

Annual
Report
of the **FEDERAL
TRADE
COMMISSION**

For the Fiscal Year Ended
June 30, 1964

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C., 20402 - Price 25 cents (paper cover)

Federal Trade Commission

PAUL RAND DIXON, Chairman
PHILIP ELMAN, Commissioner
EVERETTE MACINTYRE, Commissioner
JOHN R. REILLY, Jr., Commissioner

JOHN V. BUFFINGTON, Assistant to Chairman

JOSEPH W. SHEA, Secretary

JOHN N. WHEELOCK, Executive Director
PHILIP R. LAYTON, Program Review Officer
JAMES MCI. HENDERSON, General Counsel
L. EDWARD CREEL, Director of Hearing Examiners (acting)
DANIEL J. MURPHY, Director
 Bureau of Deceptive Practices
WILLARD F. MUELLER, Director
 Bureau of Economics
SAMUEL L. WILLIAMS, Director
 Bureau of Field Operations
CHALMERS B. YARLEY, Director
 Bureau of Industry Guidance
JOSEPH E. SHEEHY, Director
 Bureau of Restraint of Trade
HENRY D. STRINGER, Director
 Bureau of Textiles and Furs

EXECUTIVE OFFICES OF THE FEDERAL TRADE COMMISSION

Pennsylvania Avenue at Sixth Street Northwest,
Washington, D.C. 20580

Field Offices

30 Church St., New York, N.Y., 10007
Room 486, U.S. Courthouse & Federal Office
Building, 219 South Dearborn Street,
Chicago, Ill., 60604
450 Golden Gate Avenue, Box 36005, San
Francisco, Calif., 94102
Room 1212, 215 West Seventh Street, Los
Angeles, Calif., 90014
Room 1001, 131 State Street, Boston, Mass,
02109
Room 1000, Masonic Temple Building, New
Orleans, La., 70130

Room 10511 U.S. Courthouse Building, P.O. Box
61165, Houston, Tex., 77061
Room 509, U.S. Courthouse, Seattle, Wash.,
98104
Room 1128, Standard Building, Cleveland, Ohio,
44113
Room 2806, Federal Office Building, Kansas
City, Mo., 64106
Room 915, Forsyth Building, Atlanta, Ga., 30303
Anderson Building, 450 West Broad St., Falls
Church, Va., 22046

Field Stations for Textiles and Furs in Addition to the Above Branch Offices

Room 400, U.S. Court and Custom House, St.
Louis, Mo., 63101
Room 405 Thomas Building, 1314 Wood St.,
Dallas, Tex., 75202
Room 204, 327 North Tryon Street, Charlotte,
N.C., 28202
Room 231, U.S. Courthouse, Portland, Oreg.,
97205

53 Long Lane, UD -0.5 Tw (N.Cr Dt.) .00uu-19419082 TD 0.0066

Letter of Transmittal

FEDERAL TRADE COMMISSION,
Washington, D.C.

To the Congress of the United States:

It is a pleasure to transmit herewith the Fiftieth Annual Report of the Federal Trade Commission, covering its accomplishments during the fiscal year ended June 30, 1964.

By direction of the Commission.

PAUL RAND DIXON,
Chairman.

THE PRESIDENT OF THE SENATE.
THE SPEAKER OF THE HOUSE OF H

TABLE OF CONTENTS

Chapter	Page
I. Introduction	1
II. The Industry Guidance Program	7
III. Combating Deception of the Consumer	9
IV. The Fight For Fair Business Competition	19
V. Wool, Fur, and Textile Acts Enforcement	27
VI. Followthrough in Law Enforcement	31
VII. Legislation Needed	33
VIII. The Role of Economic Studies and Evidence	35
IX. Appropriations and Financial Obligations	41
Appendix (A) FTC Cases in the Courts	43
Appendix (B) Deceptive Practice Civil Penalty Cases	49
Appendix (C) Textile and Fur Court Cases	51

INTRODUCTION

Unprecedented emphasis on the use of industry guidance methods as alternatives, whenever possible, to formal adversary actions characterized the work of the Federal Trade Commission during fiscal 1964. In pursuing this policy, the Commission moved toward its original purpose of guiding business into legal channels without bringing down upon it the "menace of the law."

Only when persuasion encountered defiance or delaying tactics to prolong illegal practices did the Commission strike with the full force of the status it was given to enforce.

With an appropriation of \$12,214,000 and a staff of 1,144, it would have been simple indeed to build record statistics by showering complaints on corporations and individuals, but the Commission chose to ignore

but but actions to

ttb

This is illustrated by the unprecedented use of Trade Regulation Rules, Advisory Opinions, and the correction of law infractions by accepting assurances of discontinuance from the violators, thus avoiding time-consuming litigation. The resulting speedup in averting and informally correcting violations redounded not only to the benefit of fair competition in business but also to the consuming public. Too often in the past while the Commission was slowly driving nails into the coffin of a stoutly defended illegality, competitors and the public continued to be victimized by it.

Significantly, too, the new guidance program has muscle behind it. For example, Trade Regulation Rules are issued only after public hearings have been held at which the exact points of illegality in objectionable practices have been illuminated and defined. This serves not only to put businessmen on notice of the Commission's interpretation of the illegality but it also simplifies the FTC's burden of proof in prosecuting cases. To know with certainty what the Commission had found to be illegal about a business practice, to know that this practice had been selected by the FTC as a target, and to know that the Commission's Trade Regulation Rule can be employed effectively in the prosecution of a case is a greater deterrent to continuation of the practice than to bring isolated cases against a few violators.

Many violations, however, did not lend themselves to handling by informal methods. The Commission had no alternative but to bring formal complaints looking to the issuance of cease-and-desist orders. The fiscal year saw the Commission issue 311 such complaints and 415 orders. In fiscal 1963, comparable statistics showed the issuance of 437 complaints and 475 orders. However, the comparative numbers of complaints and orders signifies no lessened efficiency inasmuch as in fiscal 1964 much greater emphasis was placed on informal methods of obtaining compliance with the law. For example, 416 assurances of discontinuance were accepted in fiscal 1964 as compared to but 239 the previous year. The 1964 total was nearly four times the average number for the years 1958-60, inclusive. Had the Commission been determined to prosecute whenever possible, many of these assurances of discontinuance could have been converted into complaints and, in time, orders.

It is unfortunate that statistics are so often misunderstood. Superficially, the more complaints and the more orders the Commission

Chapter II

Public hearings were held on proposed rules relating to the following subjects: Deceptive advertising and labeling of previously used lubricating oil; deception as to the size of tablecloths and related products; deception as to the light output, wattage, and life of incandescent electric light bulbs; and the use of names suggesting foreign origin to describe cosmetics and toilet preparations not made wholly in a foreign country.

Among the subjects under study for Trade Regulation Rule proceedings at the close of the fiscal year were alleged discriminatory pricing practices in the marketing of gasoline, mergers in the cement industry, unlawful advertising allowances in the luggage industry, and deception as to the size of television picture tubes.

Significant strides

strides sta() Tj783icj 33.84 Tc ()3.4 0 ingdu2(the) T-ndu2(the) picj 33

In addition to the

COMBATING DECEPTION OF THE CONSUMER

Cheating of consumers, principally by false advertising, is the evil for whose eradication the

could not be stretched far enough to make industrywide investigations on other than a selective basis.

Significant areas in which the Commission acted during fiscal 1964 to prevent consumer deception include the following:

Health Products

A project involving about 50 cases was pursued in an effort to eradicate false advertising of vitamin and mineral preparations. In a typical case, the advertiser of a vitamin preparation was ordered to stop claiming the product would overcome nervousness, restlessness, listlessness, worry, irritability, tension, depression, loss of vigor and vitality, or lack of alertness, unless a clear disclosure be made that such symptoms are usually due to conditions other than vitamin deficiency and thus the product would not be of benefit in the great majority of cases (C-731).

In other typical cases involving health, the Commission took action to stop false claims that a chest rub would be of benefit to treat fever, colds, or chest congestion (C-603); misrepresentation of the optical quality of eyeglasses (8465) ; deceptive televisionr

chasers remain a member of the plan (Dockets C-523, C-605, C-614, C-708, C-719, C-745, C-760).

Clothing and Shoes

Three operators of chains of clothing stores were ordered during the year to cease using the word “Mills” as part of

so shaped as to create the optical illusion of being larger than conventionally shaped containers of equal or greater capacity, is as much a deceptive practice, and an unfair method of competition, as if the seller were to make an explicit false statement of the quantity or dimensions of his goods. While the Commission is not concerned with required standardized or uniform packaging as such, it is concerned with all forms and methods of deceptive packaging of goods in commerce, no less than with false and misleading advertising or labeling of such goods. (Docket 8489.)

Television-Radio Advertising

Deceptive television demonstrations regarding product capabilities and qualities continue to engage the attention of the Commission. For example, a leading automobile manufacturer and its supplier of glass were ordered during the year to cease use of television commercials which purported to demonstrate superior visibility through car windows, when in fact the windows had been rolled down before the pictures were taken (Docket 7643). A leading toy manufacturer was ordered to stop use of demonstrations which implied falsely that a mechanical man was voice controlled and would respond to voice commands (8530) ; and a seller of kitchen knives was ordered ttt

scheme, he is promised a commission on sales made to friends, relatives, or neighbors whose names he furnishes; and in the bogus contest he is told that his home will be entered in a contest to determine which showed the greatest improvement, with winners to be given a prize such as a free trip to a foreign country or a new automobile. The bait-and-switch technique

claiming that the client will be assured of delay, restraint, or forbearance on the part of creditors. This is a first-of-its-kind case, the principles of which should go a long way toward protecting low-income people from being deceived by concerns which hold out false hopes of help in solving problems of excessive debt (Docket C-748).

In other actions involving consumer finance, the Commission stopped the use of practices such as:

- claiming that the interest rate on a home improvement contract

- exaggerating profits small business investors can earn in Laundromat or vending-machine business.
- exaggerating profits farmers can earn by purchasing certain seed grain.
- failing to disclose the used, reclaimed, or rebuilt character of motor oil and golf balls.
- false claims by encyclopedia or magazine salesmen that they were making surveys, were teachers affiliated with an educational institution, or were competing for college scholarships.
- using deceptive "Help Wanted" ads and deceptive earnings claims to sell correspondence courses.
- use of misleading and coercive tactics to sell dance instruction courses.
- misrepresenting watches as to usual price, jewel content, composition of case, shock and water resistance, and guarantees.
- use of lottery schemes and games of chance to sell merchandise, especially to or through children.
- failure to disclose the abridgment of books.

Statistical Summary

In total, 161 orders to cease and desist and 129 formal complaints were issued in deceptive practice cases during the year. Many of these actions were part of broad-scale or project efforts in support of previously issued Trade Practice Rules or Guides, or otherwise were designed to eradicate unlawful practices on an industrywide basis.

Corrective action also was achieved in 298 cases on the basis of receiving adequate assurances that the practices under investigation had been discontinued without intent to resume.

Letters of applications for complaint received from the public numbered 4,523, about the same as the previous year when 4,562 were received. A total of 837 investigations were completed.

During the fiscal year, 511,102 radio and TV commercial scripts and 267,645 pages of print material were received. From this total, 42,646 advertisements were forwarded for consideration by the legal staff.

When the Commission's investigations disclose the use of practices which appear to be not only deceptive but fraudulent, the results of the investigation are being promptly referred to the Post Office De-

partment or Department of Justice for prosecution under applicable criminal statutes. Such action has recently been taken in cases involving interstate land sales; bogus "liquidation sales" of watches, appliances, and other merchandise; sales of aluminum siding; and referral schemes used to sell built-in vacuum cleaner systems.

Division of Scientific Opinions

THE FIGHT FOR FAIR BUSINESS COMPETITION

There is an essential difference between free enterprise and free-swinging enterprise. The latter,

straints were initiated, and 467, including those from previous years, were completed. The Commission issued 95 antimonopoly complaints and 136 orders to cease and desist. This work resulted from enforcement of general trade restraint prohibitions contained in Section 5 of the FTC Act and of sections 2, 3, 7, and 8 of the Clayton Act.

A major portion of the Commission's enforcement activity in the restraint-of-trade field involved discriminatory practices. During the fiscal year, 83 formal complaints and 113 orders to cease and desist were issued in this area.

Special emphasis was placed on formal and informal cases involving discriminatory practices found to be widespread in a number of industries. The existence of widespread violations in a given industry is a matter of serious concern to its members at all competitive levels. Competition may be substantially lessened as a result of discriminatory practices of a single competitor, but when the same practices become widespread, the cumulative effects are far reaching and often result in the destruction of competition.

Industries in which discriminatory practices were challenged on a broad scale include: (1) Carpets and rugs; (2) fluid milk and dairy products; (3) biscuit products; (4) macaroni products; (5) toy catalog jobbers; and (6) wearing apparel.

In the carpet and rug industry, in separate proceedings, the Commission issued cease-and-desist orders enjoining 12 major carpet and rug manufacturers from discriminating in price between retailers through the granting of annual volume rebates. The Commission found that the discriminatory rebates were neither cost justified nor defensible on the ground of meeting competition in good faith. Three companies took appeals from the orders, whereupon the Commission suspended the requirement that compliance reports be filed by nine respondents pending final review in the appellate court.

In the fluid milk and dairy products industry, 300 letters of complaint were received from independent dairies charging large interstate dairies with discriminatory pricing. Each of these complaints was the subject of preliminary inquiry. Seven new field investigations were instituted concerning milk-pricing practices in market areas in different sections of the country. The results of these investigations are under review.

A cease-and-desist order was issued against The Borden Co. (Docket 7474) enjoining discriminatory pricing in the sale of fluid milk. The Commission found that the company's price discriminations in favor of large retailers caused competitive injury at both the primary and secondary levels. Also a cease-and-desist order was issued against Central Arkansas Milk Producers Association (Docket 8391) proscribing coercive and discriminatory practices by the association.

In the biscuit industry, four manufacturers were required to discontinue discriminating in price between competing resellers of biscuits, crackers, and related products. The order against one of them, United Biscuit Co. (Docket 7817) also enjoined discriminatory payments of promotional allowances.

Cease-and-desist orders issued against four manufacturers of macaroni products prohibited them from favoring certain customers with preferential prices, allowances, and services or facilities. A fifth manufacturer was enjoined from granting preferential allowances to certain favored customers.

In six separate proceedings, the Commission ordered toy jobbers, owning or otherwise affiliated with toy catalog publishing companies, to stop knowingly inducing and receiving discriminatory allowances from suppliers.

Investigations in the wearing apparel industry disclosed the existence of widespread discriminatory payments of promotional allowances. The Commission offered 267 manufacturers an opportunity to dispose of their violations through consent agreements. By the end of fiscal 1964, the Commission had issued consent orders prohibiting 231 manufacturers from discriminating among competing customers in the payment of promotional allowances. The effective date of these orders has been postponed pending further developments in a number of adjudicative proceedings against nonconsenting manufacturers and completion of investigations of additional manufacturers.

In other proceedings, large national concerns were ordered to discontinue discriminating in price in the sale of their products to competing customers: Purolator Products, Inc. (Docket 7850); Pacific Molasses Co. (Docket 7462); Universal-Rundle Corp. (Docket
discr4Tc (pro83 Tc (discriminatory) Tj 75.12 dao5 60.84o2.28 0 T40c (pro83 Tc (discriminatory) T

order was issued against a large group of automotive parts jobbers enjoining the inducing and receiving of unlawful price discrimination from suppliers, National Parts Warehouse et al. (Docket 8039).

In the enforcement of the Celler-Kefauver Antimerger Act, the Commission has concentrated upon merger trends in a number of important industries. During the fiscal year, the Commission issued six formal complaints and seven cease-and-desist and divestiture orders involving mergers and acquisitions.

In the cement industry, the Commission has been primarily concerned with a growing trend toward vertical integration through the acquisition by cement companies of producers of ready-mix concrete, the largest consumers of cement. In order to fully inform itself as to the causes for and the competitive effects of this merger trend, and to enable it to establish standards for judging the legality of such mergers, the Commission has announced its intention to conduct a Trade Regulation Rule proceeding in this industry. In addition, the Commission has issued complaints challenging

proceedings challenging chain store acquisitions were argued on appeal before the Commission in National Tea Co., Docket 7453, and the Grand Union Co., Docket 8458. On the processing and manufacturing side of this industry, the Commission entered its decision in the Procter & Gamble Co., Docket 6901, finding that the acquisition by that company of the Clorox Chemical Co. violated section 7 of the Clayton Act. It also issued a complaint challenging the acquisition of S.O.S. Co. by General Foods Corp., Docket 8600.

In the enforcement of section 5 of the FTC Act, relative to general trade restraints, the Commission issued 6 formal complaints and 16 cease-and-desist orders during the fiscal year. Several industries were receiving substantial attention in investigations and in formal cases which involve the entire spectrum of general trade restraints, including conspiracy. The industries in which such efforts were being expended include floor coverings, steel reinforcement bars, tobacco, and ball and roller bearings.

Substantial effort and manpower continued to be devoted to the gasoline industry and the illegal practices

Substantj 3.480 000 (0.00) 428.6545 on BB & NY (at) 21105.4810 30000006.00028265

A Commission ruling that has international as well as national significance is that against Grand Caillou Packing Co., Docket 7887. The charge was that respondent, Peelers Co., the owner of patents on automatic, bulk-fed shrimp-processing machinery, leased this machinery to shrimp

them. For example, on May 14, 1964, the Court of Appeals for the Fourth Circuit remanded two private actions to the appropriate District Courts in North Carolina and Virginia, with the direction that the District Courts request the Federal Trade Commission to “investigate and advise” upon the validity of two proposed plans for allocation of selling time on two tobacco markets.

Compliance Work

The Commission still is faced with the serious problem of insuring compliance with outstanding orders, particularly those affecting trade restraints. They involve extremely complex pricing and distribution problems having an impact not only on the individual respondent, but in many instances on the economy of the industry in which the respondent sells. Unfortunately, this complex problem has not received the degree of attention necessary due to insufficient manpower. An average workload of 450 active cases during fiscal 1964 placed a too heavy demand for the size of the compliance staff. With the implementation of the advisory opinion program, the requests for advice involving orders in the restraint of trade area have been increasing. In addition, the compliance attorney personnel were instrumental, during fiscal 1964, in the negotiation of divestiture of over 65 plants or other facilities under final orders to divest.

The compliance staff also continued its investigation and processing of the remainder of the 56 judgement cases referred to the Commission by the Department of Justice for investigation and recommendation. These matters involve investigational and legal problems of the first magnitude. Many of the judgments cover, for example, not only a multiplicity of defendants, but all or a substantial segment of an entire industry. By the year's end, 46 of these cases had been completed and forwarded to the Attorney General.

As of the close of this fiscal year, the following civil penalty cases involving violations of outstanding Commission orders were pending:

W. B. Saunders Co. (E.D. Pa.) alleged conspiracy to boycott—medical books.

Select Magazines, Inc., et al. (S.D.N.Y.) Alleged discrimination in advertising and promotion programs—publishing industry.

Macfadden Publications, Inc. (S.D.N.Y.) alleged discrimination in advertising and promotion programs—publishing industry.

St. Regis Paper Co., et al. (S.D.N.Y.) alleged conspiracy to exchange price information.
Accounting

In addition to furnishing accounting services in the investigation and trial of cases involving price discrimination, sales below cost, and mergers, the Accounting Division made a special effort during the year to providing accounting services in the investigation and trial of cases in the food industry.

The Division also continued the tabulation and computation of (S.D.N.1 Tc (the) Tj 15.820a0TD

The Commission approved for issuance or issued 126 complaints and 88 cease-and-desist orders under the 4 statutes administered by the Bureau. These included 17 orders under the Wool Products Labeling Act, 52 under the Fur Products Labeling Act, 9 under the Textile Fiber Products Identification Act, and 10 under the Flammable Fabrics Act. The Bureau began the fiscal year with 229 formal cases, added 349 new cases, and disposed of 266.

Misbranded mohair and wool sweaters and hand-knitting yarns from abroad gave the Bureau its biggest single problem under the Wool Act. Many of these sweaters represented as containing high percentages of mohair were found to contain considerably less mohair, and in some instances substantial quantities of azlon and nylon which were not set forth on the labels.

FOLLOWTHROUGH IN LAW ENFORCEMENT

Fiscal 1964 witnessed unprecedented activity for the Office of the General Counsel. Not only did it handle a record amount of appellate casework, but more assistance was required of it in furtherance of the Commission's stepped-up program for obtaining voluntary compliance with the law. To this was added the continuing workload of negotiating consent settlements by which about three-fourths of the FTC's cases are concluded, plus increased activity in carrying out the Commission's

The Division of Consent Orders of the General Counsel's Office supervises the negotiation of consent orders to be entered in appropriate cases. These cases constitute in numbers the great majority of FTC enforcement proceedings. A total of 197 executed agreements containing consent orders to cease and desist were forwarded to the Commission during the year.

LEGISLATION NEEDED

The following represent the legislative proposals in which the Commission is most interested:

1. Amend section 7 of the Clayton Act (15 U.S.C. 18) to require prior notice to the Federal Trade Commission and other appropriate agencies of any proposed mergers of corporations of significant size which are engaged in interstate commerce, and to provide adequate means of preventing illegal mergers.

2. Amend section 2(c) of the Wool Products Labeling Act (15 U.S.C. 68 (e)), which defines a wool product, so that it will read as follows:

The term "wool product" means (1) any fibers or fibrous materials, including fibers or fibrous materials reclaimed from other products, which are, contain, or in any way are represented as containing wool, reprocessed wool, or reused wool, and (2) any yarn, fabric or other product containing or made in whole or in part of such fibers or fibrous materials.

3. Amend section 2(d) of the Flammable Fabrics Act (15 U.S.C. 1191(d)) so as to include blankets which are dangerously flammable.

4. Amend section 5(a) of the Clayton Act (15 U.S.C. 16 (a)) so as to include a final order of the Federal Trade Commission; that is, amend section 5 (a) to read:

A final judgment, decree or final order to cease and desist of the Federal Trade Commission heretofore or hereafter rendered in any civil or criminal proceeding brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under said laws or by the United States under section 4A, as to all matters

as between the parties thereto: Provided, That this section shall not apply to consent judgments or decrees entered before any testimony has been taken or to judgments or decrees entered in actions under section 4A.

THE ROLE OF ECONOMIC STUDIES AND EVIDENCE

It is not enough for the Commission simply to put out the fires of illegality whenever the smoke and flames become conspicuous enough. It also is important to explore underlying causes of and developments in economic problems so they might be tackled in the most effective way. Indeed, to garner the facts about them and to analyze these facts correctly is to provide both the Commission and the Congress with information vital to the taking of proper corrective action ranging from adversary proceedings to new legislation.

The Commission's Bureau of Economics is divided into three divisions: The Division of Economic Reports conducts inquiries into the developments of particular industries as well as broad trends reflecting changes in the structure of American industry to determine how competition is affected; the Division of Economic Evidence* provides economic information and analyses needed for the prosecution of casework; and the Division of Financial Reports collects and prepares, in cooperation with the Securities and Exchange Commission, financial reports covering various manufacturing industries.

Economic Reports

In progress is the preparation of a number of special industry studies as well as certain broad studies relating to changes in economic concentration in American manufacturing.

A preliminary report on Concentration and Mergers in American Manufacturing prepared for the Senate Subcommittee on Antitrust and Monopoly reveals significant changes in the concentration of industry.

*The name of this division has been changed to "Division of Industry Analysis."

A few highlights from this study are:

Between 1950 and 1962, the share of the total assets of all manufacturing companies held by the 200 largest firms rose from 46.7 percent to 54.6 percent, or an increase of about 17 percent.

The following table, taken from the report, shows the distribution of the assets of all manufacturing companies at year end 1962. Significantly, the study shows that one-eighth of all assets of manufacturing companies are controlled by the five largest companies, that one-fourth are controlled by the 20 largest companies, and that about three-fourths are held by the 1,000 corporations with assets in excess of \$25 million.

At the other end of the scale, an estimated 240,000 unincorporated manufacturers controlled less

CHART 1. Concentration of manufacturing corporations assets and income: 1962.

GRAPHIC - SEE IMAGE

TABLE 1. Concentration of total manufacturing assets, fourth quarter 1962

Corporate size group	Assets (millions)	All manu- facturing	Corpora- tions only
		Percent	Percent
5 largest	\$36,447	2.3	12.5
10 largest	54,353	18.4	18.7
20 largest	73,825	25.0	25.4
50 largest	105,421	35.7	36.2
100 largest	136,222	46.1	46.8
200 largest	165,328	55.9	56.8
500 largest	199,894	67.6	68.7
1000 largest	221,279	74.8	76.0
Corporations with assets over \$10 million ¹	237,410	80.3	81.6
All corporations ²	291,022	98.4	100.0
Total manufacturing businesses ³	295,690	100.0	

¹ There were 2,041 manufacturing corporations in operation the first quarter of 1963.

² This group includes about 180,000 manufacturing corporations.

³ Includes asset estimates for approximately 240,000 manufacturing proprietorships and partnerships.

Source: Bureau of Economics, Federal Trade Commission.

panies (each of which was among the 1,000 largest in 1950) reveals that only 10 percent of these companies lost money in the year prior to acquisition.

During fiscal 1964, the Division prepared A Report on Cigarette Advertising and Output, which was submitted into the record of the Commission's hearings on cigarette advertising. The report shows, among other things, that between 1952 and 1962 per capita cigarette consumption increased by about 8 percent and total domestic consumption rose by 25.5 percent. During the same period, however, the cigarette advertising expenditures of the six largest cigarette producers (accounting for about 99 percent of total domestic cigarette sales) mounted by 213.2 percent.

Substantial changes, the study showed, have occurred in smoking habits. While regular size nonfilter cigarettes garnered 77.6 percent of all sales in 1952, their share declined to 21.5 percent in 1963. On the other hand, the sales and share of the market accounted for by Menthol and filter cigarettes increased at an amazing rate. Menthol and filter cigarettes combined rose from 4.2 percent of total U.S. cigarette sales in 1952 to almost 60 percent in 1963. Filter cigarettes alone accounted for only 1.3 percent

inated, but also because entry of new firms may become ever more difficult.

The Division of Economic Evidence reviews mergers reported by major press and trade sources and examines in depth those that appear to present a threat to competition. Studies indicate that companies ranked among the largest 500 in the United States are playing a leading role in the current acquisition trend, and the present merger movement is the most prolonged in recent American history.

While in earlier merger movements the most important acquisitions were of the horizontal and vertical types, recently the trend has been toward an increasing number of conglomerate mergers, as many large firms have sought to absorb other companies in unrelated activities. Such conglomerate acquisitions may pose serious longrun problems for competition. The Commission decision barring the acquisition of Clorox Chemical Co., the Nation's leading producer of household liquid bleach, by Procter & Gamble Co. (FTC Docket 6901, Nov. 26, 1963), the leading manufacturer of household cleansing agents other than bleach, provides useful guidelines on the type of economic investigation involved in what the Commission preferred to call a "product-extension" merger rather than a pure "conglomerate" merger.

In view of the complex nature of numerous mergers falling outside the traditional horizontal and vertical classifications, economic analysis plays a significant role in the Division's work. Among the industries most closely scrutinized are chemicals, petroleum products, cement, cosmetics, drugs, baking, retail food distribution, paper, automatic vending products, textiles, power tools, plastics, coffee, dairy products, and department stores.

The Division of Economic Evidence also continues to take an active part in designing and carrying out surveys relating to the enforcement responsibilities of the agency. It assists in the preparation of certain cases involving price fixing price discrimination, other restraints of trade, and monopoly; and it participates in analyzing industry requests for premerger clearance, and reviews certain false and deceptive claims, where such claims are based on data collected by questionable sampling techniques.

Division of Financial Statistics

This Division's Quarterly Financial Reports for Manufacturing Corporations, compiled in collaboration with the Securities and Exchange Commission, continue to provide important basic indicators of financial trends in the economy.

Based on a cross section of reports from some 11,000 manufacturing corporations (of an estimated total of 200,000 corporate manufacturers in the United States), the FTC-SEC Quarterly Reports contain estimates for 13 income statement and 32 balance sheet items, as well as 44 financial and operations ratios for each of 34 manufacturing industries. Data are also shown in 10 size classifications for corporate manufacturers. These reports, which have been particularly useful for private firms in measuring efficiency and appraising profit prospects, are sold by the Superintendent of Documents on a subscription basis.

New high levels of economic activity have been reflected in the Quarterly Financial data. In the past fiscal year, total assets of the Nation's manufacturing corporations reached an unprecedented \$302.6 billion. New record highs were also established for net profits before Federal income taxes (\$33.8 billion) and net profits after taxes (\$19.5 billion).

APPROPRIATIONS AND FINANCIAL OBLIGATIONS

FUNDS AVAILABLE FOR THE COMMISSION FOR THE FISCAL YEAR 1964

Funds available to the Commission for the fiscal year 1964 continued in Public Law 88-215, 88th Congress, amounted to \$12,214,750.

Obligations by activities, fiscal year 1964

1. Antimonopoly:	
Investigation and litigation	\$5,507,990
Economic and financial reports	718,954
Trade practice conferences, industry guides, and small business	148,520
Compliance investigations for Attorney General	539,432
2. Deceptive practices:	
Investigation and litigation	3,006,758
Trade practice conferences, industry guides, and small business	297,040
Textile and fur enforcement	1,073,148
3. Executive direction and management	264,379
4. Administration	650,862
Total	12,207,083

Settlements made under Federal Tort Claims Act

During the fiscal year 1964 the Commission paid claims in the total of \$356.08. No other claims are pending for the same period.

APPENDIX (A)

FTC Cases in the Courts

Following is a summary of the principal FTC cases before the courts during fiscal 1964, together with a brief discussion of what is involved in each case or group of cases.

RESTRAINT OF TRADE CASES

Among the most important and far-reaching restraint of trade decisions occurring in fiscal 1964 was that rendered by the Seventh Circuit in *The Goodyear Tire & Rubber Co. and The Atlantic Refining Co.* (FTC Docket 6486), two of the Commission's six TBA cases. The court affirmed the Commission's holding that the sales commission method of marketing tires, batteries, and accessories through independent gasoline stations constituted an unfair method of competition. The petitioners were found to have utilized Atlantic's economic power over its dealers to influence their purchasing Goodyear products. On such transactions Atlantic received an "override" or commission payment from Goodyear. In the remaining undecided TBA cases, briefs were filed and oral arguments held in the Fifth Circuit in *Firestone Tire & Rubber Co. and Shell Oil Co.* (FTC Docket 6487), and in the District of Columbia Circuit in *Texaco, Inc. and The B. F. Goodrich Co.* (FTC Docket 6485).

In another significant case, the Second Circuit affirmed the Commission in *R. H. Macy & Co.* (FTC Docket 7869). The Commission found that Macy's had violated section 5 by soliciting \$1,000 from each of a number of its suppliers to help defray promotional costs of Macy's 100th Anniversary Celebration. The court ruled that this activity amounted to inducement and receipt of promotional payments unlawful under

Docket 7042), in the Sixth Circuit, and Brown Shoe Co. (FTC Docket 7606), in the Eighth Circuit, were both briefed and argued and were awaiting decision at the year's end. The former involves such restraints on competition as resale price maintenance, apportioning of exclusive territories, and restrictions upon retail customers; at issue in the latter is the legality of Brown's franchise stores program, whereby in exchange for various valuable benefits and services, selected shoe retailers were required to "concentrate" their purchases upon Brown products, in effect reducing the number of retail outlets available to competitive manufacturers.

In the FTC's Robinson-Patman Act enforcement, there were several note-worthy court decisions in fiscal 1964. In American Oil Co. (FTC Docket 8183), a section 2(a) case, the Seventh Circuit held that the Commission had erred in finding competitive injury in a case arising from a gasoline "price war" in Georgia. American had granted price concessions to Smyrna dealers, but not to its dealers in the adjoining Marietta area. In the court's view, the record 1

food chain customers who were also engaged in interstate commerce, but who resold the products in issue only in Louisiana, and where the nonfavored competing customers of the manufacturer were all located in Louisiana.

In the illegal merger field, section 7 of the Clayton Act, the Seventh Circuit reversed the Commission's decision in Consolidated Foods Corp. (FTC Docket 7000). It held that the record did not contain substantial evidence establishing that Consolidated Foods' acquisition of Gentry, Inc., a company engaged primarily in the production of dehydrated onion and garlic, would have the probable anticompetitive results proscribed by the statute.

Other merger cases pending at the close of the fiscal year were: The Pillsbury Co. (FTC Docket 6000), in the Fifth Circuit, involving the acquisition by Pillsbury of Ballard, its most significant regional competitor in the Southeastern United States in the family-flour and flour-base home-mixes lines of commerce, and Pillsbury's acquisition of Duff, a significant competitor in the sale of flour-base home mixes throughout the country; and Procter & Gamble Co. (FTC Docket 6901), in the Sixth Circuit, involving the acquisition of the Clorox Chemical Co., a household bleach manufacturer, by Procter & Gamble, a leading manufacturer of related products, such as soaps, detergents, and cleansers.

DECEPTIVE PRACTICE CASES

In at

motions for summary judgment and preliminary injunction, and granted the Commission's motion to dismiss for failure of plaintiff to exhaust administrative remedies.

At the close of fiscal 1963, a complaint for declaratory judgment and injunctive relief filed by John Kaslow, t/a J. C. Martin Co. (FTC Docket 6145), had been dismissed by the U.S. District Court for the District of Columbia on the Commission's motion for summary judgment, and Kaslow had appealed to the District of Columbia Circuit. His applications for stay of judgment had been denied by the district court, the court of appeals, and by the Supreme Court. In fiscal 1964, the circuit court considered Kaslow's appeal on the merits, and affirmed without opinion the judgment of the court below. Kaslow filed petition for certiorari and a second application for stay pending appeal. The Supreme Court denied both the petition and application.

In the U.S. District Court for the Northern District of Ohio (Eastern Division), Standard Drug Co., Inc., et al. (FTC Docket 8576), filed a complaint for mandatory injunction claiming various inadequacies in the pretrial procedures taken in the administrative proceeding, and challenging the validity of the Commission's complaint in light of its subsequently promulgated deceptive pricing guides. Standard's motion for a temporary restraining order was denied. Motion to dismiss or, in the alternative, for summary judgment has been filed on the Commission's behalf and is awaiting disposition by the court.

Puritan Fashions Corp. (File 621 0552) and Reliance Mfg. Co. (File 621 0517) filed a complaint against the Commission for declaratory judgment and injunctive relief in the U.S. District Court for the District of Columbia. They seek a construction of the Federal Reports Act which would compel the Commission to submit to the Bureau of the Budget for clearance all section 6(b) orders which it issues. The Commission concedes that while its orders requiring submission of data for general statistical purposes only may properly be subject to Budget Bureau scrutiny, its status as an independent administrative agency precludes submission of section 6(b) orders when the information sought by the Commission is for law-enforcement purposes.

SUITS TO COMPEL COMPLIANCE WITH COMMISSION
inadequaciWLS

APPENDIX (B)

Deceptive Practice Civil Penalty Cases

CASES CONCLUDED

Sears, Roebuck & Co. (D.C.). Misrepresentations of savings afforded purchasers of automobile tires. Dismissed.

American Albums, Inc., et al. (N.D. Ohio). Misrepresentations of photographic albums and certificates for photographs. Judgment for \$10,000.

American Broadloom Carpet Co. (E.D. Pa.). Misrepresentations as to regular price of rugs and other merchandise. Judgment for \$1,500 together with permanent injunction compelling obedience to the order.

Seawol Sewing Machines (S.D. Cal.). Misrepresenting the manufacturer and country of origin of sewing machines. Judgment for \$1,500.

Sydco Industries, Inc. (S.D.N.Y.). Misrepresenting regular and usual retail price of certain products. Dismissed.

Radio-Television Training School, Inc. (S.D. Cal.). Misrepresentations in connection with the sale of a correspondence course in the field of radio and television. Judgment for \$20,000.

Ohio Art Co. (N.D. Ohio). Failure to disclose foreign origin of toys. Judgment for \$6,000.

Curtis Bros., Inc. (D.C.). Fictitious pricing of furniture. Withdrawn.

Fluidless Contact Lenses, Inc. (E.D. Mich.). Deceptive advertising of contact lenses. Judgment for \$2,000.

Aloore Products Corp. (S.D.N.Y.). Failure to disclose foreign origin of imported merchandise. Judgment for \$2,000.

Nationwide Clothiers, Inc. (E.D.N.Y.). Fictitious pricing of wearing apparel. Judgment for \$5,000 together with permanent injunction compelling obedience to the order.

Lincoln Institute (S.D. Ill.). Misrepresentation of a correspondence course designed to train civil service applicants. Judgment for \$6,000, together with permanent injunction compelling obedience to the order.

Rhodes Pharmacal Co. (N.D. Ill.). Misrepresentation of a drug preparation advertised for use in the treatment of arthritis and rheumatism. Judgment for \$12,500.

Recoton Corporation, et al. (S.D.N.Y.). Misrepresenting the nature and quality of phonograph needles. Judgment for \$1,000, together with permanent injunction compelling obedience to the order.

Valley Steel Products Co. (E.D. Mo.). Misrepresentation of the size of steel pipes and tubing. Judgment for \$2,000.

CASES PENDING

Tropic Industries, Inc. (N.D. Calif.). Misrepresentation of cooking equipment and supplies therefor.

International Motels, Inc. (N.D. Calif.). Misrepresentation of a correspondence course designed to train purchasers in the field of motel management.

Commercial Distributors of America, Inc. (E.D. Pa.). Misrepresentation in connection with the sale of vending machines.

APPENDIX (C)

Textile and Fur Court Cases

In the Textiles and Fur field, the first fur case in which civil penalties were obtained for alleged violations of a Commission cease-and-desist order was settled by consent. Judgment entered by the Federal District Court (No. Dist. of Ohio) against I. J. Fox, Inc., Cleveland, Ohio (FTC Docket 6558), in addition to providing for penalties of \$7,000, imposed an injunction against further violation of the order. In another case, one of the few to date involving failure to maintain records required under the Wool Products Labeling Act and violations of a Commission order (FTC Docket 7257, Litchfield Woolen Mills Company) was terminated in the District of Minnesota. Judgment by consent provided for penalties of \$12,000 along with an injunction. A third civil penalties case was settled in the Southern District of New York on judgment for \$12,500 for alleged violations of a Commission order under the Wool Act (FTC 6800, 18696 Textile Fur Act 18681) - ~~Penalties of \$12,500~~ ux2Tj j 2.4