissioner Elman concurring in the result.

IN THE MATTER OF

METOMIC MANUFACTURING CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-1589. Complaint, Sept. 15, 1969—Decision, Sept. 15, 1969

Consent order requiring a Brooklyn, N.Y., manufacturer and distributor of electroplating kits to cease misrepresenting the quality or durability of the plating imparted by its process.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Metomic Manufacturing Corporation, a corporation, and Martin Zahler, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Metomic Manufacturing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 92 Brighton 11th Street, Brooklyn, New York. Respondent Martin Zahler, is the sole officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

