

IN THE MATTER OF
REXALL DRUG AND CHEMICAL COMPANY
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SECTION 7 OF THE CLAYTON ACT

Docket C-1252. Complaint, Sept. 11, 1967—Decision, Sept. 11, 1967.

Consent order requiring a major drug and chemical company with headquarters in Los Angeles, to divest itself within two years of all its domestic interests in the plastic bottle operations of a container corporation, and to refrain from acquiring any interest in this field for the next 10 years without prior approval of the 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, 15 U.S.C. § 18, and that a proceeding in respect thereof would be to the interest of the public, issues this complaint stating its charges as follows:

I. Definitions

1. For purposes of this complaint the following definitions apply:

(a) "Plastics" are a class of synthetic materials that contain as an essential ingredient an organic substance of high molecular weight, are solid in their finished state and, at some stage in their manufacture, or in their processing into finished articles, can be shaped by the application of heat and pressure;

(b) "Resins" are a class of solid or semi-solid organic products generally of high molecular weight with no definite melting point. The terms "plastics" and "resins" are used in overlapping senses, but "resins" applies more specifically to the more or less chemically homogeneous polymers used as starting materials in the production of plastics articles while "plastics" signifies the final solid product, which may contain fillers, plasticizers, stabilizers, pigments, and other materials;

(c) "Polymerization" is a chemical reaction in which molecules are linked together to form large molecules whose molecular weight is a multiple of that of the original substance;

(d) "High density (sometimes called 'linear') polyethylene" is a resin formed by the polymerization of ethylene and having a density greater than 0.940;

(e) "Polyvinyl chloride" is a resin formed by the polymerization of vinyl chloride monomer; and

(f) "Polystyrene" is a resin formed by the polymerization of styrene.

II. The Respondent

Rexall Drug and Chemical Company

2. Respondent, Rexall Drug and Chemical Company ("Rexall"), is a corporation organized and existing under the laws of the State of Delaware, with its principal office at 8480 Beverly Boulevard, Los Angeles, California 90054.

3. Rexall is a large manufacturer and distributor of chemical, plastic and drug products both in the United States and abroad. The principal operating divisions of Rexall are: (a) Chemical; (b) Packaging; (c) Tupperware; (d) Ethical Drugs (Riker); (e) Proprietary Drugs (Rexall); and (f) Retail.

4. In 1965, Rexall ranked as the 187th largest industrial corporation in the United States. Rexall's total sales in 1965 amounted to \$360,171,000. Its assets, as of December 31, 1965, were \$280,202,000.

5. Rexall is engaged in the manufacture of petrochemicals through a joint venture with El Paso Products Company, and through its own wholly owned facilities. The Rexall-El Paso petrochemical operation includes the production of ethylene and poly-

ethylene. Rexall is responsible for the production and marketing of resins produced by this joint operation. Rexall's plastic fabricating operations in packaging film, plastic containers, housewares and related products are major consumers of these resins.

6. Consolidated Thermoplastics Company, jointly owned by Rexall and El Paso Products Company, manufactures and distributes plastic film, bottles and containers. This company is the third ranking producer of plastic containers with approximately 14% of the total United States plastic container market in 1964. Consolidated Thermoplastics' share of the market for plastic containers for certain end uses is considerably higher; for example, its sales accounted for approximately 28% of the market for plastic containers for toiletries and cosmetics in 1964. White Manufacturing Company, a wholly owned subsidiary of Rexall, is a leading producer of collapsible metal tubes for pharmaceutical, cosmetic and other uses.

7. Rexall is and for many years has been extensively engaged in the purchase, sale and shipment across State lines of drugs, chemicals, resins and fabricated plastic products. Rexall is engaged in "commerce" within the meaning of the Clayton Act.

III. The Acquired Firm

Thatcher Glass Manufacturing Company, Inc.

8. Prior to June 30, 1966, Thatcher Glass Manufacturing Company, Inc. ("Thatcher"), was a corporation organized and existing under the laws of the State of New York, with its principal office at 375 Park Avenue, New York, New York. On June 30, 1966, Rexall acquired all of the outstanding stock of Thatcher through the issuance of one share of Rexall convertible preferred stock for each share of Thatcher stock. In accord with the merger agreement, Thatcher was merged into Rexall and Rexall became the surviving corporation. The stock of Thatcher acquired by Rexall had a market value at the time of Rexall's acquisition in excess of \$100 million.

9. Thatcher had long been a leading manufacturer of a broad line of glass containers, in various shapes, colors and sizes. In 1965, the year prior to the acquisition, Thatcher had sales of \$74,024,984 and assets as of December 31, 1965, of \$80,516,435.

10. In 1965, Thatcher was the fourth largest United States manufacturer of glass containers, accounting for over 6% of that market. In sales of certain types of glass containers Thatcher had a larger market share. In 1965 it accounted for nearly 19%

of the total sales of returnable glass beer bottles almost 13% of the sales of nonreturnable glass beer bottles, about 10% of glass bottles for wine and about 19% of glass containers for dairy products. Thatcher had been increasing its market share in the glass container industry steadily over the past 15 years.

11. Thatcher was also a significant producer of plastic tubes and closures. It was the second largest producer of plastic tubes with a substantial share of the total market. Thatcher had considered entry into other phases of the plastics field, including the manufacture of plastic bottles.

12. Thatcher maintained an engineering and research and development facility near Elmira, New York. The company was engaged in research activities concerning development of improved glass containers and plastic tubes and other products.

13. Prior to its acquisition by Rexall, Thatcher was and for many years had been extensively engaged in the purchase, sale and shipment across State lines of glass and plastic packaging products and was engaged in "commerce" within the meaning of the Clayton Act at the time it was acquired by Rexall.

IV. The Nature of Trade and Commerce

A. Glass Containers

14. The manufacture of glass containers is a substantial industry. In 1963, shipments in the United States by the glass container industry totaled 177.9 million gross (144 units per gross) valued at approximately \$1 billion. Shipments of glass containers rose to a new peak of 197.6 million gross in 1965, an increase of more than 10% over shipments in 1963.

15. Glass containers are manufactured for a number of end uses, including food, medicinal and health supplies, household and industrial chemicals, toiletries and cosmetics, beverages, beer, liquor, wines, and dairy products.

16. The glass container industry is extremely concentrated. The leading four and eight firms accounted for approximately 65 and 84%, respectively, of total industry sales in 1965.

B. Plastic Containers

17. Plastic containers are becoming increasingly important as containers for a number of products which previously used other types of containers. It has been estimated that the value of shipments of plastic containers in the United States increased from approximately \$50 million in 1958 to almost \$230 million in 1964.

In 1965, shipments of plastic bottles totaled 2.6 billion units, 15% higher than comparable shipments in 1964.

18. End uses for plastic containers include, food, beverages, household and industrial chemicals, toiletries and cosmetics, medicinal and health supplies, and automotive and marine products. In some end uses the recent growth of plastic containers has been enormous. For example, shipments of bottles for food and beverages almost tripled between 1963 and 1965, and shipments of bottles for packaging medicinal and health products in 1965 increased by 82% over shipments for this end use during the preceding year.

19. The plastic container industry is extremely concentrated. The four leading manufacturers of plastic containers account for an estimated 75% of total industry sales.

20. There is now and for sometime past has been an increasing competitive confrontation between glass and plastic container manufacturers for the patronage of many major end users. In 1965, shipments of glass and plastic containers for the following end uses were:

Product Category	Glass (1000 units)	Plastic (1000 units)
Food and beverage	21,611,376	62,680
Household and industrial chemicals	994,896	1,685,278
Toiletries and cosmetics	2,158,128	576,513
Medicinal and health	3,370,896	259,535

21. Competition between plastic and glass containers is a dynamic phenomenon. There are many areas today where producers of plastic containers are competing with producers of glass containers to gain the consumer's use and acceptance of their products. There has been intense competition in the household detergent and chemical end-use market between plastic and glass containers. The use of plastics for toiletries, cosmetic and similar containers has increased enormously in the last few years. Presently there is a significant shift toward plastic containers in the huge milk container market. The expected development by the plastics industry of a clear polyvinyl chloride or other plastic container suitable for packaging many types of food and beverages will open up another important and large volume market for plastic containers heretofore served by glass. Rexall is significantly involved in each of these fields.

V. Competitive Effect of Merger

22. The effect of the acquisition by Rexall of Thatcher may be substantially to lessen competition and tend to create a monopoly in the United States in the production and sale of: (1) plastic and glass containers generally and particular types of glass and plastic containers including, but not limited to, plastic containers, glass containers and such containers for particular end uses, including, among others, pharmaceutical, cosmetic and similar end uses; and (2) in the production and sale of plastic tubes and collapsible metal tubes generally and particular types of plastic and collapsible metal tubes including, but not limited to, plastic tubes, collapsible metal tubes and such tubes for particular uses including, among others, pharmaceutical, cosmetic and similar end uses. Such effect may occur in the following ways among others:

(a) Elimination of actual and potential competition between Rexall and Thatcher;

(b) Elimination of Thatcher as a substantial independent competitive factor;

(c) Increase in the already dominant position of Rexall to such a point that its advantage over its competitors may become decisive;

(d) Further increases of the existing high levels of concentration in the production and sale of plastic containers and glass containers, and containers generally; and

(e) Limitations on the operation and development of vigorous and independent competitive policies by firms in the plastic and glass container fields.

VI. Violation Charged

23. The effect of the acquisition by Rexall of Thatcher, as alleged in paragraph 8, above, may be substantially to lessen competition or to tend to create a monopoly in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as more fully described in the preceding paragraph.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of Section 7 of the Clayton Act, as amended, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; 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 complaint to issue herein, a provision that the agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission and that such acceptance may be withdrawn by the Commission as provided by its Rules, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission, having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Rexall is a corporation organized and existing under the laws of the State of Delaware, with its principal office and principal place of business located at 8480 Beverly Boulevard, Los Angeles, California, 90054.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

I

It is ordered, That respondent, Rexall Drug and Chemical Company ("Rexall"), a corporation, within two (2) years from the effective date of this Order, shall cause to be divested, absolutely and in good faith, to a purchaser or purchasers (such purchaser or purchasers being hereinafter called "Purchaser") approved by the Federal Trade Commission ("Commission") all of its interest, direct or indirect, in any assets, properties, rights and privileges, tangible or intangible, including, but not limited to, all plants, equipment, patents, trade names, trademarks, customer lists and goodwill, forming part of the Imco Container Company Division of Consolidated Thermoplastics Company ("Imco") and used in the manufacture or sale in the United States of thermoplastic bottles and thermoplastic accessories to such bottles, such as closure, plugs and overcaps (such assets and other interests set forth above being hereinafter called "the Assets"): *Provided*,

That such divestiture shall be in good faith to a Purchaser who, insofar as Rexall can reasonably determine, will operate such Assets as a going concern engaged in such thermoplastic bottle business: *Provided, further*, That nothing in this Order shall preclude such divestiture to El Paso Products Company: *And provided, further*, That Rexall shall cause to be divested the entire Imco division within the aforesaid two year period if such action is necessary to effectuate the divestiture of its interest in Imco as required by this Order.

II

It is further ordered, That, pending divestiture, Rexall shall not make or permit any deterioration of the Assets which may substantially impair present manufacturing capacity unless such capacity is restored prior to the divestiture: *Provided, however*, That nothing herein shall prevent Rexall, pending divestiture, from the exercise of good faith business judgment with respect to the operation and management of the Assets.

III

If the consideration received for the divestiture required to be made pursuant to this Order is not entirely cash, nothing in this Order shall be deemed to prohibit Rexall or any of its subsidiaries from accepting and enforcing a lien, mortgage, pledge, deed of trust or other security interest for the purpose of securing to Rexall full payment of the price, with interest, received by Rexall in connection with the divestiture; but if after *bona fide* divestiture including any disposal of any of the Assets, in accordance with the provisions of this Order, Rexall, by enforcement of such security interest regains direct or indirect ownership or control of any substantial portion of the Assets, said ownership or control regained shall be redinvested subject to the provisions of this Order, within such reasonable period as is granted by the Commission for this purpose.

IV

If complete divestiture pursuant to Paragraph I above shall not have been accomplished as required by said paragraph within the time therein provided or if the grant of license required by Paragraph VII below shall not have been accomplished within the time therein provided or any extension of said periods which the Commission may grant, Rexall, upon its showing of good faith efforts to comply with the requirements of this Order, shall be heard by the Commission before the Commission issues any

further Order other than an Order extending the time for compliance with this Order.

V

It is further ordered, That Rexall shall not be required by this Order to sell, license or in any way convey any rights to its trademarks and trade names "Rexall" and "Rexpak"; nor shall Rexall be required to sell, license, or in any way convey any rights to any of its other trademarks or trade names except rights to trademarks and trade names now used by Imco in the United States.

VI

It is further ordered, That for a period of ten (10) years after the effective date of this Order, Rexall shall cease and desist from acquiring, directly or indirectly, through subsidiaries, joint ventures or otherwise, the whole or any part of the share capital, or assets (other than products, machinery or equipment purchased in the ordinary course of business) of, or any other interest in, any domestic concern, corporate or noncorporate, engaged principally or as one of its major commodity lines at the time of such acquisition, in the United States, in the business of manufacturing glass containers, plastic containers or plastic coated containers, without the prior approval of the Commission. For the purposes of this Order, "containers" shall only include closeable bottles, jars, jugs, vials, cartons for milk and other beverages, and squeeze tubes.

VII

It is further ordered, That Rexall shall grant a license on all of its United States patents, patents pending and related know-how at the time of the granting of such license used in the production of flexible plastic squeeze tubes (hereinafter referred to as "tubes") to a firm approved and/or chosen by the Federal Trade Commission within five (5) years from the effective date of this Order, on terms which are reasonable, and that Rexall shall agree with such licensee to furnish whatever reasonable technical assistance may be required in connection with the startup of production of tubes at a cost to licensee equal to Rexall's out-of-pocket expenses.

VIII

It is further ordered, That (1) Rexall shall, promptly upon service of this Order, initiate *bona fide* efforts and take all neces-

sary steps toward the accomplishment of the divestiture required by this Order, and shall continue such efforts until the divestiture required by this Order has been completed; and (2) within thirty (30) days from the effective date of this Order, and every sixty (60) days thereafter until the divestiture required by Paragraph I of this Order has been completed, Rexall shall submit in writing to the Federal Trade Commission its plans for effecting such divestiture and the action it has taken in implementation thereof, including, in addition to such other information as may be required, (a) the name, address and official capacity of the individual or individuals designated to carry out such divestiture and to negotiate with interested parties, (b) a brochure, presentation or other writing containing all of the essential information necessary to permit an interested party to evaluate the business to be divested, (c) a summary of any efforts made and to be made in advertising and affirmatively announcing the availability of the business to be divested, (d) a summary of any efforts made to locate and interest prospective purchasers not previously engaged in the industry, (e) a summary of contracts and negotiations relating to the sale of facilities ordered to be divested, including the identities of any party or parties expressing interest in the acquisition of the business to be divested, (f) copies of all written communications pertaining to negotiations, solicitations of bids, offers to buy or indications of interest in the acquisition of the whole or any part of the business to be divested, and (g) copies of all agreements and forms of agreement relating directly or indirectly to the proposed sale of the business to be divested. Rexall shall, within thirty (30) days from the effective date of this Order, and annually thereafter until it has fully complied with the provisions of Sections VI and VII of this Order, file with the Commission a report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with said Sections.