

ROCKWELL INTERNATIONAL CORPORATION*

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

Docket 8842. Complaint, May 10, 1971—Decision, July 15, 1974

Consent order requiring a well-diversified corporation headquartered in Pittsburgh, Pa., among other things to divest itself of its knitting machine manufacturing division, Wildman-Jacquard. Further, for a five-year period respondent must, at the acquirer's option, make available at a maximum 2 percent royalty all patents, know-how and technological assistance relating to the production and operation of electronic knitting machines; and for a ten-year period respondent is forbidden to acquire, without prior Commission approval, any domestic manufacturers or sellers of looms or knitting machines or any foreign manufacturers and sellers of this machinery whose United States sales exceed an average of \$500,000 in the preceding five years, or exceeded \$700,000 in any one of the five years.

Appearances

For the Commission: *Harold E. Brandt, Stephen Miller and James W. Olson.*

For the respondent: *William F. Swanson, Jr. and Scott L. Holden, Pittsburgh, Pa. and Chadbourne, Parke, Whiteside & Wolff, New York City.*

*By order dated March 14, 1973, the administrative law judge ordered that the complaint conform with the change in name of the respondent from North American Rockwell Corporation to Rockwell International Corporation.

Complaint

84 F.T.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent North American Rockwell Corporation, Rockwell International Corporation, a corporation, has violated Section 7 of the Clayton Act, as amended, (15 U.S.C. Sec. 18) and that a proceeding in respect thereof would be in the public interest, issues its complaint pursuant to Section 11 of the Clayton Act, (15 U.S.C. Sec. 22) stating its charges as follows:

I. DEFINITIONS

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

(a) "Weaving machines," *i.e.*, looms, include all the machines used in the manufacture of fabric by interlacing warp and filling yarns according to a pre-defined pattern.

(b) "All knitting machines" include all the machines used in the manufacture of fabric by a series of interlocking loops.

(c) "Hosiery knitting machines" include seamless hosiery machines, half-hose machines and full-fashioned hosiery machines.

(d) "Knitting machines other than hosiery machines" include tricot machines, raschel machines, simplex machines, single jersey machines (including interlock), double jersey machines, sweater strip machines, flat bed machines, full-fashioned outerwear machines and pile machines, among others.

(e) "Machines used to manufacture apparel and fabric for apparel" include weaving machines and all knitting machines.

II. RESPONDENT

PAR. 2. North American Rockwell Corporation [Rockwell International Corporation] (hereafter "NAR") is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business at 2300 East Imperial Highway, El Segundo, Calif.

PAR. 3. NAR is the result of a merger on Sept. 22, 1967 between North American Aviation and Rockwell-Standard Corporation. NAR's business is conducted through two groups: the Aerospace and Systems Group and the Commercial Products Group. In addition to being the principal contractor in the Apollo/Saturn program, the Aerospace and Systems Group is a major manufacturer of spacecraft, launch vehicles, rocket engines, military aircraft and advanced electronic systems and devices. It is also the third largest company in the field of nuclear reactors and related products, and it is one of the world's major research

and development organizations. In addition to being the nation's leading independent supplier of highly engineered components for motor vehicles, the Commercial Products Group also is a leading manufacturer of textile machinery, aircraft for the general aviation market, fiberglass yachts, houseboats and pleasure boats, industrial components and graphic arts equipment. Since its formation in 1967, NAR has acquired nine companies, with three of the acquisitions occurring during the calendar year 1969. For its fiscal year ending September 30, 1969, NAR had sales and other income of \$2,689,124,000; net income of \$64,916,000; and total assets of \$1,519,726,000. On the basis of NAR's Sept. 30, 1969 financial statements, the May 15, 1970 Fortune Directory listed NAR as the 30th largest industrial corporation in the United States in total sales.

PAR. 4. Pursuant to an agreement of merger and consolidation dated May 26, 1967, Rockwell-Standard Corporation acquired Draper Corporation on June 30, 1967. The Draper Corporation is the world's largest producer of automatic looms and one of the nation's leading producers of replacement parts for knitting machines and parts for textile machinery, turnings and shapes, with total sales in the year 1966 in excess of \$112 million. In addition, the Draper Company through its wholly-owned subsidiary, the Wildman-Jacquard Company, whose 1966 sales totaled \$9,694,266, is one of the nation's leading producers of knitting machines.

PAR. 5. At all times relevant herein, NAR sold and shipped, and is now selling and shipping products in interstate commerce throughout the United States; hence, NAR was, at the time of the acquisition challenged herein, and is now, engaged in commerce as "commerce" is defined in the Clayton Act.

III. THE TEXTILE MACHINE WORKS

PAR. 6. Prior to Aug. 29, 1968, the Textile Machine Works (hereafter "TMW") was a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal office and place of business located in Wyomissing, Pa. (mailing address Reading, Pa.).

PAR. 7. At the time of its acquisition, TMW was the nation's largest manufacturer of all knitting machines and of hosiery knitting machines and was a leading producer of knitting machines other than hosiery machines, such as tricot machines and full fashioned outerwear machines. In addition, TMW was also a producer of fabric machinery, pressure hose reinforcing machines, packaging machinery, needles for knitting machines and surgical uses, and castings.

PAR. 8. For its fiscal year ending Apr. 28, 1968, TMW had total sales

of \$48,322, 391 and at the time of the acquisition, total assets of \$45,290,-638.

PAR. 9. At all times relevant herein, TMW sold and shipped products in interstate commerce and was engaged in "commerce" within the meaning of the Clayton Act.

IV. ACQUISITION

PAR. 10. Pursuant to an agreement and plan of reorganization adopted Apr. 5, 1968, NAR, on Aug. 29, 1968, acquired substantially all of the property, assets and business of TMW in exchange for 300,000 shares of the company's \$4.75 convertible preferred stock, Series A.

V. TRADE AND COMMERCE

PAR. 11. The process of making fabric from yarn falls into two broad categories, namely weaving and knitting. The manufacturing industry which produces the looms for weaving and the machines for knitting is highly concentrated. In 1967, two firms accounted for virtually all of the nation's production of looms, of which NAR's Draper alone accounted for nearly 80 percent, while five companies accounted for almost all of the nation's production of knitting machines. Traditionally, fabrics for apparel have been produced on weaving machines. In recent years, improved knitted techniques have resulted in the growth of knitted fabrics, especially for apparel use at the expense of woven fabrics.

PAR. 12. In 1967, five companies accounted for 95.7 percent of the nation's \$71.3 million of shipments of machines used to produce apparel and fabric for apparel, *i.e.*, looms and knitting machines, by domestic manufacturers, of which NAR, the largest, accounted for approximately 46.4 percent, and TMW ranked second with approximately 22.7 percent. In 1967, five companies accounted for 49.8 percent of the nation's \$106.6 million market of machines used to produce apparel and fabric for apparel, of which NAR, the largest domestic company, accounted for approximately 24.3 percent, and TMW ranked second with approximately 11.6 percent.

PAR. 13. In 1967, five companies accounted for 96.3 percent of the nation's \$40.2 million of shipments of all knitting machines by domestic manufacturers, of which TMW, the largest, accounted for approximately 40.3 percent, and NAR's Wildman-Jacquard ranked third with approximately 19.2 percent. In 1967, five companies accounted for 95.8 percent of the nation's \$25.8 million of shipments of knitting machines other than hosiery machines by domestic manufacturers, of which NAR's Wildman-Jacquard ranked second with approximately 29.8 percent, and TMW ranked third with approximately 20.2 percent.

PAR. 14. In 1967, five domestic companies accounted for 49.6 percent of the nation's \$58.2 million market for all knitting machines, of which TMW, the largest domestic company, accounted for approximately 21.3 percent, and NAR's Wildman-Jacquard ranked third domestically with approximately 7.7 percent. In 1967, five domestic companies accounted for 43.4 percent of the nation's \$42.4 million market of knitting machines other than hosiery machines, of which NAR's Wildman-Jacquard ranked second domestically with approximately 10.6 percent and TMW ranked third domestically with approximately 8.0 percent.

PAR. 15. NAR, through Draper with its looms, and through Wildman-Jacquard with its knitting machines, competed directly with TMW in the manufacture and sale of machines used to manufacture apparel and fabric for apparel.

PAR. 16. At the time of the acquisition of TMW by NAR, both Wildman-Jacquard and TMW were, by reason of their continuing experience and reputation as knitting machine manufacturers, two of the most likely potential competitors in the manufacture and sale of all types of knitting machines other than those types which they were then manufacturing.

VI. THE EFFECTS OF THE ACQUISITION

PAR. 17. The effect of the acquisition by NAR of TMW may be substantially to lessen competition or to tend to create a monopoly throughout the United States in the following ways, among others:

a. By eliminating actual competition between NAR and TMW in the manufacture and sale of machines used to manufacture apparel and fabric for apparel, all knitting machines, and knitting machines other than hosiery machines;

b. By eliminating potential competition between NAR, TMW and others in the manufacture and sale of knitting machines.

c. The dominant position of NAR in the manufacture and sale of machines used to manufacture apparel and fabric for apparel has been, or may be, further strengthened and entrenched vis-a-vis both existing and potential competitors with the result that the likelihood of any reduction in such a dominant position is remote.

VII. VIOLATION CHARGED

PAR. 18. The acquisition of TMW by NAR on Aug. 29, 1968, constituted a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18).

DECISION AND ORDER

The Federal Trade Commission having initiated a complaint charging that the respondent named in the caption hereof has violated the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18; and

Respondent and complaint counsel, after the evidentiary record was closed, by joint motion dated Jan. 2, 1974 having moved to have the matter removed from adjudication for the purpose of submitting an executed consent agreement; and

The Commission, by order issued Jan. 11, 1974, having withdrawn this matter from adjudication pursuant to Section 2.34(d) of its rules; and

The executed agreement contains a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint which the Commission issued, 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 provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comment filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent, Rockwell International Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with an office and place of business located at 600 Grant Street, Pittsburgh, Pa.

2. The Federal Trade Commission has jurisdiction of this proceeding and of the respondent and the proceeding is in the public interest.

ORDER

I

It is ordered, That, subject to the prior approval of the Federal Trade Commission, respondent Rockwell International Corporation, a corporation (hereinafter Rockwell), through its officers, directors, agents, representatives, employees, successors and assigns, shall, as soon as possible and in any event within two (2) years from the date this order becomes final, divest absolutely and in good faith, all assets, properties, rights and privileges, tangible and intangible, presently owned or con-

trolled by or assigned to what was formerly referred to as the Wildman-Jacquard Company or the Wildman-Jacquard Division of respondent, excluding, however, any of such equipment, machinery, raw material reserves, inventory and other property as are presently located at respondent's facility in Reading, Pa. and used for the manufacture or sale of large diameter circular machinery, which were not formerly used in production at the Norristown plant which is to be divested, (hereinafter Wildman-Jacquard), including but not limited to the plant owned by it and located at 1300 Stanbridge Street, Norristown, Pa., and including all equipment, machinery, raw material reserves, inventory, and other property of whatever description located at such plant and all customer lists, trade names, patents, trademarks and good will (expressly excluding, however, the trademarks Rockwell International, Rockwell, North American Rockwell, Electroknit, Electroknit 48 and other marks or names not exclusively used by Wildman Jacquard) in so far as they relate to Wildman-Jacquard and also including all additions and improvements thereto made since Jan. 1, 1973 up to the date of divestiture, to a person, firm or corporation able to operate such plant as a separate, independent and viable going concern in the manufacture and sale of large diameter circular knitting machines.

Rockwell shall also make available, on a nonexclusive basis, for a period of five (5) years from the date of divestiture, to the acquirer, at the acquirer's option, and by license or other contract, solely for the purpose of making, using and selling electronically controlled large diameter circular double knit machines as produced by Rockwell for commercial sale at or prior to the date of divestiture (hereinafter Electronic Machines), for royalty payments of not in excess of 2 percent of the sales price of the acquirer's machines making use thereof, the following:

(a) All patents and patent applications developed on behalf of Rockwell, its subsidiaries and affiliates covering inventions which were conceived or reduced to practice during the period from Aug. 29, 1968 to the date of divestiture for use in and which relate to the structure, manufacture or operation of Electronic Machines;

(b) All other know-how and technology in the form of documents developed by Rockwell, its subsidiaries and affiliates during the aforesaid period for use in and which relate to the structure, manufacture or operation of Electronic Machines;

(c) At the request of the acquirer, other reasonable technological assistance relating to know-how and technology developed by Rockwell, its subsidiaries and affiliates, during the aforesaid period for use in or which relate to the structure, manufacture or opera-

tion of Electronic Machines, such technological assistance to be provided through Rockwell personnel upon the payment of normal consulting fees for the personnel involved in addition to the royalty payments set forth above; and

(d) All patent rights and other know-how or technology in the form of documents which were licensed or assigned to, or otherwise acquired by Rockwell, its subsidiaries and affiliates during the aforesaid period for use in and which relate to the structure, manufacture or operation of Electronic Machines.

II

It is further ordered, That, if respondent is unable to sell or dispose of Wildman-Jacquard for cash, nothing in this order shall be deemed to prohibit respondent from retaining, accepting and enforcing in good faith any security interest therein, not to exceed five (5) years in duration, for the sole purpose of securing to respondent full payment of the price, with interest, at which Wildman-Jacquard is sold or disposed of; *Provided, however*, That if after a good faith divestiture of Wildman-Jacquard pursuant to this order, the buyer fails to perform his obligations and respondent regains ownership or control of Wildman-Jacquard by enforcement of any security interest therein, respondent shall divest such company within one year in the same manner as provided for herein.

III

It is further ordered, That, pursuant to the requirement of Paragraph I above, none of the assets, rights or privileges, tangible or intangible, to be divested pursuant to Paragraph I above, shall be divested directly or indirectly to anyone who is, at the time of the divestiture, an officer, director, employee, or agent of, or under the control, direction or influence of Rockwell or any of Rockwell's subsidiaries or affiliated corporations or who owns or controls more than one (1) percent of the outstanding shares of the capital stock of Rockwell.

IV

It is further ordered, That, pending divestiture, respondent shall not make any changes, other than in the ordinary course of business, or permit any deterioration in any of the plants, machinery, buildings, equipment or other property or assets of whatever description of Wildman-Jacquard which may impair said Wildman-Jacquard's capacity for the manufacture, distribution or sale of knitting machines.

V

It is further ordered, That, respondent Rockwell shall cease and desist for the period beginning on the date this order becomes final and ending ten (10) years after the completion of the divestiture required by Paragraph I of this order from acquiring, or acquiring and holding, directly or indirectly, without prior approval of the Federal Trade Commission, any part of the assets, or one (1) percent or more of the stock or other share capital, or other actual or potential equity interest or right of participation in the earnings of any domestic concern, corporate or non-corporate, which is engaged in the manufacture or sale in the United States of looms or knitting machines capable of being used to manufacture apparel or fabric for apparel, or of any foreign concern, corporate or non-corporate, engaged in the manufacture or sale of such looms or knitting machines whose sales in the United States of such looms and knitting machines in the five (5) years preceding such acquisition exceeded an average of \$500,000 per year, or exceeded \$700,000 in any one of such five years.

VI

It is further ordered, That, respondent Rockwell shall within sixty (60) days after date of service of this order, and every sixty (60) days thereafter until respondent Rockwell has fully complied with the provisions of this order, submit in writing to the Federal Trade Commission a verified report setting forth in detail the manner and form in which respondent Rockwell is endeavoring to comply or has complied with this order. All compliance reports shall include, among other things that are from time to time required, a summary of contracts or negotiations with anyone for the specified property and assets, and the identity of all such persons and copies of all written communications to and from such persons.

VII

It is further ordered, That, respondent Rockwell notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other proposed change in the corporation which may affect compliance obligations arising out of this order.

Complaint

84 F.T.C.

IN THE MATTER OF

CARNATION COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2522. Complaint, July 15, 1974—Decision, July 15, 1974*

Consent order requiring a Los Angeles, Calif., seller and distributor of Carnation Instant Chocolate Flavored Nonfat Dry Milk and its Los Angeles, Calif., advertising agency, among other things to cease misrepresenting and falsely advertising that its product is the nutritional equivalent of milk or reconstituted nonfat dry milk. Further, respondents are required for a one-year period to clearly disclose in all advertising for such a product that is not equivalent nutritionally to milk or reconstituted nonfat dry milk.

Appearances

For the Commission: *Kermit C. Morrison, Jr.* and *Edward F. Downs.*

For the respondents: *Ms. Robin Robinson* for Carnation Company, Los Angeles, Calif. *Mr. Harry L. Schnideman*, Covington & Burling, Wash., D.C. for Erwin Wasey, Inc.

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 corporate respondents Carnation Company and Erwin Wasey, Inc. have 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. Carnation Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 5045 Wilshire Boulevard, in the city of Los Angeles, State of California.

PAR. 2. Erwin Wasey, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 5455 Wilshire Boulevard, in the city of Los Angeles, State of California.

PAR. 3. Carnation Company is now, and has been for more than six months last past, engaged in the advertising, offering for sale and sale of Carnation Instant Chocolate Flavored Nonfat Dry Milk, a food product, as "food" is defined in the Federal Trade Commission Act.