

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
 Plaintiff, :
 v. :
 :
CROWELL COLLIER and :
MACMILLAN, INC. :
 :
 Defendant. :
 :

Civil Action No. 70-CIV-460

Filed: 2/4/70

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COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed under Section 15 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent and restrain the violations by the defendant, as hereinafter alleged, of Section 7 of the Act, as amended (15 U.S.C. § 18), and for equitable relief.

2. Defendant Crowell Collier and Macmillan, Inc. transacts business and is found within the Southern District of New York.

II

THE DEFENDANT

3. Crowell Collier and Macmillan, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 866 Third Avenue, New York, New York. As used herein "Crowell" means Crowell Collier and Macmillan, Inc. and all corporations which it controls, directly or indirectly, except C. G. Conn, Ltd. and Uniforms by Ostwald, Inc.

III

DEFINITIONS

4. As used in this complaint:

- (a) "Wind instruments" means those instruments commonly used by bands and orchestras in the United States, including brass instruments such as trumpets, cornets, trombones, French horns, alto horns, mellophones, baritone horns, bass horns and sousaphones; and woodwinds such as clarinets, saxophones, flutes, piccolos, oboes, English horns and bassoons.
- (b) "Band uniforms" means band, drum corps and drill teams uniforms and blazers.

IV

TRADE AND COMMERCE

5. In 1968 Crowell had sales of \$265,623,000 and a

net income of \$28,818,000. On December 31, 1968, Crowell had total assets of \$306,602,000. On a sales basis Crowell was the 315th largest industrial concern in the United States in 1968. Crowell is engaged in interstate and foreign commerce.

6. Crowell sells a broad range of educational materials, including books, for use by educational institutions and personnel and by students buying pursuant to the recommendation or requirement of an educational institution. Crowell also publishes directories and professional educational periodicals. Crowell's reputation and access to educational institutions and personnel are excellent. It has over 300 sales personnel operating in the education area.

7. Crowell has made a number of acquisitions in recent years of companies serving the education market, and the music education market in particular. In 1967 Crowell acquired U. S. School of Music, which is a small retailer of musical instruments. In 1968 Crowell acquired C. E. Ward Co., a manufacturer of band uniforms and choral robes, and G. Schirmer, Inc., a publisher of serious music. In 1969 Crowell acquired Slingerland Drum Co., a manufacturer of drum products. As a result of these acquisitions Crowell has become a major publisher of serious music, a musical instrument retailer on a modest scale, a major manufacturer of choral robes, one of the three largest drum products manufacturers in the United States, and a manufacturer of band uniforms.

8. C. G. Conn, Ltd. ("Conn"), is a corporation which was organized and formerly existed under the laws of the State of Indiana and now is a wholly owned subsidiary of Crowell. Conn manufactures and sells wind instruments in

interstate commerce. During the fiscal year ending April 30, 1968, Conn had net sales of \$28.9 million and a profit of \$42,838. Conn's total assets as of April 30, 1968 were \$24.3 million.

9. Retail sales of wind instruments in the United States in 1969 were approximately \$116 million. On a unit basis, Conn had the second largest share, or about 16%, of these sales, and four manufacturers and distributors account for about 64% of these sales. The manufacture of wind instruments requires highly skilled labor that is both costly and in short supply. Buyer preference for established brands of wind instruments is strong.

10. Uniforms by Ostwald, Inc. ("Ostwald"), is a corporation organized and existing under the laws of the State of New York, with its principal place of business at Ostwald Plaza, Staten Island, New York. Ostwald manufactures band uniforms and sells them in interstate commerce. Ostwald had sales of \$6.3 million and a net profit of about \$255,000 in the calendar year ending December 31, 1968. Ostwald's total assets as of December 31, 1968 were \$2.9 million. Band uniforms accounted for all of its sales in 1968.

11. Sales of band uniforms in the United States in 1968 approximated \$16 million. On a dollar basis, Ostwald had the largest share, or about 40% of these sales, and the four largest manufacturers of band uniforms accounted for about 68% of these sales. Unlike other types of uniforms, band uniforms require constant innovations in design and extensive ornamentation, both of which are costly. By contrast, the profit on band uniforms is fairly low.

12. About 85% of all band uniforms sold in the United States are purchased by educational institutions. Music educators select or have substantial influence in selecting band uniforms bought by educational institutions. About 85% of all wind instruments sold in the United States are bought by educational institutions or by students for use in the music programs of educational institutions. Music educators also select or have substantial influence in the selection of musical instruments, including wind instruments, and music materials. Prior to the acquisitions of Conn and Ostwald, Crowell had the resources and interest to enter into the manufacturing and distribution of wind instruments either de novo or through acquisition of a small firm in this market, and to expand its manufacturing of band uniforms. Crowell is now the only band uniform manufacturer in the United States which also sells musical instruments and other music materials.

V

OFFENSES ALLEGED

13. On May 19, 1969 Conn was merged into Crowell. The effect of the aforesaid merger may substantially lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act, as amended, in the following ways, among others:

- (a) potential competition between Conn and Crowell in the manufacture and sale of wind instruments has been eliminated;
- (b) Conn will be entrenched in its substantial position in the wind instrument market, barriers to new

entry in the manufacture and sale of wind instruments will be heightened, and concentration in that market may increase; and

- (c) other mergers and acquisitions between companies engaged in the manufacture and sale of wind instruments or between such companies and other large companies may be fostered.

14. On December 27, 1968, Crowell acquired all of the capital stock of Ostwald. The effects of the aforesaid acquisition may substantially lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act, as amended, in the following ways, among others:

- (a) actual and potential competition between Ostwald and Crowell in the manufacture and sale of band uniforms has been eliminated;
- (b) Ostwald will be entrenched in its substantial position in the band uniform market, barriers to new entry in the manufacture and sale of band uniforms will be heightened, and concentration

in that market may increase;
and

- (c) other mergers and acquisitions between companies engaged in the manufacture and sale of band uniforms or between such companies and other large companies may be fostered.

PRAYER

WHEREFORE, plaintiff prays:

1. That Crowell's acquisitions of Conn and Ostwald be adjudged and declared to be unlawful in violation of Section 7 of the Clayton Act.
2. That Crowell be required to divest itself of all its interests in and control over Conn and Ostwald.
3. That for a period of five years, except with the approval of the plaintiff or of the Court, Crowell, its successors and assigns, its officers, directors, agents, employees, and all other persons acting or claiming to act on its behalf, be enjoined from acquiring the stock or assets of any manufacturer of wind instruments or of any manufacturer of band uniforms.
4. That plaintiff have such other and further relief as the Court may deem just and proper.

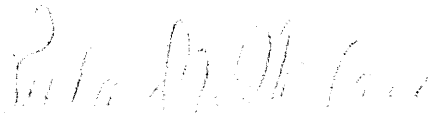
5. That plaintiff recover the costs of this
suit.

Dated:



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