

Complaint

71 F.T.C.

IN THE MATTER OF

W. R. GRACE & CO.

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

Docket C-1182. Complaint, Mar. 9, 1967—Decision, Mar. 9, 1967

Consent order prohibiting a large diversified corporation with headquarters in New York City from acquiring any corporation manufacturing or selling chocolate or cocoa products (SIC 2072), for a period of 10 years without prior approval of the Federal Trade Commission.

COMPLAINT

The Federal Trade Commission having reason to believe that the above-named respondent has violated the provisions of Section 7 of the Clayton Act, as amended, and that a proceeding in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

I

Definitions

1. For the purposes of this complaint, the following definitions are applicable:

(a) *Chocolate and cocoa products.* Chocolate and cocoa products are foods prepared in cocoa bean grinding establishments by heating and cracking dried or cured cocoa beans and removing the shell therefrom. This category includes foods prepared in such establishments by further processing of cocoa bean grindings. This definition corresponds to Standard Industrial Classification Industry No. 2072.

(b) *Cocoa Powders.* Cocoa powders are foods prepared by pulverizing the residual material remaining after part of the cocoa fat has been removed from ground cocoa nibs. This product may be packaged for household use or for use by commercial enterprises in flavoring confectionery, bakery, dairy and other food products. This definition corresponds to Bureau of Census Product Code No. 20728 75.

(c) *Chocolate and cocoa coatings.* Chocolate and cocoa coatings are intermediate food products prepared by finely pulverizing the cocoa butter or hard fat and cocoa powders to produce a solid or semiplastic substance suitable for use in coating confectionery, bakery, dairy and other food products. This category includes

sweet milk, liquor and confectionery (cocoa) coatings. This definition corresponds to Bureau of Census Product Code No. 20721.

(d) *Cocoa butter*. Cocoa butter is a food obtained from cocoa bean grindings by removing the cocoa powder therefrom. This definition corresponds to Bureau of Census Product Code No. 20728 81.

II

W. R. Grace & Co.

2. W. R. Grace & Co. (Grace) is a corporation organized and existing under the laws of the State of Connecticut with its principal office located at 7 Hanover Square, New York, New York, 10005.

3. Grace ranks among the 100 largest industrial corporations in the United States, with 1965 sales and revenues of \$1,003,070,000 and assets of \$1,070,592,000.

4. Originally a trading corporation, Grace has diversified and expanded its activities into transportation, manufacturing, agriculture, banking and food, largely by the acquisition of existing enterprises. At the end of 1965, approximately 66 per cent of Grace's revenues were derived from chemical operations, including plastics and fertilizers, and approximately 12 percent of revenues were derived from food products.

5. For a number of years prior to 1962, Grace had been a leading manufacturer of chocolate products in several countries of South America, with plants in Colombia, Peru and Chile. Its Colombian subsidiary, Comestibles La Rosa, S.A., is one of the leading companies in its field in Colombia, producing 529 metric tons of chocolate in 1964. Cia. "Arturo Field y La Estrella" Ltda., in which Grace owns a majority interest, is a leading Peruvian manufacturer of biscuits and candy and also manufactures chocolate. In 1964, Arturo Field produced about 340 metric tons of chocolate. Grace is also a majority stockholder in Hucke Hermanos, S.A.C., a leading Chilean producer of biscuits, candy and chocolate. In 1964, Hucke produced about 4,100 metric tons of these products.

6. In December, 1962, Grace acquired a majority interest in C. J. Van Houten & Zoon, N. V., one of the world's leading manufacturers of chocolate and cocoa products and by 1964 had increased its holdings to 92 percent of the outstanding stock of this company. On October 15, 1964, C. J. Van Houten & Zoon, N. V.

acquired N. V. Cacaofabriek De Zaan, whose chocolate and cocoa products production facilities are among the most modern in the world. Together, they constitute one of the largest chocolate and cocoa producers in Europe, accounting for approximately 20 percent of all cocoa bean grindings in Belgium, The Netherlands and Federal Republic of Germany; and are substantial exporters of chocolate and cocoa products to the United States.

7. To obtain a stronger position in this field, majority interests were obtained in 1963 in two other chocolate companies, Urney Chocolates, Ltd., located in Dublin, Ireland, the largest independent chocolate producer in that country and Chocolaterie Modele, S.A., known as "Martougin," of Antwerp, Belgium. In 1964, Urney, together with its subsidiaries, manufactured 11,000 metric tons of chocolate and confectionery products for distribution in Ireland, the United Kingdom and the United States.

8. Today Grace ranks among the six leading chocolate companies in the world, accounting for approximately 8 percent of the world's cocoa bean grindings. Through Van Houten and De Zaan, Grace ranks as one of the world's leading producers of cocoa butter and cocoa powder, accounting for 19.7 percent of the world's trade in cocoa butter and 30 percent of the world's trade in cocoa powder in 1962. Grace commands a pre-eminent technical position in producing chocolate and cocoa products and its know-how in producing cocoa butter and cocoa powder is among the best in the world.

9. Grace is a leading exporter to the United States of chocolate and cocoa products. In 1963, Grace's chocolate and cocoa products exported to the United States totaled \$5,972,000 and accounted for 20 percent of all cocoa powder imports, 4 percent of all chocolate and confectionery coating imports and 3 percent of all cocoa butter imports.

10. Prior to October 20, 1964, Grace's long range planning contemplated further geographic diversification of operations removed from traditional sources in Latin America; the development of a leading world position in the chocolate and cocoa products and confectionery products industries; and ultimately the manufacture of these products in the United States. Supported by the historical, technical and commercial reputation of Van Houten, Grace contemplated the internal expansion of production facilities in the United States. Although Grace recognized that it could enter the United States chocolate industry by expanding internally, it chose to make its entry by acquiring an established producer, Ambrosia Chocolate Company.

11. Grace at all times relevant herein has been engaged "in commerce" within the meaning of the Clayton Act.

III

Ambrosia Chocolate Company

12. Ambrosia Chocolate Company (Ambrosia) was, prior to its acquisition by Grace on October 20, 1964, a corporation organized and existing under the laws of the State of Wisconsin, with its principal office and place of business located at 528 West Highland Avenue, Milwaukee, Wisconsin.

13. Ambrosia ranked as a leading producer of intermediate chocolate and cocoa products in the United States with 1963 sales of \$17,167,638 and was one of the most advanced companies in the use of cocoa butter substitutes and the production of chocolate coatings for use in the ice cream, biscuit, and candy industries. Ambrosia possessed excellent technical knowledge, competent management, an expanding market, and demonstrated continued growth in excess of the industry average.

14. Between 1961 and 1963, Ambrosia acquired all of the outstanding capital stock of Hooten Chocolate Company (Hooten), a corporation organized and existing under the laws of the State of New Jersey, with its principal office and place of business located at 339 North Fifth Street, Newark, New Jersey. Hooten's sales of chocolate and confectionery coatings, chocolate liquor, ice cream coatings, and cocoa butter totaled \$4,076,000 in 1962.

15. Together, Ambrosia and Hooten ranked as the Nation's third largest producer of intermediate chocolate and cocoa products, grinding about 16,000 tons of cocoa beans, which constitutes approximately 4% of total United States grindings. In 1963, they accounted for approximately 7.3% of all domestic chocolate coating shipments, 29.9% of confectionery (cocoa) coating shipments and about 3.9% of all other chocolate and cocoa products intended for use in flavoring or coating other food products.

16. Ambrosia at all times relevant herein was engaged "in commerce," within the meaning of the Clayton Act.

IV

Trade and Commerce

17. Chocolate and cocoa products are intermediate or producer goods which are sold primarily to producers of consumer food products, principally confectionery, bakery and dairy products.

Trade and commerce in chocolate and cocoa products is substantial. The United States accounts for approximately 29 percent of world production of such products, with a consumption average of 7.8 pounds per capita. Domestic manufacturers produce about 80% of total United States requirements for chocolate and cocoa products.

18. In 1963, United States chocolate and cocoa products shipments were valued at \$563 million, an increase of \$89 million over the last decade. Total shipments of intermediate chocolate and cocoa products accounted for \$385 million of which the principal intermediate product, coatings, accounted for shipments of \$132 million.

19. Concentration is high in the chocolate and cocoa products industry and in individual chocolate and cocoa products. In 1958, the four largest companies accounted for 71% of industry shipments of all chocolate and cocoa products and 46% of shipments of all chocolate and cocoa coatings. Twenty companies accounted for nearly all (97%) of industry shipments in that year.

20. Since 1958, mergers and acquisitions have tended to alter the structure of the chocolate and cocoa products industry. Concentration has been increased by mergers among large food, confectionery and related products makers. Mergers between large food, confectionery and related products manufacturers and chocolate and cocoa products manufacturers have reduced the number of independent suppliers of chocolate and cocoa products and have begun to transform the industry from one composed largely of specialized independent producers into one composed of large corporations whose principal business is in other industries. The number of independent manufacturers has been reduced from approximately twenty in 1958 to about eleven companies in 1965.

V

The Acquisition

21. On October 20, 1964, Grace acquired substantially all of the business and assets of Ambrosia in exchange for 116,000 shares of Grace common stock valued at approximately \$6,712,000.

VI

Effects of the Acquisition

22. The effects of the foregoing acquisition has been, or may be, the following, among others:

(a) Substantial potential competition has been eliminated between Grace and Ambrosia in the manufacture and sale of chocolate and cocoa products, generally, and in individual chocolate and cocoa products—cocoa butter, cocoa powder and chocolate and confectionery coatings—in the United States or portions thereof;

(b) New entry into the chocolate and cocoa products industry may be inhibited or prevented;

(c) Other acquisitions in the chocolate and cocoa products industry may be encouraged or stimulated, thus aggravating the competitive impact of the instant acquisition, as hereinbefore described, thereby tending further to transform the chocolate and cocoa products industry from one composed of viable, independent, locally owned business into a more concentrated industry composed of large, diversified corporations;

(d) The members of the consuming public in the United States and in portions thereof, may be denied the benefits of free and unrestricted competition in the chocolate and cocoa products industry.

VII

The Violations Charged

23. The effect of the acquisition of Ambrosia by Grace, viewed separately and as part of a series of acquisitions described in Paragraph 20 may be substantially to lessen competition or to tend to create a monopoly throughout the United States, or in portions thereof, in the manufacture and sale of chocolate and cocoa products generally, or in segments of the chocolate and cocoa products industry, in violation of Section 7 of the Clayton Act, as more fully described above in Paragraph 22.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 7 of the Clayton Act, as amended; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth

in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondent has violated Section 7 of the Clayton Act, as amended, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent W. R. Grace & Co. is a corporation organized and existing under the laws of the State of Connecticut, with its principal office located at 7 Hanover Square, New York, New York 10005.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That for ten (10) years from the effective date of this Order, respondent, W. R. Grace & Co., shall not, without prior approval of the Federal Trade Commission, acquire directly or indirectly the whole or any part of the stock or share capital in, or the whole or any part of the assets (other than assets offered for sale in the usual and ordinary course of business) of any corporation engaged in commerce (as presently defined in the Federal Trade Commission Act) and in the manufacture and sale of products included within the chocolate and cocoa products industry (Standard Industrial Classification Industry 2072).

It is further ordered, That respondent W. R. Grace & Co. shall, within sixty (60) days after service upon it of this order, and annually thereafter, file with the Commission a verified report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist as set forth herein.

Complaint

IN THE MATTER OF

FRANCIS E. MASTBROOK DOING BUSINESS AS
EDISON SEWING MACHINE AND VACUUM CLEANER CO.,
ETC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 8710. Complaint, Sept. 14, 1966—Decision, Mar. 13, 1967

Consent order requiring a Washington, D.C., retailer of sewing machines and vacuum cleaners to cease using deceptive means to sell his merchandise, such as alleging certain items were repossessed and purchasers would save paid-in amount, making false guarantee offers, using bait and switch tactics, using contests, prizes, and certificates in a deceptive manner, fictitiously pricing merchandise, and falsely implying that he was conducting a survey for appliance manufacturers.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Francis E. Mastbrook, doing business as Edison Sewing Machine and Vacuum Cleaner Co., Edison Sewing Machine Co., Sewing Machine Exchange, Coles Adjustment Service, Edison Sales, and Consumer Advertising and Research Service, hereinafter referred to as respondent has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Francis E. Mastbrook is an individual doing business as Edison Sewing Machine and Vacuum Cleaner Co., Edison Sewing Machine Co., Sewing Machine Exchange, Coles Adjustment Service, Edison Sales, and Consumer Advertising and Research Service, with his office and principal place of business located at 2626 Bladensburg Road, NE., Washington, D.C., 20710.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of sewing machines and vacuum cleaners and other appliances at retail to the public.

PAR. 3. In the course and conduct of his business respondent maintains his principal place of business within the District of Columbia, and now causes, and for some time last past has caused,