

232. Neither Myers nor any other "IRAC trustee" had anything to do with the preparation of the "new brochure" on registered trademarks. Myers had not even seen a copy of it during the three days he was with Balfour in Nassau. In fact, Myers did not even want to see it as long as it met with Mr. Balfour's "approval." Myers also suggested that copies be sent to each of the IRAC trustees so that they would know that "such pamphlet was available" (CX 517A).

233. O'Leary (who had no official position in IRAC) indicated that it was "her thought" that "we might mail [the new brochure] to all of the fraternities and sororities together with an additional bulletin listing the names of the fraternities and sororities who are properly registered as recorded in this office [Attleboro]" (CX 516A). IRAC apparently attached to this bulletin information that Mr. Doane, a Washington, D.C., lawyer, would handle registration of trademarks for fraternities for \$125 (CX 527, 528, 529).

234. A Commission investigator picked up a bulletin on trademarks in the offices of Delta Delta Delta in Evanston, Illinois. This bulletin, dated March 11, 1955, is apparently part of the trademark bulletin prepared by Balfour but circulated under the name of IRAC (CX 768). The bulletin states that "IRAC strongly recommends" that fraternities give trademark registration careful consideration (CX 768C). This bulletin, prepared by Balfour but distributed by and through IRAC, states to the fraternities that IRAC is concerned not over "the few sales" by competitors, but because such sales represent a "definite threat" to the fraternity names and insignia.

235. Mr. Balfour's Administrative Secretary-Treasurer Report of May 6, 1955, attributed this trademark bulletin to "Mr. Edward L. Scheuffler, Chairman of the Law Committee" (CX 518L).

236. About three years later, on January 21, 1958, Miss O'Leary wrote to Judge Myers' secretary:

It is apparent that IRAC should at this time prepare a new Bulletin for distribution to the various fraternities and sororities. . . . In addition it will enable us to bring current information on registration to the attention of interested fraternities and sororities. (CX 530.)

It is apparent that the initiative behind urging trademark registration upon fraternities was Balfour's, not IRAC's.

237. There are other examples of how Balfour, through IRAC, has urged fraternities to "protect" their insignia by obtaining trademarks, by not purchasing from unauthorized sources (CX 282, 479B, 482B), and by utilizing "exclusive manufacturing

contracts" (CX 531, p. 38). Miss O'Leary, in writing through IRAC, stated to Tau Epsilon Phi, a men's national college social fraternity, as follows:

I believe you will be interested to know that the University of Maine chapter of Tau Epsilon Phi Fraternity has purchased unofficially from these companies on occasion. IRAC is concerned because these sales constitute a definite threat to your name and insignia which you have legally protected under trademark registration. (CX 282.)

(Tau Epsilon Phi had one trademark on its coat-of-arms only, which expired in 1956 and was not renewed [RX 265 (123)].)

238. Judge Myers advised the Trustees of IRAC, on October 20, 1954, of the names of companies, other than respondents, selling fraternity insignia products. He suggested that each conference (NIC, NPC, PIC, PPC) furnish these names to each fraternity to advise each chapter not to purchase any merchandise from such concerns (CX 479B). The trademark brochure (CX 768) distributed in March 1955 referenced the fact that IRAC in October 1954 had called the attention of the fraternities to several violators of fraternity insignia (CX 768C).

239. At the IRAC meeting of the Board of Trustees in Princeton, New Jersey on October 1, 1955, Judge Myers announced that he had "secured the services of Mr. Vernon H. Doane of the law firm of Burns and Doane of Washington, D.C." to assist the fraternities in the protection of their insignia. Judge Myers expressed his "personal disappointment" at the "apparent lack of interest" of the fraternities in the activities of IRAC in the fraternity insignia area (CX 519B). It was recommended that the Trustees again contact their member fraternities and again acquaint the groups with IRAC's proposal of assistance in insignia "protection" (CX 518B). Judge Myers agreed to draft a bulletin to the Trustees for use in contacting the member groups (CX 519B).

240. Within three weeks Judge Myers prepared such a bulletin (CX 482B). Judge Myers again stated that he had been "most disappointed" at the fraternities' response to IRAC's proposal to protect fraternity insignia. He requested that the member fraternities again be contacted and advised that IRAC does not want to file a law suit, but merely to file a complaint with the FTC. He further stated that the national fraternities should: (1) "emphasize" to their chapters to purchase insignia products only from authorized sources; (2) that anytime a chapter purchased from unauthorized sources, the national headquarters should "admonish" the chapters, and refuse to recognize such purchases; and (3) the national should "refute the action of their active chapters in dealing with unauthorized manufactur-

ers" (CX 482B). Mr. Balfour's comment on this report to IRAC's Trustees by Chairman Myers is "great" (CX 482; Tr. 2799).

241. On January 3, 1956, Mr. Balfour wrote to Judge Myers:

Through your efforts the fraternities are finally cognizant of the necessity of protecting their names and insignia, and I am certain for the first time will give their complete cooperation to the united effort to this end. (CX 568B.)

Mr. Balfour further commented that "the fraternities are at last badly worried" over the insignia issue (CX 568B).⁴¹

242. Balfour has a list that he maintains in Attleboro of fraternities that have registered trademarks (CX 516, 530) and he encourages and requests that fraternities "register" their trademarks in Attleboro (CX 516A, 768).

243. Balfour has prepared and distributed numerous bulletins to national college fraternities on the procedure for obtaining trademark protection and the necessity for such fraternities to acquire this protection. The fraternities are informed that if their insignia is not protected and controlled, it will be sold by pirates to "NON-members" (CX 33, 780). Commission Exhibit 33 is such a memorandum prepared and distributed by Balfour to the fraternities explaining the necessity for and the method of obtaining trademark protection (Tr. 637-39).

244. Commission Exhibit 278 is an example of Mr. Balfour "covering the waterfront"; he disparages competitors, urges fraternities to protect their insignia through obtaining trademarks and urges fraternities to caution their chapters about purchasing insignia products from unauthorized sources. Balfour wrote:

Practically all of the fraternities and sororities have registered their names and insignia as trademarks, which automatically include protection of badges and coats-of-arms where the latter bear your Greek letters. Several fraternities are moving quickly to legally protect their rights. If you are interested, you should contact the Interfraternity Research and Advisory Council Chairman, Judge Frank H. Myers, Municipal Court Building, 4th & E Streets, Washington, D.C. (CX 278B.)

245. Careful examination of this "Balfour Bulletin" reveals that nowhere in the document does Balfour reveal his association with IRAC (at that time he was IRAC secretary-treasurer). To the contrary, Balfour advises the fraternities to "contact Judge Frank H. Myers, Municipal Court Building, 4th and E Streets,

⁴¹ Balfour availed himself of every opportunity to cast fear into the fraternities about their insignia. In his 1956 report to IRAC Trustees, he stated:

"You will be interested to learn that during the past year in four separate instances we found that chapters which had resigned from their own fraternities on account of discrimination issues had in the past two years purchased insignia of the original fraternity for their initiates from unofficial jewelers." (CX 521D.)

Washington, D.C." (CX 278B). Balfour was attempting to create the appearance that this trademark registration was an IRAC project.

246. Other examples are in the record where Balfour has urged fraternities not to patronize unauthorized suppliers (CX 346, 466I, 564B). Mr. Balfour wrote to the Grand President, Alpha Delta Pi sorority, that "it behooves the national officers of all of the fraternities and sororities to renounce these violations and try to educate the undergraduates to protect their trademark registrations" (CX 545).

247. Mr. Balfour wrote to Judge Myers:

I fully agree with you that the Conference [NIC] should concentrate all of its energies and money available on attempting to protect the Greek letter Fraternities' rights to protect their names and insignia. (CX 548.)

248. Another example of Mr. Balfour representing himself and the Balfour Company as the protectors of the fraternities' names and insignia is Commission Exhibit 370, the "Special Announcement" that Balfour had acquired BPA, issued on May 12, 1959. Although Mr. Balfour had owned and operated BPA for years, as a competitor, maintaining such ownership in secrecy from the fraternities, he announced the ownership of BPA as an opportunity to represent himself and the Balfour Company as protectors of the fraternities, and he announced that he had made the acquisition of BPA just for this purpose. He stated:

The acquisition of Burr, Patterson & Auld Company constitutes a substantial financial sacrifice on the part of the L. G. Balfour Company. It is, however, in line with our continued endeavors to protect Fraternity names and insignia and to supply the Fraternities with a record of all sales. (CX 370B.)

249. Commission Exhibit 780 is a letter on IRAC stationery written by Margaret O'Leary urging Delta Delta Delta to prevent their membership from purchasing unofficially. Miss O'Leary severely disparages and defames Brochon and otherwise makes strong arguments about not permitting chapters to purchase from competitors, apparently because Delta Delta Delta had approved a purchase by its Vermont chapter from Brochon (CX 780B). Miss O'Leary stated that similar situations brought to the attention of other NPC groups have resulted in the officers of the sororities directing chapters to cancel the orders even if it necessitates a forfeiture of the chapter's deposit.

250. Mr. Balfour, in coordination with Miss O'Leary, also wrote to Delta Delta Delta on IRAC stationery about this same

Vermont chapter's purchase from Brochon, approved by Delta Delta Delta. Balfour asks Delta Delta Delta to "further emphasize" at its Leadership School "loyalty to the [Balfour] contract" and "the fact that the protection of your name and insignia represents a personal responsibility on the part of each and every member of your sorority" (CX 780C). Mr. Balfour also enclosed a copy of the IRAC trademark registration broadcast and recommended that Delta Delta Delta protect "not only your Greek letters but your coat-of-arms, badge, pledge pin, and all official insignia" (CX 780C).

251. Mr. Balfour, in this letter dated February 24, 1955, also disparages Brochon, and states that the Federal Trade Commission has held that the fraternities "are absolutely powerless" unless they register their Greek letters as a trademark, and unless the fraternities do "everything within their power" to protect their names and insignia (CX 780D).

252. Mr. Balfour then holds the L. G. Balfour Company and IRAC out as the great protectors of fraternity names and insignia by prevailing upon groups not to use Delta Delta Delta insignia; he also depicts the Balfour Company and IRAC as protectors of all fraternity names and insignia. Balfour also makes it perfectly clear that the L. G. Balfour Company and IRAC are one in purpose and one in action in their joint effort to "protect" fraternity insignia:

. . . the L. G. Balfour Company and IRAC have more than a dozen times in the past forty years and at a substantial cost, prevailed upon other groups to change their names. . . . For the past five years the *L. G. Balfour Company in cooperation with IRAC* has been attempting to prevail upon this group to change its name and insignia. Finally we were forced to file suit. (CX 780D, emphasis supplied.)

Balfour and IRAC, at the date of this letter, February 1955, had not been involved in any such suit.⁴²

253. These two letters written by Margaret O'Leary and Mr. Balfour on IRAC stationery are examples of the coordinated threats, coercion and intimidation used to prevent fraternities from officially approving chapter purchases from competitors, and they are also examples of Balfour posing as the great protector of all fraternities, painting a dark picture as to what would happen if the fraternities do not continue to purchase through their only authorized jeweler—Balfour.

254. After reviewing the O'Leary and Balfour letters, the

⁴² Miss O'Leary also made a representation that Balfour's attorneys were handling the Notre Dame ring litigation "for the administrators of this college" (CX 570). This statement was also a fabrication (Tr. 4375-76).

Delta Delta Delta officials immediately decided to review their constitution with a view to "adding a stronger ruling about the protection of our fraternity insignia" (CX 780E).

255. These letters, memoranda and bulletins to fraternities and fraternity officials by Balfour and IRAC urging the fraternities to "protect" their insignia, to instruct chapters and members to "protect" their insignia and not to purchase from unauthorized sources, and the Balfour and IRAC letters urging the fraternities to register trademarks, are all part of a continuing plan to protect Balfour's monopoly.

*Balfour Has Deliberately Created a "Myth" That All
National College Fraternity Insignia Is Fully and
Lawfully Protected by Trademarks*

256. The Balfour Company and Mr. Balfour, directly and through IRAC, have attempted to create the belief among the national college fraternities and among Balfour's competitors, and potential competitors, that all national college fraternity insignia products are fully protected by lawful trademarks or copyrights.

Balfour tells the fraternities themselves that "all," or "practically all," the national college fraternities have protection under the federal trademark laws (CX 33, 278B). Commission Exhibit 278, a Balfour Bulletin directed to the fraternities states:

Practically all of the fraternities and sororities have registered their names and insignia as trademarks. . . .

257. Balfour informs its salesmen that "practically all" fraternities have registered their insignia as a trademark or copyright (CX 465C).

258. It must be concluded, therefore, that Balfour has acted intentionally in creating the belief that all fraternity insignia are protected by trademark, and that this misapprehension has been created and utilized to encourage fraternity trademark registration and to discourage competitors from engaging in the sale and distribution of such products, thereby protecting and furthering Balfour's monopolistic position.⁴³

*Only a Small Percentage of National College
Fraternity Insignia Even Purports to be Covered By
Trademark Registration*

⁴³ Balfour's statements that "all" fraternity insignia are trademarked have affected competition at many levels, including the supplier level. See letter from Duracraft cutting off Ross Dallas's supply of fraternity items because "practically all fraternities have protection . . ." (CX 232).

259. Respondents offered into the record of this proceeding an exhibit containing trademarks secured by various national college fraternities at sometime in the past. By stipulation these trademarks were acknowledged to be "true and correct copies" of such certificates as issued by the United States Patent Office (RX 264-65). Respondents stipulated that RX 265 contains all the trademark certificates that could be located for those national college fraternities listed in complaint counsel's tabulation CX 717A-J (RX 264). The stipulation upon which these trademarks were received does not establish that the trademarks are lawful, only that at one time a trademark was issued by the Patent Office (Tr. 4723, 4728).

260. These exhibits offered into evidence by respondents establish that only one-third of the fraternities shown on CX 717 had an existing trademark as of 1961 (CX 717; RX 265). This can be demonstrated as follows:

Number of fraternities on CX 717A-J.....	288
Number of fraternities shown on RX 265 as having existing trademarks	96
Percent	33.3

261. A fraternity, for complete trademark protection, probably should have a minimum of six trademarks, *i.e.*: (1) an English letter name, (2) Greek letters, (3) badge, (4) pledge pin, (5) recognition pin, and (6) coat-of-arms (CX 33). Therefore, the 288 fraternities shown on CX 717A-J would need a minimum of 1,728 trademarks (288 x 6) to have trademark coverage for all their insignia. As a matter of fact, RX 265 shows that only 224 trademarks have ever been obtained by the fraternities shown on CX 717A-J. Interestingly, RX 265 also shows that the fraternities let 52 of these trademarks expire without renewal. Therefore, as of 1962, only 172 trademarks existed out of a possible 1,728 trademarks. Consequently, only 10 percent (1728 divided by 172) of national college fraternity insignia is covered by trademarks.

262. Respondents included in the trademark exhibit, RX 265, several trademarks which obviously do not apply at all to jewelry or novelty products. For example, one such trademark by Acacia Fraternity is for "The Triad of Acacia," a Class 38 trademark for a periodical publication (RX 265-13); "The Chi Phi Chakett" is also a Class 38 trademark (RX 265-29); see also "Delta Chi Quarterly" (RX 265-35) and similar trademarks for periodical publications (RX 265-44, -45, -72, -113, etc.).

263. Further, Sigma Nu has 18 trademarks outstanding (RX

265-96-113). This fraternity received trademarks on its badge, coat-of-arms, and Greek letters in five different product classes, *i.e.*: Class 30 for chinaware; Class 28 for jewelry; Class 2 for compacts and receptacles; Class 39 for jackets; and Class 37 for writing paper. The record does not show whether it is necessary for each fraternity to have trademarks under five classes in order to have protection on all articles bearing its insignia. If this be true, then the 288 fraternities would need a total of 8,640 trademarks.⁴⁴ The record establishes that only 96 fraternities had existing trademarks in 1962, and there were a total of only 172 existing trademarks as of 1962, as found in paragraphs 260 and 261 above.

264. Respondents have not brought forth proof of the lawfulness of the trademarks in the record for the purposes which respondents have sought to use trademarks, that is, to prevent competitors from manufacturing and selling any fraternity insignia products.

265. The above discussion is sufficient to establish that actually very little national college fraternity insignia is trademarked. As stated in an IRAC bulletin on trademarks, prepared by Balfour:

We understand that a comparatively few [fraternities] have covered all official insignia including the coat-of-arms as well as your names and Greek letters. (CX 768C.)

*Balfour Has Engaged in a Continuing Policy of
Disparagement of Competitors*

266. Balfour has continuously disparaged his competitors in the national college fraternity insignia products market. Evidence in this record clearly demonstrates that Balfour routinely accused competitors of selling promiscuously to nonmembers of fraternities, of selling cheap, gaudy favors, of selling in violation of the fraternities' contracts and insignia rights, of violating registered trademarks, of selling to pawnshops, of selling jewelry of lowest quality material and workmanship, and of selling jewelry of unofficial design containing imitation stones and so forth. This disparagement was engaged in directly and through IRAC.

267. Perhaps the best example of disparagement is shown by CX 278, a Balfour Bulletin dated October 20, 1954, written by Mr. Balfour himself. This document entitled "News of Importance to Modern Greeks" was written by Mr. Balfour and it was

⁴⁴ 288 fraternities × 6 items of insignia × 5 classes of trademarks = 8,640 trademarks.

distributed to the national college fraternities (Tr. 1734, 2088). Mr. Balfour characterized this Balfour Bulletin as being "the property of the national fraternities" (CX 65).

268. This document lists seven competitors of the Balfour Company in the sale of fraternity insignia products and it disparages these competitors. Mr. Balfour commenced this bulletin by stating that these competitors are offering merchandise in violation of fraternity names and insignia and jewelry regulations. He then continues the disparagement by stating that these competitors are: (1) offering items lacking in dignity; (2) placing items in bookstores and other outlets for promiscuous sale to nonmembers; (3) flooding campuses with cheap literature; (4) attempting to enlist services of undergraduates with a view to complicating matters; and (5) L & L Party Favors is the chief violator, offering badges of unofficial design, of lowest quality of material and workmanship, with white sapphires and imitation diamonds, indiscriminately and without regard for fraternity regulations. The national fraternities are urged to write the companies for advertising literature, and also to contact their fraternity chapters to enlist their aid in fully protecting the manufacture and distribution of fraternity insignia and trademarks.

269. The entire tenor of this document is that these seven competitors are unreliable and the fraternities should therefore beware of them and avoid them. This warning is from the official jeweler whose only interest is in helping the fraternities "protect their rights," and, of course, preventing "adverse publicity for the fraternity system" (CX 278B).

270. Sigma Chi immediately put out a memorandum dated October 27, 1954, addressed to "All Consuls, Chapter Advisers, and Grand Praetors," listing these same seven competitors and echoing Balfour's remarks (CX 280). Sigma Chi refers to "sub-standard" merchandise being supplied by the firms and states that Sigma Chi has been informed that the jewelry is of unofficial design and of the "lowest quality and workmanship." Some jewelry products also have "white sapphires and imitation diamonds."

271. Sigma Chi requests that these matters be brought to the attention of all chapter officers at the earliest convenient date, and that legal action is being considered against these violators of the fraternities' trademarks.

272. Gerald Pollack testified that in October 1954 he had CX 278 "shown to me by potential cutomers many times when I was

refused the opportunity of selling them" (Tr. 1734). Mr. Pollack picked up the Sigma Chi bulletin in a fraternity chapter house (Tr. 1747).

273. There is other evidence in the record directly showing that the fraternities followed-up Balfour's bulletin of October 20, 1954. For example, a member of the Advisory Board of the University of Maryland chapter of Alpha Chi Omega wrote to Pollack and to Brochon (CX 402, 403). These two documents can be directly attributable to CX 278 because the letters—CX 402, 403—bear the same incorrect addresses as are shown on CX 278. In other words, Pollack's correct address in 1954 was North State Street not East State Street; Brochon's correct address was 233 Ontario Street not 235 Ontario Street (Tr. 1734-35). The two companies also received several other letters from fraternities directly attributable to CX 278.

274. A similar situation occurred in respect to L & L Party Favors, also mentioned in CX 278. L & L's address shown on CX 278 is 1421 S. Washington Street; the correct address should have been 141 S. Washington Street. CX 423-426 are letters written by national fraternity officials to L & L as a result of CX 278 (Tr. 2095-96). There were others (Tr. 2096).

275. Gadzik Sales Company, mentioned on CX 278, also received a letter from a national fraternity official as a direct result of Balfour's circulation of CX 278 (CX 449).

276. Another example of disparagement is the two letters written to Delta Delta Delta, one written by Miss O'Leary and one by Mr. Balfour (CX 780A-D). Both letters are written on IRAC stationery. Both were written because Delta Delta Delta approved a purchase by its Vermont chapter from Brochon.

277. Miss O'Leary's letter of February 19, 1955, disparaged Brochon as being the leader in the efforts of "unrecognized jewelers" in fighting fraternity contracts and particularly the royalties. It is stated that Brochon complained to the Federal Trade Commission about the fraternity contracts and royalties, and Brochon later urged the government to declare royalties as income and subject the fraternities to income taxes. It is further stated that Brochon sells unethically, without regard to membership; they copy official insignia and offer it at reduced prices. Finally,

In all instances where items have been examined or assayed they have been found to be of extremely low quality, poorly constructed and of unofficial design. (CX 780B.)

278. Mr. Balfour's letter was written five days after Miss

O'Leary's letter. His first statement is to thank Delta Delta Delta for emphasizing "loyalty to the [Balfour] contract," and the fact that the Vermont chapter is the only reported contract "violation" on the part of Delta Delta Delta. Mr. Balfour then recommends that Delta Delta Delta seek trademarks.

279. Mr. Balfour commenced his disparagement by stating that Brochon filed complaints during the NRA days claiming the fraternities had no legal or moral right to control their insignia, and claiming the fraternities should be subject to income tax on all royalties received. After NRA, Brochon "headed a list of pirates" who openly violated fraternity regulations, sold Delta Delta Delta insignia promiscuously to nonmembers and "placed them on memorandum in pawnshops." He further stated that IRAC is considering filing suit against violators such as Brochon.

280. Mr. Balfour notes that the small [dollar] amount of the Vermont chapter order is unimportant, the important fact is that "this piracy was permitted and approved." Mr. Balfour then states that the Balfour Company and IRAC are the protectors of the fraternities "at a substantial cost," replacing badges "without charge," and finally by filing suit against groups who copy fraternity insignia.⁴⁵ He further stated that IRAC will shortly determine whether to file suits "against the violators—such as Brochon"; "naturally . . . IRAC will assume all financial and other responsibilities."

281. The entire tenor of these two letters is to disparage competitors, throw fear into the fraternity about its insignia and show Balfour as the protector of the fraternity's rights and interest. Balfour wanted Delta Delta Delta to withdraw their consent to the Brochon purchase (CX 516B), and not grant such consent in the future.

282. CX 704 is a letter written by Mr. Balfour to the president of Pi Lambda Phi fraternity on January 6, 1961. Mr. Balfour mentions that IRAC sponsored the Buchroeder litigation and this litigation was necessary because:

. . . Buchroeder along with a sizable number of other jewelers has issued a large catalog featuring every type of national fraternity and sorority insignia, including yours, and has been selling these items promiscuously and regardless of membership, through retail stores, through distributors, and in many instances, through Pawnshops. (CX 704.)

283. CX 33, a brochure on "Protection of Fraternity Insignia,"

⁴⁵ This representation that Balfour and IRAC had filed suit against groups copying fraternity insignia is just to make Balfour appear as the protector of fraternities. As of February 1955, the date the statement was made, Balfour and IRAC had not been involved in any litigation.

circulated to fraternities by Balfour (Tr. 637-39), warns fraternities about pirates, motivated by greed, selling to non-members, and advises fraternities to police its membership and "NOT to encourage unauthorized reproduction and distribution through patronage of pirates." (CX 33.)

284. Mr. Balfour even disparaged BPA in order to place himself in a favorable light as the protector of fraternities. In writing to the Grand President, Alpha Delta Pi, about the then recent merger of Balfour and BPA, Mr. Balfour stated:

I appreciate your comments on our acquisition of the Burr, Patterson & Auld Company. All of the sororities and fraternities seem extremely happy over the merger since it gives them more permanent protection and at the same time eliminates one of the most serious pirates. (CX 545.)

285. Even in the "Special Announcement" of the BPA acquisition by the Balfour Company, Mr. Balfour took the opportunity to disparage BPA and competitors and potential competitors, and again set forth Balfour as the protector of the fraternities. Although Mr. Balfour had secretly owned BPA for years, in his announcement of the acquisition he stated that he had been fearful BPA would fall into the hands of disinterested parties which would involve "increased difficulties for fraternities to protect their names and insignia." Now that Balfour has acquired BPA, Mr. Balfour stated, "they [BPA] are now pledged to respect all fraternity regulations and contracts." He further stated:

The acquisition of Burr, Patterson & Auld Company constitutes a substantial financial sacrifice on the part of the L. G. Balfour Company.⁴⁰ It is, however, in line with our continued endeavors to protect Fraternity names and insignia . . . The intent and effect of this affiliation is to perpetuate the effective serving of undergraduate chapter requirements by experienced and well equipped manufacturing organizations, and to safeguard the traditional rights of fraternal organizations to control their official insignia. (CX 370B.)

286. Balfour has also disparaged competitors through the medium of IRAC. The O'Leary and Balfour letters previously discussed were on IRAC stationery (CX 780). Margaret O'Leary wrote to Tau Epsilon Phi fraternity on IRAC stationery disparaging firms selling "cheap gaudy favors" (CX 282). She also warned the fraternity about its University of Maine chapter which had purchased "unofficially." She further stated:

IRAC is concerned because these sales constitute a definite threat to your name and insignia which you have legally protected under trademark registration.

⁴⁰ The BPA acquisition did not involve a financial "sacrifice" of any kind as Mr. Balfour had owned BPA for years. There was no financial transaction whatsoever involved in 1959 at the time the announcement was made.

She further states that because of the sizable number of protests which have been filed with IRAC, "the Trustees of this group have voted to institute a lawsuit seeking injunctions and damages against some of the more important violators . . . IRAC will assume . . . all expense and risks"⁴⁷ (CX 282).

287. The above letter to Tau Epsilon Phi was written on February 16, 1955. Apparently about this same time Miss O'Leary also wrote a similar letter to Tau Kappa Epsilon on IRAC stationery about the proposed IRAC litigation, and also warning this fraternity about two of its chapters that were purchasing from unofficial companies. The Executive Secretary of the fraternity replied:

Thanks so much for mentioning the specific cases of two of our chapters obtaining fraternity items from certain unofficial companies which might not be desirable. We will check into these situations with these two chapters. (CX 564B.)

288. One of Judge Myers' first acts after he became Chairman of IRAC was to advise the IRAC Trustees about concerns soliciting sales of fraternity insignia merchandise in violation of the trademarks of the fraternities and the rights of the fraternities to control their names and insignia. Judge Myers advised the Trustees to transmit the names of such firms to each member fraternity with the direction that each fraternity advise each chapter that these concerns have no right to sell such merchandise without written authorization, and that no chapter member should buy from such concerns. The question of "filing appropriate injunction suits," the trustees are told, will be discussed later (CX 479B).

289. Some four months thereafter, Judge Myers wrote another communication to the Trustees of IRAC about "Violators of trademark registration protection," and requested definite information from the fraternities as to whether these firms had actually ever been granted permission to use fraternity names (CX 481). CX 565 and CX 567 are letters from Judge Myers to two fraternities reporting on IRAC's efforts to prevent "offending manufacturing concerns" from offering merchandise for sale bearing fraternity insignia. Judge Myers' concern for the fraternities' rights was a continuing effort which finally brought about litigation.

290. RX 258 is a letter dated January 6, 1958, written by

⁴⁷ At the time this letter was written, IRAC had not voted to start litigation. Miss O'Leary's statement was, therefore, a misrepresentation to make Balfour appear as the fraternity's protector.

