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COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the defendant named herein and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This Complaint is filed and this action is instituted under Section 15 of the Clayton Act, as amended (15 U.S.C. § 25), to prevent and restrain violation by the defendant, as hereafter alleged, of Section 7 of the Clayton Act, as amended (15 U.S.C. §18).

2. American Brands, Inc. (hereinafter "American Brands") has its principal place of business, transacts business, and is found within the Southern District of New York.

II

DEFINITIONS

3. "Home and office staplers" means non-electric stapling machines used primarily for fastening papers together with a staple and includes, but is not limited to, full-strip and half-strip office desk top staplers, plier staplers, heavy-duty staplers, and mini staplers.

4. "HHI" means the Herfindahl-Hirschman Index, a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

III

THE DEFENDANT

5. American Brands is made a defendant herein. American Brands is a corporation organized and existing under the laws of the State of Delaware. It maintains its principal executive offices in New York City, New York. American Brands is a holding company engaged in a variety of operations including the production and sale of tobacco products, office products, hardware, distilled spirits and insurance. It manufactures and sells home and office staplers through its wholly-owned subsidiaries, Swingline Co. and Ace Fastener Co. (hereinafter "Swingline" and "Ace", respectively). In 1980, American Brands' total sales revenue was \$6.8 billion.

6. Gallaher, Ltd. (hereinafter "Gallaher") is a wholly-owned subsidiary of American Brands. Gallaher is a corporation organized and existing under the laws of the United Kingdom and maintains its principal place of business in London, England. Gallaher manufactures and markets cigarettes, cigars and pipe and chewing tobacco.

IV

THE ACQUIRED FIRM

7. Ofrex Group, Ltd. (hereinafter "Ofrex") is a corporation organized and existing under the laws of the United Kingdom and maintains its principal place of business in London, England. Ofrex distributes a full line of office supplies within the United Kingdom and manufactures a number of products. Ofrex, through its wholly-owned subsidiaries, Ofrex Engineering Products, Ltd. and Howard Wall, Ltd., manufactures home and office staplers. Ofrex's total sales in 1980 were approximately \$92.5 million.

8. Ofrex sells home and office staplers in the United States through its subsidiary, Rexel, Inc. (hereinafter "Rexel"). Rexel is a corporation organized and existing under the laws of the State of Delaware and maintains its principal place of business in Long Island City, New York. It distributes home and office staplers and staples and nyrex binders manufactured by Ofrex. Rexel also manufactures staples at its United Staple Company division, also located in Long Island City, New York. Rexel had total sales in 1980 of \$4.2 million.

V

TRADE AND COMMERCE

9. Home and office staplers are used primarily to fasten paper together. There are six basic categories of manual home and office staplers: full-strip desk top staplers (holding 210 staples); half-strip desk top staplers (holding 105 staples); plier or hand-held staplers; heavy-duty staplers; mini staplers; and miscellaneous staplers (including, but not limited to, saddle stitch staplers and long-reach staplers). Every model of stapler in each of these categories can be used to fasten paper together and is produced by a similar process and with similar machinery.

10. In 1980, approximately \$47 million of home and office staplers were sold in the United States. In 1980, the four

largest firms accounted for approximately 89% of total sales and the HHI was approximately 4659.

11. American Brands, through its Swingline and Ace subsidiaries, produces home and office staplers in Long Island City, New York and in Chicago, Illinois. American Brands is the dominant producer of home and office staplers in the U.S. market. In 1980, American Brands had sales of home and office staplers in the United States of approximately \$31.1 million and accounted for approximately 67% of the market.

12. Ofrex produces home and office staplers in its plants in the United Kingdom at Langeinor, South Wales and London, England, and is the dominant producer of such staplers in the United Kingdom. Ofrex's home and office staplers are distributed in the United States through its subsidiary, Rexel. Ofrex is the fourth largest seller of home and office staplers in the U.S. market. In 1980, Ofrex had sales of home and office staplers in the United States of approximately \$2.8 million and accounted for approximately 6% of the market.

13. American Brands and Ofrex are direct competitors in the production, and in the sale in the United States, of home and office staplers. The combined market share of American Brands and Ofrex is approximately 73%. The acquisition increases the HHI by approximately 801 to 5460.

14. Successful market entry into the home and office stapler market involves significant time and costs. A new entrant must raise the capital necessary to design, produce, sell and market one or more models of staplers. A stapler manufacturer must also overcome the entrenched brand preferences of the market, a process that is time consuming and costly.

15. American Brands is engaged in United States interstate and foreign commerce and its activities substantially affect United States interstate and foreign commerce. American Brands

sells a wide variety of products, including home and office staplers, that are regularly shipped in interstate and foreign commerce from United States production sites to customers located in other states and countries.

16. Ofrex is engaged in United States interstate and foreign commerce and its activities substantially affect United States interstate and foreign commerce. Ofrex sells a variety of products, including home and office staplers, that are regularly shipped into the United States from production sites in the United Kingdom. Its subsidiary, Rexel, sells various products, including home and office staplers, that are regularly shipped in interstate commerce from Long Island City, New York to customers located in other states.

VI

VIOLATION ALLEGED

17. On or about August 19, 1981, American Brands acquired, through Gallaher, a controlling interest in Ofrex and had, by November 17, 1981, acquired approximately 99% of the outstanding shares of Ofrex for approximately \$75 million.

18. The effect of this acquisition may be substantially to lessen competition or to tend to create a monopoly in the production and sale of home and office staplers in the United States, in violation of Section 7 of the Clayton Act, in the following ways:

- (a) Existing and potential competition between American Brands and Ofrex in the production and sale of home and office staplers has been eliminated;
- (b) Competition generally in the production and sale of home and office staplers may be substantially lessened; and
- (c) Concentration in the production and sale of home and office staplers has been substantially increased.

PRAYER

WHEREFORE, plaintiff prays:

1. That the acquisition of Ofrex by American Brands, through Gallaher, be adjudged and decreed to be in violation of Section 7 of the Clayton Act;
2. That American Brands be ordered to divest or cause the divestiture of appropriate stock, assets, or both, as will restore competition in the production and sale of home and office staplers that has been eliminated or lessened as a result of the acquisition;
3. That American Brands be enjoined from acquiring, directly or indirectly, the stock or assets of any concern engaged in the production and sale of home and office staplers, without prior notice to and approval by plaintiff or by the Court, should plaintiff withhold its approval;
4. That the plaintiff have such other and further relief as the Court may deem just and proper; and
5. That the plaintiff recover the costs of this action.



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