with the words "U.S.A.," or "U.S.A. Pat. ________" or "U.S. Pat. ________" or packages, containers, display devices or guarantee forms in inventory as of said date imprinted with those words.

It is further ordered, That the foregoing shall be without prejudice to the rights of respondents (a) to seek a ruling from the Commission pursuant to § 3.61 of the Commission's Rules with respect to the use of push pin components in excess of the foregoing numbers, or (b) to seek advice from the Commission regarding the use in their products of parts thereof made in a foreign country.

It is further ordered, That the Initial Decision of the hearing examiner be, and it hereby is, vacated.

It is further ordered, For purposes of the reports of compliance to be filed in this matter that the country of origin or fabrication of the leather components of watchbands made in the United States from foreign skins (including alligator, sea turtle, seal, etc.) shall be deemed to be the country where such skins are finished but acceptance of such reports of compliance may be rescinded pursuant to § 3.61(d) of its Rules if the Commission subsequently determines that the country where the skins were taken and/or tanned are material facts and that they should be disclosed in the public interest; and in such event, the respondents shall be afforded 180 days after notice of such determination within which to comply therewith.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

THE SEEBURG CORPORATION

ORDER, OPINIONS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECTION 7 OF THE CLAYTON ACT

*Docket 8682. Complaint, Apr. 22, 1966—Decision—Apr. 10, 1969**

Order requiring a Chicago, Ill., manufacturer of vending machines to

*Paragraph D of order modified pursuant to a decision of the Court of Appeals, Sixth Circuit, 425 F.2d 124 (8 S.&D. 1146), December 10, 1970, 77 F.T.C. 1540.

divest itself of a Chattanooga, Tenn., company in the same business, and refrain for a period of 10 years from acquiring any domestic vending equipment supplier without prior Commission approval.

COMPLAINT

The Federal Trade Commission has reason to believe that The Seeburg Corporation, a corporation, has acquired the assets of Cavalier Corporation, a corporation, in violation of Section 7 of the Clayton Act (15 U.S.C. Sec. 18), as amended, and therefore, pursuant to Section 11 of said Act (15 U.S.C. Sec. 21), it issues its complaint, stating its charges in that respect as follows:

I

Definitions

1. For the purpose of this complaint the following definitions shall apply:

(a) "Vending machine" means any coin-operated electronic or mechanical device which dispenses a product.

(b) "Bottle vending machine" means any vending machine which dispenses bottled soft drinks.

II

The Seeburg Corporation

2. The Seeburg Corporation, respondent herein, is a corporation, organized and existing under the laws of the State of Delaware with its principal office located at 1500 North Dayton Street, Chicago, Illinois.

3. Respondent, directly or through its subsidiaries, is principally engaged in the manufacture and sale of coin-operated phonographs, various types of vending machines, background music systems, hearing aids, electronic organs and coin-operated amusement games. For the fiscal year ended October 31, 1963, respondent had sales of $54,581,306, assets of $36,258,288 and net income of $2,484,483.

4. Respondent, directly or through its subsidiaries, operates manufacturing plants located in Chicago and Niles, Illinois; Windsor Locks, Connecticut; Minneapolis, Minnesota; Haverhill, Massachusetts; Laconia, New Hampshire; and Chattanooga, Tennessee.

5. In 1958, respondent entered the vending machine manufacturing industry through the acquisition of certain assets of a

cigarette vending machine manufacturing company. The growth and expansion of respondent's line of vending machines have to a substantial extent been attributable to a series of acquisitions of all or part of the assets or stocks of other vending machine manufacturers. Respondent's sales of vending machines have grown from approximately $3.2 million in 1959 to over $23 million in 1963.

6. At the time of the challenged acquisition respondent was the fourth largest manufacturer of bottle vending machines. For the fiscal years ended October 31, 1960, through October 31, 1963, respondent's shipments of bottle vending machines were as follows:

Year	*Units*	*Dollar value*
1960	6,300	$3,114,000
1961	7,561	3,589,000
1962	10,016	5,537,000
1963	11,722	5,290,000

7. At all times relevant herein, respondent was a corporation subject to the jurisdiction of the Federal Trade Commission and engaged in commerce, as "commerce" is defined in the Clayton Act.

III

Cavalier Corporation

8. Prior to December 3, 1963, Cavalier Corporation (Cavalier) was a corporation organized and existing under the laws of the State of Tennessee with its office and principal place of business located at 1100 East 11th Street, Chattanooga, Tennessee.

9. At the time of the acquisition, Cavalier was principally engaged in the manufacture and sale of bottle vending machines and was the second largest manufacturer of such machines. For the years 1961, 1962 and the ten-month period ending October 31, 1963, Cavalier had sales of bottle vending machines as follows:

Year	*Units*	*Dollar value*
1961	22,152	$7,518,000
1962	17,658	6,441,000
1963	24,111	8,607,000

10. At all times relevant herein, Cavalier was a corporation engaged in commerce, as "commerce" is defined in the Clayton Act.

IV

Acquisition

11. On or about December 3, 1963, respondent acquired all of

the assets and business of Cavalier for a consideration of approximately $11,813,000.

V

The Nature of Trade and Commerce

12. The vending machine manufacturing business in the United States is substantial. In 1963, the dollar value of shipments of vending machines amounted to approximately $162,815,000.

13. Vending machines are the indispensable means of distribution for the automatic merchandising industry. There are nc substitutes for vending machines in the performance of this function.

14. The demand for vending machines has increased sharply in recent years as the sale of goods through vending machines has expanded from an estimated $600 million in 1946 to $3.2 billion in 1963. At the same time, concentration in the manufacture of vending machines has substantially increased, in large part as a result of many mergers and acquisitions. In 1963, the four largest companies accounted for approximately 60% of the total dollar value of industry shipments of vending machines.

15. In 1963, respondent accounted for approximately 14.2%, and Cavalier for approximately 5%, of the total dollar value of shipments of vending machines in the United States.

16. Bottle vending machines are the most important single category, in terms of units and dollar value of shipments, in the vending machine manufacturing industry. In 1963, there were about twelve companies engaged in the manufacture and sale of bottle vending machines with total shipments of 131,296 units having a dollar value of approximately $50,572,000. In that year four companies accounted for over 84% of the total shipments of such vending machines.

17. Prior to the acquisition, respondent and Cavalier were substantial actual and potential competitors in the sale of bottle vending machines. In 1963, respondent accounted for approximately 9%, and Cavalier for approximately 18% of the total shipments of such machines.

18. As a result of the challenged acquisition respondent is now the second largest manufacturer of bottle vending machines and concentration has increased to the point where the two largest firms account for approximately 68% of the total shipments of such machines. At the same time, respondent has substantially enhanced its overall position in the vending machine

manufacturing industry and concentration has increased to the point where the two largest companies account for approximately 45% of the total dollar value of industry shipments.

VI

Violation of Section 7 of the Clayton Act

19. The effect of the acquisition of Cavalier Corporation by The Seeburg Corporation may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of vending machines of all types and in the manufacture and sale of bottle vending machines, in the United States, in the following ways, among others:

(a) Substantial actual and potential competition between respondent and Cavalier has been eliminated.

(b) Cavalier has been eliminated as a substantial independent competitive factor.

(c) Concentration in the manufacture and sale of vending machines and bottle vending machines has been substantially increased.

(d) Respondent has substantially enhanced its competitive position to the detriment of actual and potential competition.

(e) The entry of new competitors into the manufacture and sale of vending machines and bottle vending machines may be inhibited or prevented.

Now, therefore, the acquisition of Cavalier Corporation by The Seeburg Corporation, as above alleged, constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18).

Mr. Raymond L. Hays, Mr. Montgomery K. Hyun, Mr. William E. Barr, Mr. A Roy Lavik supporting the complaint.

Mr. Frederick M. Rowe, Mr. James M. Johnstone and *Mr. A. Paul Victor* for respondent.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

MAY 22, 1967

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STATEMENT AND HISTORY OF PROCEEDINGS

The complaint herein was issued by the Federal Trade Commission on April 22, 1966, and challenges the legality under § 7 of the amended Clayton Act (15 U.S.C. § 18) of The Seeburg Corporation's acquisition of Cavalier Corporation in December 1963.

Specifically the complaint alleges that the acquisition's effect "may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of vending machines of all types and in the manufacture and sale of bottle vending machines, in the United States" by (1) the elimination of "substantial actual and potential competition between" Seeburg and Cavalier, (2) the elimination of Cavalier "as a substantial independent competitive factor," (3) substantially increasing "concentration in the manufacture and sale of vending machines and bottle vending machines," (4) substantially enhancing Seeburg's "competitive position to the detriment of actual and potential competition," and (5) inhibiting or preventing "the entry of new competitors into the manufacture and sale of vending and bottle vending machines" (Complaint, par. 19).

By its answer, filed May 31, 1966, as amended August 4, 1966,

Seeburg denied the material allegations of the complaint, including particularly all of the alleged adverse competitive effects claimed to flow from the challenged acquisition (Answer, pars. 5, 6, 17, 19).

In addition, as an affirmative defense, Seeburg challenged the Commission's jurisdiction on the grounds that the complaint's issuance "was based on procedures violative of the letter and spirit of the Administrative Procedure Act, the Freedom of Information Act of 1966, and the canons of administrative due process of law" (Ans., par. 20). On July 15, 1966, Seeburg filed a Motion to Vacate the Commission's Complaint on these same grounds. Respondent's Motion to Vacate the Complaint certified to the Commission by the hearing examiner on August 4, 1966, was denied by the Commission on October 25, 1966. Respondent's court action seeking an injunction and declaratory relief was dismissed on November 28, 1966, by the United States District Court for the Eastern District of Tennessee (Western Division). Respondent's appeal from the District Court's said order is now pending before the U.S. Circuit Court of Appeals for the Sixth Circuit (*The Seeburg Corp.* v. *FTC*, appeal docketed, No. 17,606, 6th Cir., Dec. 12, 1966).

Beginning on June 16, 1966, and continuing until the hearings commenced on December 6, 1966, a total of eight prehearing conferences were held before the hearing examiner. During these conferences, conducted in part pursuant to agendas agreed upon by the parties beforehand, numerous preliminary matters were accomplished to facilitate the actual hearings and to make for an orderly proceeding.

For example, each party filed pretrial briefs (counsel supporting the complaint on June 30, 1966; Seeburg on August 12, 1966) and served upon the other side their proposed exhibits and a list of proposed witnesses. Both parties had ample opportunity to, and did, file objections in advance of trial to many of the proposed exhibits disclosed by the other side. Moreover, Seeburg conducted discovery of third parties by means of subpoenas issued by the hearing examiner.

Finally, underlying documents in support of sales data intended to be relied upon by the parties were made available for mutual verification in advance of trial, eventually enabling the parties to stipulate on January 11, 1967, as to certain sales data for Seeburg and other third party vending machine manufacturers (CX 247; RX 417). These stipulations obviated the necessity for