

Complaint

88 F.T.C.

IN THE MATTER OF

## KRAFTCO CORPORATION

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

*Docket 9035. Complaint, June 17, 1975 — Decision,\* Sept. 9, 1976*

Consent order requiring a Glenview, Ill., manufacturer and seller of margarine, edible oils, and barbecue sauce, among other things to cease permitting individuals to simultaneously serve on its Board of Directors and that of its competitor, SCM Corporation and, for a period of four years, to annually obtain from current and prospective board members written certification that they are not serving on the boards of competitive companies. Additionally, the order prohibits respondent from seating on its Board of Directors, any individual who fails to furnish such written certification.

*Appearances*

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

For the respondent: *Chadwell, Keyser, Ruggles, McGee & Hastings, Chicago, Ill.; Hoosin & Taffe, Glenview, Ill.; Sullivan & Cromwell, New York City; Ballard, Spahr, Andrews & Ingersoll, Philadelphia, Pa.*

## 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 Kraftco, Inc. (hereinafter "Kraftco") is a Delaware corporation, and maintains its principal office at Kraftco Court, Glenview, Illinois. Kraftco 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 SCM Corporation (hereinafter "SCM") is a New York corporation, and maintains its principal office at 299 Park Ave., New York, New York. SCM has capital, surplus, and undivided profits aggregating more than one million dollars, and is engaged in whole or

\* For decision concerning Richard C. Bond, see, 87 F.T.C. 809, and decision concerning SCM Corporation is pending.

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 Richard C. Bond is a resident of the Commonwealth of Pennsylvania.

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

PAR. 5. The business of the corporate respondents, Kraftco and SCM, includes the manufacture and sale in commerce of margarine, edible oils, and barbecue sauce.

PAR. 6. Kraftco and SCM, by the nature of their margarine, edible oil, and barbecue sauce business and location of operations with respect to said products, are competitors of each other. The elimination of competition with respect thereto by agreement between Kraftco and SCM would constitute a violation of the antitrust laws.

PAR. 7. Therefore, the simultaneous presence of respondent Richard C. Bond on the Board of Directors of respondents Kraftco and SCM constitutes a violation of Section 8 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act.

#### 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 filed, 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, Kraftco 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 Kraftco Court, Glenview, Illinois.

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 Kraftco Corporation (identified in the complaint as "Kraftco, Inc."), 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 SCM Corporation, so long as Kraftco and SCM Corporation compete in the production or sale of any product.

##### II

*It is further ordered*, That within ninety (90) days of the date of service of this order and annually in each of the four (4) years thereafter, Kraftco shall transmit to each member of its Board of Directors (except directors whose terms expire at the next election and who are not standing for re-election), and each nominee for directorship who is not then a director, a list of the following products: (a) cheese, (b) fluid milk, (c) ice cream, (d) barbecue sauce, (e) edible oils, (f) margarine, and (g) any product in which Kraftco had sales which accounted for 5 percent or more of Kraftco's gross revenues in the preceding fiscal year. "Product" as used in category (g) of this paragraph shall mean the four-digit industry code (SIC) classifications published by the Bureau of the Census in its latest *Numerical List of Manufactured Products*. Kraftco shall also request that each director or nominee certify to Kraftco in writing that he or she does not serve on the Board of Directors of any corporation which is engaged in competition with Kraftco in the manufacture or sale in the United States of any product listed by Kraftco where the sales of such product by the corporation (exclusive of sales at retail to consumers) exceed \$1,000,000 per year. 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 Kraftco ("parent"); (ii) Kraftco 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 Kraftco ("sister"). "Corporation" as used herein shall include parent, subsidiary or sister corporations.

## III

*It is further ordered,* That for a period ending five (5) years from the date of service upon it of this order, Kraftco shall not permit on its Board of Directors any nominee or director who fails to submit a written certification pursuant to Paragraph II above, either because he or she cannot truthfully submit such written certification or for whatever other reason, or with respect to whom a reasonably diligent investigation by Kraftco would reveal that such certification cannot truthfully be made. The prohibition contained in this paragraph shall not apply where (a) Kraftco, or any corporation on the Board of Directors of which a nominee or director of Kraftco also serves, cease to be competitors; or (b) said nominee or director ceases to serve on the Board of Directors of such other competitor corporation. Notwithstanding any other provision of this order, any director or nominee shall not be prohibited by this order from serving on the Board of Directors of Kraftco, if Kraftco has shown to the satisfaction of the Federal Trade Commission or to any other court of competent jurisdiction, in a final nonappealable determination, that there is no competition as defined in Section 8 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act between Kraftco and the other corporation on whose Board he or she serves in the manufacture or sale of any product required to be listed by Kraftco pursuant to Paragraph II of this order.

## IV

*It is further ordered,* That within ninety (90) days of the service of this order, and annually for each of the four years thereafter, Kraftco shall file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order. If compliance with this order requires any member of Kraftco's Board of Directors to resign or to be removed from the Board of Directors of Kraftco, or of another corporation, Kraftco 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 Kraftco 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.

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*It is further ordered*, That Kraftco notify the Commission at least thirty (30) days prior to any change in Kraftco, 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 Kraftco which may affect compliance obligations arising out of this order.

Commissioner Dole did not participate by reason of absence.

IN THE MATTER OF  
JIM WALTER CORPORATION

*Docket 8986. Order, Sept. 10, 1976*

Denial of motion to postpone oral argument.

*Appearances*

For the Commission: *John J. O'Malley.*

For the respondent: *John J. Voortman, W. Donald McSweeney and Susan A. Henderson, Schiff, Hardin & Waite, Chicago, Ill. Dan L. Saltsman, Tampa, Fla.*

ORDER DENYING MOTION TO POSTPONE ORAL ARGUMENT

Respondent moves for a postponement of the oral argument in this matter from September 15, 1976, until some date after October 1976. According to the motion, respondent's lead attorney has been engaged in a trial in the United States District Court for the Eastern District of Wisconsin since May 3, 1976, and expects to be so engaged through a substantial part of October 1976.

While the Commission has been willing to grant short postponements to accommodate irreconcilable scheduling conflicts, a six-week postponement is unwarranted, especially in view of the lack of any showing that another attorney could not be assigned to argue the appeal. *See American General Insurance Co., Dkt. No. 8847, Order Denying Complaint Counsel's Motion to Postpone Oral Argument, June 8, 1976.* Furthermore, the motion is untimely since there is no indication that counsel could not have perceived his need for a continuance before this late date. Accordingly,

*It is ordered,* That the aforesaid motion be, and it hereby is, denied. Commissioner Dole not participating by reason of absence.