

IN THE MATTER OF  
DEAN FOODS COMPANY ET AL.

MODIFIED ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

*Docket 8674. Complaint, Dec. 22, 1965—Decision, May 22, 1967*

Order modifying a divestiture order dated November 14, 1966, 70 F.T.C. 1146,  
requiring a food products company to divest itself of certain acquisitions  
by substituting a new plan of divestiture agreed upon between the Com-  
mission and the company and affirmed on April 21, 1967, by the Court  
of Appeals, Seventh Circuit.

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## MODIFIED ORDER

Dean Foods Company, having filed in the United States Court of Appeals for the Seventh Circuit on December 8, 1966, a petition to review and set aside the order of divestiture issued herein on November 14, 1966 [70 F.T.C. 1146]; and the Commission and Dean Foods Company, having subsequently agreed upon a plan of divestiture and upon the provisions of a final order modifying the order entered by the Commission on November 14, 1966; and the Court on April 21, 1967 [8 S.&D. 474], having issued its final decree affirming and enforcing said order as submitted by the Commission and Dean Foods Company;

*Now, therefore, it is hereby ordered,* That the order of November 14, 1966, be, and it hereby is, modified in accordance with the final decree of the Court to read as follows:

*It is ordered,* That:

## I

Respondent Dean Foods Company ("Dean"), a corporation, through its officers, directors, agents, representatives and employees, shall divest itself absolutely, in good faith, and as a unit, of all right, title and interest and all assets, properties, rights and privileges, tangible and intangible, including without limitation all manufacturing plants, equipment and operating facilities, lands, leases and the warehousing facilities, delivery equipment, machinery, inventory, customer lists and good will of the dairy products businesses located in Columbus (Ohio), Terre Haute (Indiana), Bettendorf (Iowa), Racine (Wisconsin), and Tomah (Wisconsin), and the "Bowman" trade name and related trademarks acquired by Dean as a result of its acquisition of certain assets of Bowman Dairy Company ("Bowman") pursuant to their purchase agreement of December 13, 1965, together with all additions and improvements thereto which are presently utilized or which may hereafter and prior to divestiture be utilized by Dean in its operation of the above-specified businesses, to a purchaser approved by the Federal Trade Commission who shall operate said businesses as a going concern in the dairy industry.

## II

Respondent Dean, a corporation, through its officers, directors, agents, representatives and employees, shall divest itself absolutely, in good faith to the purchaser of the assets required to be divested pursuant to Section I of this Order, of all right, title and

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interest and all assets, properties, rights and privileges, tangible and intangible, including without limitation all inventory, delivery equipment, customer lists and good will of the dairy products businesses located in Cleveland (Ohio) and New Albany (Indiana) acquired by Dean as a result of its acquisition of certain assets of Bowman pursuant to their purchase agreement of December 13, 1965, together with all additions and improvements thereto which are presently utilized or which may hereafter be utilized by Dean in its operation of the above-specified businesses, but excluding manufacturing plants, lands, and processing machinery, and equipment: *Provided, however*, That Dean may divest separately the Cleveland assets required to be divested pursuant to this Section, exclusive of the "Bowman" trade name and related trademarks which Dean shall divest in accordance with Section I of this Order, to a separate purchaser approved by the Commission who shall operate said assets as a going concern in the dairy industry.

## III

Respondent Dean, a corporation, through its officers, directors, agents, representatives and employees, shall divest itself absolutely, in good faith, and as a unit, of all right, title and interest and all assets, properties, rights and privileges, tangible and intangible, including without limitation all manufacturing plants, equipment and operating facilities, lands, leases, warehousing facilities, delivery equipment, machinery, inventory, trade names, trademarks and good will of the dairy products business located at Saginaw (Michigan) acquired by Dean as a result of its acquisition of certain assets of Bowman pursuant to their purchase agreement of December 13, 1965, together with all additions and improvements thereto which are presently utilized or which may hereafter and prior to divestiture be utilized by Dean in its operation of that business, but not including the "Bowman" trade name and related trademarks which Dean shall divest in accordance with Section I of this Order, to a purchaser approved by the Federal Trade Commission who shall operate that business as a going concern in the dairy industry.

## IV

Respondent Dean, a corporation, through its officers, directors, agents, representatives and employees, within ten (10) days after the date of service upon it of this Order, shall begin to offer, and continue to make good faith efforts to divest the dairy prod-

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ucts businesses required to be divested pursuant to Section I through III of this Order, to the end that such divestitures shall be fully completed no later than two (2) years from the effective date of this Order: *Provided, however,* That if Dean shall fail to effect such divestitures despite its good faith efforts, it may apply to the Federal Trade Commission for an extension of time or such other relief as may be appropriate under Rule 3.28 of the Commission's Rules of Practice for Adjudicative Proceedings. Upon Dean's application and showing of its good faith efforts to divest, the Commission shall, in its discretion, either grant an extension of time or order such other relief as it may deem appropriate: *Provided, however,* That such other relief shall be no broader than that provided for in this Order.

## V

Notwithstanding the provisions of Sections I through III of this Order, respondent Dean shall be entitled to the exclusive use of the "Bowman" trade name and related trademarks in sales of dairy products (Standard Industrial Classification Group No. 202) to Dean customers using the "Bowman" trade name as of the effective date of this Order, within the Illinois counties of Lake, Cook, DuPage, Will and Kane for a period of six (6) months from the effective date of this Order: *Provided, however,* That at the option of the purchaser of the assets required to be divested pursuant to Section I of this Order, Dean shall make available to such purchaser, for a period of two (2) years commencing at the expiration of the above-mentioned six (6) month period, dairy products under the "Bowman" trade name for sale within the above-mentioned Illinois counties at a negotiated price or at the lowest *bona fide* price available to such purchaser within the above-mentioned Illinois counties.

## VI

The Bowman businesses required to be divested pursuant to Sections I through III of this Order shall not be sold or transferred, directly or indirectly, to any person who, at the time of divestiture, is a stockholder, officer, director, employee or agent of, or otherwise directly or indirectly connected with, or under the control or influence of, Dean or any of Dean's subsidiaries or affiliated companies, or who owns or controls, directly or indirectly, more than one (1) percent of the outstanding stock of Dean.

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Pending effectuation of the divestitures required by Section I through III of this Order, Dean shall not, except with the approval of the Federal Trade Commission, make any material changes, directly or indirectly, with respect to the Bowman assets or businesses required to be divested, including the operation and policies affecting said assets and businesses, except such changes which may be required in the ordinary course of business or which may be required to improve the salability of said assets and businesses or to prevent the impairment of value of said assets and businesses: *Provided, however,* That pending the divestitures required by Sections II and III of this Order, Dean may transfer production from the New Albany (Indiana), Cleveland (Ohio) and Saginaw (Michigan) facilities to Dean facilities, with the understanding that Dean will make no change in labeling, delivery of products or billing of customers.

## VIII

Respondent Dean, a corporation, for a period of ten (10) years from the date this Order becomes final, shall cease and desist from acquiring, directly or indirectly, by any device or through subsidiaries or otherwise, the whole or any part of the stock, share capital, or assets (other than products sold in the regular course of business), of any firm engaged in the manufacture, processing, distribution or sale of dairy products, without the prior approval of the Federal Trade Commission.

## IX

Respondent Dean, a corporation, within thirty (30) days from the effective date of this Order, and every ninety (90) days thereafter until it has fully complied with Sections I through VII of this Order, shall submit in writing to the Federal Trade Commission a compliance report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with Sections I through VII of this Order. All compliance reports shall include without limitations a specification of the steps taken by Dean to inform brokers, investment bankers and prospective purchasers of its desire to sell those assets, a list of all persons, including dairy and nondairy companies, bankers, brokers and management consultant firms to whom this notice of sale has been given, a summary of all discussions and negotiations, together with the identity of all such potential pur-

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chasers or intermediaries with whom these discussions or negotiations were undertaken and copies of all written communications to and from all such intermediaries or potential purchasers and all contracts entered into with purchasers.

## X

Respondent Dean, a corporation, within thirty (30) days from the effective date of this Order, and annually thereafter until it has fully complied with Section VIII of this Order, shall file with the Federal Trade Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with Section VIII of this Order.

## XI

As used in this Order, the word "person" shall include all members of the immediate family of the individual specified and