

IN THE MATTER OF
KANE-MILLER CORP., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECTION 8 OF THE CLAYTON ACT AND SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT

Docket 9034. Complaint, June 17, 1975 — Decision, Sept. 1, 1976

Consent orders requiring two manufacturers and sellers of meat and meat products, Kane-Miller Corp. of Tarrytown, N.Y., and United Brands Co. of New York City, among other things, to cease permitting individuals to simultaneously serve on their boards of directors and those of their competitors. Further, respondents are required to establish procedures designed to detect the existence of unlawful interlocking directorates; and for a period of five years, obtain annually written certification from current and prospective board members that they are not serving on the boards of competitive companies. The complaint as to the individual respondent, Joseph M. McDaniel, Jr., was dismissed by order of the Commission dated May 6, 1976, upon his resignation from the board of directors of Kane-Miller Corp.

Appearances

For the Commission: *Joseph Tasker, Jr., Ronald A. Bloch and Clinton R. Batterton.*

For the respondents: *Wald, Harkrader & Ross, Washington, D.C. Kaye, Scholer, Fierman, Hays & Handler, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondents have been and are in violation of the provisions of Section 8 of the Clayton Act, as amended, and Section 5(a)(1) of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Kane-Miller Corp. (hereinafter Kane-Miller) is a New York corporation, and maintains its principal office at 555 White Plains Rd., Tarrytown, New York. Kane-Miller has capital, surplus, and undivided profits aggregating more than one million dollars, and is engaged in whole or in part in commerce as "commerce" is defined in Section 1 of the Clayton Act and Section 4 of the Federal Trade Commission Act.

PAR. 2. Respondent United Brands Co. (hereinafter United Brands) is a New York corporation, and maintains its principal office at 245 Park Ave., New York, New York. United Brands has capital, surplus, and undivided profits aggregating more than one million dollars, and is

engaged in whole or in part in commerce as "commerce" is defined in Section 1 of the Clayton Act and Section 4 of the Federal Trade Commission Act.

PAR. 3. Respondent Joseph M. McDaniel, Jr. is a resident of the Commonwealth of Pennsylvania.

PAR. 4. Respondent McDaniel is a member of the Board of Directors of each of the herein named corporate respondents.

PAR. 5. The business of the corporate respondents, Kane-Miller and United Brands includes the manufacture and sale in commerce of meat products.

PAR. 6. Kane-Miller and United Brands by the nature of their business as set forth in Paragraph Five above and location of operations with respect to said products, are competitors of each other. The elimination of competition with respect thereto by agreement between Kane-Miller and United Brands would constitute a violation of the antitrust laws.

PAR. 7. Therefore, the simultaneous presence of respondent Joseph M. McDaniel, Jr. on the Board of Directors of respondent Kane-Miller and United Brands constitutes a violation of Section 8 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act.

ORDER AS TO INDIVIDUAL RESPONDENT

JOSEPH M. MCDANIEL, JR.

MAY 6, 1976

It is ordered, That the complaint against the individual respondent, Joseph M. McDaniel, Jr., be and it hereby is *dismissed*.

DECISION AND ORDER

The Federal Trade Commission having heretofore issued its complaint charging the respondent named in the caption hereto with violation of Section 8 of the Clayton Act and Section 5(a) (1) of the Federal Trade Commission Act, and the respondent having been served with a copy of the complaint and with a copy of the notice of contemplated relief accompanying said complaint; 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 heretofore 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 other provisions as required by the Commission's Rules; and

The Commission having thereafter issued an order withdrawing the matter described in the caption hereto from adjudication for the purpose of considering the proposed consent agreement pursuant to Section 3.25 of its Rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing a consent order having thereupon been placed on the public record for a period of sixty (60) days, and no comments having been received by the Commission, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby issues its decision in disposition of the proceeding against the above-named respondent, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Kane-Miller Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office located at 555 White Plains Road, Tarrytown, New York.

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

ORDER

I

It is ordered, That Kane-Miller Corp. ("Kane-Miller"), a Delaware corporation, its successors and assigns, do forthwith cease and desist from permitting any individual to serve on its Board of Directors if such individual is or would be at the same time a director of United Brands Company, a New Jersey corporation, so long as United Brands Company and Kane-Miller compete in the production or sale of any product by virtue of their business and location of operation.

II

It is further ordered, That Kane-Miller shall, within sixty (60) days after the service upon it of this order, and annually for each of the five years after said date of service, transmit to each nominee or director a copy of the complaint and order in this proceeding together with a request that each nominee or director certify to Kane-Miller in writing that he does not serve on the Board of Directors of any corporation that (1) is in or affects "commerce" as defined in Section 1 of the Clayton Act, as amended, or Section 4 of the Federal Trade Commission Act,

and that (2) has sales in commerce or affecting commerce, in competition with Kane-Miller by virtue of business and location of operation, in excess of \$1,000,000 annually, or from which one percent (1%) or more of such corporation's gross sales revenue is derived, whichever is less, in any of the following: (a) products the content of which is more than fifty percent (50%) meat, or meat by-products; (b) margarine, or vegetable fats or oils; (c) baked goods or recycled bakery waste; (d) prepared salads, prepared salad dressings, or prepared puddings; (e) cheese; (f) wine; (g) canned peas, corn, lima beans, tomatoes (including juice and catsup), sweet potatoes, white potatoes or asparagus; (h) wholesale food distribution; (i) restaurants; or (j) any product in a list to be prepared by Kane-Miller and transmitted to each such nominee or director simultaneously with the request for certification, which list shall include each and every product listed in subparagraphs (a) through (i) above together with each and every additional product for which Kane-Miller has sales in or affecting commerce in its prior fiscal year in excess of \$1,000,000, or from which it derived one percent (1%) or more of its gross sales revenue, whichever is less, and which is contained in the seven-digit code and product description in the *Numerical List of Manufactured Products* published by the Bureau of the Census in its latest Census of Manufacturers. The provisions of this paragraph shall not apply to another corporation on the Board of Directors of which such nominee or director also serves where: (a) Kane-Miller controls, directly or indirectly through subsidiaries, more than fifty percent (50%) of the voting stock of such other corporation ("subsidiary"); or (b) Kane-Miller has been actively seeking control of such other corporation for a period of no longer than one year from the date on which there was first a common directorship. A corporation, including Kane-Miller, shall be deemed to be engaged in the sale of a product if any subsidiary is so engaged.

III

It is further ordered, That, for a period ending five years from the date of service upon it of this order, Kane-Miller shall not permit on its Board of Directors any nominee or director who fails, or is unable, truthfully to submit a written certification pursuant to Paragraph II above, or with respect to whom a reasonably diligent investigation by Kane-Miller would reveal such certification cannot truthfully be made. The prohibition contained in this paragraph shall not apply where: (a) Kane-Miller, or any corporation on the Board of Directors of which a nominee or director of Kane-Miller also serves, cease to be competitors, as defined in Paragraph II; or (b) said nominee or director ceases to serve on the Board of Directors of such other competitor corporation.

IV

It is further ordered, That Kane-Miller shall, within ninety (90) days after service upon it of this order, and annually for each of the five years thereafter, file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order, including copies of those certifications provided by all current directors of Kane-Miller pursuant to Paragraph II of this order. If compliance with Paragraphs II and III of this order requires any member of Kane-Miller's Board of Directors to resign or be removed from its Board of Directors, Kane-Miller shall be allowed a reasonable period of time, but in no event longer than ninety (90) days, within which to take any legal or other steps necessary to secure compliance. Nothing in this order shall be construed to exempt Kane-Miller from compliance with the antitrust laws or the Federal Trade Commission Act: and the fact that any activity is not prohibited by this order shall not bar a challenge to it under such statutes.

V

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

Commissioner Clanton not participating; Commissioner Dole not participating by reason of absence.

DECISION AND ORDER

The Federal Trade Commission having heretofore issued its complaint charging the respondent named in the caption hereto with violation of Section 8 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act, and the respondent having been served with a copy of the complaint and with a copy of the notice of contemplated relief accompanying said complaint; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent to all the jurisdictional facts set forth in the complaint heretofore 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 other provisions as required by the Commission's Rules; and

The Commission having thereafter issued an order withdrawing the matter described in the caption hereto from adjudication for the purpose of considering the proposed consent agreement pursuant to Section 3.25 of its Rules; and

The Commission, having considered the agreement and having provisionally accepted same, and the agreement containing a consent order having thereupon been placed on the public record for a period of sixty (60) days and no comments having been received by the Commission, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby issues its decision in disposition of the proceeding against the above named respondent, makes the following jurisdictional findings, and enters the following order:

1. Respondent, United Brands Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office located at 245 Park Ave., New York, New York.

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

ORDER

I

It is ordered, That United Brands Company, a New Jersey corporation, its successors and assigns, do forthwith cease and desist from permitting any individual to serve on its Board of Directors if such individual is or would be at the same time a director of Kane-Miller Corp., a Delaware corporation, so long as said respondent and Kane-Miller Corp., compete in the production or sale of any product.

II

It is further ordered, That respondent shall, within sixty (60) days after the service upon it of this order and annually, in each of the four years thereafter, transmit to each nominee or director a copy of the complaint and order in this proceeding together with a request that each such nominee or director certify in writing to respondent that such person does not serve on the Board of Directors of any corporation which is engaged in a business in or affecting commerce, as commerce is defined in Section 1 of the Clayton Act or Section 4 of the Federal Trade Commission Act, and in competition with respondent, in any of the following: (a) the production, processing and sale (exclusive of sales at retail to consumers) of products whose content is more than 50

percent meat, in fresh, frozen, or processed forms; (b) the sale (exclusive of sales at retail to consumers) of bananas; and (c) the production or sale of any product for which respondent had sales to unrelated purchasers in the United States in its prior fiscal year in an amount equal to five percent or more of respondent's total sales in the United States for that year, where such sales exceed \$1,000,000 per year. Those products falling within category (c) of this paragraph shall be identified by respondent in a list to be prepared by it and transmitted to each such nominee or director simultaneously with the request for certification. For purposes of Paragraph I and category (c) of this Paragraph, identification of all products shall be by reference to the four-digit Code and Product Description published by the Bureau of the Census in its latest *Numerical List of Manufactured Products*. The provisions of this Paragraph shall not apply where: (i) the other corporation on whose Board of Directors such nominee or director also serves controls 50 percent or more of the voting stock of respondent ("parent"); (ii) respondent controls, directly or indirectly through subsidiaries, 50 percent or more of the voting stock of the other corporation on whose Board of Directors such nominee or director also serves ("subsidiary"); or (iii) 50 percent or more of the voting stock of the other corporation on whose Board of Directors such nominee or director also serves is held by a corporation which also holds 50 percent or more of the voting stock of respondent ("sister"). Notwithstanding the fact that a product of respondent which is within category (c) of this Paragraph and a product of the other corporation shall each be included in the same four-digit Code and Product Description, the provisions of this Paragraph shall not apply if respondent has shown to the satisfaction of the Federal Trade Commission or to any court of competent jurisdiction, in a final, non-appealable determination, that such products do not compete. A corporation, including respondent, shall be deemed to be engaged in the production or sale of a product if any parent, subsidiary or sister corporation is so engaged.

III

It is further ordered, That for a period ending five years from the date of service upon it of this order, respondent shall not permit on its Board of Directors any nominee or director who fails to submit a written certification pursuant to Paragraph II above, or who is unable to submit truthfully such written certification, or with respect to whom a reasonably diligent investigation would reveal to respondent that such nominee or director is not able truthfully to so certify.

IV

It is further ordered, That respondent shall, within ninety (90) days after service upon it of this order, and annually for each of the four years thereafter, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order, including copies of those certifications provided by all current directors of respondent, pursuant to the requirements of Paragraph II of this order. If compliance with Paragraphs II and III of this order require any member of respondent's Board of Directors to resign or to be removed from the Board of Directors of respondent, or of another corporation, respondent shall be allowed a reasonable period of time, but in no event longer than ninety (90) days, within which to take any legal or other steps which are necessary to secure compliance with this order. Nothing in this order shall be construed to exempt respondent from complying with the antitrust laws or the Federal Trade Commission Act and the fact that any activity is not prohibited by this order shall not bar a challenge to it under such laws.

V

It is further ordered, That respondent 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, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

Commissioner Clanton not participating; Commissioner Dole not participating by reason of absence.

IN THE MATTER OF
QUALITONE, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9010. Complaint, Jan. 29, 1975 — Decision, Sept. 8, 1976

Consent order requiring a Minneapolis, Minn., hearing aid manufacturer, among other things to cease misrepresenting the beneficial results of using its merchandise, the performance characteristics, efficacy and uniqueness of its products; furnishing means and/or instrumentalities of deception or misrepresentation; and failing to maintain records which are both adequate and accurate. Further, in the event a final trade regulation rule regarding hearing aids is promulgated, such rule shall supersede this order to the extent that any requirement or prohibition herein is omitted by the rule or differs from the corresponding portion of the rule.

Appearances

For the Commission: *Wallace S. Snyder* and *Cynthia L. Ingersoll*.

For the respondent: *Lee R. Marks* and *James E. Wesner*, *Ginsburg, Feldman & Bress*, Washington, D. C.

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 Seeburg Industries, Inc., 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 Seeburg Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal place of business located at 767 Fifth Ave., New York, New York.

PAR. 2. Respondent, Seeburg Industries, Inc., under a recent comprehensive reorganization acquired all shares of Seeburg Corp. of Delaware, and took over its various divisions, including the Qualitone Division which manufactures and distributes hearing aids. Respondent is now, for some time last past, and as successor in interest to Seeburg Corp. of Delaware, has been, through its operating division, Qualitone, 4931 West 35th St., Minneapolis, Minnesota, at times referred to as Qualitone World Wide Hearing Service, engaged in advertising, offering for sale, sale and distribution of hearing aids which come