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,

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[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 "substandard" 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.

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[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.

Meredith Daubin, Chancellor of Delta Theta Phi fraternity, as Chairman of IRAC's Law Committee, to the Trustees of IRAC.[48] In this letter, written to encourage the Trustees of IRAC to institute litigation against Buchroeder, Daubin states that several manufacturing jewelers are selling fraternity insignia products without a contract with, or authorization from, national fraternities, and they are selling irrespective of membership. Further, some of the products are in bad taste, and "In many instances, the badges, etc., are of inferior quality and are offered at prices less than official sales prices." (RX 258.)

291. CX 673 is a letter dated April 17, 1958, from Judge Myers, chairman of IRAC, to Meredith Daubin, chairman, IRAC Law Committee. Judge Myers wrote to Daubin that Mr. Balfour had advised him:

> . . . of innumerable violations of jewelry contracts by the Buchroeder Company of Columbia, Missouri, which is offering official insignia at reduced prices and using poor quality of pearls. This firm is also placing its jewelry in bookstores and local jewelry stores in various areas offering it indiscriminately and without regard for membership. (CX 673.)

292. At the time the Daubin letter (RX 258) and the Myers' letter were written (early 1958), the Law Committee and the Trustees were being pressed by Balfour and Myers to get the Buchroeder litigation underway. Such disparagement as was contained in these letters undoubtedly influenced the Trustees of IRAC to approve the Buchroeder litigation.

Balfour's Policing Tactics

293. Balfour has engaged in a continuous policing effort directly and through IRAC to keep fraternities from granting permission to their chapters to purchase from sources other than Balfour. CX 780, the Delta Delta Delta correspondence previously discussed, is an example of such policing. Both Mr. Balfour and Miss O'Leary used IRAC stationery for this correspondence with the fraternity. Miss O'Leary also wrote letters on IRAC stationery to Tau Epsilon Phi (CX 282) and to Tau Kappa Epsilon (CX 564B) reporting that their chapters were purchasing from unauthorized sources. "IRAC is concerned" about these purchases as they constitute a "definite threat" to the fraternities' insignia (CX 282). An example of a Balfour Company policing letter is CX 37, a letter from Miss O'Leary to Phi Delta Theta about their Tulane chapter purchasing from

48 The Trustees of IRAC are the heads of the member interfraternity conferences: NIC, NPC, PIC, and PPA (RX 175D). They are, therefore, very influential members of the fraternity world.

unofficial sources (CX 37–39).

294. CX 278, the Balfour Bulletin naming and disparaging seven competitors, is another example of Balfour's policing efforts. This document, and the fraternities' response thereto, has previously been discussed. CX 278 has further significance however.

295. Shortly after becoming chairman of IRAC, Judge Myers wrote letters to 11 companies whose names had been furnished to Judge Myers by Mr. Balfour (CX 479B, 481). Copies of some of these letters are in the record (CX 279, 281, 309, 311, 312). These letters by Judge Myers to competitors are dated October 21, 1954. Mr. Balfour's Balfour Bulletin—CX 278—is dated October 20, 1954. At this same time, October 20, 1954, Judge Myers wrote to the Trustees of IRAC as follows:

> It would be my further suggestion that these names [of competitors] be transmitted to the memberships of each conference with direction to them to advise their chapters that these concerns have no right to sell goods or chinaware or jewelry using the name of [or] insignia of the fraternity without the written authority and consent of the national organization and that no chapter member shall purchase such merchandise from these concerns. (CX 479B.)

296. This policing effort by Mr. Balfour and Judge Myers was, therefore, a coordinated affair. Mr. Balfour wrote to the fraternities; Judge Myers wrote to the competitors, and he wrote to the Trustees of IRAC with the request that the trustees write to the fraternities.

297. There are other examples of coordinated policing efforts in the record. On March 1, 1954, Margaret O'Leary wrote letters to Zeta Beta Tau (CX 40), to Lambda Chi Alpha (CX 44), to Alpha Tau Omega (CX 47), and to Sigma Chi (CX 48), advising the fraternities that Burton Myles Collegiate Company, Ellettsville, Indiana, was advertising fraternity insignia products. On this same day, IRAC sent a letter to Burton Myles informing the company that if it did not stop the manufacture and distribution of "any and all items," complications and litigation would result (CX 387).[49] At least one fraternity wrote a follow-up letter to Burton Myles as a result of Miss O'Leary's letter (CX 41).

298. Another example of coordinated policing is the attack upon Benton's University Jewelers, Seattle, Washington. On

[49] This letter—CX 387—is signed by Kathleen Davison. Another letter in the record written some six months earlier is also signed by Kathleen Davison (CX 307). The handwritten signatures differ, clearly raising the question of whether both letters were signed by the same person (CX 307, 387).

October 24, 1958, a letter was prepared and mailed by Miss O'Leary from Attleboro, on IRAC stationery, to Benton's with Judge Myers' "rubber-stamped" signiature thereon (CX 293; Tr. 261–62, 285–86). Miss O'Leary, under Judge Myers' "rubber-stamped" signature, informed Benton's that unless Benton's stopped selling "officially and legally protected" national college fraternity insignia products, the matter would be referred "to our lawyer" to take immediate action (CX 293).

299. On December 9, 1958, about six weeks after the O'Leary letter, Judge Myers wrote a letter on "Judge Myers" IRAC stationery to Benton's, again warning Benton's against "unauthorized" use of "officially and legally protected" insignia, which practice is "objectionable to the national college fraternities and sororities" (CX 314).

300. The above-mentioned coordinated policing efforts by the Balfour Company, and the special use of the IRAC Trustees, who headed the interfraternity conferences, as policing agents, establish that respondents availed themselves of every possible means to eliminate all competition in the national college fraternity market.

Respondents' Exclusive Arrangements with Suppliers Foreclose and Eliminate Competition in the National College Fraternity Insignia Products Market

301. Respondents have entered into exclusive supply arrangements with suppliers of various products intended for resale to national college fraternities. These arrangements foreclose and eliminate competition in the national college fraternity market. The use of exclusive arrangements with suppliers is established by testimony of Balfour officials, and by testimony of competitors who have been cut off by suppliers or have been unable to purchase products from suppliers. Additionally, the record contains documentary proof of such exclusive arrangements.

302. Mr. Licher testified that he made arrangements with suppliers of fraternity insignia items whereby the suppliers would not sell such items to competitors (Tr. 594–97, 604–08, 646). He listed several suppliers with whom he had made such an agreement, for example: Champion Knitwear Company (Tr. 596, 604); Collegiate Manufacturing Company (Tr. 604–06); Fuerer Company (Tr. 646); and Lapere Pottery Company (Tr. 646). The agreement, as explained by Mr. Licher, was that the suppliers must operate as Balfour directs (Tr. 595), that is:

We told them that they could not sell this sort of thing or use our designs to sell to any other organization, because that would be a violation of our agreement. So we were virtually giving them a franchise to work under our direction. And I was held responsible to see that those things were done. We told them that they could never sell any of this for resale. (Tr. 595.)

303. On June 11, 1953, Mr. Licher, in a letter (CX 362) to Champion Knitwear Company, a manufacturer of T-shirts, jackets, etc. (CX 216), set out in writing the agreement between Balfour and Champion:

Now our agreement with you is that we would concentrate all of the business for the flock applied merchandise consisting of items from your line so decorated, with the Champion Knitwear Company and in return we were assured that we could count on full cooperation right down the line. (CX 362.)

If Mr. Licher discovered that such knitwear products were being sold to competitors, he would "grab the telephone and let them know how I feel about it" (Tr. 604). Champion could not sell such products to bookstores (Tr. 495).

304. The agreement between Balfour and Collegiate Manufacturing Company, a manufacturer of stuffed toy animals (CX 427) included an understanding that Collegiate would reserve products bearing fraternity insignia exclusively for Balfour (Tr. 617). They could not sell such items to their bookstore trade (Tr. 607).

305. Balfour's agreement with suppliers went beyond an agreement that such suppliers would not sell products decorated with national college fraternity insignia to other concerns. The agreements covered specific items, undecorated items, selected by Belfour for sale to national college fraternities. This is established by Sam Sargeant's testimony, as follows:

Q. Has the Balfour Company ever purchased any products from the Farrington Manufacturing Company?

A. Yes, Sir.

Q. What type of products?

A. Farrington was making boxes, stud boxes, jewel boxes, that type of a box.

Q. Was there any agreement with the Farrington Company that they would confine the sale of certain products to the Balfour Company?

A. Yes, sir.

Q. What type of products were they?

A. Those that we selected from their line and put in our salesmen's lines, that ran about a hundred quantity, plus illustrating the items we selected from Farrington in our Balfour Blue Book.

Q. And those items were to be confined to the Balfour Company?

A. Yes, sir.

Q. Now, were they also made available to Burr, Patterson?

A. Yes, sir. (Tr. 495–96.)

306. Balfour's agreement with Champion is clearly spelled out. Mr. Licher wrote on November 1, 1952:

> The L. G. Balfour Company is the exclusive distributor of Champion Knitwear items in the college fraternities and sororities all over the nation. (CX 201.)

On November 12, 1962, Licher, in commenting on the Champion label in a fraternity T-shirt on sale in a college bookstore, wrote:

> Of course, this is a violation of the agreement which we have with the Champion Knitwear Company, namely that they will reserve for us exclusively the right to be their distributors on all fraternity and sorority decorated merchandise and that they will not sell this type of merchandise through any other agency, including their bookstore accounts. (CX 202, 203.)

Licher commented that Champion management had been "most cooperative," and that further T-shirts "will not be available from the Champion source" to this competing bookstore (CX 202).

307. CX 216–237 set forth the history of how Ross Dallas, owner of College Crafter, a small company selling knitwear to college fraternities, was cut off by Champion at the instance of Balfour. Ross Dallas, through his friendship with Sam Friedman, a Champion salesman, had been purchasing processed knitwear from Champion since 1948 (Tr. 1801, 1817). Mr. Friedman encouraged Ross Dallas to purchase from Champion (CX 216–17) because he needed the extra volume (CX 219). On January 1, 1954, Champion refused to fill any further orders for Ross Dallas and cut him off (Tr. 1820–21).

308. Ross Dallas began full-time operation of his business in 1951 (Tr. 1799). Shortly thereafter, in October 1951 (beginning of the school year), he received a request from Champion asking to see one of his "flyers that you are sending out to the Fraternities and Sororities" (CX 218).

309. On January 17, 1952, Mr. Friedman wrote to Ross Dallas "a letter that I hate to write and one that I never thought I would have to write anybody." He stated as follows to Ross Dallas:

> The L. G. Balfour Company buys about $100,000 worth of material from us a year and they happen to be a pet account of my Bosses. Buying that much material, they feel they have got a right to tell us to discontinue the sale of Fraternity merchandise to anybody who competes with them. (CX 220.)

Sam Friedman gave Ross Dallas about two months to find another supplier.

310. Two documents bearing on Balfour's arrangement with Collegiate Manufacturing Company are in the record (CX 427, 428). Collegiate advised L & L on June 16, 1955:

> We have an arrangement with L. G. Balfour Company of Attleboro, Massachusetts, by which we supply them exclusively with our stuffed pets for fraternity and sorority favors and with certain fraternity markings and colors. (CX 427.)

Collegiate later wrote to L & L:

> Thank you for your letter of June 21, in which you tell us that if we were to give you our jobbing set-up, you would sign a contract not to sell our merchandise to the fraternity field. This would be the only way in which we could work with you, since we are definitely committed in the fraternity field and could not make any other arrangement which would interfere with this previous agreement. (CX 428.)

311. Another example of "exclusive" supply arrangements with suppliers occurred in competition for the commercial service awards of Western Electric and New York Telephone Company. Western Electric sent out specifications for bids, and the specifications on one item required that the insignia be mounted on a specific Anson tie bar. O. C. Tanner Company asked Anson for their price on the tie bar. Anson informed Tanner orally over the telephone (Tr. 1006–07), by telegram (CX 381), and by letter (CX 380), that they could not supply this tie bar to Tanner (Tr. 1001). Anson informed Tanner that they could not supply Tanner with this tie bar because of an exclusive supply arrangement with Balfour (CX 380; Tr. 1007).

312. It is apparent from this record that respondents have entered into exclusive supply arrangements with suppliers of products which are desirable or necessary for resale to fraternities or other companies, for the purpose of foreclosing and eliminating competition. Such contracts enable Balfour to monopolize trade in insignia jewelry products, and specifically to monopolize and maintain a monopoly in the national college fraternity products market.

313. The most compelling proof of respondents' seeking every business opportunity to foreclose competition in the fraternity market is the exclusive dealing arrangements set forth in the national fraternity contracts (CX 10). These contracts specifically set forth that respondents have the right to supply, not only all jewelry products, but "*all* other articles of jewelry, novelties, awards and *merchandise or material of every description* mounted with or bearing the Fraternity badge, coat-of-arms, Greek letters or *other authorized insignia*" (CX 10A; emphasis supplied).

Respondents Control the Price of National College Fraternity Products

314. Evidence of respondents' monopoly power in the national college fraternity insignia products market is respondents' ability to fix and control the prices of such products in this market. This contrasts sharply with respondents' inability to fix and control the prices of insignia jewelry in any other market in which respondents engage in business.

Because respondents have not faced competitive forces in the national college fraternity insignia jewelry market, respondents have been free to set their own prices on insignia jewelry in that market. Over the years respondents, by their own admission, have set the resale prices of national college fraternity insignia jewelry at 100 percent markup over cost.

As Yeager testified:

Q. Do you mark all your college fraternities' pins up 100 percent?

A. Well, from memory I can't say we did all. I would say most we did. (Tr. 3786)

And as Nelson testified:

We usually double our cost figures on a fraternity pin. In other words, if it cost $10, we would sell it for $20 and we paid commission and royalty on the $20. (Tr. 3006)

315. This contrasts sharply with respondents' markup of commercial and organizational insignia jewelry which respondents must price according to the competition. As Mr. Yeager testified:

Q. How do you price your commercial products, Mr. Yeager?

A. Well, it's priced on both quantity and *on the competition that we get into.*

Q. And how about the American Legion? How do you price that, Mr. Yeager?

A. Well, that's a *very close account.* We try to get, I think, 10 to 12 percent profit on that.

Q. To be priced there according to your competition?

A. Yes, sir. We have had some very low priced competition that has come in our industry in the last three years. In other words, to survive. We began to get competitive prices.... (Tr. 3786–87, emphasis supplied.)

* * * * * * *

Sometimes when you sell a commission order the cost to the consumer is a very important thing. I mean it's *strictly competitive and whoever gets in with the lowest bid will get the contract.* . . . (Tr. 3790, emphasis supplied.)

316. National college fraternities do not seek competitive bids

and respondents have had more than 90 percent of these fraternities under exclusive contract continuously for the entire ten-year period. Consequently, respondents are able to, and have, set their own price to the fraternities. When respondents want to raise prices, they tell the fraternities that prices will be raised and the fraternities accept without question. One fraternity official testified that respondents had told her that they were about to raise the price of a very popular badge because of an increase in the price of pearls. This official accepted respondents' explanation without question:

. . . I was interested in why there should be an increase in that particular badge, and I found out.

Q. You were told it was the increase in the price of pearls?

A. Right.

Q. Did you check that out in any other way?

A. No, I was willing to accept the explanation which was given to me. (Tr. 4556)

317. Respondents are able to modify and/or eliminate contract provisions. The fraternities accept respondents' explanation therefor without question. For example, the Balfour contract with Phi Delta Phi as executed in 1922 called for: (1) 14 carat gold; (2) 20 percent royalty; (3) payment for advertising space by Balfour; and (4) the furnishing of souvenirs at national conventions by Balfour. The Balfour contract now calls for: (1) 10 carat gold; (2) 10 percent royalty; (3) no advertising payment required; and (4) no furnishing of souvenirs required (Tr. 4564–66; RX 218A–E). This was done without objection on the part of the fraternity and apparently without any effort being made to seek competitive bids (Tr. 4570). Another fraternity official wrote to BPA (CX 770A) complaining about the quality of BPA badges:

Several of our Chapters and Alumni have complained recently about the quality of the badges today as compared with the badges of former years. This is not only the change that was made in the pearls but the appearance and workmanship of the badge as a whole.

In this same letter the fraternity official states:

. . . I can see no reason why your Company should not be entitled to the approximate 10% increase that you are asking on Alpha Rho Chi badges.

318. On co-official contracts Balfour and BPA agree on the prices they will charge a fraternity, as is evident from a series of letters between BPA and an official of Phi Kappa fraternity

(CX 776A–P). On December 1, 1955, Mr. F. L. Chinery of Phi Kappa wrote to BPA:

As you no doubt know, the L. G. Balfour Company has also been making a check . . . and came up with a proposal regarding an increase in the prices of Phi Kappa insignia. In some instances your . . . prices are more favorable and in other cases L. G. Balfour Company is lower. (CX 776A.)

Nelson replied to Chinery:

We are assuming that the prices are satisfactory with the Balfour Company because it is advisable that the prices of both companies be the same. (CX 776C.)

319. Respondents do not deviate from their prices. They instruct their salesmen not to cut prices. As a former BPA salesman testified:

Q. Did you ever receive any specific instructions about price cutting?
A. The understanding was that there would be no price cutting. That we maintained the price that they had in the price book. (Tr. 2188.)

And another former BPA salesman testified:

Q. Did you receive instructions from Burr-Patterson in regard to pricing merchandise as between Balfour and Burr, Patterson?
A. Well, like in competing with each other on the party favors, on large orders, we were not to cut the price beyond the normal discount given to quantity buyers. (Tr. 2064.)

320. Another example of Balfour's control over price and market terms and conditions in the national college fraternity insignia products market is a letter dated January 6, 1961, written by Mr. Balfour to Mr. Norman Silverman, president, Pi Lambda Phi, a national college social fraternity (CX 704A, 717B). Mr. Balfour advised Mr. Silverman about the Buchroeder litigation [50] and the fact that the litigation concerns a conspiracy charge. Mr. Balfour then states:

. . . our auditors have suggested that Pi Lambda Phi Fraternity might wish to revert to the former program and furnish us with advertising on a gratis basis to meet the demands of the Federal Trade Commission under a similar investigation several years ago. At that time the Commission ruled that any fraternity purchasing official insignia at net prices and realizing a royalty from the sale of these items should not be recompensed for advertising.

If we might have your general approval of all our auditors' recommendations we will be in a position to justify our services to Pi Lambda Phi Fraternity and avoid any complications. (CX 704B.)

[50] Stating that Buchroeder sells "promiscuously" without regard to membership, "and in many instances, through Pawnshops" (CX 704A).

Three days later Mr. Silverman replied:

We hereby release the L. G. Balfour Company from any future compensation requirements in reference to their advertising in our National publications.

In the future, all L. G. Balfour Company advertising in our National publications, will be furnished on a gratis basis to meet the demands of a Federal Trade Commission ruling which stated that any Fraternity purchasing official insignia at net prices and realizing a royalty from the sale of these items should not be recompensed for advertising. (CX 671.)

321. Mr. Silverman's reply shows that he did not question Mr. Balfour's request for "gratis" advertising services, demonstrating the control Balfour has over prices, terms and conditions of sale.

322. It should also be emphasized that the Federal Trade Commission never made any such ruling as represented by Mr. Balfour.

Balfour's Efforts to Hire Away Key Tanner Company Employees

The Tanner Company

323. O. C. Tanner Jewelry Company (hereinafter Tanner), Salt Lake City, Utah, manufactures jewelry products, principally commercial service emblems (Tr. 912, 974). During the years 1955 and 1956 Tanner's total sales volume approximated $1,500,000 per year (CX 383) in comparison with Balfour's total sales of approximately $17,000,000 per year (CX 686). At this time, Tanner was a small competitor, relatively unknown in the Eastern part of the United States, with a poor capital structure, which made it difficult to compete with the better known companies, such as Balfour which was considered the top company in its field (Tr. 3915, 3978–3979, 3981).

The Tanner Employees Hired Away by Balfour

324. During the period late 1956 through early 1959, Balfour succeeded in hiring away Tanner's entire Art Department (consisting of the Department Head and 4 artist-designers) (Tr. 989–990), and the main of Tanner's Sales Department, including two of Tanner's three principal salesmen (Tr. 974–975, 986, 998).

325. It is recognized that a certain amount of hiring other companies' employees is within the realm of ordinary and reasonable business practices. Mr. Tanner himself is on record as accepting this fact, when he referred to efforts to hire two

particular salesmen of his. But he saw a vast difference between such ordinary business practices and Balfour's effort to hire away substantially his entire Art and Sales Departments which:

> . . . was an effort to totally eliminate us from the industrial service end of the field as we had been eliminated from the fraternity field. (Tr. 997.)

326. That such an effect on Tanner was known by Balfour is evident from testimony of Miles, Balfour's Western sales manager who was the instrument of Balfour's efforts. Miles admitted that if he had successfully hired away eight named Tanner employees (whom he agreed he had solicited with the intent of hiring for Balfour; Tr. 4080), it would have been "a great detriment" to Tanner (Tr. 4078). Further, he was referring only to eight specific Tanner employees (Archbold, Stevens, Greenhalgh, Nichols, Balser, Gwilliam, Hey and Bowles; Tr. 4075–4076), whereas, in fact, a total of 15 Tanner employees had actually been solicited by Balfour. Yeager, Balfour's president, was long experienced in the jewelry manufacturing business, and he knew the effect resulting from loss of such key Tanner skilled employees.

Mr. Balfour Organized, Financed and Controlled IRAC

327. In 1940, when Mr. Balfour was chairman of NIC, he appointed a committee to organize the interfraternity conferences. Thus, IRAC was conceived by Balfour (RX 39, p. 7). IRAC held its first meeting on April 28, 1946, in Cincinnati, Ohio. Mr. Balfour was elected chairman of the new organization and by unanimous vote was continued in that capacity until 1954 (RX 39, p. 9). In May 1954 the operational form of IRAC was changed to a five-member board of trustees. Thereafter, Judge Frank H. Myers was named chairman of the board of trustees, and Mr. Balfour became administrative secretary-treasurer (RX 39, p. 9).

328. Mr. Balfour resigned from his position as administrative secretary-treasurer of IRAC on July 1, 1956, "for reasons of a personal nature," as Judge Myers wrote to the IRAC trustees (CX 483A); however, it is apparent that Mr. Balfour's resignation was brought about by the Balfour Company's promise to the Federal Trade Commission "to abandon any direct common enterprise between it and the Interfraternity Counsel" (RX 70). Judge Myers further noted, however:

> This does not mean that he [Balfour] will be any less interested in the work of IRAC in the future or will discontinue his personal contributions that he has generously made in the past towards the support of IRAC operation expenses. (CX 483A.)

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This record establishes that Mr. Balfour's resignation was in name only, and that he continued to be the real power behind IRAC until the date the complaint issued herein.

329. The IRAC history brochure states that "without the guiding genius of Mr. Lloyd G. Balfour in the early years of this Council, IRAC could easily have failed in its purpose" (RX 39, p. 4). Therefore, Mr. Balfour was chairman and the main sponsor of IRAC at least during its first eight years, and IRAC's administrative secretary-treasurer until July 1, 1956.

Administrative Office of IRAC

330. Mr. Balfour established and operated the only IRAC "headquarters" or "Central Office" or "Administrative Office." This office was located in the Balfour Company during the entire period 1946–1961.

331. An example of the connection between the respondents and IRAC, it is important to note, is that by letter of October 20, 1958, Balfour forwarded to IRAC Chairman Myers a "photostatic copy of a letter received at our Washington office from Julius H. Wolpe & Co., together with copy of registered letter sent out today over your signature to this firm" (CX 575).[51] On October 31, 1958, Myers wrote to O'Leary (CX 576A–B) referring to the letter of October 20 sent to Wolpe by the Balfour Company over Myers' signature, and advising that a local attorney had come to see Myers on October 31 about the matter (CX 576A). Referring to the "local attorney," Myers stated:

> He seemed more particularly concerned with the position of the Balfour Company in the case than with any other phase of the matter. After I explained to him that . . . *IRAC maintains an office in Attleboro*, he felt better satisfied. However, *I never was able to explain satisfactorily to him why the letter from me for IRAC was mailed out to him in an envelope bearing the name L. G. Balfour & Co.*
>
> I am quite convinced personally that *we must* in every way *divest IRAC* of *any connection with the Balfour Co.* if we are to be successful in maintaining our contention against these violators of fraternity registration rights. (CX 576A; emphasis supplied.)

332. Edith Crabtree had been appointed IRAC secretary-treasurer in mid-1956 (CX 522A) after Balfour announced his intention to submit his resignation as IRAC administrative secretary-treasurer effective July 1, 1956 (CX 483). Crabtree, after having served as IRAC's "secretary-treasurer" for more than three years,

[51] Apparently Myers' name was "rubber-stamped" to this letter because Myers received only a copy thereof, and he apparently knew nothing about the incident as of October 20, 1958.

wrote to Judge Myers on November 21, 1959 (CX 549; Tr. 2780–81) stating:

> I was somewhat startled to receive the word that I was to handle IRAC finances. *It was my understanding when you and Bally asked me to assume the IRAC Secretary-Treasurer* position that the finances would *actually be handled in Attleboro.* The actual check signing could be arranged without much loss of time in the transaction, but I could not take care of all the details in a businesslike way moving around as I do. I shall quite understand if you think it is wise for me to resign. The good of IRAC must come first. (CX 549; Tr. 2780–81; emphasis supplied.)

Myers' testimony corroborates this point wherein he states that while Crabtree was "named" IRAC treasurer she "didn't want to take any responsibility for handling the funds" and that Balfour was in fact treasurer and signed all checks for IRAC (Tr. 4827).

333. In view of Crabtree's refusal to handle the IRAC funds and her offer to resign, Chairman Myers on December 9, 1959, announced the appointment of Mr. Charles E. Pledger, Jr., of Washington, D.C., as IRAC treasurer inasmuch as "it has been found impractical to have the IRAC funds handled by the IRAC Secretary" (CX 495). Myers also announced that the IRAC funds "previously held in our account at Attleboro, Massachusetts," were to be transferred to Washington, D.C., and that "hereafter" the "records of all collections and payments to IRAC and expenditures by IRAC" would be kept in Myers' office in Washington (CX 495).

Myers further stated:

> *IRAC is most appreciative to Miss Margaret O'Leary in Attleboro, Massachusetts, for her services in relation to IRAC funds* and most grateful to Mr. Balfour for making such services available to IRAC. (CX 495; emphasis supplied.)

334. The IRAC funds were transferred from Attleboro to Washington after Buchroeder had filed a counter-claim in the Missouri litigation, charging Balfour and the Balfour Company with a conspiracy to restrain trade (Tr. 4842). The check transferring the funds from Attleboro to Washington was signed by Balfour as "Treasurer, Interfraternity Research and Advisory Council" (Tr. 4828; RX 259A) three and one-half years after Balfour had resigned as Treasurer (Respondents' Answer, Par. 5).

335. After the transfer of IRAC funds in December 1959, the Attleboro IRAC Office continued to publish the IRAC Bulletin (Tr. 4825). O'Leary worked on the September 1961 issue of the IRAC Bulletin just a few weeks before she testified in this proceeding (Tr. 379–80).

336. After the transfer of IRAC funds, the Attleboro Office continued to handle the preparation and distribution of other IRAC publications, such as the IRAC minutes, as is evident from the following.

The Changing of the 1960 IRAC Annual Meeting Minutes

337. By letter of June 6, 1960, nearly four years after Balfour had severed official connections with IRAC (CX 483), Balfour wrote to Myers (CX 554) suggesting certain changes in the minutes of the 1960 IRAC annual meeting prior to final printing, and advising Myers that:

> I will be grateful if you will let me have your immediate response *since we are holding printing of the Minutes* for your instructions. (CX 554A; emphasis supplied.)

338. The suggested changes Balfour wanted should be noted:

1. Balfour wanted to eliminate the words "tie–up through IRAC and the Balfour Company" which appeared in "paragraph 3" of the "Report of the Law Committee" (CX 554A).

2. In lieu of the words "tie-up through IRAC and the Balfour Company," Balfour suggested:

> It appears that the defendant, Buchroeder, through its counsel, is determined to make a stiff fight in an attempt to show a "conspiracy" and "restraint of trade." (CX 554A.)

3. Balfour suggested eliminating Crabtree's "Discussions with Reference to Buchroeder Litigation."

4. Balfour suggested that in lieu of Crabtree's remarks "we should simply state in this area of the Minutes that following the presentation of Vernon Doane's report on Buchroeder Litigation it was voted that the report be referred to the Resolution Committee requesting the Committee to present a resolution admonishing the Four Conferences to urge their member groups to instruct their chapters to purchase fraternity jewelry, favors, prizes, awards, and materials bearing the fraternity insignia only through authorized sources" (CX 554B).

339. It is apparent from the above that Balfour wanted to remove any indication of a connection between the Balfour Company and IRAC because of Buchroeder's countersuit in the Missouri litigation as hereinbefore mentioned.

340. It is significant to note that every change Balfour suggested was incorporated into the text of the 1960 IRAC minutes as finally published (RX 175):

1. The "Report of Law Committee" as finally printed, contains

no reference to "tie-up through IRAC and the Balfour Company" (RX 175-O).

2. The precise wording that Balfour suggested for "paragraph 3" of the "Law Committee's Report" appears in the text of the minutes as finally printed (RX 175-O).

3. The minutes as printed include no reference to Crabtree's "Discussions with Reference to Buchroeder Litigation" (RX 175).

4. The minutes as printed include the following statement which appears in the text after Doane's report on the Buchroeder litigation:

> Following a statement by the Honorable Vernon H. Doane it was VOTED: that his report be referred to the Resolution Committee requesting the Committee to present a resolution admonishing the Four Conferences to urge their member groups to instruct their chapters to purchase fraternity jewelry, favors, prizes, awards and materials bearing the fraternity insignia only through authorized sources. (RX 175P.)

341. Thereafter, on June 8, 1960, Myers advised the IRAC trustees (CX 496A) that "the IRAC Minutes are in the process of being published at this time. . . . If you know of [m]any orders that have not been given, please let *Miss O'Leary in Attleboro* hear by return mail so as not to delay the prompt issuance and distribution of these 1960 Minutes" (CX 496A; emphasis supplied).

342. That the IRAC office continued to operate out of the Balfour Company as late as December 1960 is evidenced by an IRAC envelope bearing the return address "IRAC, Box 899, Attleboro, Mass." (CX 323.) The evidence also shows that as late as July 1961 O'Leary was still doing IRAC work, as is evidenced by a letter from O'Leary to Kappa Sigma Kappa dated July 7, 1961 (CX 561), advising that:

> A recent survey of our accounts receivable reveals that your invoice dated September 21, 1960 for *three IRAC Bulletin subscriptions* remains open and unpaid at this time. (CX 561; emphasis supplied.)

343. Therefore, at all times pertinent hereto, IRAC's offices were maintained in the offices of the Balfour Company in Attleboro, Massachusetts.

Balfour's Financial Support of IRAC

344. Balfour or the Balfour Company has paid most of IRAC's expenses during the entire period involved in this proceeding. The 1954 history of IRAC states:

> The headquarters are maintained at Attleboro through the generosity of Mr. Balfour . . . (RX 39, p. 9).

The record, however, discloses that Mr. Balfour supported IRAC to further his control over the fraternities and the manufacture, sale and distribution of their insignia products.

345. In his May 1953 report covering the period May 1952–May 1953, IRAC's Chairman Balfour estimated that it cost "at a minimum $35,000 yearly" to run the IRAC office (CX 511B). Accepting Balfour's "minimum" figure as a basis, it is mathematically concluded that the cost of running IRAC for the nine year period 1952–1961 was "at a minimum" $315,000. Only $27,492.65 of IRAC funds contributed by sources other than Balfour or the Balfour Company were actually allocated to IRAC expenses during the entire nine year period 1952–1961, or an average of approximately $3,000 per year.

346. Balfour estimated that it cost "at a minimum $35,000 yearly" to run the IRAC office (CX 511B) and since IRAC's average annual contribution to IRAC's expenses was approximately $3,000, the only conclusion to be reached is that Balfour supplied the balance. Balfour identifies the source in his own words which appear in his May 1954 report as chairman of IRAC (CX 513A–L). Therein Balfour states:

> . . . we *continue* to *pursue* our *established* program of *absoring* the *greater* portion of the expenditures, together with all of our other expense. (CX 513K; emphasis supplied.)

347. Balfour made it clear that he would continue to cover the expenses of IRAC after July 1, 1956. Chairman Myers in a communication dated June 29, 1956 (CX 483A–B), states:

> I have just returned from a short visit to Attleboro last week-end where I had an opportunity to confer with Mr. Balfour respecting the affairs of IRAC. I regret to advise that he informs me that for reasons of a personal nature, it will be necessary for him to submit his resignation as Administrative Secretary-Treasurer effective July 1, 1956. This does *not mean that he will be any less interested in the work of IRAC in the future or will discontinue his personal contributions* that he has generously made in the past *towards the support of IRAC* operation expenses. (CX 483A; emphasis supplied.)

348. Balfour commenting on the 1957 IRAC "Financial Report" [Balfour actually refers to the Report as the "Financial Report . . . submitted by your Treasurer, Mrs. Crabtree" since Balfour has "retained no executive office . . . for the past year" (CX 522A)] with reference to the balance in the IRAC treasury, states: "You are also aware of the fact that we have this balance only because *your Attleboro Headquarters has continued to absorb IRAC expense.*" (CX 522A; emphasis supplied.)

349. In this same report Balfour also indicates that he will continue to absorb the "extra cost" involved in getting the IRAC bulletin printed and distributed (CX 522C).

350. Again in May 1958 Balfour assured that he "will absorb the extra expense" of publishing and mailing the IRAC bulletin (CX 533A); that the "Attleboro office has absorbed the cost of completing and mailing questionnaires and communications" for IRAC's Committee on Surveys and Projects; and that Balfour is "happy" to "contribute *funds and services of our Attleboro personnel* to any and all projects for the overall benefit of the fraternity system" (CX 533A).

351. Mr. Balfour, therefore, furnished the entire financial support for the IRAC Attleboro office. Meanwhile, such funds as IRAC did receive were accumulated, at Mr. Balfour's suggestion for an "unexpected development or emergency" (CX 521), such as the Buchroeder litigation. In fact, IRAC funds were held in Attleboro until they were transferred to Washington after Myers became chairman (*supra*) and after the Buchroeder litigation was underway (RX 259).

Balfour and the Balfour Company Used IRAC (1) To Threaten Competitors With Litigation (2) To File a Complaint Against Competitors With the FTC (3) To Bring Suit Against One of Respondents' Principal Competitors and Finally (4) To Petition the FTC Not to Initiate The Instant Proceeding

352. During the period which is pertinent to this proceeding the record establishes that Mr. Balfour and the Balfour Company used IRAC (1) to threaten competitors with litigation, (2) to file a complaint with the Federal Trade Commission against respondents' competitors, (3) to bring suit against one of respondents' principal competitors, Buchroeder, and finally (4) to file a petition with the FTC not to initiate the instant proceeding.

353. As early as October 1953, while Mr. Balfour was IRAC chairman and personally directing all of IRAC (CX 518A), IRAC letters threatening litigation were being sent to respondents' competitors. A specific example is the IRAC letter dated October 5, 1953, to National Fraternity Supply Company (CX 307). This letter bears an IRAC letterhead identifying Mr. Balfour as "Chairman, Box 899, Attleboro, Massachusetts."

354. The record further shows that while Mr. Balfour was IRAC chairman, Balfour and IRAC engaged in a coordinated, simul-

taneous campaign directed at threatening litigation against respondents' competitors. On March 1, 1954, Miss O'Leary wrote to Zeta Beta Tau (CX 40), to Lambda Chi Alpha (CX 44), to Alpha Tau Omega (CX 47), and to Sigma Chi (CX 48). All of these letters concerned party favors being advertised by Burton Myles Collegiate Company,[52] Ellettsville, Indiana. On the same day, IRAC addressed a letter to Burton Myles [53] advising Burton Myles that all fraternities and sororities had legal trademarks and that if Burton Myles did not "discontinue the manufacture and distribution of any and all items . . . complications and litigation" would result (CX 387).

355. After Balfour resigned as chairman of IRAC in May 1954 this coordinated, simultaneous campaign of Balfour and IRAC increased in intensity.

The 1954 Fall Campaign to Eliminate Competitors Through Threat of Litigation

356. On October 20, 1954, Mr. Balfour sent a "Balfour Bulletin" to the national college fraternities and sororities (CX 278) calling their attention to seven of Balfour's competitors that were selling merchandise in violation of fraternity names and insignia. Shortly before sending this Bulletin to the national fraternities and sororities, Mr. Balfour also sent IRAC Chairman Myers a number of advertisements and folders of firms offering for sale national college fraternity insignia products (CX 479B). Judge Myers wrote to seven of these firms requesting that the firms cease and desist (CX 479B; RX 254B).

357. Copies of Judge Myers' letters to five of these firms are in the record (CX 279, 281, 309A, 311, 312). The letters are all dated October 21, 1954, the day following Mr. Balfour's Bulletin to the national college fraternities (CX 278). IRAC letters were sent to the following firms: L & L Party Favors (CX 279), Nassau China Company (CX 281), Brown Wholesale Company (CX 309A), Gadzik Sales Company (CX 311), and Collegiate Specialty Company (CX 312). All of the letters are basically similar in content. They advise the firms that all of the national college fraternities have legally protected their names and insignia under the Lanham Trademark Act; that the firms' advertising and selling of merchandise bearing such insignia is unauthorized, and that continuation of the violations of any individual fra-

[52] Burton Myles Collegiate Company was "just a couple of young fellows trying to make a buck" (Tr. 1466, 2136–37).

[53] This IRAC letter to Burton Myles is the second letter which bears the signature "Kathleen Davison." (See footnote 49, *supra*.)

ternity's rights will lead to "complications" and "further action to stop it."

358. In addition to Judge Myers' letters to respondents' competitors, the national college fraternities also sent letters to these firms pursuant to Mr. Balfour's Bulletin of October 20, 1954 (CX 402, 403, 423–426; Tr. 1739, 2094–96).

359. On November 8, 1954, Miss O'Leary forwarded to Myers some advertising material of the Esquire House of New York (CX 514B). In her forwarding letter (CX 514A), she stated:

> We believe you will want to write this company as chairman of IRAC protesting the violation of Greek letter insignia and also protesting the use of their present stationery.

On November 10, 1954, Judge Myers wrote to Esquire House (CX 515). The letter is substantially the same [54] as Judge Myers' other letters of October 21.

360. On November 15, 1954, Judge Myers sent a letter to the National Fraternity Supply Company (CX 308).[55] This letter is basically a copy of Judge Myers' earlier letters of October 21 and November 10.

361. It is important to note that at the time Judge Myers sent the letters of October 21, November 10 and November 15 he did not actually know whether or not any of the firms to which he had written had an official contract with or authorization from any of the national college fraternities and sororities as is evidenced by his January 13, 1955, IRAC communication (CX 481) wherein Myers lists the names of 11 firms to which he had written (including all of the firms mentioned above) and states:

> I think it necessary that I know *in advance*, among other things, that the above-named concerns have *not* been granted the written consent of any of the national fraternity organizations for use of their Greek names and insignia. Therefore, I would appreciate it if you would promptly communicate with the Executive Secretaries of all organizations in your Conferences for the purpose of ascertaining this information for me (CX 481B; emphasis supplied).[56]

362. It is important to note that Myers did not seek the approval of the IRAC trustees prior to sending his October 21 letter

[54] It should be noted that Esquire House's advertising material which O'Leary sent to Myers (CX 514B–C) was actually an appeal by Esquire House to serve as an "official" outfitter to the fraternities. Esquire House offered to distribute its blazers through the Central Offices of the fraternities and to pay the fraternities a royalty. Esquire House offered to deal with the fraternities in the same manner as Balfour. Myers, however, advised Esquire House that its proposal was "objectionable to the national college fraternities" (CX 515).

[55] This is the same company to which IRAC had written the year previous while Mr. Balfour was still IRAC chairman (CX 307).

[56] As late as February 1955 (CX 517 A–B) and November 1955 (CX 565) Myers still did not know whether the violators had official contracts.

as is evidenced by Myers' October 20 communication wherein he informed the IRAC trustees that he had already written [57] to the firms after receiving information from Mr. Balfour (CX 479A–C). The IRAC trustees, prior to receiving Myers' communication, knew neither that Mr. Balfour had sent Myers the names of the violators, nor that Myers had written to them.[58] The IRAC trustees did not approve Myers' sending the October 21 letters before he sent them and could only have approved of his action after the letters were mailed.

363. The record does not contain any indication that Myers consulted with the IRAC "Law Committee" on the matter, which Committee Myers established upon taking office (RX 252, 253). It was not until November 1 that he referred the matter to the Law Committee for action (CX 480).

Effort to File a Complaint Against The Violators With the FTC

364. In addition to sending letters directly to Balfour's competitors, Myers, at about the same time, also conferred with Babcock of the Federal Trade Commission (RX 254). This was done without consultation with the IRAC "Law Committee" or the approval of the IRAC trustees. In his communication of November 1, 1954, Myers simply advised the trustees that he had already conferred with Harry A. Babcock of the Federal Trade Commission and was now communicating with the trustees to have them look for fraternities that would be willing to authorize Myers to file a complaint with the Federal Trade Commission.[59]

365. The fraternities showed no interest in filing a complaint with the Federal Trade Commission. More than two months after his first appeal for volunteers, Myers stated:

> I also have not yet received authorization from *any* national organization in *any* of the Conferences directing me to file complaints with the Federal Trade Commission. . . . (CX 481B; emphasis supplied.)

Four months thereafter the IRAC Law Committee appealed to the

[57] Although Myers advised the IRAC trustees on October 20 that he had already written to the violators, Myers did not actually send the letters until October 21 (CX 279, 281, 309, 311, 312). Myers advised the IRAC trustees that copies of the letters he had sent would be mailed to the trustees "later" (CX 479B).

[58] Upon taking office as IRAC chairman, Myers set up his system of formally numbered "Communications" because "Decisions on [IRAC] matters must of necessity be made by correspondence" (RX 252C). Available Myers' Communications to the IRAC trustees prior to October 20 contain no indication of Myers' intention to write letters to violators on behalf of IRAC (CX 478; RX 252, 253).

[59] Myers' Annual Report of May 1955 to the IRAC trustees confirms that Myers conferred with no one except Mr. Balfour prior to his first conference with Babcock of the F.T.C. (RX 251P).

national fraternities and sororities for authorization (RX 251B). Six months later Myers again expressed "personal disappointment" that the fraternities and sororities had failed to respond to his call for volunteers and had an "apparent lack of interest" in this "important service offered by IRAC." Myers felt that it should be impressed upon the fraternities and sororities that full support of this project would not involve them in a lawsuit, that IRAC merely wanted to file complaints with the Federal Trade Commission and wanted authority from the fraternities to do this (CX 519B). Again on October 18, 1955, Myers reiterated that he had been "most disappointed" at the response from the fraternities and sororities and again he explained that IRAC was not asking for authority to file lawsuits but merely to petition for a Federal Trade Commission investigation (CX 482B).

366. Mr. Balfour himself acknowledged this lack of interest in a letter to Myers of January 3, 1956:

> 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 . . . The fraternities are at *last* badly worried over this situation. . . . (CX 568B; emphasis supplied.)

367. On October 1, 1955, Myers announced that he had hired Mr. Vernon Doane, of the law firm of Burns, Doane, Benedict and Irons of Washington, D.C., to assist the IRAC Law Committee in preparing and filing complaints with the Federal Trade Commission (CX 519A–B). There is no evidence showing that Myers sought advance approval of the IRAC trustees to do this. Myers made the announcement of his securing Doane after doing so, as shown by the October 1 IRAC minutes.[60]

368. Mr. Balfour's staff and his entire fraternity sales force were utilized in the campaign to "round up" volunteers among the fraternites and sororities. By letter of February 14, 1955, Miss O'Leary advised Myers that she was sending him under separate cover, copies of letters which Balfour had sent to the various central offices where Balfour's salesman had obtained proof of "violations" (CX 516A–B), and she further indicated:

> As soon as we have definite information from you with reference to the form of testimony which will be required at the [F.T.C.] hearings we will be in a position to complete correspondence with a few of the

[60] There is also no evidence showing that Doane was paid from IRAC funds for his eventual filing of the application for complaint with the Federal Trade Commission (RX 257A–D) although the pertinent IRAC financial reports are in the record. This may explain why Myers did not secure advance approval of the IRAC Trustees to hire Doane.

sororities [61] whom we have written for assistance. (CX 516A.)

369. Miss O'Leary offered to send a bulletin to all the fraternities and sororities furnishing whatever information was desired in connection with the filing of a complaint with the Federal Trade Commission (CX 516A–B). On March 11, 1955, Miss O'Leary issued such a bulletin urging those fraternities and sororities that were willing to permit the use of their names to contact Judge Frank H. Myers, Municipal Court House, Fourth and E Streets, NW., Washington, D.C. (CX 768A–C).

370. Myers also conducted a personal campaign to enlist volunteers. In early November 1955 Myers wrote to Theta Chi (CX 565A–B) and Zeta Tau Alpha (CX 567A–B) advising that Collegiate Specialty Company was violating their Greek names.[62] Myers asked both fraternities for permission to use their names in filing a complaint with the Federal Trade Commission against Collegiate Specialty as he was "anxious" to take action on such violations.

371. A year and a half after the first call for volunteers, some fraternities gave IRAC authorization to use their names in petitioning the Federal Trade Commission to issue a complaint (RX 256), and in May 1956 an application for complaint against Gadzik Sales Company [63] was filed with the Federal Trade Commission (RX 257A–D).

372. In addition to the efforts of his Attleboro staff and his sales force, Mr. Balfour himself was involved in the matter of the Federal Trade Commission complaint.

373. During this period involving the filing of the complaint Mr. Balfour was administrative secretary–treasurer of IRAC (Respondents' Answer, Par. 5), and he financed the IRAC operations. In February 1955 Myers visited Mr. Balfour for three days in Nassau, and shortly thereafter Myers advised O'Leary (CX 517) that while in Nassau, he and Mr. Balfour discussed a number of IRAC matters, and no doubt Mr. Balfour would advise her "respecting *our* decisions in these matters" (CX 517A; emphasis supplied). During Myers' three-day visit to Nassau, Mr. Balfour urged him to file a complaint with the Commission

[61] One of the sororities to whom Miss O'Leary had written for assistance was Delta Delta Delta (CX 780). A copy of Miss O'Leary's letter to Delta Delta Delta was sent to Mr. Balfour who was in Nassau at the time.

[62] It is interesting to note that Myers also asked both fraternities whether they had registered trademarks of their names and insignia. It will be recalled that more than a year previous Myers had written to Collegiate Specialty advising that *all* national fraternities had registered their names and insignia as trademarks (CX 312). Myers obviously made such representation without actually knowing which, if any, fraternities had registered trademarks.

[63] Total sales of the Gadzik Sales Company in 1956 were $19,895 (CX 450).

without waiting for the fraternities' permission. This is evident from the following statement of Myers in his letter to O'Leary:

> I am still of the opinion that it will be necessary to have written authorization from the fraternities and sororities . . . before we take any action in filing a complaint with Mr. Babcock of the Federal Trade Commission. (CX 517A.)

374. Mr. Balfour was kept informed of developments. For example, Myers wrote to Theta Chi and Zeta Tau Alpha (CX 565, 567) requesting their permission to file a complaint, sending carbon copies of his letters to Messrs. Balfour, Doane and Pledger. When Miss O'Leary wrote to Delta Delta Delta for assistance, a copy was sent to Mr. Balfour who was in Nassau at the time (CX 780). Mr. Balfour assured he was kept informed, as evidenced by his letter to Myers wherein he states:

> As soon as your conference with Charles Pledger and Vernon Doane is completed with reference to the Federal Trade Commission, *please let me have all facts.* (CX 568B; emphasis supplied.)

375. Mr. Balfour urged Myers to press the complaint with the Federal Trade Commission:

> The fraternities are at last badly worried over this situation and they will be eternally grateful to IRAC if you can prevail on the Federal Trade Commission to handle the situation. (CX 568B.)

376. Mr. Balfour personally participated in discussions of the matter with Federal Trade Commission personnel in behalf of the fraternities (Tr. 2854; RX 221A–B; CX 743B).

377. The record, therefore, leaves no doubt that Mr. Balfour, the Balfour Company and IRAC were indistinguishably bound together.

Buchroeder Litigation

378. On February 20, 1959, two suits were filed against respondents' principal competitor, Buchroeder, in the name of Sigma Chi and Phi Delta Theta in the United States District Court for the Western District of Missouri (RX 263). These suits were brought at the instance of IRAC and at the outset were financed with IRAC funds (CX 492A, 535C). IRAC did not vote to sue Buchroeder until October 1958 (CX 535C). Before that respondents were attempting to bring about such litigation. As early as February 1955 Mr. Balfour was writing to fraternities advising that IRAC was about to file suit against "the violators" (CX 780D). At the same time Miss O'Leary was writing to fraternities on IRAC stationery attempting to enlist their support and guaran-

teeing all expenses [64] for an IRAC lawsuit to seek injunctions and damages against the "more important violators" (CX 282, 564B). In October 1957 Balfour told its salesmen that IRAC had "voted to sue one of the competitors who is illegally attempting to sell fraternities and sororities" (CX 464B). And again in December 1957 Mr. Balfour told William Underwood, a salesman not working for Balfour, that the fraternities had recently voted to file suit against one of the "chief violators" of fraternity names and insignia (RX 74A). This was before IRAC had actually voted to sue.

379. The fraternities were not interested in getting involved in litigation. Despite respondents' urgings, both directly and through IRAC, most of the fraternities have not bothered to secure trademarks so as to "legally" protect their insignia. When Myers called for fraternities to volunteer as applicants in filing a complaint with the Federal Trade Commission, he met with disappointment. Myers had to repeatedly remind the fraternities that he was seeking their permission not to file a lawsuit, but merely to request the Federal Trade Commission to conduct an investigation. The fraternities were not interested in IRAC and for a time discontinued their financial contributions toward the support of IRAC (Tr. 4823–24; CX 484A–B, 531 pp. 13–14, 533C, 535J, 538; RX 260A; CX 522A–B).

380. During the years that Mr. Balfour was chairman of IRAC, and later as administrative secretary-treasurer, and for more than three years after Yeager had assured the Commission that all connections between Balfour and IRAC had been severed (RX 70), Mr. Balfour was the power behind IRAC as previously discussed. Until December 1959, he controlled the IRAC funds and was the only person who had the authority to disburse such funds [65] (Tr. 4827–28; RX 259A; CX 486, 525, 549, 578). During the years prior to the initiation of the IRAC suits against Buchroeder, Mr. Balfour continually set aside a substantial part of the IRAC funds to be held for an "unexpected development or emergency" (CX 511B, 513K, 521A, 522B). He deposited the IRAC funds with The First National Bank, Attleboro, Massachusetts, and would not allow them to be spent (CX 487, 521A, 522, 571, 572, 581). After Buchroeder filed his answer and counterclaim charging Mr. Balfour, the Balfour Company and the fra-

[64] One would question by what authority Miss O'Leary who had no official position in IRAC could guarantee IRAC's paying expenses for litigation, or for anything else for that matter.

[65] As late as May 1960, some fraternities thought that Mr. Balfour was still in charge of IRAC funds (CX 533).

ternities with conspiracy in restraint of trade, Mr. Balfour gave up his control of IRAC funds (Tr. 4842; RX 259A; CX 550B, 549, 494A, 495, 580; par. 351, *supra*).

381. Mr. Balfour was the first to propose Buchroeder as the party defendant and he made his proposal directly to the chairman of the IRAC Law Committee, a year before the IRAC vote on the matter was taken (CX 743). The problem remaining was the selection of the proper party plaintiff. Myers stated in a letter to Mr. Balfour of December 11, 1957:

> In respect to the proposed Buckroeder [sic] [66] suit in the name of Phi Delta Theta, I have been awaiting the receipt from the fraternity secretary of certain information that he was going to send me, at which time I would ask that the IRAC Law Committee meet with George Ward (past president of Phi Delta Theta) and myself to go over the factual situation to be certain that we are on sound grounds. . . . In other words, we must assure ourselves that Phi Delta Theta has complete control legally over the use of its name and insignia. . . .[67] (CX 674; Tr. 2782–83).

382. Shortly thereafter, on January 13, 1958, Mr. Balfour wrote to George Ward of Phi Delta Theta (CX 573) urging speed on Phi Delta Theta's granting permission to use its name so that the IRAC litigation could be instituted before the "ardor of our supporters may cool." Mr. Balfour further assured Ward that IRAC would guarantee the expenses of the litigation and that Phi Delta Theta would not be financially involved.[68] This is particularly significant because Mr. Balfour was not an official of IRAC or on the IRAC Law Committee at this time.

383. Again in April 1958 Mr. Balfour urged Myers, who in turn urged Daubin of the IRAC Law Committee, to choose Buchroeder as the party defendant, as is evident from Myers' letter to Daubin of April 17, 1958 (CX 673):

> I am in receipt of a letter from Mr. Balfour advising of innumerable violations of jewelry contracts by the Buchroeder Company of Columbia, Missouri, which is offering official insignia at reduced prices and using poor quality of pearls. . . . Mr. Balfour feels that any legal action should be first directed at this company which seems to be the major violator in this field. With this suggestion, I am in accord and I would suggest that you consult with the other members of your committee at an early date on that point.[69]

[66] It is noted that Myers misspelled Buchroeder's name three times in this letter. This suggests that Myers had, up to that point in time, no familiarity with the written name. He simply spelled it as he had heard it from Mr. Balfour.

[67] This statement that "we must assure ourselves that Phi Delta Theta has complete control legally over the use of its name and insignia" contrasted with earlier Myers' letters to fraternities stating that all national fraternities do have legal trademarks (see CX 279, 281).

[68] It should be noted that only Mr. Balfour and Miss O'Leary guaranteed the fraternities that IRAC would pay all the expenses of suit (CX 282, 564B).

[69] As of April 17, 1958, the final selection of Buchroeder had not yet been made (CX 743B).

On September 11, 1958, Myers advised Daubin, chairman of the IRAC Law Committee (CX 729) that Phi Delta Theta had amended its statutes so as to better qualify as a party plaintiff. Myers then states:

> Under the circumstances it would not appear that we are in position to prepare the necessary suit against Buchroeder....[70]
>
> * * * * * * *
>
> As this question of litigation has been pending for some period of time being delayed by the inadequacy of proper fraternity statutes, I would appreciate it if we could make some progress in the matter at this time. . . . (CX 729.)

384. On September 19, 1958, Myers wrote to Mr. Balfour (CX 574) regarding the delay in starting the IRAC litigation. Myers stated that he was "as anxious as" Mr. Balfour to get some action started, and stated that the delay had not been the fault of IRAC but rather the difficulty in obtaining a proper party plaintiff.

385. On October 4, 1958, a meeting of the IRAC trustees, IRAC officers and Mr. Balfour was held at the Sheraton Park Hotel in Washington, D.C. (CX 535). At this meeting it was voted that the IRAC Law Committee be authorized to proceed at once to take the necessary steps to initiate suit and that IRAC would underwrite the expenditure of the necessary funds (CX 535C).

386. Mr. Balfour stated in a June 1, 1959, letter to Alpha Delta Pi: "Once the Buchroeder suit is won all of these violators will be automatically out of business." (CX 545.)

The IRAC Petition Filed Prior to the Complaint Herein

387. Prior to the issuance of the complaint in this proceeding, IRAC adopted a Resolution calling upon the Federal Trade Commission to "stay its hand" in the instant matter which involved only Mr. Balfour, the Balfour Company and BPA (Respondents' Motion to Produce, filed September 13, 1965, attachments D–2 & 3). Copies of this Resolution were sent to Senator Magnuson, Chairman of the United States Senate Committee on Commerce, and to Chairman Dixon of the Federal Trade Commission (Attachments B & D–1).

388. This was an attempt on the part of respondents to stop the Federal Trade Commission from proceeding further in this matter. This Resolution from IRAC asking the Commission to

[70] It is apparent that by September 11, 1958, the party defendant in the IRAC suit had been chosen. The IRAC trustees as of this date had not voted litigation nor approved Buchroeder as party defendant (CX 673).

"stay its hand" and not proceed against Balfour is a strong indication of Mr. Balfour's power over IRAC. It is similar to a situation which had occurred just two years previously, shortly after the suits against Buchroeder were filed. In a letter of April 16, 1959, Mr. Balfour instructed IRAC Chairman Myers to send out a broadcast to all of the IRAC fraternities analyzing two letters which Buchroeder had sent to manufacturing and retail jewelers:

What I would like to have you do, Frank, is to write a letter on IRAC paper, over your signature analyzing in detail these two Buchroeder broadcasts and calling on all Fraternities for aid and assistance in this emergency. This, as you will recall, is what we did under the NRA fight, and as a result, we swamped the NRA Meeting in Washington with the highest type of fraternity professional legal men and women and won the case. (CX 580B.)

Respondents Operated BPA and Edwards Haldeman As Competitors

389. During the entire period pertinent to this proceeding, respondents owned BPA (Respondents' Answer, Para. Five). Respondents also owned Edwards Haldeman, which respondents have apparently put out of existence (Respondents' Answer, Para. Five). Respondents kept secret their ownership of Edwards Haldeman while it was in operation and kept secret their ownership of BPA until May 1959 (Tr. 2853–54; CX 370).

390. Special attention must be given to Mr. Balfour's *Special Announcement* of May 12, 1959, announcing the acquisition of BPA (CX 370A–B). Through this document, respondents advised the fraternities that Balfour had not owned and did not then own BPA, and that Balfour was about to acquire BPA at a substantial sacrifice to Balfour—and was doing so to protect the fraternities' names and insignia.

391. Because of its significance, this document is immediately hereinafter set forth in its entirety in numbered paragraphs.

SPECIAL ANNOUNCEMENT

(1) Burr, Patterson & Auld Company is one of the oldest manufacturing jewelers in the United States. It was founded in 1870, has been in continuous operation for over eighty years, and numbers among its contract customers some of the most important fraternal organizations in the country.

(2) For some time we have been fearful that this company would fall into the hands of people who might not operate it in accordance with the high standards always observed in the past.

(3) Control by disinterested parties of the large number of dies, tools, and other equipment owned by Burr, Patterson & Auld would, in our

opinion, have involved increased difficulties for the fraternities to protect their names and insignia.

(4) For this reason, the L. G. Balfour Company some time ago supplied additional capital in order that Burr, Patterson & Auld might maintain its traditional role in the fraternity field.

(5) Recently the retirement of the major Burr, Patterson & Auld stockholder presented the opportunity to the Balfour Company to take over completely the physical assets and control of the company.

(6) Effective July 1, 1959, Burr, Patterson & Auld will become an affiliate of the L. G. Balfour Company. It will, however, continue to operate an entirely separate organization. There will be no change in Burr, Patterson & Auld management or policies except they are now pledged to respect all fraternity regulations and contracts.

(7) Burr, Patterson & Auld salesmen, subject to your approval on their visits to campuses throughout the country, will offer favors and other items not only to their customers but also to accounts now being served under contract by the L. G. Balfour Company. Burr, Patterson & Auld salesmen will accept replacement orders for official insignia with your permission, but only as a special accommodation. Copies of such orders will be approved by the L. G. Balfour Company before processing and will be approved and shipped only after meeting official requirements and instructions. Under no circumstances will Burr, Patterson & Auld salesmen be permitted to write orders for any initiate fraternity badge order or for any women's fraternity or sorority official badges or insignia.

(8) A royalty system similar to the one used by the Balfour Company is being installed at Burr, Patterson & Auld offices in Detroit. Any jewelry sales made by Burr, Patterson & Auld to Balfour contract customers will be processed for royalty payments in the same manner had the order been handled by us. A periodic report of such sales will be made by Burr, Patterson & Auld to the L. G. Balfour Company. These additional royalty payments will be credited to your account.

(9) 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.

(10) 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. The L. G. Balfour Company is proud to associate itself with the Burr, Patterson & Auld organization, and welcomes the opportunities afforded by this association to extend still further the services and selections available to both Balfour and Burr, Patterson & Auld contract accounts.

Respectfully submitted,

L. G. BALFOUR COMPANY
(Signed) L. G. Balfour

392. The most obvious question raised by the announcement is, if the fraternities already knew that Balfour owned BPA, why

was it necessary to announce this ownership? The answer is obvious, they did not know. There are numerous documents which show that the fraternities did not know Balfour owned BPA prior to the 1959 announcement (CX 17A–B, 32, 469A, 475A, 543, 545, 665B, 667).

393. No one connected with IRAC, and none of the 5,000 recipients of the IRAC Bulletin, knew of the BPA acquisition since a "news item" on the "merger" was published in the IRAC Bulletin (CX 283D).

394. Balfour's employees were not told. Miss O'Leary, Mr. Balfour's "girl Friday" for more than 40 years, didn't know (Tr. 291). Mr. Licher, another long–time employee who has handled a variety of assignments within the company said: "Until the announcement came out, I had no definite proof." (Tr. 621.) Balfour's salesmen were never officially advised (Tr. 2031). Balfour's competitors did not know (Tr. 1823, 1852, 3283). BPA did not tell the fraternities (Tr. 2045, 2183), nor its salesmen (Tr. 2045, 2181). In fact, BPA warned their salesmen that a fine would be imposed if they discussed Balfour's possibly owning BPA. As former BPA salesman Conley testified:

> . . . I received a communication from the factory in Detroit . . . to the effect that some of the salesmen were guilty of mentioning that Burr, Patterson & Auld was [owned] or controlled by L. G. Balfour. They requested that we sign a statement not to say such things to our customers or any people we contacted. They said for every violation of the agreement we would agree to pay $100 fine or penalty. . . . (Tr. 2045.)

395. Respondents also did not disclose their ownership of BPA to the business world prior to the merger announcement. A Dun & Bradstreet Report of March 12, 1959 (CX 752A–C), two months prior to the Balfour announcement, does not reveal the true ownership. By contrast, a Dun & Bradstreet Report of October 26, 1961 (753A–E) states that "Burr, Patterson & Auld Company (Inc.)" is a "subsidiary of L. G. Balfour Company" (CX 753A).

396. Respondents knowingly misrepresented the ownership of BPA to state governmental authorities prior to the merger announcement. BPA's Annual Reports to the State of Michigan for the years 1951, 1955 and 1959 [71] affirmatively deny [72] that its stock was owned by another company (CX 746C, 747C, 748C).

[71] The 1959 report was submitted on April 27, 1959, two weeks before the merger announcement.

[72] The State of Michigan requires affirmative disclosure and identification of "every subsidiary or affiliated corporation owning stock . . . together with the number of shares" (CX 746C, 747C, 748C).

Balfour's State of Michigan reports fail to disclose the identity of its "subsidiaries"[73] in 1951 (CX 750E) and "subsidiary"[73] in 1955 (CX 751D). By contrast, BPA's Annual Report for 1960, after the merger announcement, discloses that the "L. G. Balfour Company" owns "100%" of BPA's stock (CX 749C).

397. Accordingly, the above evidence conclusively establishes that respondents kept their ownership of BPA secret until the merger announcement of May 12, 1959. The fact that they kept BPA's ownership secret supports the allegation that they also kept the ownership of Edwards Haldeman secret. The factual pattern with respect to the secrecy of ownership of Edwards Haldeman is the same as with that of BPA. Miss O'Leary did not know that Balfour owned Edwards Haldeman, as she testified:

Q. Did Mr. Balfour ever discuss with you whether or not he had any interest in or any ownership of or whether or not he was in any way associated with Burr, Patterson & Auld?

A. Definitely no.

Q. Would that same answer be true as to . . . Edwards Haldeman?

A. Right. I never knew of any ownership Mr. Balfour had other than the L. G. Balfour Company. (Tr. 288.)

398. Similarly, with respect to BPA, Balfour's salesmen were never officially advised of the ownership of Edwards Haldeman. A former salesman for 21 years until 1953 testified:

Q. . . . were you officially advised of the true Burr-Patterson ownership?

A. Not to the best of my knowledge, no, sir.

Q. And would that same be true of Edwards Haldeman?

A. I would say *in both instances* there was no official word received on that. . . . (Tr. 2031, emphasis supplied.)

399. Not only were the Balfour and BPA salesmen not advised of the true ownership of Edwards Haldeman and BPA, they were also led to believe that the three companies were actually competitors. As former Balfour salesman Dooling testified:

Q. Mr. Dooling, can you state for me who your competitors were in the fraternity and sorority field in 1951?

HEARING EXAMINER LYNCH: In the area in which you served.

THE WITNESS: Yes. Well, there was Edwards, Haldeman, and Burr-Patterson, and you mean in active competition . . .

Q. I mean in active competition with you.

A. *I would say those two are the ones.*

Q. And if we go to the year of 1952, who were your competitors then?

A. *Those were the only two competitors that I had,* as far as fraternity

[73] Respondents' counsel conceded that the two "subsidiaries" in 1951 were BPA and Edwards Haldeman and the "subsidiary" in 1955 was BPA (Tr. 5705).

jewelry was concerned, to the best of my knowledge. (Tr. 2030–31, emphasis supplied.)

As former BPA salesman Michaelis testified:

Q. . . . Who were your competitors in the period 1945 through 1954 when you left Burr-Patterson?

A. . . . My main competition then would still just be Balfour and Edwards Haldeman up until 1953. (Tr. 2212–13.)

Michaelis further stated that he had known David Nelson at one time as a "competitor" with Edwards Haldeman:

Q. Do you know Mr. Nelson's background, where he came from?

A. I knew of him *as a competitor* with the Edwards Haldeman (sic) Company.

Q. *As a competitor*, you say?

A. Yes, sir. (Tr. 2174, emphasis supplied.)

400. The Edwards Haldeman's 1951 sales catalog, the Book of Treasures (CX 367), makes no disclosure of Balfour's ownership. Respondents represent Edwards Haldeman as a "manufacturer",[74] when, in fact, the company was "never a manufacturer" (Tr. 765, 2964) but strictly a "distributor" or "jobber" for Balfour (Tr. 734, 2964). Any Balfour product sold by Edwards Haldeman was boxed in an Edwards Haldeman box (Tr. 3029).

401. Mr. Lynn, executive secretary of Pi Kappa Alpha from 1946 to 1959, when questioned by the Hearing Examiner, testified:

HEARING EXAMINER LYNCH: Getting back to the question of official jeweler, as I had understood it the answer to Mr. Karzen's question back in 1947 and 1948 and 1949, around that period, it was your understanding through gossip, rumor and so forth, that the Edwards Haldeman Company and Burr, Patterson, and Balfour were one and the same thing, is that right?

THE WITNESS: *No, I would not say one and the same thing*, those would not be my words, but in essence I knew there was *some interrelationship, but I didn't know what the interrelationship was*, and in our operations *they operated separately in dealing with us*, and had representatives. (Tr. 4292–93, emphasis supplied.) [75]

402. Accordingly, the record conclusively establishes that respondents kept secret their ownership of both BPA and Edwards Haldeman. The next question is: "Why"? The answer centers around the fact that both BPA and Edwards Haldeman operated

[74] The term "manufacturer" suggests an independent operation, especially in light of the fact that no disclosure of ownership by another company appears in the catalog.

[75] Coincident with Mr. Lynn's testimony, it is noted that in October 1954, Lynn sent a letter to Mr. Michaelis with separate carbon copies to L. G. Balfour Company, Burr, Patterson and Auld Company and Edwards Haldeman Company (CX 32).

exclusively, or nearly so, in the national college fraternity field as BPA still does today.

403. Respondents had three reasons for not revealing their ownership of their competitors. All three reasons relate to the national college fraternity products business:

1. Respondents' ownership of these two firms contractually guaranteed respondents practically all of the business of nearly all the national college fraternities.

2. Since respondents had no effective competition, they had to "create" competition among the sales forces of each of their firms by keeping their common ownership secret.

3. By not disclosing the ownership of BPA and Edwards Haldeman, Balfour avoided paying royalties on "pirate" sales made by BPA and Edwards Haldeman to fraternities under sole official contract with Balfour; and conversely, BPA and Edwards Haldeman avoided paying royalties on Balfour's "pirate" sales to BPA's and Edwards Haldeman's sole official contractees.

Through Secrecy Respondents Cornered All The Business

404. It will be recalled that at one time some of the national college fraternities required two or three official jewelers (Tr. 766, 2185, 4293–94; CX 17). This requirement was embodied in the fraternity's constitution or bylaws (Tr. 745). Those fraternities that formerly required three official jewelers, now only require one or two (Tr. 4292–95).[76]

405. Respondents secretly operated BPA and Edwards Haldeman to get all of the business of those fraternities that required two or three official jewelers, as Yeager testified concerning Edwards Haldeman:

> . . . they mainly operated for the fraternities that wanted two or three official jewelers. . . . (Tr. 766.)

And concerning BPA:

> Q. Now, you mentioned something sometime back about it is necessary that some of the fraternities which the Balfour Company sells to to have co-official jewelers?
>
> A. Yes, sir.
>
> Q. Could you tell me what you meant by that?
>
> A. Well, it is a statutory requirement of certain organizations that they have more than one official jeweler. . . .
>
> Q. By statutory, do you mean their constitution and by-laws?
>
> A. The constitution required it.

[76] Delta Tau Delta had three jewelers at one time: Balfour, BPA, and Edwards Haldeman; for the period 1951–61, Balfour and BPA were co-official jewelers to this fraternity (CX 17, 717A, 791).

Q. The fraternity constitution required it?
A. That is correct, and my own fraternity was one of those fraternities.
Q. *So this made it possible for the Balfour Company to be one and Burr, Patterson to be one?*
A. Correct. (Tr. 745, emphasis supplied.)

406. It will be recalled that of the 11 fraternities which have co-official jewelers, Balfour and BPA have been the co-official jewelers, to ten of them during the entire period pertinent to this proceeding. The eleventh fraternity, which is served on a co-official basis by Balfour and Miller Company, Detroit, Michigan, is a very small fraternity (CX 717A, 718).[77]

407. In addition to the "co-official" fraternities as described above, there are also some fraternities which traditionally have not wanted to deal with Balfour. These fraternities turned to BPA and/or Edwards Haldeman as their jewelers, not knowing that both firms were owned by Balfour. Mr. Balfour had to keep his ownership of BPA and Edwards Haldeman secret or run the risk of losing the business of such fraternities. An example of this is Kappa Kappa Gamma (hereinafter KKG).[78] Until 1946, this fraternity had co-official contracts with BPA and Edwards Haldeman (Tr. 2191–92). In 1946, KKG entered into a sole official jeweler contract with BPA (CX 665). For years KKG would not deal with Balfour (Tr. 842, 858). KKG, therefore, had a special clause inserted in its 1946 agreement with BPA which permitted KKG to cancel the contract in the "event of the sale, dissolution, merger or consolidation" of BPA (CX 665B). Since KKG was unwilling to deal with Balfour (Tr. 842, 858), BPA had to be kept in operation so that respondents could keep the KKG account, as Yeager testified:

Q. Who has the Kappa Kappa Gamma contract?
A. Burr, Patterson and Auld. *And one of the reasons we keep it open.*
Q. I didn't get that last statement.
A. I say one reason we continue to operate Burr, Patterson and Auld. . . . And people who have been customers of Burr, Patterson and Auld just from the standpoint of being customers over a long period of time. . . . (Tr. 806–08.)

As long as the true ownership of BPA was kept secret, Balfour

[77] It must also be kept in mind that BPA has had 35 sole official contracts with fraternities during the entire period 1951–1961 (CX 717A–H, 718) which were Balfour's by virtue of the BPA acquisition.

[78] Kappa Kappa Gamma is one of the largest national college fraternities in the country (CX 717C). As of 1961, KKG had 88 collegiate chapters, 342 alumnae chapters and a total membership of 64,634 (CX 728 [Leland's] p. 20).

had no need to fear loss of the KKG account.[79]

Respondents Had To "Create" Competition

408. One of the more obvious admissions by respondents of their monopoly position in, and their monopolizing of, the national college fraternity products market rests on the fact that respondents operated BPA and Edwards Haldeman secretly in order to stimulate competition at the salesmen's level. This admission was made by both Mr. Balfour and Mr. Yeager. Mr. Balfour testifying in explanation of his reasons for making the acquisition announcement said:

Number two, the fraternities. They had different ideas on it, were demanding that I come out and make a public announcement to their undergraduates, because we had not told the undergraduates. *We were trying to develop a sales competition here.* (Tr. 2853–54, emphasis supplied.)

And Yeager, explaining why Mr. Balfour never closed BPA, testified:

. . . from the *competitive angle at the sales level,* I insisted that we keep it open. (Tr. 809–10, emphasis supplied.)

409. Further evidence of Balfour's attempt to create competition between Balfour and BPA salesmen is demonstrated by the fact that at least in the early 1950's both Balfour and BPA had stores located in the same three college towns of Ann Arbor, Michigan; Columbus, Ohio; and Champaign, Illinois. In two of these towns (Ann Arbor and Columbus), the Balfour and BPA stores were on the same street within one block of each other (Compare CX 366, inside front cover, with CX 368, p. 1; Tr. 2056). In a fourth town, Lafayette, Indiana, Balfour had a "Sales Headquarters" and BPA had a store (Compare CX 366, inside front cover, with CX 368, p. 1).

Respondents Avoided Royalties

410. Mr. Balfour admitted in his May 1959 BPA merger announcement that theretofore royalties had not been paid to Balfour contract customers on jewelry sales to such customers by BPA, as is evident from paragraph 8 of his BPA merger announcement:

[79] This is further substantiated by the reaction of KKG to the merger announcement. Upon the announcement, Nelson, BPA's president, advised all the fraternities under contract with BPA that Balfour salesmen would commence selling novelties and favors to these fraternities. KKG objected to this and wanted BPA to continue making all sales to KKG. So, Nelson, BPA's president, re-wrote the letter to KKG agreeing that "Balfour salesmen and offices will not accept orders for KKG jewelry and this includes novelties and kindred items" (CX 667; Tr. 2997).

A royalty system similar to the one used by the Balfour Company *is being installed* at Burr, Patterson & Auld offices in Detroit. Any jewelry sales made by Burr, Patterson & Auld to Balfour contract customers *will be processed* for royalty payments in the same manner had the order been handled by us. *A periodic report* of such sales *will be made* by Burr, Patterson & Auld to the L. G. Balfour Company. These *additional royalty* payments will be credited to your account. (CX 370, emphasis supplied.)

411. By respondents own definition, a "pirate" is one who sells a fraternity's insignia products without having a contract with the fraternity (Tr. 464–65). Having no contract, a "pirate" is under no obligation to pay the fraternity a royalty on sales. Mr. Balfour, in paragraph 6 of his merger announcement, implied that BPA had been a "pirate" up to the very day of the announcement:

[BPA is] *now* pledged to respect all fraternity regulations and contracts. (CX 370, emphasis supplied.)

Mr. Balfour reiterated this in a letter dated June 1, 1959, responding to Alpha Delta Pi's congratulatory message on "taking over" BPA (CX 544):

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 545A, emphasis supplied.)

Mr. Nelson admitted that BPA "pirated" on Balfour contracts (Tr. 2975–76). In fact, he admitted that BPA had to do it:

We needed the volume. It is the only way we could really exist. (Tr. 2976.)

* * * * * * *

Q. Were the salesmen able to make a satisfactory living on sales to the fraternities and sororities under which Burr, Patterson had contracts?

A. No. (Tr. 2978.)

412. A former Balfour salesman described BPA's and Edwards Haldeman's pirating of Balfour contract customers as: " . . . that was the meat of their business. . . . (Tr. 2028.) BPA's former salesmen admitted pirating on Balfour contracts (Tr. 2050, 2185). Balfour salesmen pirated on BPA's contracts (Tr. 2028–29, 2051). Yeager admitted that Edwards Haldeman did not have contracts with all the fraternities whose jewelry is displayed in the Edwards Haldeman sales catalog (Tr. 765; CX 367). This is also true of BPA (CX 368). Respondents even made pirate sales of Chi Omega insignia the one social fraternity which respondents do not have under contract (Tr. 2029, 2051–52, 2186) but "would love to have" (Tr. 536).

413. In light of all the evidence that BPA and Edwards Haldeman pirated on Balfour contracts and that Balfour pirated on BPA and Edwards Haldeman contracts, it would have to be concluded that if Mr. Balfour paid royalties where he was under no contractual obligation to do so, he paid them out of the goodness of his heart. This record does not permit such a conclusion in view of the way respondents operated their business.

414. Mr. Nelson, president of BPA, admitted that prior to the merger announcement of 1959, BPA made no royalty payments to Balfour on BPA's sales to Balfour contract customers. BPA began making such payments to Balfour only after Mr. Balfour's merger announcement (Tr. 3027–28).

415. Respondents' failure to come forth with evidence which should be within their knowledge and under their control, establishes that respondents deliberately and willfully engaged in withholding from fraternities the royalties due them under respondents' contracts.

Why Did Balfour Make the May 1959 BPA Merger Announcement

416. Mr. Balfour's reason for giving up the advantages of operating BPA as a competitor is best expressed in his own words:

> Then I [heard] rumors. I knew [80] that Sigma Chi and Phi Delta Theta filed a suit against Buckroeder (sic) and I heard rumors that Buckroeder and Associates were going to claim that we were dealing under the table and so forth. (Tr. 2854.)

The High School Class Ring Market, the Principal Competitors and Their Sales Volume

417. The total annual high school class ring market is estimated to be in excess of $45,000,000 as of 1961 (Tr. 719, 4312). The three largest class ring companies in the United States are respondent Balfour Company, Josten's, Inc., Owatonna, Minnesota, and Herff Jones Company, Indianapolis, Indiana (Tr. 3290, 4336). Each of these three companies sells and distributes high school class rings nationwide (Tr. 3088, 3095, 5328, 5478).

418. The approximate dollar share of this market represented by each of these three companies' respective divisions which basically sell high school class rings is as follows:

(a) Balfour, class ring division—$10,954,000 in 1960 (CX

[80] This record establishes that Mr. Balfour's involvement went beyond mere "knowledge" of the suit. Mr. Balfour was primarily instrumental in bringing the suit against Buchroeder.

686M: Tr. 3096);

(b) Herff Jones, jewelry division—$9,250,000 in 1961 (Tr. 5329);

(c) Josten's, jewelry division—$8,600,000 in 1960 [based on 45 percent of Josten's total sales of $19,120,000 (Tr. 5474)].

Balfour's sales of high school class rings amounted to $7,721,-842 in 1960 (CX 686M).

419. There were approximately 26,000 high schools (public and nonpublic) in the United States during the school year 1960–1961 (Tr. 718; RX 136–137).

420. With respect to the class ring phase of this proceeding, complaint counsel alleges that respondent Balfour Company has attempted to monopolize the sale of high school class rings nationwide, and has monopolized the sale of high school class rings in the southeastern states. There is no issue in this proceeding, and complaint counsel does not claim, that Balfour's practices in the sale of class rings, including its use of "term contracts" in conformity with industrywide practice, constitute unlawful exclusive dealing violative of Section 5. Complaint counsel contends that "term contracts" are bad and have a bad effect upon competition. However, the record does not sustain complaint counsel's theory.

421. There is no proof that any act or practicie engaged in by Balfour in the sale of high school class rings or other high school products has had or is likely to have any substantial adverse effect upon any competitor or upon competition generally.

422. Balfour has no monopoly position in the sale of high school class rings or other high school products and has not attempted to monopolize such sales. Balfour utilizes the same types of business and marketing practices in its sale of high school class rings and other high school products as have been employed for many years by all class ring manufacturers.

423. A number of companies, such as Herff Jones, Josten's, Dieges & Clust and Balfour, manufacture and sell high school class rings (Tr. 1105, 3088, 3095–3096, 3261, 5327, 5473). All of these competitors sell class rings by means of term agreements of three to five years, and it is the usual practice in the ring industry to sell rings pursuant to three to five year term contracts (Tr. 1105–1106).

424. Balfour accounts for somewhere between 14 percent and 20 percent of total class ring sales to high schools. For example, according to complaint counsel's proposed findings, total sales of high school class rings in 1961 exceeded $45 million, while Bal-

four's sales of high school class rings were only $7,721,842 (CCPF p. 341; CX 686M). Thus, Balfour's share of total sales of high school class rings based on complaint counsel's own proposed findings is only 17 percent. Clearly, $45 million is a minimum figure for total sales of high school class rings. Mr. Yeager estimated total sales to be $50 million (Tr. 719). Thus, in all likelihood, Balfour's share of total sales of high school class rings is somewhat less than 17 percent.

425. The practices upon which the charges of monopolization and attempted monopolization of high school class rings are based on practices which have been utilized for many years by every other manufacturer of class rings throughout the industry.

426. This record conclusively establishes that Balfour's practices in the sale of high school class rings including the use of term contracts—far from being a means of monopolizing class ring sales—simply enable Balfour to remain competitive with the many other class ring sellers, including its larger competitors Herff Jones and Josten's, all of whom engaged in precisely the same types of marketing practices.

427. The record establishes that Balfour has many active and vigorous competitors in the sale of high school class rings. First, there are two competitors which, like Balfour, sell class rings nationwide, namely, Josten's, Inc., and Herff Jones Company, and each of these companies is larger than Balfour in sales of class rings (Tr. 4336; CCPF, p. 341).

428. In addition to these competitors on a nationwide basis, Balfour has many regional competitors. For example, in the New England area additional competitors include Dieges & Clust, Leavins Manufacturing Co., Panticoft Company, Baile Pin Company, Metal Arts Company, Kenney Company and College Seal and Crest Company (Tr. 3217–3218). In the Southeastern United States, Balfour's principal competitors are Herff Jones and Josten's, but in addition, Dieges & Clust and Star Engraving Company compete in that area (Tr. 3218).

429. The examiner is of the opinion that the acts and practices of the respondent Balfour in the sale of high school class rings and other high school products is no different than that of all of the major competitors in this field; furthermore, that the complaint in this proceeding was bottomed on Balfour's activities in the fraternity insignia jewelry and other fraternity products market and not illegal acts or practices in the high school class ring market. If complaint counsel or the Commission are of the opinion that the use of "term contracts" is an illegal practice,

the proper procedure, it seems, would be an industrywide investigation so that all the facts may be secured and all of the parties given an opportunity to express their views. The high school class ring market is a highly competitive market as this record discloses, but it is the examiner's opinion that it would be very unfair to single out Balfour for an alleged illegal practice that has been used by all of the major competitors in this field for the past 30 years. This case is not the proper vehicle to use to regulate the entire industry.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

2. Respondents L. G. Balfour Company, Burr, Patterson and Auld Company, and individual respondent Lloyd G. Balfour, in connection with the sale of national college fraternity insignia products, and in connection with the sale of high school class rings and other high school products, and in connection with all other products manufactured, processed, sold or distributed by said respondents, at all times relevant hereto, have been engaged in interstate commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

3. Respondents have attempted to monopolize, and have monopolized the manufacture, sale and distribution of national college fraternity insignia products, and have engaged in numerous unfair methods of competition and numerous unfair acts or practices in connection therewith for the purpose and with the intent and effect of maintaining, fostering and perpetuating such monopoly. Such unfair methods of competition and unfair acts or practices include, but are not limited to, harassing and threatening competitors with ligitation; instituting or causing others to institute litigation against competitors; disparaging competitiors; misrepresenting the number and extent of trademark protection existing in the national college fraternity insignia products market; entering into exclusive dealing arrangements with substantially all of the national college fraternities; entering into exclusive supply arrangements with suppliers of products especially desirous for sale or distribution to national college fraternities; acquiring competitors and operating such firms as secret competitors; and organizing, financing and utilizing fraternity organizations as an instrumentality to foster and maintain a monopoly in the national college fraternity insignia products market. All of which individually and collectively constitute violations of

Section 5 of the Federal Trade Commission Act.

4. Respondents have engaged in unfair methods of competition and unfair acts and practices in the manufacture, sale and distribution of fraternity products as defined herein in violation of Section 5 of the Federal Trade Commission Act by engaging in such acts and practices as, but not limited to, exclusive dealing arrangements with national college fraternities; by acquiring competitors and operating such firms as secret competitors; by enticing away key employees of competitors; by harassing and threatening competitors with litigation; by instituting or causing others to institute litigation against competitors; by entering exclusive supply arrangements with suppliers; by disparaging competitors; and by falsely representing the extent of trademark protection.

DEFINITIONS

For the purposes of the order to be issued in this proceeding, the following definitions shall apply:

(a) *Respondents,* unless otherwise indicated, shall mean L. G. Balfour Company, a corporation, its officers, agents, representatives, employees, subsidiaries, successors and assigns; Burr, Patterson & Auld Company, a corporation, and its officers, agents, representatives, employees, subsidiaries, successors and assigns; and Lloyd G. Balfour, an individual.

(b) *Fraternity* shall mean a college social or college professional fraternity or sorority or college honor or college recognition society having more than one chapter.

(c) *Fraternity products* shall mean products bearing the trademark or distinctive insignia of a fraternity (as defined in (b) above); including, but not limited to, such products as standard badges, jeweled badges, pledge buttons or pins, recognition pins, monogram pins, pendants, miscellaneous jewelry items, paddles, beer mugs, processed knitwear, blazers, party and dance favors, stationery, pennants and other novelty-like items.

(d) *Findings* shall mean any product used in the manufacture, fabrication or processing of insignia jewelry, service awards or specialty products including, but not limited to, tie bars, tie tacks, tie chains, cuff links, lapel pins or buttons, key chains, identification bracelets, belt buckles, pendants, compacts, vanities, cigarette lighters, billfolds, jewel or cigarette boxes and pens and pencils.

I

It is ordered, That respondents, in connection with the sale, offering for sale, or distribution of fraternity products in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall terminate all contracts, agreements, understandings or arrangements, written or oral, in effect with any fraternity relating in any manner to the manufacture, sale or distribution of fraternity products. Respondents shall send a written notice of termination to each said fraternity, together with a copy of this order; and a copy of such notice and order, together with a list of the fraternities to which said notice and order has been sent, shall be furnished to the Federal Trade Commission within thirty days thereafter.

II

It is further ordered, That respondents, in connection with the sale, offering for sale, or distribution of fraternity products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Monopolizing, or attempting to monopolize, the manufacture, sale or distribution of fraternity products by utilizing any plan, policy, method, system, program or device which has the purpose or effect of foreclosing competitors from the manufacture, sale or distribution of such products, or otherwise unlawfully forecloses, restricts, restrains, or eliminates competition in the manufacture, sale or distribution of such products.

(2) Entering into, maintaining or utilizing any contract, agreement, understanding or arrangement, written or oral, with any fraternity which designates, appoints, authorizes, grants or entitles respondents, or either of them, to be sole or exclusive supplier, or suppliers, of any or all types of fraternity products to said fraternity, or which requires or obligates said fraternity to purchase its requirements of any or all types of fraternity products from respondents, or either of them.

(3) Representing that respondents, or either of them, is the "sole official jeweler," "official jeweler" or "co-official jeweler" of any fraternity, or making any other statement or representation implying, directly or indirectly, that respondents, or either of them, is the sole authorized supplier or suppliers of any or all types of fraternity products to any fraternity.

(4) Holding any office in, making any financial or other contribution of value to, or participating in any manner in the

management of the affairs of any organization composed of more than one fraternity, such as, but not limited to, the Interfraternity Research and Advisory Council, National Interfraternity Conference, National Panhellenic Conference, National Panhellenic Council, Professional Interfraternity Council, Professional Panhellenic Association or Association of College Honor Societies.

III

It is further ordered, That respondents, in connection with the manufacture, sale, offering for sale, or distribution of fraternity products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing in any manner, directly or indirectly, that any competitor has manufactured, distributed or sold any or all types of fraternity products without permission or authorization of any fraternity or fraternities.

(2) Urging, inducing or coercing any fraternity or any officer, member or employee thereof, (a) to refrain from giving fair consideration to offers by respondents' competitors to sell any or all types of fraternity products to any fraternity or any member thereof, or (b) to deny respondents' competitors free and open access to the national offices or chapter houses of any fraternity, or (c) to cancel any existing contract or purchase order of respondents' competitors covering the sale of any or all types of fraternity products to any fraternity or to any member thereof.

(3) During a period of ten (10) years from the date of entry of this order, purchasing, merging or consolidating with, or in any way acquiring any interest in, any competitor engaged in the manufacture, distribution or sale of any or all types of fraternity products whose sales of said fraternity products constitute an amount in excess of ten (10) percent of the total sales of such competitor, unless permission to make such merger, consolidation or acquisition is first obtained from the Federal Trade Commission.

(4) Entering into any contract, agreement, understanding or arrangement, written or oral, with any manufacturer or distributor of any fraternity product, or any product intended for sale or distribution to any fraternity, that such supplier shall not sell said product, or products, to any competitor of respondents: *Provided, however*, That this paragraph shall not be construed as constituting a waiver by respondents, or either of them, of any lawful rights they may have to designs or styles of their

own creation, or as prohibiting any contract, agreement, understanding or arrangement with any supplier in respect to any product or products made with special dies and tools created or furnished by respondents, or either of them.

IV

It is further ordered, That respondents within one (1) year from the date this order becomes final, shall divest themselves, absolutely and in good faith, of all assets, properties, rights and privileges, tangible and intangible, of Burr, Patterson & Auld Company relating in any way to the manufacture, sale or distribution of fraternity products, including patents, trademarks, trade names, firm names, good will, contracts and customer lists. In such divestment no property above mentioned to be divested shall be sold or transferred, directly or indirectly to anyone, who at the time of the divestiture is a stockholder, officer, director, employee or agent of, or otherwise directly or indirectly connected with, or under the control or influence of, respondents, or any of respondents' subsidiaries or affiliated companies, or to any purchaser who is not approved by the Federal Trade Commission.

From and after the effective date of such divesture respondents shall refrain, for a period of ten (10) years, from selling any fraternity products to any fraternity that was under an official, co-official, or sole official jeweler contract with Burr, Patterson & Auld as of June 16, 1961.

V

It is further ordered, That respondents, in connection with the manufacture, sale, offering for sale or distribution of any of their products in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

(1) Falsely imputing to any competitor dishonorable conduct, inability to perform contracts, questionable credit standing, or falsely disparaging any competitor's products, business methods, selling prices, values, credit terms, policies or services.

(2) Enticing away employees or sales representatives from any competitor with the intent or effect of injuring any competitor or competitors: *Provided, however,* That this provision shall not be construed as prohibiting any person from seeking more favorable employment with respondents, or either of them, or to prohibit said respondents, or either of them, from hiring or offering employment to employees of a competitor in good faith and

not for the purpose of inflicting injury on such competitor.

(3) Entering into any contract, agreement, understanding or arrangement, written or oral, with any supplier of any finding or findings that such suppliers shall not sell said finding or findings to any competitor of respondents: *Provided, however,* That this paragraph shall not be construed as constituting a waiver by respondents, or either of them, of any lawful rights they may have to designs or styles of their own creation, or as prohibiting any contract, agreement, understanding or arrangement with any supplier in respect to any finding or findings made with special dies and tools created or furnished by respondents, or either of them.

APPENDIX A–1

L. G. Balfour Co.—Docket No. 8435

Tabulation of men's national social fraternities, showing their contracts with L. G. Balfour Co. and Burr, Patterson & Auld Co., for the years 1951 through 1961 and total number of active chapters with memberships for the years 1953 and 1961.

Men's social fraternities	Member of [1]	L. G. Balfour official jeweler	BPA official jeweler	Co-official jeweler BPA with Balfour	Active chapters as per Leland's Annual			Active membership: As per Leland's Annual			Active membership: Per Baird's Manual, 1957	
					1953	1961	Change	1953	1961	Change	Chapters	Members
Acacia	N.I.C.	X			41	44	3	16,704	20,750	4,046		
Alpha Chi Rho	N.I.C.	X			18	23	5	8,373	10,016	1,643		
Alpha Delta Gamma		X			10	N/A	N/A	8,500	N/A	N/A	14	
Alpha Delta Phi	N.I.C.	X			28	28		25,600	17,000	(8,600)		
Alpha Epsilon Pi	N.I.C.	X			59	73	14	13,000	20,009	7,009		
Alpha Gamma Rho	N.I.C.		X		33	37	4	16,040	21,000	4,960		
Alpha Gamma Upsilon		X [2]			12	12		2,716	3,892	1,176		
Alpha Kappa Lambda	N.I.C.		X		12	19	7	3,089	4,581	1,492		
Alpha Phi Alpha		X			26	23	(3)				113	26,000
Alpha Phi Delta	N.I.C.	X			55	56	1	6,650	7,000	350		
Alpha Sigma Phi	N.I.C.	X			116	120	4	26,000	29,598	3,598		
Alpha Tau Omega	N.I.C.	X			N/A	4	N/A	63,143	78,241	15,098		
American Association of Common Clubs		X			5	6	1	N/A	3,000	N/A		
Beta Sigma Psi	N.I.C.	X			11	11		1,710	2,100	390		
Beta Sigma Rho	N.I.C.	X						2,750	4,000	1,250		
Beta Theta Pi	N.I.C.	X			97	99	2	55,543	64,424	8,881		
Chi Phi	N.I.C.	X			33	32	(1)	21,915	25,450	3,535		
Chi Psi	N.I.C.	X			26	27	1	17,059	19,260	2,201		
Delta Chi	N.I.C.	X			41	45	4	17,500	23,400	5,900		
Delta Kappa		X									7	1,000
Delta Kappa Epsilon	N.I.C.	X			50	49	(1)	31,500	27,500	(4,000)		
Delta Phi	N.I.C.	X			16	17	1	5,500	6,500	1,000		
Delta Psi	N.I.C.	X			9	9		3,900	4,428	528		
Delta Sigma Phi	N.I.C.			X	72	95	23	26,731	28,695	1,964		
Delta Tau Delta	N.I.C.			X	84	91	7	50,226	61,445	11,219		
Delta Upsilon	N.I.C.	X			71	80	9	34,000	39,000	5,000		
Farm House	N.I.C.	X			12	18	6	3,910	5,900	1,990		
Kappa Alpha Order	N.I.C.	X			75	81	6	40,425	49,568	9,143		
Kappa Alpha Psi			X								110	12,991
Kappa Alpha Society	N.I.C.	X			9	9		3,100	3,550	450		
Kappa Delta Rho	N.I.C.		X		18	19	1	6,100	7,900	1,800		
Kappa Nu	N.I.C.	X			15	16	1	4,000	5,950	1,950		
Kappa Sigma	N.I.C.	X			125	132	7	71,567	87,573	16,006		
Kappa Sigma Kappa		X			50	36	(14)	10,101	13,889	3,788		
Lambda Chi Alpha	N.I.C.	X			144	151	7	57,750	76,559	18,809		
Omega Psi Phi		X									90	18,000

Phi Alpha	N.I.C.				15	[3]	(15)	5,906	[3]	(5,906)		
Phi Delta Theta	N.I.C.	X			116	121	5	80,225	96,574	16,349		
Phi Epsilon Pi	N.I.C.	X			36	38	2	10,872	15,250	4,378		
Phi Gamma Delta	N.I.C.	X			81	86	5	44,000	66,000	22,000		
Phi Kappa				X	27	[4]	(27)	10,358	[4]	(10,358)		
Phi Kappa Psi	N.I.C.	X			58	61	3	40,386	47,029	6,643		
Phi Kappa Sigma	N.I.C.	X			44	46	2	18,100	24,000	5,900		
Phi Kappa Tau	N.I.C.	X			65	67	2	20,182	27,000	6,818		
Phi Mu Delta	N.I.C.	X			10	11	1	5,988	7,064	1,076		
Phi Sigma Delta	N.I.C.	X			27	47	20	7,956	17,239	9,283		
Phi Sigma Epsilon	N.I.C.		X		24	35	11	11,063	13,500	2,437		
Phi Sigma Kappa	N.I.C.	X			61	70	9	27,615	33,872	6,257		
Pi Kappa Alpha	N.I.C.			X	106	117	11	45,000	60,000	15,000		
Pi Kappa Phi	N.I.C.			X	45	50	5	12,550	20,026	7,476		
Pi Lambda Phi	N.I.C.	X			31	42	11	12,471	17,500	5,029		
Psi Upsilon		X			30	30		16,800	18,000	1,200		
Sigma Alpha Epsilon	N.I.C.	X			136	141	5	87,555	108,504	20,949		
Sigma Alpha Mu	N.I.C.	X			46	51	5	12,500	18,300	5,800		
Sigma Chi	N.I.C.	X			123	134	11	77,513	96,000	18,487		
Sigma Nu	N.I.C.	X			116	128	12	65,500	71,569	6,069		
Sigma Phi	N.I.C.	X			11	11		3,200	3,800	600		
Sigma Phi Epsilon	N.I.C.			X	123	149	26	42,300	60,117	17,817		
Sigma Pi	N.I.C.			X	46	52	6	13,720	18,136	4,416		
Sigma Tau Gamma	N.I.C.		X		45	54	9	14,344	18,410	4,066		
Tau Delta Phi	N.I.C.	X			26	29	3	5,800	9,711	3,911		
Tau Epsilon Phi	N.I.C.	X			41	52	11	10,000	17,250	7,250		
Tau Kappa Epsilon	N.I.C.	X			99	168	69	23,000	42,270	19,270		
Theta Chi	N.I.C.			X	111	124	13	37,626	49,740	12,114		
Theta Delta Chi	N.I.C.	X			29	29		14,000	16,000	2,000		
Theta Kappa Phi				X	21	[4]	(21)	6,000	[4]	(6,000)		
Theta Xi	N.I.C.			X	49	46	(3)	19,748	24,472	4,724		
Triangle	N.I.C.		X		17	20	3	6,900	8,706	1,806		
Zeta Beta Tau	N.I.C.	X			47	48	1	14,500	20,100	5,600		
Zeta Psi	N.I.C.	X			32	35	3	15,515	16,171	656		
Phi Kappa Theta	N.I.C.			X	[4]	51	51	[4]	18,859	18,859		
Total					3,257	3,601	344	1,485,795	1,850,347	364,552	320	57,991
					10	N/A	N/A	2,500	N/A	N/A	14	N/A
					N/A	4	N/A	N/A	3,000	N/A		
					3,267	3,605		1,488,295	1,853,347	364,552		

[1] N.I.C. National Interfraternity Conference.
[2] Co-official with Miller Co. of Detroit.
[3] Merged with Phi Sigma Delta.
[4] Phi Kappa Theta formed by merger of Phi Kappa and Theta Kappa Phi.
Note.—Figures in parenthesis denotes decline.

APPENDIX A–2

L. G. Balfour Co.—Docket No. 8435

Tabulation of women's national social fraternities, showing their contracts with L. G. Balfour Co. and Burr, Patterson & Auld Co., for the years 1951 through 1961 and total number of active chapters with memberships for the years 1953 and 1961.

Women's social fraternities	Member of [1]	L. G. Balfour official jeweler	BPA official jeweler	Co-official jeweler BPA with Balfour	Active chapters as per Leland's Annual			Active membership: As per Leland's Annual			Active membership: Per Baird's Manual, 1957	
					1953	1961	Change	1953	1961	Change	Chapters	Members
Alpha Chi Omega	N.P.C.	X			76	92	16	35,628	48,239	12,611		
Alpha Delta Pi	N.P.C.	X			81	102	21	37,615	50,850	13,235		
Alpha Epsilon Phi	N.P.C.		X		39	48	9	12,096	19,000	6,904		
Alpha Gamma Delta	N.P.C.	X			60	85	25	25,422	36,000	10,578		
Alpha Kappa Alpha	N.P.C.		X								101	20,551
Alpha Omicron Pi	N.P.C.	X			56	69	13	21,449	29,598	8,149		
Alpha Phi	N.P.C.	X			50	73	23	26,000	31,000	5,000		
Alpha Sigma Alpha	N.P.C.	X			40	40		13,154	17,585	4,431		
Alpha Sigma Tau	N.P.C.		X		24	27	3	6,600	9,000	2,400		
Alpha Xi Delta	N.P.C.	X			65	79	14	28,000	37,000	9,000		
Beta Sigma Omicron	N.P.C.			X	17	16	(1)	8,361	17,900	9,539		
Chi Omega[2]	N.P.C.				115	125	10	54,976	73,530	18,554		
Delta Delta Delta	N.P.C.	X			96	105	9	52,300	67,000	14,700		
Delta Gamma	N.P.C.	X			80	88	8	35,386	48,000	12,614		
Delta Phi Epsilon	N.P.C.	X			18	24	6	5,000	6,000	1,000		
Delta Sigma Theta	N.P.C.	X [3]									111	N/A
Delta Zeta	N.P.C.		X		73	129	56	24,257	40,511	16,254		
Gamma Phi Beta	N.P.C.	X			59	70	11	29,500	37,789	8,289		
Iota Alpha Pi	N.P.C.	X			10	11	1	4,500	5,600	1,100		
Kappa Alpha Theta	N.P.C.	X			78	85	7	44,095	56,175	12,080		
Kappa Delta	N.P.C.	X			82	100	18	33,900	47,500	13,600		
Kappa Kappa Gamma	N.P.C.		X		83	88	5	51,040	64,634	13,594		
Phi Mu	N.P.C.	X			68	81	13	27,000	35,600	8,600		
Phi Sigma Sigma	N.P.C.	X			23	24	1	6,194	8,506	2,312		
Pi Beta Phi	N.P.C.	X			100	105	5	58,242	73,964	15,722		
Pi Kappa Sigma					31	[4]	(31)	11,013	[4]	(11,013)		
Sigma Delta Tau	N.P.C.	X			27	36	9	6,853	11,221	4,368	39	N/A

Sigma Gamma Rho	N.P.C.		X									
Sigma Kappa	N.P.C.	X			61	97	36	22,229	32,195	9,966		
Sigma Sigma Sigma	N.P.C.	X			54	57	3	17,051	23,397	6,346		
Theta Phi Alpha	N.P.C.		X		14	17	3	6,050	7,401	1,351		
Theta Sigma Upsilon					16	[5]	(16)	4,693	[5]	(4,693)		
Theta Upsilon	N.P.C.	X			16	16		6,735	8,200	1,465		
Zeta Tau Alpha	N.P.C.	X			77	89	12	30,000	36,685	6,685		
Delta Sigma Epsilon	N.P.C.				44	[6]	(44)	12,892	[6]	(12,892)		
Total					1,733	1,978	245	758,231	980,080	221,849	101 150	20,551 N/A

[1] N.P.C.—National Panhellenic Council.
[2] Dorst Co. official jeweler.
[3] L. G. Balfour official jeweler since December 1956.
[4] Merged With Sigma Kappa in 1959.
[5] Merged With Alpha Gamma Delta in 1959.
[6] Merged With Delta Zeta in 1956 (Baird's Manual p. 445)
Note.—Figures in parenthesis denotes decrease.

APPENDIX A–3

L. G. Balfour Co.—Docket No. 8435

Tabulation of men's professional fraternities, showing their contracts with L. G. Balfour Co. and Burr, Patterson & Auld Co., for the years 1951 through 1961 and total number of active chapters with membership for the years 1953 and 1961.

Men's professional fraternities	Member of	L. G. Balfour official jeweler	BPA official jeweler	Co-official jeweler BPA with Balfour	Active chapters as per Leland's Annual			Active membership				
								As per Leland's Annual			Per Baird's Manual, 1957	
					1953	1961	Change	1953	1961	Change	Chapters	Members
Alpha Beta Alpha		X 1/54									14	763
Alpha Chi Sigma	P.I.C.[1]		X		45	48	3	25,157	30,027	4,870		
Alpha Delta Sigma		X			43	53	10	12,000	16,600	4,600		
Alpha Eta Rho		X									11	2,700
Alpha Kappa Kappa	P.I.C.	X			44	37	(7)	25,750	31,000	5,250		
Alpha Kappa Psi	P.I.C.	X			66	108	42	33,140	48,489	15,349		
Alpha Omega	P.I.C.		X		28	35	7	7,000	7,500	500		
Alpha Psi		X			8	8	0	4,500	6,042	1,542		
Alpha Rho Chi	P.I.C.		X		6	7	1	2,388	2,700	312		
Alpha Tau Alpha		X			19	20	1	5,722	8,040	2,318		
Alpha Zeta		X			49	52	3	31,000	39,823	8,823		
Alpha Zeta Omega		X			25	35	10	2,136	4,217	2,081		
Beta Alpha Psi		X			33	54	21	12,419	21,150	8,731		
Delta Kappa Psi		X									5	2,146
Delta Phi Epsilon			X		18	7	(11)	5,000	3,500	(1,500)		
Delta Pi Epsilon		X			N/A	34	N/A	N/A	6,000	N/A		
Delta Sigma Delta	P.I.C.	X			36	36	0	31,450	30,415	(1,035)		
Delta Sigma Pi	P.I.C.		X		83	108	25	31,963	43,246	11,283		
Delta Sigma Theta		X									11	
Delta Theta Phi	P.I.C.	X			81	60	(21)	33,675	41,800	8,125		
Gamma Eta Gamma		X			11	24	13	8,702	N/A	N/A		
Gamma Theta Upsilon		X 1/58			N/A	75	N/A	N/A	10,660	N/A		
Beta Lambda Sigma			X								21	
Kappa Alpha Mu		X									23	
Kappa Delta Phi		X			12	15	3	4,150	6,613	2,463		
Kappa Eta Kappa		X			3	4	1	1,835	2,312	477		
Kappa Phi Kappa	P.I.C.	3/53	X		43	39	(4)	18,338	23,321	4,983		
Kappa Pi Sigma		X			6	6	0	469	735	266		
Kappa Psi	P.I.C.	X			46	50	4	19,586	21,831	2,245		
Keramos			X		11	12	1	1,767	2,435	668		
National Block and Bridle			X								27	
Nu Beta Epsilon			X								10	
Nu Sigma Nu			X		45	42	(3)	27,906	24,299	(3,607)		
Omega Delta		X			8	5	(3)	3,415	5,250	1,835		
Omega Epsilon Phi		X			9	11	2	2,940	3,400	460		
Omega Tau Sigma	P.I.C.	X			N/A	8	N/A	N/A	3,850	N/A		
Phi Alpha Delta	P.I.C.	X			74	85	11	26,400	37,000	10,600		

Phi Beta Gamma	P.I.C.	X			9	9	0	1,550	2,218	668		
Phi Beta Phi	P.I.C.	X			37	35	(2)	19,346	20,212	866		
Phi Chi	P.I.C.		X		55	55	0	38,076	46,279	8,203		
Phi Delta Chi	P.I.C.	X			31	41	10	14,000	16,000	2,000		
Phi Delta Epsilon	P.I.C.	X			49	42	(7)	12,000	15,863	3,863		
Phi Delta Kappa		X 6/60			60	126	46	56,272	85,000	28,728		
Phi Delta Phi	P.I.C.	X			74	76	2	49,242	57,928	8,686		
Phi Epsilon Kappa	P.I.C.	X			38	42	4	8,663	13,200	4,537		
Phi Lambda Kappa	P.I.C.	X			13	15	2	4,000	5,400	1,400		
Phi Mu Alpha	P.I.C.	X			131	180	49	26,500	35,000	8,500		
Phi Psi		X									9	
Phi Rho Sigma	P.I.C.		X		27	26	(1)	21,138	23,619	2,481		
Phi Sigma Pi		X			13	13	0	3,585	5,600	2,015		
Psi Omega	P.I.C.	X			35	37	2	30,908	20,105	(10,803)		
Rho Pi Phi	P.I.C.	X			19	20	1	4,989	4,250	(739)		
Scarab			X		9	10	1	3,430	4,363	933		
Sigma Alpha Eta		X									43	643
Sigma Delta Chi		X			55	75	20	23,000	16,304	(6,696)		
Sigma Delta Kappa	P.I.C.	X 8/56			26	14	(12)	15,215	16,674	1,459		
Sigma Iota Epsilon		X									8	
Sigma Nu Phi		X			7	6	(1)	4,039	4,329	290		
Sigma Phi Delta		X			11	13	2	2,895	4,100	1,205		
Sigma Tau Delta		X[2]			86	103	17	11,280	15,600	4,320		
Tau Epsilon Rho		X			12	12	0	3,500	3,850	350		
Theta Kappa Psi	P.I.C.	X			7	8	1	13,705	14,304	599		
Theta Tau	P.I.C.	X			24	24	0	13,455	16,010	2,555		
Xi Psi Phi	P.I.C.	X			30	33	3	19,550	23,250	3,700		
Total					1,730	1,976	246	770,444	931,203	160,759	73	6,252
					N/A	117	N/A	N/A	20,510	N/A		
								8,702	N/A	N/A	109	N/A
					1,730	2,093	246	779,146	951,713	160,759	182	6,252

[1] P.I.C. Professional interfraternity conference.
[2] Verbal agreement.

NOTE.—Figures in parenthesis denotes decrease.

APPENDIX A–4

L. G. Balfour Co.—Docket No. 8435

Tabulation of women's professional fraternities, showing their contracts with L. G. Balfour Co. and Burr, Patterson & Auld Co., for the years 1951 through 1961 and total number of active chapters with membership for the years 1953 and 1961.

Women's professional fraternities	Member of [1]	L. G. Balfour official jeweler	BPA official jeweler	Co-official jeweler BPA with Balfour	Active chapters as per Leland's Annual			Active membership: As per Leland's Annual			Active membership: Per Baird's Manual, 1957	
					1953	1961	Change	1953	1961	Change	Chapters	Members
Alpha Alpha Gamma		X 9/56			8	10	2	1,600	1,095	(505)		
Alpha Delta Theta	P.P.A.	X			14	18	4	357	2,975	2,618		
Alpha Epsilon Iota		X 9/58			24	21	(3)	3,647	3,666	19		
Alpha Tau Delta	P.P.A.	X			12	16	4	800	1,500	700		
Delta Omicron	P.P.A.		X		29	48	19	4,905	6,800	1,895		
Delta Psi Kappa	P.P.A.	X			24	20	(4)	3,949	6,019	2,070		
Epsilon Eta Phi	P.P.A.	X			5	6	1	810	1,150	340		
Gamma Alpha Chi		X			32	25	(7)	4,069	5,828	1,759		
Iota Tau Tau		X			N/A	28	N/A	N/A	1,266	N/A		
Kappa Beta Pi	P.P.A.	X			35	37	2	3,500	4,255	755		
Kappa Delta Epsilon	P.P.A.		X		20	35	15	4,400	8,500	4,100		
Kappa Epsilon	P.P.A.	X			18	27	9	1,369	2,600	1,231		
Kappa Omicron Phi		X			29	29		3,188	5,229	2,041		
Lambda Kappa Sigma	P.P.A.	X			33	37	4	3,500	4,200	700		
Mu Phi Epsilon	P.P.A.	X			75	83	8	17,500	20,500	3,000		
Phi Beta	P.P.A.	X			32	28	(4)	11,176	13,091	1,915		
Phi Chi Theta	P.P.A.	X			28	37	9	6,650	9,214	2,564		
Phi Delta Delta	P.P.A.	X			40	46	6	2,315	3,117	802		
Phi Delta Gamma		X			13	16	3	2,690	4,000	1,310		
Phi Delta Pi			X		7	7		3,300	7,179	3,879		
Phi Gamma Nu	P.P.A.		X		20	19	(1)	4,493	5,834	1,341		
Phi Mu Gamma			X		5	7	2	5,573	5,850	277		
Phi Upsilon Omicron			X		39	46	7	12,000	16,500	4,500		
Pi Lambda Theta			X		41	47	6	37,000	55,000	18,000		
Sigma Alpha Iota	P.P.A.	X			101	121	20	25,000	33,115	8,115		
Sigma Delta Epsilon		X			17	19	2	5,000	1,719	(3,281)		
Theta Sigma Phi	P.P.A.	X			52	63	10	13,000	17,500	4,500		
Upsilon Alpha [2]					7	7		165	160	(5)		
Zeta Phi Eta	P.P.A.	X			28	32	4	6,761	9,169	2,408		
Total					788	906	118	188,717	255,765	67,048		
					N/A	28	N/A	N/A	1,266	N/A		
					788	934	118	188,717	257,031	67,048		

[1] P.P.A.—Professional Panhellenic Association.
[2] Official sorority pin supplied by Spies Bros. Inc. of Chicago, Ill.

Note.—Figures in parenthesis denotes decline.

APPENDIX A–5

L. G. Balfour Co.—Docket No. 8435

Tabulation of National Recognition Societies, showing their contracts with L. G. Balfour Co. and Burr, Patterson & Auld Co., for the years 1951 through 1961 and total number of active chapters with membership for the years 1953 and 1961.

National Recognition Societies	Member of [1]	L. G. Balfour official jeweler	BPA official jeweler	Co-official jeweler BPA with Balfour	Active chapters as per Leland's Annual			Active membership: As per Leland's Annual			Active membership: Per Baird's Manual, 1957	
					1953	1961	Change	1953	1961	Change	Chapters	Members
Alpha Delta (merged with Alpha Phi Gamma)												
Alpha Epsilon Rho		X			31	36	5	3,273	4,469	1,196		
Alpha Phi Gamma		X 9/59			[1] 40	49	9	[1] 1,705	580	(1,125)		
Alpha Phi Omega		X			269	319	50	41,000	65,000	24,000		
Alpha Psi Omega		X			305	340	35	22,340	38,599	16,259		
Arnold Air Society		X									177	
Beta Beta Beta		X			93	140	47	14,100	23,860	9,760		
Blue Key		X			92	114	22	37,187	46,712	9,525		
Chi Beta Phi		X			21	N/A	N/A	5,300	N/A	N/A	24	4,500
Chi Delta Phi		X			13	[4] 10	(3)	200	[4] 2,000	1,800		
Owens		X			[2] 16	N/A	N/A	4,500	N/A	N/A		
Delta Phi Alpha		X			35	98	63	9,829	17,000	7,171		
Eta Sigma Phi		X			N/A	66	N/A	N/A	1,200	N/A		
Gamma Alpha		X			14	12	(2)	8,506	10,697	2,191		
Gamma Sigma Epsilon			X		18	19	1	4,205	5,238	1,033		
Kappa Kappa Psi		X			66	98	32	N/A	2,100	N/A		
Kappa Mu Epsilon		X			49	59	10	10,000	15,515	5,515		
Kappa Pi		X			80	104	24	23,000	39,450	16,450		
Lambda Delta Lambda		X			13	15	2	1,942	2,587	645		
National Collegiate Players [3]					55	60	5	N/A	9,000	N/A		
Order of Artus		X									15	
Pershing Rifles		X									33	
Phi Lambda Upsilon		X			47	49	2	23,300	29,691	6,391		
Pi Alpha Xi		X 11/57									8	1,350
Pi Delta Epsilon		X			86	100	14	N/A	28,590	N/A		
Pi Delta Phi		X 4/54									66	
Pi Kappa Delta		X			180	202	22	27,318	34,000	6,682		
Pi Omega Pi			X								96	
Psi Chi		X			94	145	51	20,000	21,000	1,000		
Scabbard & Bende		X			121	149	28	61,249	85,000	23,571		
Sigma Delta Pi		X			93	116	23	N/A	17,000	N/A		
Sigma Delta Psi		X			97	124	27	2,311	3,275	964		
Sigma Mu Sigma		X			N/A	5	N/A	5,300	5,900	600		
Sigma Zeta		X			18	17	(1)	3,600	5,123	1,523		
Tau Beta Sigma		X			42	65	23	N/A	1,200	N/A		
Theta Alpha Phi		X			54	53	(1)	15,869	18,650	2,781		
Total					2,005	2,493	488	336,414	474,346	137,932	32	5,850
					N/A	71	N/A	9,800	N/A	N/A		
					37	N/A	N/A	N/A	59,090	N/A	387	N/A
					2,042	2,564	488	346,214	533,436	137,932	419	5,850

[1] 1953 membership includes Alpha Delta which was merged with Alpha Phi Gamma.
[2] 1953 membership as per Baird's Manual based on 1953–54 academic year.
[3] Erffmeyer & Son Co. official jeweler.
[4] Active chapters and membership as per Baird's Manual 1957.
Note.—Figures in parenthesis denotes decline.

APPENDIX A–6

L. G. Balfour Co.—Docket No. 8435

Tabulation of National Honor Societies, showing their contracts with L. G. Balfour Co. and Burr, Patterson & Auld Co., for the years 1951 through 1961 and total number of active chapters with membership for the years 1953 and 1961.

National Honor Societies	Member of [1]	L. G. Balfour official jeweler	BPA official jeweler	Co-official jeweler BPA with Balfour	Active chapters as per Leland's Annual			Active membership: As per Leland's Annual			Active membership: Per Baird's Manual, 1957	
					1953	1961	Change	1953	1961	Change	Chapters	Members
Alpha Chi [4]	A.C.H.S.				35	51	16	13,350	20,791	7,441		
Alpha Epsilon Delta	A.C.H.S.	X			63	77	14	13,500	21,000	7,500		
Alpha Kappa Delta		X [2] 8/57									73	N/A
Alpha Kappa Mu [5]	A.C.H.S.				52	58	6	3,664	5,517	1,853		
Alpha Lambda Delta	A.C.H.S.	X			71	107	36	24,448	39,889	15,441		
Alpha Omega Alpha	A.C.H.S.	X [3] 10/57			65	85	20	20,100	31,220	11,120		
Alpha Pi Mu	A.C.H.S.	X			12	26	14	N/A	2,800	N/A		
Beta Gamma Sigma		X			61	81	20	26,386	37,790	11,404		
Chi Epsilon	A.C.H.S.	X			44	51	7	9,700	14,895	5,195		
Delta Epsilon Sigma		X			67	84	17	3,814	6,000	2,186		
Delta Phi Delta	A.C.H.S.		X		35	37	2	9,829	11,016	1,187		
Delta Sigma Rhu	A.C.H.S.	X			79	85	6	17,000	17,750	750		
Eta Kappa Nu	A.C.H.S.		X		56	72	16	22,300	32,000	9,700		
Gamma Sigma Delta		X			10	20	10	9,833	18,000	8,167		
Iota Sigma Pi		X			23	19	(4)	4,000	5,936	1,936		
Kappa Delta Pi			X		190	228	38	106,300	164,000	57,700		
Kappa Tau Alpha	A.C.H.S.	X			8	38	30	3,316	5,193	1,877		
Mortar Board	A.C.H.S.	X			89	103	14	21,200	30,650	9,450		
Omicron Delta Kappa	A.C.H.S.	X			80	98	18	22,950	34,010	11,060		
Omicron Kappa Upsilon		X			42	46	4	8,300	11,750	3,450		
Omicron Nu			X		39	40	1	14,800	19,700	4,900		
Order of the Coif		X			43	47	4	9,000	11,000	2,000		
Phi Alpha Theta	A.C.H.S.	X			126	193	67	13,822	25,210	11,388		
Phi Beta Kappa		X			160	164	4	120,000	186,000	66,000		
Phi Eta Sigma	A.C.H.S.	X			81	109	28	44,356	68,617	24,261		
Phi Kappa Phi	A.C.H.S.	X			65	79	14	84,000	115,000	31,000		
Phi Sigma	A.C.H.S.	X			34	37	3	20,000	25,633	5,633		
Phi Sigma Iota	A.C.H.S.	X			40	47	7	8,700	11,484	2,784		
Pi Gamma Mu		X			112	128	16	54,000	69,630	15,630		
Pi Kappa Lambda		X			31	45	14	5,675	8,500	2,825		
Pi Mu Epsilon		X			53	74	21	21,900	26,000	4,100		
Pi Sigma Alpha	A.C.H.S.		X		63	99	36	9,000	14,500	5,500		
Pi Tau Sigma	A.C.H.S.	X			59	70	11	19,043	29,480	10,437		
Rho Chi	A.C.H.S.	X			44	63	19	6,842	11,162	4,320		
Sigma Epsilon Sigma [6]											8	N/A
Sigma Gamma Epsilon		X			47	55	8	10,000	11,000	1,000		
Sigma Pi Sigma	A.C.H.S.	X			80	110	30	12,000	18,000	6,000		

Sigma Tau	A.C.H.S.	X			29	32	3	21,000	27,500	6,500		
Sigma Theta Tau	A.C.H.S.	X			9	17	8	1,500	4,068	2,568		
Sigma Xi	A.C.H.S.	X			116	136	20	60,000	160,000	100,000		
Tau Beta Pi	A.C.H.S.	X			96	107	11	77,134	106,850	29,716		
Tau Kappa Alpha	A.C.H.S.	X			88	93	5	7,000	10,713	3,713		
Tau Sigma Delta	A.C.H.S.		X		12	13	1	2,950	3,651	701		
Xi Sigma Pi	A.C.H.S.	X			18	20	2	4,154	5,938	1,784		
Total								966,866	1,477,043	510,177		
								N/A	2,800	N/A		
					2,527	3,144	617	966,866	1,479,843	510,177	81	N/A

[1] A.C.H.S.—Association of College Honor Societies.
[2] Balfour official jeweler since August 1957.
[3] Balfour official jeweler since October 1957.
[4] Star Engraving, Houston, Texas.—official jeweler.
[5] Oral agreement with Metal Arts Co.
[6] Erffmeyer & Sons official jeweler.
Note.—Figures in parenthesis denotes decline.

APPENDIX A–7

L. G. Balfour Co.—Docket No. 8435

Tabulation of national fraternities which do not appear in Baird's 1957 Manual but are listed in Leland's 1961 Fraternity-Sorority Directory, showing their contracts with L. G. Balfour Co. and Burr, Patterson & Auld Co. for the years 1951 through 1961 and total number of active chapters with membership for the years 1953 and 1961.

	L. G. Balfour official jeweler	BPA official jeweler	Co-official		Active chapters			Active membership		
			LGB	BPA	1953	1961	Change	1953	1961	Change
Axis					1	1		450	399	(51)
Beta Sigma Kappa					12	12		900	1,290	390
Delta Mu Delta	X				6	8	2	1,665	2,800	1,135
Delta Omega	X				4	4		315	325	10
Eta Upsilon Gamma [1]	X				9	7	(2)	7,176	7,950	774
Gamma Delta	X				95	146	51	4,457	5,200	743
Iota Tau Sigma	X				6	6		1,732	1,856	124
Phi Alpha Sigma	X				4	4		1,850	1,850	
Phi Lambda Chi		X			N/A	6	N/A	N/A	2,005	N/A
Phi Sigma Gamma	X				5	5		1,950	2,169	219
Phi Sigma Tau	X				[2]	26	26	[2]	2,850	2,850
Sigma Epsilon Delta	X				4	4		1,665	2,200	535
Sigma Iota Chi [1]	X				13	10	(3)	14,300	21,125	6,825
Theta Phi	X 7/56				6	3	(3)	425	628	203
Zeta Mu Epsilon [1]	X				4	3	(1)	1,500	1,600	100
Sigma Phi Alpha	X 11/58				[3]	20	20	[3]	495	495
Total					169	259	90	38,385	52,737	14,352
					N/A	6	N/A	N/A	2,005	N/A
					169	265	90	38,385	54,742	14,352

[1] Junior college fraternities.
[2] Founded in 1955.
[3] Founded in 1958.
Note.—Figures in parenthesis denotes decline.

APPENDIX A–8

L. G. Balfour Co.—Docket No. 8435

Summary of national college fraternities, recognition societies and honor societies, showing active chapters with membership and contracts with L. G. Balfour Co. and Burr, Patterson and Auld Co. for the years 1953 and 1961

	Total number of active chapters		Increase	Total number of active chapters under official jeweler contract with L. G. Balfour and B.P.A.		Increase	Total membership		Increase	Total members of fraternities under contract with Balfour and B.P.A.		Increase
	1953	1961		1953	1961		1953	1961		1953	1961	
Men's social fraternities	3,591	3,935	344	3,601	3,939	338	1,543,786	1,908,338	364,552	1,546,286	1,911,338	365,052
	10	N/A	N/A				2,500	N/A	N/A			
	N/A	4	N/A				N/A	3,000	N/A			
Wonen's social fraternities	1,984	2,229	245	1,758	2,104	346	778,782	1,000,631	221,849	723,806	927,101	203,295
Men's professional fraternities	1,912	2,158	246	1,792	2,275	483	785,398	946,147	160,749	694,810	957,965	263,155
	N/A	117	N/A				N/A	11,808	N/A			
Women's professional fraternities	788	906	118	749	927	178	188,717	255,765	67,048	183,305	256,871	73,566
	N/A	28	N/A				N/A	1,266	N/A			
Recognition societies	2,424	2,912	488	2,292	2,923	631	342,264	480,196	137,932	352,064	530,286	178,222
	N/A	71	N/A				9,800	N/A	N/A			
	37	N/A	N/A				N/A	59,090	N/A			
Honor societies	2,608	3,225	617	2,375	3,108	733	966,866	1,477,043	510,177	929,752	1,453,535	523,783
							N/A	2,800	N/A			
Fraternities not listed in Baird's 1957 Manual	169	259	90	150	252	102	38,385	52,737	14,352	36,610	53,053	16,443
	N/A	6	N/A				N/A	2,005	N/A			
Total	13,476	15,624	2,148	12,717	15,528	2,811	4,644,198	6,120,857	1,476,659	4,466,633	6,090,149	1,623,516
	N/A	266	N/A				N/A	79,969	N/A			
	47	N/A	N/A				12,300	N/A	N/A			
	13,523	15,850	2,148	12,717	15,528	2,811	4,656,498	6,200,826	1,476,659	4,466,633	6,090,149	1,623,516

OPINION OF THE COMMISSION

JULY 29, 1968

By Jones, *Commissioner*:

I

Complaint in this matter was filed on June 16, 1961, charging respondents L. G. Balfour Company (Balfour), its wholly owned subsidiary Burr, Patterson & Auld (BPA) and Lloyd G. Balfour, Balfour's president and sole owner, with engaging in unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act in connection with the manufacture, sale and distribution of fraternity insignia products, college and class rings and commercial jewelry.[1] The principal allegations in the complaint fall into three categories:

1. Whether respondents' activities in connection with the manufacture and sale of these products unreasonably foreclosed competitors and potential competitors from access to substantial markets and denied to these competitors a reasonable opportunity to compete (Par. Six (1) and (2)).

2. Whether respondents monopolized or attempted to monopolize the sale and distribution of fraternity insignia jewelry and a full line of other fraternity insignia-bearing products, and engaged in various other unfair acts of competition in connection with the sale of these products (Par. Six (3), (6), (7), (8), (9), (10), (11), (12), (14)).

3. Whether respondents monopolized and attempted to monopolize the sale and distribution of college and class rings and engaged in various other unfair acts of competition in connection with the sale of insignia rings for high school classes and colleges including, among other things, the execution of exclusive dealing arrangements operating for periods of three to five years and

[1] Individual respondent L. G. Balfour is 84 years old. During the course of oral argument before the Commission, respondents' counsel advised the Commission that Mr. Balfour recently suffered several strokes and a heart attack and has not left his home in several months and urged that he be dismissed as a respondent. On the basis of those representations, at the close of oral argument, the Commission dismissed the complaint against L. G. Balfour personally. The Commission stated: "Without prejudicing the liability of the other respondents named in this complaint, based solely on humanitarian grounds. the action of the Commission against Mr. Balfour personally is dismissed" (Tr. of Oral Argument on Appeal Before the Commission, pp. 76, 82).

Throughout this opinion, the term "respondents" will refer to the three respondents named in the complaint.

sometimes indefinitely (Par. Six (4), (13)).[2]

The hearing examiner, in a lengthy and detailed opinion almost entirely devoted to the fraternity insignia phase of the case, found that the manufacture and sale of fraternity insignia jewelry and other fraternal insignia products constituted a separate and distinct market capable of monopolization, that respondents possessed 96.9% of this market and had attempted to and did monopolize this market and had engaged in various unfair acts and practices in connection therewith for the purpose of maintaining, fostering and perpetuating such monopoly (Conclusion 3, I.D. p. 476). The examiner also concluded that respondents engaged in unfair methods of competition in the manufacture, sale and distribution of other fraternal products bearing distinctive fraternal insignia such as badges, pins, mugs, blazers and similar products (Conclusion 4, I.D. p. 477). Among the unfair acts and practices which the examiner found had been engaged in by respondents were: the use of "official jeweler contracts," which had the effect of foreclosing substantial portions of the market to respondents' competitors; the use of exclusive supply contracts, which foreclosed sources of supply to competitors and inhibited potential competition; active disparagement of competitors and their products; the use of threats, coercion, and litigation to effect adherence to the "official jeweler" contracts; the acquisition and covert operation by Balfour of its two major competitors and the enticing away of key personnel of competitors to work for respondents (Conclusions 3, 4; I.D. pp. 476, 477).

On the college and class ring phase of the case the examiner concluded that respondents had not attempted to and did not monopolize the manufacture, sale and distribution of high school class rings and other high school products (Finding 422, I.D. p. 474) and that the record contained no proof that any act or practice by respondents, including their use of term contracts in the sale of these products, had or was likely to have any substantial adverse effect on commerce (F. 420–21, I.D. p. 474). The examiner found that the practices upon which the monopolization charges were based, and the other practices engaged in by Balfour in connection with the sale of high school products, were common to all members of this industry and were

[2] Charges regarding a third class of products, commercial and industrial emblematic jewelry, were apparently abandoned by complaint counsel during the course of the hearing. No findings were made by the examiner with respect to these products, the allegations respecting these products were not dealt with by counsel supporting the complaint in his appeal from the examiner's decision and accordingly we find these allegations to have been unproven and dismiss the complaint with respect to them.

engaged in by respondents to enable them to be competitive (F. 425–26; I.D. p. 475). Finally, he expressed the opinion that if respondents' term contracts constituted an illegal practice, "the proper procedure . . . would be an industrywide investigation so that all of the facts may be secured and all of the parties given an opportunity to express their views" (F. 429; I.D. pp. 475, 476).

Respondents have appealed from the fraternity insignia phase of the examiner's decision. They challenge the examiner's definition of the market, and also urge, *inter alia*, that their market position, however defined, was due to the efforts of national college fraternities to protect their distinctive insignia and to respondents' skill, the superior quality and workmanship of their products and to the confidence of the fraternities in respondents. Respondents argue generally that the various acts and practices attributed to them were not proven and did not amount to unfair methods of competition. Respondents also challenge the propriety and scope of the order issued by the examiner.

Counsel supporting the complaint have appealed from the class ring phase of the examiner's opinion, contending that the examiner erred in refusing to find that the sale of high school class rings constituted a proper submarket either nationally or in the Southeastern portion of the United States and that the examiner erred in finding that the high school class ring market is highly competitive, that there was no proof that Balfour's acts and practices in connection with the sale of high school rings and other products have or are likely to have any substantial adverse effects on competition and that it would be unfair to single out Balfour for a practice widely used in the industry. Complaint counsel contend that the high school class ring market is controlled by only three major companies and that most class ring sales by Balfour are made pursuant to term contracts, which are designed to and do foreclose competition in violation of Section 5 of the Federal Trade Commission Act. Finally counsel urge that respondents' activities in connection with the sale and distribution of high school class rings constitute an attempt to monopolize nationwide and monopolization in the Southeastern United States.

Counsel supporting the complaint urge entry of the order relating to the high school phase of the case which they presented to the hearing examiner at the conclusion of the hearing.[3]

II

FRATERNITY INSIGNIA MONOPOLY, MONOPOLIZATION AND UNFAIR ACTS OF COMPETITION CHARGES

We have carefully considered the record and detailed findings of the hearing examiner on the fraternity insignia phase of this case (F.F. 1–416, I.D. pp. 353–473). We conclude that the examiner's findings and conclusions are fully supported by reliable and probative record evidence and we hereby adopt these findings numbered 1–416 as our own.

The facts as found by the examiner and supported by substantial and probative evidence in the record show that the fraternity insignia market is a relevant market capable of monopolization within the criteria laid down by the Supreme Court in *Brown Shoe Co.* v. *United States*, 370 U.S. 294 (1962). In that case, the Court noted that the relevant market for purposes of Section 7 must be determined by reference to:

> such practical indicia as industry or public recognition of the submarket as a separate economic entity, the products' peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes and specialized vendors.[4]

In the instant case competing jewelers testified that they considered national college fraternity jewelry as a separate and distinct sales market. Entry into this market would require a separate and unique sales and distribution system, additional production facilities and the training of additional specialized sales personnel (F. 76–80; I.D. pp. 376–386). Furthermore, the national college fraternity system constitutes a unique and distinct class of purchasers whose interests are different from other organizations purchasing emblematic jewelry (F. 70–75; I.D. pp. 375, 376). The existence of several small firms, devoted

[3] The Retail Jewelers of America filed with the Commission a motion for leave to intervene, alleging principally that term purchase agreements executed in connection with high school and college class rings constituted exclusive dealing arrangements and an unfair method of competition within Section 5. The Commission denied the petition, which was opposed by both parties, but received the materials as a brief *amicus curiae*. Other parties also filed *amici* briefs while the case was pending on appeal to the Commission relating to the fraternal insignia jewelry aspect of the case, urging generally that official jeweler contracts are necessary in order to protect each fraternity's distinctive insignia and that the order entered by the examiner directly and adversely affects the fraternities' contractual rights as well as the freedom of fraternities under contract with BPA to choose as their official jeweler the particular supplier in which they have confidence.

[4] *Id;* at 325.

The law is clear that similar standards are applicable in defining relevant product markets in a monopolization case. *United States* v. *Grinnell Corp.*, 384 U.S. 563 (1966).

solely to the sale of insignia products to national college fraternities (F. 81–90; I.D. pp. 387–390) gives added support to the examiner's market definition. Respondents themselves maintain a separate sales department, known as the Fraternity Division, limited to the sale of fraternity insignia products. This Division has its own organizational structure, sales bulletin and commission schedules and utilizes its own competitive methods which differ from the sales methods employed by respondents' other product sales divisions.[5]

We therefore hold that the relevant product market for the purpose of this proceeding is the sale and distribution of national college fraternity jewelry and other fraternity insignia-bearing products.

In considering the universe of this market and respondents' share thereof, we are unpersuaded by respondents' assertion that total sales in the market are between 15 and 18 million dollars and that the examiner's total market figure of $6.1 million was in error. Respondents' figure was derived from opinion evidence offered by two jewelers, one of whom had not been involved in this market for over two decades. Other substantive support for respondents' contrary contention is absent; standing alone, this opinion evidence is substantially contradicted by the weight of the evidence relied upon by the examiner for his finding on the size of this market. We find that the record amply supports the examiner's finding that total sales in the market were about $6.1 million, of which respondents accounted for $5.3 million, or 86.9% (F. 6, 8, 79–90; I.D. pp. 355, 356, 384–390).

Respondents' sales share of 86.9% [6] approximates a monopoly under the guidelines set forth by Judge Learned Hand in *United States* v. *Aluminum Co. of America,* 148 F. 2d 416 (2nd Cir. 1945). In discussing whether Alcoa, with 90% of the relevant market, was a monopoly, Judge Hand said "that percentage is enough to constitute a monopoly; it is doubtful whether 60 or 64% would be enough; certainly 33% is not" (148 F. 2d at 424).

The law is clear, however, that the statute proscribes monopolization, not monopoly. Mere size is not illegal. Accordingly, it is necessary, as the examiner has done, to determine whether respondents' activities "though 'honestly industrial,' were not eco-

[5] (F. 12–14; I.D. pp. 357–360). The salesmen in Balfour's Fraternity Division worked on a fixed commission basis; salesmen in Balfour's other divisions set their own commissions.

[6] The examiner also determined, using a different method of computation, that respondents possessed 96.9% of the market, well within Judge Hand's formulation. This higher market share was determined by measuring the percentage of national college fraternities which had agreed to buy all their insignia products and jewelry from respondents. F. 192–213; I.D. pp. 415–520. *See* part I, *supra* for a discussion of the examiner's findings of monopolization.

nomically inevitable, but were rather the result of the firm's free choice of business policies." [7] Complaint counsel contend that many of these policies in and of themselves constituted unfair methods of competition. In expressing the appropriate test for determining the question of whether a company has monopolized a given industry, the Supreme Court pointed out in *United States* v. *Griffith,* 334 U.S. 100, 107 (1948):

It follows *a fortiori* that the use of monopoly power, however lawfully acquired, to foreclose competition, to gain a competitive advantage, or to destroy a competitor, is unlawful.

We agree with the examiner that respondents' activities in the manufacture, sale and distribution of fraternal insignia products constituted unfair methods of competition and monopolization in violation of Section 5 of the Federal Trade Commission Act and were not the result of inevitable economic factors (Conclusions 3, 4; I.D. pp. 476, 477).

The evidence does not support respondents' contention that they were the innocent recipients of their market share. Even if official jeweler contracts were desired by many fraternities, the evidence, as illustrated by the statement made on cross-examination by Judge Barnes, national president of the Sigma Chi Fraternity, does not show that it is necessary to have a single official jeweler (Tr. 4506B).

Q. Isn't it true that Sigma Chi could be serviced by having individual jewelers designated to serve certain regions of the country or certain states of the country?

A. Certainly. You could have an individual jeweler for every chapter if you wanted it.

The reasonable assumption to be drawn from this statement by one of respondents' primary witnesses is that fraternities desire a reliable source of supply; someone who is able to provide the service and products required by the fraternity. It does not follow from this that it is necessary for one jeweler to be the only authorized supplier of all fraternity jewelry, as respondents contend. We agree with the examiner that respondents' market position is not the result either of the need or of the desires of the fraternity system; rather, the causal factors of respondents' monopoly position were the various business activities knowingly employed by respondents to maintain their market share.

Respondents argue that, regardless of their market share or

[7] *United States* v. *United Shoe Machinery Corp.*, 110 F. Supp. 295, 341 (D. Mass 1953). *See also, Lorain Journal Co.* v. *United States*, 342 U.S. 143 (1951); *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 429 (2nd Cir. 1945).

intent, they lack the power to fix prices and exclude competition necessary for an illegal monopoly. Their own admissions in the record clearly refute this argument.

We are hard pressed to see the logic in respondents' argument that they do not have the power to exclude competition in the relevant market. By their own admission, no firms have entered the fraternity jewelry market in the past five years and only one firm is considered a major competitor in the sale of party favors. This "major competitor," L & L Party Favors, had total sales of $107,000 in the 1956–57 fiscal year.[8] Moreover, Balfour has successfully tied up all the major fraternities, save one, with exclusive dealer contracts, a prerequisite for sales. This practice foreclosed the market to potential competitors (F. 221; I.D. p. 422. See also, F. 218–28; I.D. pp. 421–424). The evidence indicates that respondents not only had the power to exclude competition but in fact they acted deliberately to eliminate competition. For example, respondents were the motivating force behind litigation instituted against their "chief competitor" Buchroeder.[9] Respondent L. G. Balfour wrote to the grand president of Alpha Delta Pi Sorority, saying "Once the Buchroeder suit is won all of these will be automatically out of business. . . ." (CX 545a). Moreover, the record amply supports the charge that respondents acquired another of its competitors, Burr, Patterson & Auld (BPA), and indeed attempted to keep this acquisition secret so as to preserve an aura of extant competition (See discussion *infra*).

We find that the record provides substantial support for the examiner's conclusion that respondents had power to exclude competition (F. 154, 214–28; I.D. pp. 406, 420–424).

That they had the power to fix prices is clearly shown by the fraternities' unquestioned acceptance of price and quality changes instituted by Balfour (F. 314–322; I.D. pp. 444–447). There is also evidence that Balfour obtained price increases from competitors on nonjewelry items when the latter's prices were below those of respondents (CX 226A–227).

The record supports the findings relating to the degree of statutory trademark protection possessed by the fraternities. On appeal, respondents implicitly accept this conclusion by arguing

[8] F. 216–217, I.D. p. 421. Respondents' major competition in the sale of fraternity jewelry, Buchroeder, had sales of $26,744 in 1960. (F. 154, fn. 35; I.D. p. 406.)

[9] Although suit was filed by two national college fraternities as nominal plaintiffs, and the expenses underwritten by IRAC, the record clearly shows that respondents were the motivating force behind the litigation. Comments made by Mr. Balfour, prior to consideration and approval of the suit by IRAC, show that it was Mr. Balfour and respondents who desired the suit, not IRAC or the fraternities (CX 464B).

that the fraternities had common law protection notwithstanding the lack of Lanham Act registrations. We think that this argument is irrelevant. Respondents were charged with misrepresenting the degree of the fraternities' statutory protection which jewelers selling crested products without authorization were infringing. The record supports this charge and the examiner's findings.[10] The logical assumption arising from these false statements is that they were used to stifle and inhibit competition. We find that they were in violation of Section 5 of the Federal Trade Commission Act.

Respondents' contentions that they have not disparaged their competitors are contradicted by the record evidence. In addition to calling their competitors "pirates,"[11] the legality and propriety of respondents' usage of this term we find unnecessary to determine, respondents also have stated the competitors' products were of secondary quality, poor workmanship and so forth.[12] Respondents introduced no evidence to support these statements. In addition, many of the firms so accused had the same suppliers as respondents.[13]

The examiner further found that respondents' exclusive supply arrangements with suppliers foreclosed competition and restrained potential competition (F. 301–13; I.D. pp. 440–443). Respondents argue that they were protecting their legitimate rights, did not tie up "premier" suppliers, as charged, and that sufficient sources of supplies remained. There is no support for respondents' contention that the examiner recognized their legitimate right to protect sources of supply and designs through the use of exclusive contracts; rather, the examiner found that the "arrangements foreclosed competition and eliminated competition in the national college fraternity market" (F. 301; I.D. p. 440).

There is no factual dispute over the existence and utilization of

[10] *E.g.*, CX 232, a letter from a supplier to one of Balfour's competitors, which states in part:

"As you know, the system of insignia is the property of the fraterniy including their coat-of-arms and Greek letter combinations. Practically all of the fraternities have the protection of the Lanham Act Federal Statues."

Similar statements are made in CX 278B, THE BALFOUR BULLETIN, a newsletter from respondents to the fraternities; CX 279, 281, 282, 290A, 291, 306A and 307A, letters from IRAC to respondents' competitors.

[11] We find it interesting that, in respondents' minds, competitors selling insignia jewelry without an "official jeweler, contract are "pirates," while the same is not true for Balfour who offers for sale Chi Omega jewelry, for instance, without such contractual authorization. (*See* CX 366, CX 368, catalogues of Balfour and BPA). If, as respondents assert, all national fraternities have Lanham Act protection, it would appear that Balfour is also a "pirate."

[12] *E.g.*, CX 278, a newsletter from Balfour to all fraternities; CX 780, letters from IRAC to Delta Delta Delta Sorority, written by Mr. Balfour and one of his employees.

[13] Tr. 1469–71; 1531–32, 2108–10, 2373–75. As will be shown, *infra*, respondents cut off these sources of supply to their competitors.

these types of contracts. The evidence amply supports the examiner's findings that competition was restricted by the competitors' inability to obtain and keep sources of supply. CX 202 and 204 are letters written by Balfour officials to a supplier relating to sales made by the supplier. These letters state that Balfour considers its supply sources exclusive and that no competing accounts should be served. Other such statements and evidence are shown in the citations given and quotations used by the examiner in his discussion (I.D. pp. 440–443).

We find that the evidence supports the examiner's findings that Balfour's contracts with suppliers eliminated potential competition by foreclosing sources of supply. These contracts also forced several small firms to abandon their activities in the national college fraternity market. We therefore hold that these contracts, in conjunction with the other activities engaged in by respondents, constituted unfair methods of competition in violation of Section 5.

We agree with the examiner's finding that respondents controlled IRAC and considered it nothing more than an extension of their own operations (F. 327–55; I.D. pp. 448–455). Respondents concede that Mr. Balfour organized IRAC when he was Chairman of the National Inter-Fraternity Conference. They contend, however, that although he continued his interest and support after resigning from formal office, this cannot be equated with control.

The record support for the examiner's findings contradicts these assertions. Mr. Balfour served as IRAC's Chairman from its founding until 1954; he then served as its Administrative Secretary-Treasurer until 1956. His resignation, as shown by the record, was caused in part by the Commission's insistence, not by the altruistic motives of Mr. Balfour.[14] The continual control Mr. Balfour exercised after 1956 is shown by a letter sent in 1959 by Mrs. Edith Crabtree, IRAC's Secretary-Treasurer to Judge Myers, Chairman of IRAC, in which she said:

> I was somewhat startled to receive the word that I was to handle IRAC finances. It was my understanding when you and Bally [Mr. Balfour] asked me to assume the IRAC Secretary-Treasurer position that the finances would actually be handled in Attleboro [Balfour's home offices] (CX 549).

Following the institution of the Buchroeder litigation, the finances were transferred from Attleboro to Washington. The check transferring the funds was signed by Mr. Balfour as Treas-

[14] RX 70, a letter from the Director of the Bureau of Investigation of the Commission to Mr. Balfour.

urer of IRAC (CX 259A). With this check, dated December 2, 1959, Mr. Balfour relinquished control of the funds—over three years after he resigned as Treasurer. Moreover, Judge Myers testified that contributions of money, time and effort by Mr. Balfour and the Balfour organization enabled IRAC to continue its existence (Tr. 4824–25; 4827).

By using IRAC, Balfour was able to police its contracts and pressure competitors through the guise of an impartial and respectable third party. IRAC's role in the trademark registration campaign and Buchroeder litigation, discussed *supra*, is evidence of this intent. We agree with the examiner that the facts clearly show that respondents organized and operated IRAC for their own benefit. When examined in conjunction with respondents' other activities, we are of the opinion that such operation is in violation of Section 5. This determination does not mean that IRAC functioning free of respondents' influence, would violate Section 5. We do not need to reach that question.

We also deem it unnecessary to engage in an extended discussion of respondents' exclusive dealing arrangements. The record clearly shows that the "official jeweler contracts" [15] as used by respondents were exclusive and, by respondents' own admissions, anticompetitive. Without determining whether this type of contract would be illegal in some other context, we are of the opinion that in the present factual situation, with the purpose, intent and competitive effects of these contracts, official jeweler contracts, as accumulated and enforced by respondents, are an unfair method of competition and violate Section 5.

We are unpersuaded by respondents' arguments that their acquisition and operation of BPA and Edwards Haldeman was well-known and did not adversely affect competition. The complaint did not charge these acquisitions as violations of Section 7; rather, it clearly alleged that by secretly acquiring and operating these competitors Balfour increased its market control while projecting an image of extant competition.

The contention that the acquisitions which took place were common knowledge prior to Balfour's formal announcement of them in 1959 is refuted by comments such as a letter from the national president of Delta Delta Delta Fraternity written to Mr. Balfour (CX 544A):

Congratulations on taking over Burr, Patterson & Auld! That was indeed

[15] CX 10J, 10A, 11A, 17C and 28A. Mr. Balfour made it quite clear in his testimony at the hearings and in his statements contained in various exhibits that a company cannot operate without official jeweler contracts (Tr. 2909–10; CX 465B).

a surprise and a wonderful enlargement of holdings for you! We will be glad to spread the good news.

The record also shows that key Balfour employees had no knowledge of the acquisition. Margaret O'Leary, Mr. Balfour's administrative secretary and responsible for much of the IRAC work done in Attleboro, testified that prior to the 1959 announcement she had always considered BPA as a competitor of Balfour (Tr. 282, 288).

Moreover, Balfour's formal announcement referred to a recent acquisition; it did not verify a well-known corporate arrangement. The language of the announcement clearly indicates that Balfour intended to convey the impression that the acquisition was of recent origin and that it had not been previously known to the public.[16] Moreover, the record indicates that in fact Balfour had not previously disclosed the acquisition in credit reports filed with Dun & Bradstreet, (F.F. 395; I.D. p. 466) or in documents which it had filed with the State of Michigan, although both reports required inclusion of information regarding corporate structure and ownership of subsidiaries (F.F. 396; I.D. p. 466).

The evidence, as illustrated above, clearly refutes respondents' contentions that Balfour's ownership of BPA was common knowledge.

There is a similar lack of evidence to support the assertion that Balfour exercised no control over BPA's policies. The evidence does support the examiner's findings that through BPA Balfour gained exclusive official jeweler contracts with more fraternities. We cannot logically conclude, as respondents assert we must, that Balfour did not control a wholly owned subsidiary which the parent admits was in dire financial straits. A reasonable businessman, which we assume Mr. Balfour was, would take all necessary steps in this situation to try and gain a return on his investment. If he was unconcerned and/or without control, Mr. Balfour must have been realizing this return elsewhere, namely

[16] CX 370, which reads in part:

"Burr, Patterson & Auld Company *is* one of the oldest manufacturing jewelers in the United States. . . .

"For some time *we have been fearful* that this company *would fall* into the hands of people who might not operate it in accordance with the high standards always observed in the past. . . .

"Control by disinterested parties . . . *would* in our opinion, *have involved* increased difficulties for the fraternities to protect their names and insignia. . . .

"*Effective July 1, 1959*, Burr, Patterson & Auld *will become* an affiliate of the L. G. Balfour Company. . . .

"The *acquisition* of Burr, Patterson & Auld Company *constitutes* a substantial financial sacrifice on the part of the L. G. Balfour Company. . . .

"The L. G. Balfour Company *is proud to associate* itself with the Burr, Patterson & Auld organization." (Emphasis added.)

from the increased market share attained by Balfour. An examination of the facts as found by the examiner and supported by the record requires us to conclude that Balfour covertly purchased and operated BPA and Edwards Haldeman in order to maintain and increase their monopolistic position. As such, this action constituted an unfair method of competition.

We have considered the other arguments advanced by respondents in this area of the appeal and are of the opinion that they are without merit.

It is well established that "unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce," prohibited by Section 5(a) (1) of the Federal Trade Commission Act, include monopolizing and acts of monopolization, as well as other business practices having anticompetitive effects. The record in this case satisfies the tests of monopolization laid down by the courts.[17] Respondents here have 86.9% of market sales and have exercised a dominant control over the market. They have clearly excluded potential competition and eliminated actual competitors; their dominant market position cannot be attributed to "their ability, economies of scale, research, national advantages or adaptation to inevitable economic laws."

Respondents' activities cannot be immunized as they argue in their brief (R. Br. on Appeal, pp. 6–8, 12–30) by the contention that their monopoly resulted in substantial social benefits flowing to the fraternity market. The law is clear that if monopolization is shown, purported beneficial side effects are irrelevant to a statutory violation. As the District Court pointed out in *United States* v. *Pullman Co.*, 50 F. Supp. 123, 132 (E. D. Penn. 1943):

> Benevolent monopoly is no less a monopoly because it is benevolent. *A fortiori* evidence that defendants know their business and function in an efficient manner or even that their customers are not displeased is beside the legal point.[18]

We agree with the hearing examiner that respondents' activities in the manufacture, sale and distribution of fraternity insigna jewelry and other fraternal insignia-bearing products constitute unfair acts and practices in competition and monopolization in violation of Section 5 of the Federal Trade Commission

[17] *See* cases sited *supra* note 7, p. 499; *see also United States* v. *Griffith, supra. Also, e.g.*, *Union Leader Corp.* v. *Newspapers of New England*, 284 F. 2d 582 (1st Cir. 1961); *United States* v. *Eastman Kodak Co.*, 226 Fed. 62 (W.D.N.Y. 1915).

[18] *United Shoe Machinery Co., supra*, at 345 and *see also*, *United States* v. *Great Lakes Towing Co.*, 208 Fed. 733 (N.D. Ohio 1913), where the court, rejecting defendant's arguments, said that a defense of beneficence and social advantage does not answer the question of whether the same benefits could have been obtained absent a monopoly.

Act. As the Supreme Court said:

> If the purpose and practice of the combination of garment manufacturers and their affiliates run counter to the public policy declared in the Sherman and Clayton Acts, the Federal Trade Commission has the power to suppress it as an unfair method of competition.[10]

III

RESTRAINTS RESPECTING COLLEGE AND CLASS RINGS

During the course of the hearings, counsel supporting the complaint stated that they did not intend to offer evidence respecting college rings in connection with the complaint allegations charging foreclosing of competitors, attempted monopolization and monopolization and unfair acts of competition in the sale and distribution of college and class rings (Tr. 5422). Accordingly, our discussion of these allegations will be confined to respondents' activities relating to the sale of class rings.

A. *The Monopolization Charges*

Complaint counsel contend that the sale of high school class rings constitutes a relevant market capable of monopolization and that the hearing examiner erred in his conclusion that no proof had been adduced of such monopolization. Respondents contend that the "issue of high school rings as such" is not properly before the Commission. (R. Ans. Br. on Appeal pp. 11–14). Respondents are apparently arguing that the complaint allegations charging monopolization of "college and class rings" were not directed to high school class rings as a separate market and that even if the complaint's language was sufficient, the charge was abandoned when complaint counsel abstained from attempting to prove violations respecting both college and high school class rings.

We believe that high school rings were clearly intended to be described by the term "college and class rings." The complaint referred to respondent Balfour as a member of "the insignia jewelry, college and class ring, and commercial jewelry industry" and a manufacturer and seller of "insignia jewelry, college and class rings, and commercial jewelry" (Pars. 4 and 5). These allegations accurately describe Balfour's three major product lines and accord with the three Balfour sales divisions (Tr. 706).

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[10] *Fashion Originators' Guild of America* v. *FTC*, 312 U.S. 457, 463 (1941). *Also see*, *FTC* v. *Motion Picture Adv. Serv. Co.*, 344 U.S. 292 (1953); *reh. den.*, 345 U.S. 914 (1953); *FTC* v. *Cement Institute*, 333 U.S. 683 (1948); *FTC* v. *Union Circulation Co.*, 241 F. 2d 652 (2d Cir. 1957).

The record is replete with evidence that companies operating within that segment of the industry described as college and class rings sold these products to two types of customers: high schools and colleges (see, *e.g.*, Tr. 1896, 1943, 3088, 3261, 3280, 5473–5474). Moreover, the complaint itself gives explicit recognition to this fact in Paragraph Six, subparagraph 13 in which respondents are charged with engaging in unfair methods of competition in the sale of "college and class rings" by entering into exclusive dealing agreements relating to these products with representatives of "high school classes and colleges." The statement of complaint counsel that they did not intend to offer evidence in the case with respect to the sale of college rings and respondents' acquiescence in this in no way eliminated any issue in the case with respect to high school rings, and we do not believe that respondents can seriously urge this argument at this point in the case.

Respondents make the additional argument that high school rings do not constitute a proper market (see Part II, *supra*) and argue that at the very least the relevant market should be the high school and college ring market (R. Ans. Br. on Appeal p. 22). We believe that the monopolization allegations of the complaint relating to college and class rings are sufficient to charge monopolization of either class of products if the evidence supports the propriety of such submarkets. There is considerable record evidence indicating significant differences in the methods of sale used in the high school and college markets and also in the nature of the customers in each market (*e.g.*, Tr. 5513–5514; *compare* Tr. 3099, 3204–3205; CX 598F; RX 43A–B *with* Tr. 4353, 4385, 5331, 5429–5430; RX 91). Nevertheless, we do not believe that we can properly rely on this evidence in view of the periodic objections by both counsel to the introduction of other evidence offered respecting ring sales to colleges (*e.g.*, Tr. 3175–3177, 5422, 5519–5522). At best the record before us is incomplete on this issue of market definition and we cannot make a determination on this aspect of the complaint. It is unnecessary, therefore, for us to consider respondents' counsel's further arguments addressed to the relevancy and propriety of the geographic market contended for by counsel supporting the complaint. Accordingly, we conclude that the complaint allegations with respect to respondents' alleged attempted monopolization and monopolization of college and class rings have not been proven and should be dismissed.

B. *Respondents' Alleged Unfair Acts of Competition Other than Monopolization*

In addition to charging monopolization, the complaint allegations relating to college and class rings concern respondents' activities, generally, to forestall and deny competitors an opportunity to compete and, specifically, to enter into exclusive dealing arrangements with representatives of high school classes. The evidence offered by counsel in support of the complaint relating to high school rings was exclusively confined to respondents' activities in securing and renewing its term agreements for the sale of rings to high schools.

Preliminarily, respondents argue—and the hearing examiner apparently agreed—that the complaint did not charge, and complaint counsel did not press the claim, that Balfour's term agreements in connection with the sale of high school rings constituted unlawful exclusive dealing arrangements in violation of Section 5 of the Federal Trade Commission Act (R. Ans. Br. on Appeal p. 27; F. 420, I.D. p. 474).

We find no support in the record for this position. The complaint expressly charges that Balfour violated Section 5 by unreasonably foreclosing competitors and identifies Balfour's exclusive dealing arrangements in connection with high school class rings (Par. Six (1), (2) and (13)). We find nothing in complaint counsels' statement of their intent not to offer evidence with respect to college rings which even remotely suggested that they were abandoning these complaint allegations. Both parties offered substantial evidence as to Balfour's practices with respect to its use of term agreements in the sale of rings to high school classes, thus indicating that during the hearing respondents were under no illusions as to any abandonment of this phase of the case. We believe that the Proposed Findings of Fact, Conclusions, Order, and Supporting Argument submitted by Complaint Counsel to the hearing examiner, read in their entirety, adequately presented the issue at that stage of the proceeding, and both counsel address themselves to the reasonableness and legality of respondents' term agreements. Accordingly, we will determine this issue in terms of the complaint allegations and the evidence in the record.

The evidence in the record indicates that there are two types of class rings sold to high schools: first, standard or special rings which require special dies costing "many hundreds of dollars;" and second, road-line rings which can be struck from one set of dies requiring only minor changes made by means of superimposing on the original dies, die crests costing from $45 to $75 (Tr. 2581, 3112–16, 3290–91, 4402).

Balfour has two different systems of compensation for its salesmen depending on whether they sell road-line rings or standard rings. Die costs in connection with road-line rings are absorbed by Balfour as part of company overhead (Tr. 3235; RX 47A–C). Die cost of standard rings are deducted by Balfour from its salesmen's commissions prorated over the life of the agreement (Tr. 3192–93, 3233–35).

Balfour's term agreements are printed contracts which provide that the high school appoints Balfour "sole official jeweler," or words to that effect (See *e.g.*, CX 623D, 642B, 646B). By the agreement, Balfour is appointed to supply all the class rings (or specified items) for the duration of the contract (CX 646B, CX 662A). Generally, the agreements do not specify the quantity of items to be purchased or the size, price or delivery date, type of specification of rings or amount of the deposit (Tr. 3128–3129). These specifics are contained in annual service orders given by the class members of the school which form the basis for actual ring sales (Tr. 3604; RX 43B).[20] Balfour's standard printed term contract forms, although modified over the years, all contain provisions to the effect that the school will receive "special prices" whenever possible under the contract (CX 623A, 646B, 650A, 650D). Some Balfour contracts, by separate entry, promise "discounts" (Tr. 3133–34, CX 623B, 651A) or rebates (see, *e.g.*, CX 658B, 663C). Any such discount or rebate is paid by Balfour to the person its salesman names as designated by the school authorities to receive it (Tr. 3119–20, 3123, 3127, 3133, 3138).

In addition respondents have established what they term the "Balfour Plan" under which schools signing term contracts with Balfour generally receive, without separate charge, "honor awards" consisting of a wall plaque, with blank name plates to be imprinted each year with the name of the school's honor student, and an individual key for the student (Tr. 3110, 3162–63, 3238; RX 44A; see CX 609D). Sometimes a free ring is given to the class president (CX 663A).

Balfour annually establishes a net price for its high school

[20] The service order specifies the exact ring to be purchased, and it shows the name of the school and salesman, type and quantity of ring ordered, price, delivery date and contract date (Tr. 3203–3204). The form in use in 1961 included a statement that the contract is not cancellable (*see* RX 43B, 44B). The order also contains the number under which the order was entered into production (Tr. 3604).

class rings (Tr. 3128–29). The company charges this net price to its salesmen, who then determine the ultimate price at which the rings will be sold to the schools (Tr. 3090; RX 47B). Balfour salesmen are responsible for their expenses, for any special "free" merchandise or for any special price terms (Tr. 3110; RX 47B; see CX 631).

From 85% to 90% of Balfour's high school class ring sales are made pursuant to term agreements (Tr. 3105).[21] This contrasts with approximately 30% to 50% of the business of its smaller competitors which is done pursuant to these contracts (Tr. 3269, 3289, 4343).[22]

In 1961 Balfour had some 4,000–5,000 term contracts in effect and sold to some 5,000–6,000 high schools out of an estimated total of 26,000 high schools in the United States (Tr. 718, 3104–3105). Total sales of Balfour's class ring division in 1960 were approximately $10.9 million; high school rings alone accounted for over $7.7 million. Balfour's share of high school sales was about 17–20% of the industry total (Tr. 718; CX 686M). Balfour and two other competitors constituted about 60% of the market, which was estimated to total about $45 million. The balance of the market was found by the examiner to be occupied by some 10 other companies (I.D. pp. 474, 475).[23]

Term agreements are generally signed on behalf of the school by the top school administrator or person to whom this function is delegated (Tr. 3107). Most often, they are signed by the principal for an individual school, but in some instances they may be signed by a superintendent and may cover several schools or all of the schools in a county (CX 622, 623D). Balfour's salesmen usually sign the agreements for the company. (Tr. 3099, 3209; RX 42A–B.)

The duration of term contracts has become quite standardized. Thus, the contracts of both Balfour and its competitors normally cover a term of from three to five years (Tr. 722–23, 1105–06, 3100), usually five (Tr. 714, 3267–68, 3289, 4338). Some

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[21] The terms "term agreement," "term purchase agreement" and "term contract" are employed interchangeably in the record to signify the multi-year arrangements between high schools and their suppliers (*See* Tr. 714, 3099, 3105).

[22] A Balfour representative stated that most of the rest of the industry's ring sales to high schools are made pursuant to term agreements (Tr. 3105) and Balfour's competitors also believe that a high percentage of schools honor term contracts (Tr. 713–14, 2538–39 (Meyers); 3267–70 (Dieges & Clust); 3289–90, 3297–98 (Metal Arts); 4322–33, 4339 (Morgan's)).

[23] Respondents urge that the total number of manufacturers amounted to at least 27 companies and that there were at least some 125–150 manufacturers capable of entering the market. Of the 27 referred to by respondents, only 24 are named (RPF, p. 13). The record contains testimony of representatives of 8 of them. Of the remaining 18, one is only a distributor and three apparently are no longer in the high school class ring business (Tr. 914; 1771, 3219–20, 3266, 5365).

covered longer periods of time (*e.g.*, CX 643E (the years of 1958 to 1969)).

In some instances, Balfour and one or more of its competitors enter into alternating term agreements, which provide that the suppliers named in the agreement will supply rings to the schools' students in alternate years (Tr. 3144–50; CX 626–627, 656A–B, 660A–B, 664E). When asked whether these alternating contracts were an unusual arrangement, the manager of Balfour's class ring division answered, "I would say it is not the normal practice, but it certainly—I have no idea" (Tr. 3144–47).

Respondents argue that its term agreements do not foreclose competition because they are not *legally* binding (R. Ans. Br. on Appeal p. 29). In our opinion, the question of whether these contracts are enforceable in law is not determinative of the issues of whether these agreements foreclose competition and whether they are reasonable and essential in light of the business practices in the sale of high school class rings.

Indeed the record would seem to support respondents' contention that its term agreements are not legally binding (Tr. 3106, 3208). Yet despite its protestations as to the unenforceability of these term agreements, Balfour goes to extraordinary lengths to promote their execution and renewal. With the knowledge and cooperation of the company, all Balfour salesmen encourage schools to enter into term contracts by offering special prices, discounts and rebates and the "Balfour Plan," described above (Tr. 3101, 3162–63, 3236–38; CX 610B, 623A–C, 625, 628–637). Since respondents' term agreements are not legally binding, it would appear that the special prices, discounts and rebates which are provided for in respondents' term agreements are simply added inducements to the purchaser to enter into these nonenforceable agreements. Also, Balfour enters into agreements with its salesmen under which any Balfour salesman who becomes incapacitated during the life of the term contract of two years or more is entitled to 40% of commissions on sales made in connection with that contract (RX 47C). Balfour apparently regards these agreements as of such importance—unenforceable though they may be—that it is willing to add this incentive for its salesmen.

Balfour encourages its salesmen to keep abreast of prospective changes in school administration on grounds that if the salesman is instrumental in securing a position for an individual, he normally obtains a term contract from that individual (CX 597D, 599D, 602C). In some instances, Balfour cooperated with its salesmen in back-dating term contracts with outgoing administrators (CX 643B–E, 648A–B).

Balfour sends letters of acknowledgement referring to these term arrangements as "contracts," thanking the principal for his "approval" of them and expressing the company's intention to serve the school "thoroughly under the terms of the contract agreement" (CX 617–621, 624–625). Balfour urges early renewals of term contracts and encourages its salesmen to obtain and retain term agreements (Tr. 3101, 3106–07; CX 600C, 606D).

The record also demonstrates that Balfour's efforts have been highly successful. Balfour concedes that about 80% to 85% of the schools with which it has executed such agreements for the usual three to five year term honor them provided Balfour complies with its obligations (Tr. 3101–02). Moreover, more than 85% of Balfour's high school ring sales are made pursuant to such term agreements (Tr. 3104–05). Some schools have continued under term contract with Balfour for over 20 years (CX 622). In the 9-state tabulation offered by counsel supporting the complaint to show monopolization, 73% of the term contracts entered into in that area were renewals (CX 732).

Finally, while the existence of a term agreement is by no means an absolute barrier to a competitor's sales to that school, the record demonstrates that these agreements do create barriers to entry and that such competition as does take place in the sale of high school rings is infrequent and minimal. A Dieges & Clust representative testified that his company has found it can sometimes get the business of a school under a term contract with another company "if the competitor is not servicing that contract properly" (R. 3270). In response to the question whether term contracts affect the company's ability to get started in an area, he said:

> Yes, just as our contracts do us good in the area in which we are established, they also make it more difficult to establish ourselves in a territory that we are not known in (Tr. 3271).

The president of Morgan's Inc., testified that whether a salesman will respect the term agreement of another manufacturer varies with the territory and the individual. He said that his company does not encourage its salesmen to induce a breach ". . . unduly, not to create a situation that would be unfair but to be on hand in the event . . . the situation . . . changes" (Tr. 4342). He testified that every now and then "a little effort [is] made to open the business up" (Tr. 4323). Asked whether term agreements kept competition out of the schools, he replied in the affirmative. One purpose of these agreements, he testified, is "to preserve the continuity of business" (R. 4340).

> Q. To tie up the school for five years?
> A. Using that term, yes, you could say it is securing the business or tying it up if you want to call it that . . . (R. 4340).

The representative of another small company, Metal Arts Co., Inc., testified that the presence of term contracts impeded its effort to obtain product orders from high schools (Tr. 3290). An executive of Meyers & Co., a minor competitor, testified that the presence of term agreements had prevented the company in 1949 from breaking into the high school market in and around Southern California because, the witness testified:

> . . . Most of the schools, upon being contacted, would answer that they were under contract and that the contract had not yet expired (Tr. 2538).

In response to a question as to why the contracts prevented other jewelers from selling, the executive replied:

> A. The fact that a contract existed, during the period of the contract, prevented any other jeweler from offering rings to the school.
> Q. Prevented you from showing?
> A. From showing.
> Q. Can you sell your rings without showing them?
> A. No, sir. (Tr. 2539).

John J. Jack, president of Metal Arts Co., Inc., said that his company, which he described as a small part of the industry, had experienced considerable difficulty in breaking into the market. As Mr. Jack put it:

> A. . . . Obviously, being a small company in the field, every place we go, normally seven schools out of ten, one of those three companies are [sic] already there.
> Q. And is it difficult then for you to make an entry into that school?
> A. Yes, sir, it is because they have them well tied up with contracts, as a rule, and it is always hard for a small company such as ours to break in when we hit this wall which could be there from any one of these companies (Tr. 3290).

The General Manager of Balfour's own Class Ring Division admitted on the witness stand that:

> The purpose of the term purchase agreement is to, more than anything else, establish order in this business so that a man knows where he is going to secure his business or has a relatively good idea. He can plan his itinerary. If we were not able to do that we would need three times as many salesmen. The price would go up terrifically. One man could not sell one area if he had to run each time and present his wares and then

wait for some competitor to present his. He wouldn't have any order in this business (Tr. 3205).

Other competitors made substantially the same point and echoed the fact that term agreements, in effect, are useful because they reduce the area of competition. For example, respondents' witness Mr. Morgan, of Morgan's Inc., replying, during cross examination, to complaint counsel's question as to whether finding 75% or 80% of the schools in an area under term agreements would cause Morgan any difficulty in breaking in stated (Tr. 4343–44):

> . . . It would depend on how many schools there were in the state. I would say that if 20 percent of the orders were open for competition, it would probably be about all one man could get to to compete on when the orders were open for competition. . . .
>
> * * * * * * *
>
> Whether he could contact any more than that effectively would depend, of course, I think on the geographic layout of the state, if it was a state with 600 or 700 schools why probably 20 percent is about all he could do justice to on a competitive basis, and a small company probably wouldn't try to put more than one man in the state to try to break in on it anyway.
>
> Q. And you think it would be just fine for him to be foreclosed from 80 percent of the schools . . .?
>
> A. I would just as soon have it—have the situation that way than to have them all open to have him trying to compete with the deluxe displays, the very expensive display cases and the expensive line of roadline samples which we have found must be submitted in order to have a chance of actually winning the order.

The inference of Mr. Morgan's testimony is inescapable. Term agreements to him were useful because they shielded him from competition just as they constituted a barrier to his growth wherever they existed.

The Retail Jewelers Association of America filed materials in this proceeding in which they make the flat assertion that respondents' term agreements had the effect of foreclosing all retail jewelers from this high school ring market (Motion by Retail Jewelers of America, Inc. for Leave to Intervene and Submit Materials for Consideration by Federal Trade Commission in Connection with Proposed Consent Decree certified to Commission, dated November 21, 1966, p. 4).

Complaint counsel's position on appeal is that respondents' term agreements are designed to and do in fact foreclose competition, hinder or prevent the entry of new competition, and serve to stabilize the market in a fixed competitive posture, that they therefore conflict with the central policy of § 1 of the

Sherman Act and § 3 of the Clayton Act and thus that they also conflict with the policy of the Federal Trade Commission Act and are in violation of that Act (Ap'l. Br. 31–32).

It is not necessary for us to resolve the question of whether respondents' term agreements violate Section 3 of the Clayton Act. See *Tampa Electric Co.* v. *Nashville Coal Co.*, 365 U.S. 320, 327 (1961); *Standard Oil Co. of California* v. *United States*, 337 U.S. 293, 314 (1949) [hereinafter *Standard Stations*]. It is well established that conduct which conflicts with the policy of the Clayton Act, whether or not within its letter, may itself be a violation of § 5 of the Federal Trade Commission Act (*FTC* v. *Brown Shoe Co.*, 384 U.S. 316, 321–22 (1966); *Atlantic Ref. Co.* v. *FTC*, 381 U.S. 357, 369–370 (1965); *FTC* v. *Motion Picture Advertising Serv. Co.*, 344 U.S. 392, 394–95 (1953)). We believe, accordingly, that if the record shows that the term contracts used by respondents in connection with the sale of high school class rings unreasonably foreclose competitors and lessen competition at the schools in question, this would be sufficient to support the conclusion that they violate § 5 of the Federal Trade Commission Act.

Respondents argue that Balfour's use of term purchase agreements does not constitute an unfair method of competition for a number of reasons. First, they argue that all Balfour's competitors have long used term agreements and Balfour's use of them simply enables Balfour to remain competitive (R. Ans. Br. on Appeal, pp. 28–29). The record does not fully support this statement. The testimony of witnesses representing several smaller firms indicates that those companies do not rely upon term contracts as heavily as does Balfour, but instead employ them at "40%" (Tr. 3269), "⅓ to ½" (Tr. 3289) or "about 50%" (Tr. 4343) of the schools where they sell rings, as opposed to Balfour's admission that its term contracts cover about 70% of the high schools where it sells rings and account for 85 to 90% of its high school class ring sales (Tr. 3101–05). Moreover, the fact that these agreements are used by other industry members does not immunize them under the antitrust laws. As the Court in the *Standard Stations* case pointed out:

> When it is remembered that all the other major suppliers have also been using requirements contracts, and when it is noted that the relative share of the business which fell to each has remained about the same during the period of their use, (footnote omitted) it would not be farfetched to infer that their effect has been to enable the established suppliers individually to maintain their own standing and at the same time collectively, even

though not collusively, to prevent a late arrival from wresting away more than an insignificant portion of the market (337 U.S. 293 at 309).

Respondents next contend that term agreements cannot be considered unlawful exclusive dealing arrangements because they are not binding contracts (R. Ans. Br. on Appeal pp. 29–31). The term agreements here are in some respects analogous to the agreements involved in the Commission's *Brown Shoe* franchise decision subsequently upheld by the Supreme Court, *supra*. In *Brown Shoe*, respondents argued there was no compulsion since Brown's dealers were free to leave the plan and the decision to enter the plan was a voluntary one (*Brown Shoe Co.*, 62 F.T.C. 679 at 712, 714). Yet this element of "voluntariness," if such it can be called, was not held to eliminate the restrictive impact of these agreements. See also, *F.T.C.* v. *Motion Picture Advertising Serv. Co., supra* at 395–96. Here in Balfour the fact that the term agreements are only "morally" binding does not relieve their anticompetitive effect, once it is determined that the agreements are generally honored.

Indeed, we are particularly concerned by respondents' evidence that their term agreements do not constitute binding contracts. In our view, this only strengthens the conclusion that they are anticompetitive. Some school districts might be unwilling or even unable (Tr. 4403) to execute legally-enforceable long term contracts binding future graduating classes without giving those classes a chance to participate in the selection of supplier. Hence, Balfour's so-called unenforceable contract device may be a means for it to accomplish in fact what it could not always accomplish by a genuine contract. The major purpose of such a non-binding arrangement can only be to create the impression at the schools that they are bound to use Balfour as their sole official supplier of rings.

Thus the real vice of these agreements, as we view them, lies in the fact that they were not legally binding, but yet Balfour did everything in its power to create the impression that the school was obligated to honor them. This is the only conclusion which can be drawn from Balfour's concentrated efforts to secure the execution of these non-enforceable contracts.

It is not for us to speculate on the reasons why respondents use the device of a legally unenforceable contract as a means of selling class rings to high schools.[24] However, it is clear that

[24] There is some suggestion in the record that high school authorities are either not authorized or are unwilling to enter into legally binding contracts for periods of years since each high school class would want to select its own class ring (Tr. 3208). It is possible that Balfour itself would have difficulty in committing itself for sustained periods of time to contracts which openly specifies exact prices.

if firm contracts were employed by respondents, then their competitors would be in a position to counter the contract prices or to offer more favorable terms and conditions. In other words, the use of firm contracts, even if the circumstances of the market required them to be only for a year's duration, would be conducive to competition. The use of a pseudo-contract has precisely the opposite effect. It does not specify prices and precise terms and conditions; thus it cannot effectively be countered in the marketplace by a competitor desirous of offering more favorable prices or terms. Instead, this nonenforceable, essentially blank contract is clothed with all the exterior trappings of a binding instrument. Its renewal is vigorously pushed; it is used to create the illusion of obligating the purchasers, thus deliberately circumscribing their freedom to invite or consider competitive offers. Given the lack of business experience of high school students—and even of some local school principals—the form of respondents' term agreements and respondents' sales policy with respect to them effectively camouflages their real nature and creates the impression of the existence of a strong moral, if not legal, obligation to honor the agreement. It is difficult to imagine a more invidious foreclosure of competition than to create a sense of moral obligation to purchase from a particular supplier, and we believe that the device might constitute a violation of § 5 for this reason alone.

Accepting respondents' argument that these agreements have no legal effect, it is difficult to understand why respondents spend so much concentrated effort on the execution of these terms agreements unless they are intended to have some anti-competitive impact. Counsel supporting the complaint contend their purpose and effect is to restrict and foreclose competition. In our judgment the record amply supports this contention and we conclude that these agreements constitute an effective device by which to foreclose competition and deny competitors an opportunity to compete.

Respondents not only deny that their term agreements were designed to or did in fact foreclose competition, but argue affirmatively that these agreements are necessary in order to amortize die costs (over several classes) and that school officials reportedly find term agreements effective in saving school time devoted to the selection of class rings and in eliminating unethical sales practices such as salesmen secretly inducing students to electioneer for a product in a supposedly competitive showing (Tr. 4317–18). Term agreements, according to respondents, give principals "an excuse to tell the peddlers to quit bothering them" (Tr. 3206) and provide the officials with the opportunity to judge a salesman's conduct, reputation, quality of ring, performance and the service of the salesman and his company (Tr. 4346–47). Finally, respondents argue that unless they are permitted to continue to use these term agreements, more salesmen will be needed and marketing costs will increase (Tr. 3205, 4319).

We find these arguments of respondents tenuous on the facts and inconclusive in law. Indeed, they appear to us, if anything, to give support to the complaint allegations that these contracts are designed to and do unreasonably foreclose competitors and potential competitors from access to substantial markets and deny competitors and potential competitors a reasonable opportunity to compete.

Respondents' argument that their term agreements are necessary to amortize its die costs does not seem credible. The evidence demonstrates that respondents use these agreements for both their standard rings, which do have substantial die costs, as well as for their road-line type rings, the die costs of which are almost minimal.[25] Moreover, respondents sell some of their rings to colleges under one year agreements although presumably these sales involve substantially similar die costs (*e.g.*, RX 91). Respondents' argument that they need term agreements to amortize their die costs is wholly inconsistent with their assertion that these agreements are not legally binding. The record indicates that while most schools *do* honor these agreements, not all do. Moreover, some rings are sold to high schools which are not under such term contracts. In some schools, respondents have alternating contracts. Moreover, respondents, even under their term agreements, cannot control whether a high school class selects a standard or road-line ring or whether it selects a ring which its predecessor class selected so that in fact the die costs can be amortized. Indeed respondents' annual net prices are established for all its high school class rings regardless of whether they are sold under a term agreement or not.

We fail to comprehend how a relationship which is not binding and is "not infrequently" disregarded, as respondents contend (Ans. Br. p. 30), enables respondents to offer a reduced annual sale price with confidence that a portion of the cost will be spread to sales in future years. In short, respondents' argu-

[25] Tr. 2580–81, 3116, 3291. *See also*, Meyers' testimony respecting minimal die costs of road-line rings (Tr. 2580–81); Metal Arts' president Jack's admission that die costs would only be a factor in connection with standard rings (Tr. 3290); to same effect, *see* Morgan's testimony (Tr. 4340).

ments of business necessity are neither factually convincing nor legally persuasive.

Respondents' arguments addressed to the service which these agreements provide to high school authorities are similarly without merit in our judgment. We do not doubt that term agreements might save high school authorities time in arranging for demonstrations and purchases.[26] Yet this argument does not seem to us to be relevant to the allegation that use of these agreements forecloses competition. Indeed respondents' further argument that marketing costs might well increase if class ring manufacturers were no longer able to use these term agreements tends to underscore their anticompetitive effect. This argument clearly implies that absent these unenforceable term agreements the ring manufacturers would have to devote more time to competing. Whether this would increase their marketing costs as well as the price of rings to the purchaser, as respondents urge, is not for us to determine. Nor indeed is it a relevant consideration. Congress has made the policy decision in favor of competition and the courts have been clear that so-called social benefits of devices which minimize competition cannot be considered in administering these laws. *United States* v. *Pullman Co.*, *supra*, 50 F. Supp. at 134; *United States* v. *United Shoe Machinery*, *supra*, 110 F. Supp. at 345.

Moreover, the cases are clear, as a matter of law, that alleged business justifications, no matter how factually accurate, are irrelevant to save the lawfulness of these arrangements once it is found that widespread industry use of the agreements produces a destructive effect upon commerce (*Atlantic Ref. Co.* v. *FTC*, *supra*, 312 U.S. at 371; *Standard Stations*, *supra*, at 309; *cf. Fashion Originators Guild of America*, *supra*, at 468.

We believe that respondents' fourth contention—that small competitors prefer term agreements—merely indicates that other suppliers also wish to avoid strenuous competition. The record

[26] Evidence of record supports the inference that sales procedures are quicker and less expensive where term agreements are in effect. The sales representative must still contact the school each year to take the specific orders (R. 4322, 4403, CX 598F–G), but the agreement helps expedite matters. Thus, a Mississippi Balfour salesman described his sales technique as follows. He visits school authorities in July and August to set up appointments, a long range itinerary making it possible to go around faster. The school authority has the seniors assembled when he arrives. He shows three rings, helps them select one, leaves slips and a ring gauge and, as he departs, asks the principal to telephone the next school principal to have that class assembled. Thus, he can visit many schools over a substantial area (CX 598F–G).

A high school principal explained Balfour's term contract procedure. To take the order, the salesman calls on the school once a year, accompanied by a local jeweler; six or eight people come in before school each day for a week. Subsequently, the rings are delivered to the jeweler. Thus, the jeweler places the annual order. No school time is consumed, and the principal has no contact with the money (Tr. 4405–06).

testimony of several competing suppliers casts doubt upon the allegation that no competition is foreclosed. Testimony of some of these competitors indicates that even though they use term contracts, they recognize that anticompetitive effects result. A California competitor testified that the fact that the schools were under contract prevented his company from showing rings (Tr. 2539–40); several witnesses remarked that the presence of term contracts impedes a company's ability to enter an area (Tr. 3271, 3290) or reduces competition for the school's business (Tr. 3205, 4340). Thus, although we have no wish to make it more difficult for small competitors to compete for high school class ring orders, we are unable to believe that the use of term agreements affirmatively and legitimately benefits competition.

Finally, respondents argue that we must judge the impact of exclusive dealing agreements in the setting of a relevant market. For this, they rely upon *Tampa Electric Co., supra,* and *Carvel Corp.,* Dkt. No. 8574 (Opinion of the Commission, July 19, 1965). *Tampa* was decided under § 3 and is therefore not controlling. In *Carvel,* we found that the franchise agreement was an exclusive distributorship and the substantiality of foreclosure should be evaluated under *Tampa's* criteria. Both of these cases preceded the Supreme Court's decision in *Brown Shoe Co., supra,* which reaffirmed the Commission's right to strike down restrictive agreements even without proof that the contracts amount to a full-fledged violation of § 3 when the proceeding is under § 5. The Court was satisfied that Brown's franchise program conflicted with the central policy of both § 1 of the Sherman Act and § 3 of the Clayton Act and held that in declaring the franchise program unfair the Commission acted well within its authority, even in the absence of a showing of the § 3 element of "substantiality" (384 U.S. at 321–322).

We do not believe that our failure to determine definitively on this record whether the sale of high school class rings constitutes a legally relevant market for monopolization purposes precludes us from determining that respondents' agreements have substantially foreclosed competition.

The annual sale of high school rings accounts for a dollar volume of some $45 million. Companies engaged in the sale of these rings are identifiable. Balfour is one of only three national sellers, which together account for 60% of the market (Tr. 5328, 5478). Balfour was not a newcomer seeking to break into the market (see *Standard Stations,* 337 U.S. at 307 (*dicta*)). Its term agreements, at least when applied to road-line type rings, cannot be said to be economically essential (see *FTC* v. *Motion Picture Advertising Serv., supra* at 395). Moreover, beyond the assertion of its need to amortize the die costs of its standard rings over some period of time, Balfour has not demonstrated that this objective can only be served or indeed in fact is actually served by this device of executing pseudo term agreements with schools since presumably there are times when its pseudo agreements have not been honored (see Tr. 3106, 3208). Balfour accounts for 14% to 20% of the national high school class ring sales (Tr. 718–19, 4312, CX 686M) and in particular areas, such as the Southeastern States, has term agreements with nearly 45% of the high schools (CX 730). Out of a possible market of some 26,000 schools (RX 136–137), Balfour has term contracts with some 4,000 to 5,000 and sells to about 1/5 of the total or 5,000–6,000 school districts (Tr. 3105). The annual sales of its class ring division were $10,954,000 in 1960, of which high school class rings alone accounted for $7,721,842 (Tr. 3096; CX 686M). The record fails to specify the dollar amounts of Balfour's 1961 high school class ring sales or of industry sales in 1960, but assuming that neither figure changed drastically in those two years, Balfour's term contracts during that period accounted for some $6.5 to $6.9 million per year (85% to 90% of $7,421,842 in sales, *supra*) and constituted some 15% of total industry sales. We are therefore satisfied that the foreclosure before us is not *de minimis*.

We also note that Balfour's term agreements, if honored, are not merely restrictive, as were Brown's franchises, but are wholly exclusive through the years they are in effect. Also, the record here indicates actual foreclosure of competitors and lessening of competition at schools under term contracts.

Congress has charged the Commission with the responsibility in the first instance of giving substance to the broad public policy standard underlying the term "unfair" as it is used in § 5. When a challenged method of competition bears the characteristics of a recognized antitrust violation, it is particularly appropriate for us to act, using that violation not mechanically but as a guideline for analyzing the variant before us.[27]

The evidence is clear, in our judgment, that, whatever the reason, Balfour and its competitors in most cases do respect each other's term agreements (Tr. 4342). The situation is aggra-

[27] *FTC* v. *Brown Shoe Co.*, 384 U.S. at 321; *Atlantic Ref. Co.* v. *FTC*, 381 U.S. at 367–68, 369–70; *FTC* v *Motion Picture Advertising Serv. Co.*, 344 U.S. at 394–95; *Fashion Originators Guild of America* v. *FTC*, 312 U.S. at 463.

vated where Balfour and one or more of its competitors employ alternating term contracts and amicably share the business of individual high schools without sacrificing the appearance of competition. The offering of supposedly special prices and terms, before actual prices and terms are determined, furthers the illusion. All of this, coupled with the practice of customers to honor the agreements (Tr. 3289, 4339), has to a large extent eliminated competition at many high schools. The use of these contracts in most instances is not justified by economic or other considerations; rather, they are used for the purpose and with the effect of lessening competition. We hold that Balfour's use of term agreements reduced and foreclosed competition at the schools where they were in effect, in conflict with the policy of § 3 of the Clayton Act, and constituted an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act.

Respondents argue that it would be an abuse of our discretion to enter an order against Balfour alone in the class ring phase of this case, leaving its competitors free to engage in the practices from which Balfour is barred (Ans. Br. Part VIII). In this contention, they are supported by the hearing examiner, who concluded that Balfour's acts and practices in the sale of high school class rings and other high school products are used by all of the major competitors and that if the use of term contracts is believed to be an illegal practice, an industrywide investigation should be undertaken. The examiner added that, in his opinion, it would be unfair to single out Balfour for this practice (F. 429, I.D. pp. 475–76).

We believe that respondents and the examiner raise an important and legitimate issue presenting essential questions of the fairness of Commission orders. It is clear that as an administrative agency we have discretion to proceed againt a single company for practices which appear to be employed throughout an industry, but equally clear is our responsibility to perform a reasonable evaluation of the competitive situation to ascertain whether a particular order would be contrary to the purposes of the laws we seek to enforce (see *FTC* v. *Universal-Rundle Corp.,* 387 U.S. 244, 251–52 (1967)).

We are far from believing that an order prohibiting only Balfour from using term contracts would result in sacrificing this company as a competitor in the high school class ring field. Respondents contend, and the hearing examiner found, that their practices are no different from those of the major competitors. However, the record shows that many smaller suppliers of class rings do not rely on term agreements to as great a degree as Balfour (*supra*). In other words, these companies find they can make a substantial portion of their sales operating on a year to year basis, without relying on formal long-term relationships with the purchasers. Entry of an order at this time may caution these competitors to avoid expanding their use of the proscribed device, in case they were otherwise moved to attempt it.

It is equally clear that a prohibition on the use of these agreements will not spell commercial disaster. Again, the fact that a relatively large segment of the business is done outside the scope of term agreements would tend to underscore this. If schools will only purchase class rings pursuant to such agreements, it would seem that respondents would not need to offer such special promotional devices as "free" awards, discounts, and rebates to encourage schools to sign (see, *e.g.*, CX 623E, 646E). Balfour, of course, is and remains free to compete annually for the sale of rings and other products at every high school in the country. Indeed, one would suppose that as creative a company as Balfour could devise a promotional campaign extolling the benefits of single-year contracts, which assure individual class prerogative and freedom of selection.

The government has in the past entered antitrust orders against individual firms denying them the right to use a device which was employed throughout an industry (*FTC* v. *Universal-Rundle Corp., supra; Moog Industries* v. *FTC*, 355 U.S. 411 (1958); *Standard Stations, supra*). The text is always the need for an order when weighed in the context of the significance of the anticompetitive impact of the challenged practice. We find such need here and conclude that an order here is proper and appropriate.

For all of these reasons, we conclude that the hearing examiner was in error in dismissing the complaint allegations charging respondents' term agreements as illegal. We find that these agreements are unreasonable, have foreclosed competition and denied competitors an opportunity to compete in violation of Section 5 of the Federal Trade Commission Act.

The only remaining issue for decision concerns the scope of the order which should be entered here and we turn now to a consideration of this issue.

IV

THE ORDER

The order entered by the hearing examiner adopted the order provisions proposed by counsel supporting the complaint relating to the fraternity insignia allegations (I.D., Order, par. I–IV, pp. 478–480), and provided in addition for some general prohibitions on respondents' conduct with respect to the manufacture, sale, offering for sale or distribution of "any of their products in commerce." (I.D., Order par. V, pp. 480, 481). In view of the examiner's disposition of the high school class ring allegations the order proposed by him contained no specific provisions with respect to respondents' activities in this field.

Accordingly, we will consider these two phases of the order seriatim.

A. *Order Provisions Relating to Fraternity Insignia Products*

The principal provisions of the order proposed by the examiner relating to fraternity insignia which are in issue on this appeal concern the requirements that respondents terminate all of their outstanding agreements with fraternities (Part I), that they cease and desist in the future from entering into exclusive or requirements agreements with the fraternities and that Balfour divest itself of Burr, Patterson and Auld and refrain from selling products to any fraternity which was under an official jeweler contract with BPA as of June 16, 1961.

Respondents argue that unilateral cancellation of their outstanding fraternity agreements would interfere with the rights of third parties and fails to provide for orderly disposition of accumulated inventories; they contend that exclusive dealing arrangements are not illegal *per se*, that a one year's duration for such agreements is not unreasonable and that it would be unfair not to permit them to designate these agreements as "official jeweler" contracts. Finally, they argue that the Commission is without power to order divestiture in a Section 5 case, that even assuming the power such drastic relief is inappropriate and that the hearing examiner failed to explain why this remedy was chosen. They assert that the prohibition against respondent Balfour selling to fraternities previously under contract to BPA deprives the 52 fraternities involved of their freedom of choice of supplier and denies to them the benefit of competition, that in any event the 10 year duration of the bar is unreasonable and that, moreover, this provision is totally unnecessary because the other portions of the order are sufficient to assure open competition.

We believe that this order is for the most part a proper and appropriate remedy for the illegal acts and practices found to have been committed by respondents.

The key objective of relief in monopoly cases is to recreate the competitive conditions which the respondents' illegal monopolization eliminated. The Supreme Court has consistently proclaimed that restrictive provisions alone may not suffice to achieve this goal. *United States* v. *Schine Chain Theatres, Inc.*, 334 U.S. 110 (1948). In that case, the court pointed out that:

> In this type of case we start from the premise that an injunction against future violations is not adequate to protect the public interest. If all that was done was to forbid a repetition of the illegal conduct, those who had unlawfully built their empires could preserve them intact. They could retain the full dividends of their monopolistic practices and profit from the unlawful restraints of trade which they had inflicted on competitors. Such a course would make enforcement of the Act a futile thing unless perchance the United States moved in at the incipient stages of the unlawful project. For these reasons divestiture or disolution is an essential feature of these decrees (p. 128).

See also, United States v. *Grinnell Corp.*, 384 U.S. 563, 577–78 (1966) ; *United States* v. *International Boxing Club of New York, Inc.*, 358 U.S. 242, 258 (1959) ; *United States* v. *Crescent Amusement Co.*, 323 U.S. 173, 189–90 (1948).

In the instant case, respondent Balfour acquired one of its competitors, Burr, Patterson and Auld. The hearing examiner found that respondents initially kept the ownership secret. This enabled them to secure all the business of fraternities whose constitutions and bylaws required them to engage more than one official jeweler (F. 5, 389, 397, 405, I.D. pp. 355, 464, 467, 469), as well as to obtain and retain the business of fraternities that did not wish to do business with Balfour. Not until disclosure was threatened by its adversary in litigation did Balfour reveal the true relationship between the two companies, and by then, of course, respondents had succeeded in obtaining an overwhelming proportion of the market (F. 416, I.D. p. 473). Thus, Balfour's hidden acquisition and holding out of BPA as a competitor was part and parcel of the successful overall effort to secure to itself almost the total business of the fraternity market (F. 404–07; I.D. pp. 469–470).

In this situation, it would be a manifestly vain act simply to prohibit respondents from making future acquisitions of their competitors, leaving Balfour's BPA acquisition untouched. In order to restore competition, it is essential that BPA be divested from Balfour so that it can resume its independence and offer fraternities the competition which—prior to May, 1959—they believed they were getting.[28]

To make competition a reality in this industry, however, additional steps must also be taken, and we agree with the hearing examiner's proposed order providing that all of respondents' existing contracts with fraternities be terminated, that respondents not use any "official jeweler" or requirements contracts or representations and that respondents refrain for a time from selling to any fraternity that was under contract with BPA as of June 1961.

Respondents' objections to these provisions on the ground that they unduly interfere with the rights of third parties, the fraternities, are unpersuasive. In *United States* v. *Schine Chain Theatres, Inc., supra,* 334 U.S. 110 at 127 and 130, the Court sustained a District Court decree which prohibited the defendant from buying or booking any films for theatres in which it did not have an interest. Similarly, the order, in *United States* v. *International Boxing Club of New York, Inc., supra,* 171 F. Supp. 841 (S.D.N.Y. 1957), *aff'd.*, 348 U.S. 242 (1949), imposed severe restrictions on the defendants, limiting them to the promotion of only two professional boxing contests a year and cancelling all outstanding exclusive contracts for professional boxing contests as well as all outstanding stadia leases. As the District Court put it (1957) Trade Cas., par. 68, 759 at p. 73, 104) :

> By terminating all exclusive contracts and leases and enjoining them in the future, the way will be open for those who wish and have the financial ability and otherwise meet local and state requirements to enter into the promotion of championship boxing contests.

The Supreme Court specifically discussed and sustained the exclusive contracts provision of the order entered by the District Court (358 U.S. at 262).

Respondents particularly object to the portion of Part IV which prohibits Balfour for 10 years from selling to any fraternity that was under exclusive contract with BPA as of 1961. We believe that if Balfour's monopoly power is to be effectively dissipated, it must be prevented for a reasonable period from seeking the business which it deliberately steered to BPA or which, perhaps, had always been BPA's. Of course, this provision

[28] The Commission has ample power to enter an order of divestiture. *See FTC* v. *Dean Foods Co.*, 384 U.S. 597, 606, n. 4 (1966) ; *Pan American World Airways, Inc.* v. *United States*, 371 U.S. 296, 312, n. 17 (1963).

will not prevent fraternities which have dealt directly with Balfour from continuing to deal with Balfour, if they wish to do so. Also, fraternities which have in the past dealt with BPA may continue to deal with BPA or with any other supplier excepting only Balfour.

Because of Balfour's monopolization of this market, existing suppliers other than respondents account for only 3.1% of the market (based upon the number of fraternities under exclusive contract with respondents, Part II, *supra*). However, seven firms which are now limited to the high school class ring, college ring and commercial and organizational jewelry field at one time sold national college fraternity insignia jewelry (F. 76, 78, I.D. pp. 376, 380–384), and nine other small firms presently engaged in selling insignia products other than jewelry to national college fraternities (F. 80–90, I.D. pp. 386–390). Furthermore, we are told by respondents themselves that other manufacturers stand ready to enter into competition for fraternity insignia products (R. Br. on Ap'l. pp 53–55), and the record indicates that, technically and financially, entry into this market is not difficult (R. 3707–08, 3788, 5505–06). Accordingly, it is not farfetched to assume the existence of significant potential entrants and reentrants to this field, ready, willing and able to compete. We therefore do not believe that the provision in question will deprive the 52 affected fraternities of the benefits of competition, as respondents contend; rather, this barrier against Balfour should help revive competition, to the paramount benefit of all fraternities.

At the same time, it is not our intent to shackle competition after it is recreated. Given the existing companies on the fringe of the market, a ten-year restraint may not be necessary. We believe that prohibiting sales for a period of 5 years is more reasonable, and we amend Section IV of the order proposed by the examiner accordingly. We are unpersuaded by respondents' contention that as a result of these provisions Balfour will be saddled with useless inventories. Respondents argued that their existing contracts were cancellable upon a maximum of one year's notice, so in no case could they justify having inventory covering more than a single year. The existence of some available supplies should only help respondents in competing for sales during the first 12 months after the effective date of the order.

We believe that various other portions of the order objected to by respondents—including the prohibitions against exclusive dealing contracts of any duration, against use of the term "official jeweler" and against any statements, however accurate, regarding competitors' activities—all constitute measures necessary to provide the industry with a "breathing spell" during which competition may be renewed. *F.T.C.* v. *National Lead Co.*, 352 U.S. 419, 428–29 (1957); *Vanity Fair Paper Mills, Inc.*, v. *F.T.C.*, 311 F. 2d 480, 488 (2d Cir. 1962).

We further believe that to assure competitors a maximum opportunity to break the existing stalemate in the fraternity insignia market, respondents should be prohibited during five years from entering into any contract of more than one year's duration with any fraternity.

We find no merit in any of the other arguments advanced by respondents respecting the order proposed by the examiner.

If competition is to be recreated in this industry, it is essential that the inertia engendered by respondents' monopolization be broken. Respondents' customers must be stimulated to re-examine their purchasing policies, and respondents' competitors, actual and potential, must be afforded some opportunity to gain access to the re-opened market. The provisions of the examiner's order are appropriately designed to breathe new vitality into this field. Accordingly, we adopt the order, with the exception noted above, insofar as it relates to the college fraternity insignia phase of this case. It goes without saying that respondents always have the right to petition the Commission for modification of the prohibitions of this order if they can demonstrate that market conditions have so changed in this industry as to render the prohibitions unnecessary. Similarly, it is clear that the extent to which the provisions of the order must be applied against Burr, Patterson and Auld after its divestiture from respondent Balfour is open to re-examination at that time.

B. *Order Provisions Relating to High School Class Rings*

Complaint counsel have proposed two additional sections to the order proposed by the Hearing Examiner to deal with the high school class ring phase of the case. In view of our conclusion that the monopolization charges with respect to high school class rings have not been proved, we will deal only with counsel's proposed order provisions relating to respondent Balfour's use of term agreements in the sale of these products.

Counsel supporting the complaint propose that in the sale of high school class rings and other high school products respondent be prohibited from entering into any agreements with high schools for a period in excess of one year, except where rings require an original set of dies, from entering into any contract more than 60 days before the contract is to begin, from entering into alternating contracts and from falsely representing any "special" pricing terms (Complaint Counsel Appeal Br. pp. 43–44).

Respondent does not interpose any specific objections to any particular parts of this proposed section of the order. Rather it addresses its argument to the general contention that it would be unfair to enter any order against Balfour with respect to its use of term agreements. We have already dealt with respondent's arguments as to the fairness of entering an order against respondent, and we will not repeat that discussion here.

The complaint charged that respondent's use of term agreements unreasonably restrained competition, and these allegations are amply supported by the record. Accordingly, an order is essential to eliminate the anticompetitive features of these agreements.

In order to remove the anticompetitive features we have found inherent in respondent's use of term agreements, the order to be entered must specifically require respondent to cease and desist from entering into any agreement which fails to specify the type and price of the ring to be ordered or which for any other reason does not constitute a legally binding contract. We have framed a provision to that effect.

Similarly, respondent's significant share of the high school market requires that its contracts for high school rings, which by their nature will probably be exclusive contracts, be limited to one year periods. We have considered respondent's arguments in this connection and have concluded that it has failed to demonstrate any general need for these contracts to have a longer duration.

At the same time, we agree with the exception proposed by complaint counsel in the case of an initial contract for the manufacture of rings requiring special, expensive dies. To permit amortization of these significant costs, contracts may cover up to three years when manufacturing the ring will require construction of a complete, original set of dies usable solely for the particular ring. In those cases, the contract must state these costs separately. Since at the end of the three years the cost of the dies by hypothesis will have been fully paid by the school, the contract must stipulate that the dies then belong to the school, and no further multi-year contract may be entered into with respect to them. We provide accordingly.

We agree with complaint counsel that the order provisions in this phase of the case must contain prohibitions on the use of alternating contracts and against the use of fictitious pricing claims, although we have made some modification of the language proposed in the interest of clarification.

We do not agree that there is a sufficient basis in the record for making this part of the order applicable to high school products other than rings; consequently we are deleting these provisions from the proposed order.

FINAL ORDER

This matter having been heard by the Commission upon cross appeals of respondents and complaint counsel from the hearing examiner's initial decision and upon briefs and oral argument in support of and in opposition to said appeals; and

The Commission having determined for the reasons stated in the accompanying opinion that the appeal of counsel supporting the complaint should be granted in part and denied in part and that respondents' appeal should be granted in part and denied in part; that Findings 1–416 should be adopted and Findings 417–429 should be rejected by the Commission; that charges respecting the individual respondent, L. G. Balfour, respecting monopolization and attempted monopolization of the sale and distribution of college and class rings and respecting commercial and industrial emblematic jewelry should be dismissed; and that the order contained in the initial decision should be modified to read as follows:

ORDER

DEFINITIONS

For the purposes of the order to be issued in this proceeding, the following definitions shall apply:

(a) *Fraternity* shall mean a college social or college professional fraternity or sorority or college honor or college recognition society having more than one chapter;

(b) *Fraternity products* shall mean products bearing the trademark or distinctive insignia of a fraternity (as defined in (a) above); including, but not limited to, such products as standard badges, jeweled badges, pledge buttons or pins, recognition pins, monogram pins, pendants, miscellaneous jewelry items, paddles, beer mugs, processed knitwear, blazers, party and dance favors, stationery, pennants and other novelty-like items;

(c) *Findings* shall mean any product used in the manufacture, fabrication or processing of insignia jewelry, service awards or specialty products including, but not limited to, tie bars, tie tacks, tie chains, cuff links, lapel pins or buttons, key chains, identification bracelets, belt buckles, pendants, compacts, vanities, cigarette lighters, billfolds, jewel or cigarette boxes and pens and pencils.

I

It is ordered, That respondent L. G. Balfour Company, a corporation, and its officers, agents, representatives, employees, subsidiaries, successors and assigns and respondent Burr, Patterson and Auld Company, a corporation, and its officers, agents, representatives, employees, subsidiaries, successors and assigns, in connection with the sale, offering for sale, or distribution of fraternity products in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall terminate all contracts, agreements, understandings or arrangements, written or oral, in effect with any fraternity relating in any manner to the manufacture, sale or distribution of fraternity products. Respondents shall send a written notice of termination to each said fraternity, together with a copy of this opinion and order; and a copy of such notice and order, together with a list of the fraternities to which said notice and order has been sent, shall be furnished to the Federal Trade Commission within thirty days thereafter.

II

It is further ordered, That respondent L. G. Balfour Company, a corporation, and its officers, agents, representatives, employees, subsidiaries, successors and assigns and respondent Burr, Patterson and Auld Company, a corporation, and its officers, agents, representatives, employees, subsidiaries, successors and assigns, in connection with the sale, offering for sale, or distribution of fraternity products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Monopolizing, or attempting to monopolize, the manufacture, sale or distribution of fraternity products by utilizing any plan, policy, method, system, program or device which has the purpose or effect of foreclosing competitors from the manufacture, sale or distribution of such products, or utilizing any contract, agreement, understanding or arrangement, written or oral, which has the purpose or effect of unlawfully foreclosing, restricting, restraining, or eliminating competition in the manufacture, sale or distribution of such products;

(2) Entering into, maintaining or utilizing any contract, agreement, understanding or arrangement, written or oral, with any fraternity which designates, appoints, authorizes, grants or entitles respondents, or either of them, to be sole or exclusive supplier, or suppliers, of any or all types of fraternity products to said fraternity, or which requires or obligates said fraternity to purchase all or substantially all of its requirements of any or all types of fraternity products from respondents, or either of them;

(3) For a period of five (5) years, entering into, maintaining or utilizing any contract, agreement, understanding or arrangement, written or oral, with any fraternity which continues in effect for a period longer than one year;

(4) Representing, directly or by implication, that respondents, or either of them, are the sole authorized supplier or suppliers of any or all types of fraternity products to any fraternity;

(5) Holding any office in, making any financial or other contribution of value to, or participating in any manner in the management of the affairs of any organization composed of more than one fraternity, such as, but not limited to, the Interfraternity Research and Advisory Council, National Interfraternity Conference, National Panhellenic Conference, National Panhellenic Council, Professional Interfraternity Council, Professional Panhellenic Association or Association of College Honor Societies.

III

It is further ordered, That respondent L. G. Balfour Company, a corporation, and its officers, agents, representatives, employees, subsidiaries, successors and assigns and respondent Burr, Patterson and Auld Company, a corporation, and its officers, agents, representatives, employees, subsidiaries, successors and assigns, in connection with the manufacture, sale, offering for sale, or distribution of fraternity products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing in any manner, directly or indirectly, that any competitor has manufactured, distributed or sold any or all types of fraternity products without permission or authorization of any fraternity or fraternities;

(2) Inducing or coercing any fraternity or any officer, member or employee thereof, (a) to refrain from giving fair consideration to offers by respondents' competitors to sell any or all types of fraternity products to any fraternity or any member thereof,

or (b) to deny respondents' competitors free and open access to the national offices or chapter houses of any fraternity, or (c) to cancel any existing contract or purchase order of respondents' competitors covering the sale of any or all types of fraternity products to any fraternity or to any member thereof;

(3) During a period of ten (10) years from the date of entry of this order, purchasing, merging or consolidating with, or in any way acquiring any interest in, any competitor engaged in the manufacture, distribution or sale of any or all types of fraternity products whose sales of said fraternity products constitute an amount in excess of ten (10) percent of the total sales of such competitor, unless permission to make such merger, consolidation or acquisition is first obtained from the Federal Trade Commission;

(4) Entering into any contract, agreement, understanding or arrangement, written or oral, with any manufacturer or distributor of any fraternity product, or any product intended for sale or distribution to any fraternity, that such supplier shall not sell said product, or products, to any competitor of respondents.

IV

It is further ordered, That respondent L. G. Balfour Company, within one (1) year from the date this order becomes final, shall divest itself, absolutely and in good faith, of all assets, properties, rights and privileges, tangible and intangible, of respondent Burr, Patterson & Auld Company relating in any way to the manufacture, sale or distribution of fraternity products, including patents, trademarks, trade names, firm names, good will, contracts and customer lists. In such divestment no property above mentioned to be divested shall be sold or transferred, directly or indirectly, to anyone who at the time of the divestiture is a stockholder, officer, director, employee or agent of, or otherwise directly or indirectly connected with, or under the control or influence of, respondent L. G. Balfour Company, or to any purchaser who is not approved by the Federal Trade Commission.

Commencing upon the date this order becomes final and continuing for a period of five (5) years from and after the effective date of the divestiture, respondent L. G. Balfour Company shall refrain from selling any fraternity products to any fraternity that was under an official, co-official or sole official jeweler contract with respondent Burr, Patterson & Auld as of June 16, 1961.

V

It is further ordered, That respondent L. G. Balfour Company, a corporation, and its officers, agents, representatives, employees, subsidiaries, successors and assigns and respondent Burr, Patterson and Auld Company, a corporation, and its officers, agents, representatives, employees, subsidiaries, successors and assigns, in connection with the manufacture, sale, offering for sale or distribution of any of their products in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

(1) Falsely imputing to any competitor dishonorable conduct, inability to perform contracts, questionable credit standing, or falsely disparaging any competitor's products, business methods, selling prices, values, credit terms, policies or services;

(2) Enticing away employees or sales representatives from any competitor with the intent or effect of injuring any competitor or competitors. This provision shall not prohibit any person from seeking more favorable employment with respondents, or either of them, or to prohibit said respondents, or either of them, from hiring or offering employment to employees of a competitor in good faith and not for the purpose of inflicting injury on such competitor;

(3) Entering into any contract, agreement, understanding or arrangement, written or oral, with any supplier of any finding or findings that such supplier shall not sell said finding or findings to any competitor of respondents.

VI

It is further ordered, That respondent L. G. Balfour Company, a corporation, its officers, agents, employees, representatives, subsidiaries, successors and assigns, directly or indirectly, through any corporate or other device, in or in connection with the offering for sale, sale or distribution of high school class rings in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Entering into, establishing, maintaining, enforcing, or continuing in operation or effect beyond the first school year that ends after the effective date of this order, any contract, agreement or understanding with any high school official or high school class with respect to the sale, supply or distribution of high school class rings which fails to set forth all of the terms essential to enable performance of such contract, agreement or un-

derstanding, including a description of the ring being ordered and the price thereof;

(2) Entering into, establishing, maintaining, enforcing, or continuing in operation or effect beyond the first school year that ends after the effective date of this order, any contract, agreement or understanding with any high school official or high school class with respect to the sale, supply or distribution of high school class rings which continues in effect for a period longer than one year: *Provided, however*, That respondent L. G. Balfour Company, a corporation, and its officers, agents, representatives, employees, subsidiaries, successors and assigns, may enter into such contract, agreement or understanding for a period not in excess of three years if (i) the manufacture of the high school class rings that are the subject of any contract, agreement, or understanding requires respondent to construct a complete and original set of dies usable solely for said rings, (ii) the die charges are separately quoted and stated by respondent and (iii) the contract, agreement, or understanding provides that the dies become the property of the high school at the expiration thereof;

(3) Representing, directly or by implication, that special prices, discount prices, term prices, discounts, or rebates are afforded to purchasers of high school class rings unless the price at which such merchandise is offered constitutes a reduction equal to any amount stated, or otherwise directly or by implication represented, from the actual, bona fide price at which such merchandise was offered to high schools on a regular basis during the calendar year in which such representation is made in the regular course of business in the trade area where the representation is made, and unless such regular price and the discount price, discount rate, or rebate terms are clearly set forth in such agreement;

(4) Entering into, establishing, maintaining, or enforcing at any time after the first school year that ends after the effective date of this order, any contract, agreement, or understanding with any high school official or high school class with respect to the sale, supply, or distribution of high school class rings more than sixty days prior to the date upon which the term of such contract, agreement, or understanding is to begin;

(5) Entering into, establishing, maintaining or enforcing at any time after the first school year that ends after the effective date of this order, any contract, agreement, or understanding with any person whereby respondent will alternate, rotate, or otherwise share with any competitor in the sale or supply of high school class rings to any high school class.

VII

It is further ordered, That respondent L. G. Balfour Company and respondent Burr, Patterson & Auld shall, within sixty (60) days from the date of service of this order, submit to the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which they have complied with Parts I, II, III and V of this order; respondent L. G. Balfour Company shall also, within sixty (60) days from the date of such service, submit to the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with Part VI of this order; and respondent L. G. Balfour Company shall also, within sixty (60) days from such date of service and every sixty (60) days thereafter until it has fully complied with this order, submit to the Commission a detailed written report of its actions, plans and progress in complying with the provisions of Part IV of this order.

VIII

It is further ordered, That all charges respecting respondent L. G. Balfour be, and they hereby are, dismissed.

IN THE MATTER OF

HAWAIIAN SPORT SHOP, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-1394. Complaint, July 29, 1968–Decision, July 29, 1968

Consent order requiring two affiliated Florida retailers of ladies' and men's sportswear to cease marketing dangerously flammable products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Hawaiian Sport Shop, Inc., a corporation, and Waikiki Shop, Inc., a corporation, and John F. McFall, individually and as an officer of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Flammable Fabrics Act, as amended, and it appearing