

IN THE MATTER OF
THE PILLSBURY COMPANY, ET AL.

Docket 9091. Interlocutory order, Nov. 24, 1976

Commission issues instructions to ALJ pursuant to order of the court, and establishes reporting schedule as to status of case.

Appearances

For the Commission: *Peter J. P. Brickfield, Joseph Tasker, Jr.*

For the respondents: *Murphy & Pearson, Chicago, Ill. and Faegre & Benson, Minneapolis, Minn.*

INSTRUCTIONS TO ADMINISTRATIVE LAW JUDGE

On November 15, 1976, the Commission and the respondents, together with the United States Attorney for the Northern District of Illinois, entered into a stipulation and order which was approved and entered by Judge Flaum of the United States District Court for the Northern District of Illinois, a copy of which is attached. Section V of that order calls for all parties to these proceedings to expedite final disposition of this matter, without waiver of any legal rights.

Pursuant to the order of the court, the Commission hereby directs that the administrative law judge take all appropriate steps to expedite the proceedings before him and that he make a brief written report to the Commission on February 15, 1977, and on the 15th of every third month thereafter during the pendency of proceedings in this matter before him as to the procedural status of the matter and the steps which have been taken to expedite the proceedings.

STIPULATION AND ORDER

Pursuant to the motion filed by the Federal Trade Commission, Judge Leighton, U. S. District Judge for the Northern District of Illinois, Eastern Division, issued on November 12, 1976 a Temporary Restraining Order prohibiting the consummation of the acquisition of the assets of Fox Deluxe Foods, Inc. ("Fox") by The Pillsbury Company ("Pillsbury") for ten days.

The parties having met to consider the most appropriate manner in which to assure the continued viability of Fox's frozen prepared pizza operations as a readily identifiable operation which might most easily be divested by Pillsbury as a viable, separate and independent company, in the event a final order of divestiture results from the administrative proceeding against Fox and Pillsbury commenced by the Federal Trade

Commission on November 11, 1976, which challenges the lawfulness of the acquisition.

The Commission (being fully appraised of the unique factual situation in this matter and being mindful of the Temporary Restraining Order entered by Judge Leighton on November 12, 1976) Fox and Pillsbury stipulate to the entry of the following Preliminary Injunction and to the dissolution of the November 12, 1976 Temporary Restraining Order.

PRELIMINARY INJUNCTION

I

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim upon which relief may be granted against respondents under Section 13(b) of the Federal Trade Commission Act. Entry of this order is in the public interest.

II

As used in this order:

(A) "Pillsbury" means respondent The Pillsbury Company and its subsidiaries, divisions, affiliates and the predecessors and successors of any of the foregoing.

(B) "Fox" means respondent Fox Deluxe Foods, Inc. and its subsidiaries, divisions, affiliates and the predecessors and successors of any of the foregoing.

(C) "New Company" means the corporation formed as ordered in Paragraph III(A) hereof and its successors.

(D) "Final ordered divestiture" means any divestiture ordered by a final order as defined in 15 U.S.C. §§ 21 and 45 which may be issued by the Federal Trade Commission in respect to the administrative complaint issued November 11, 1976, Dkt. 9091.

(E) "Person" means an individual, partnership, association, firm, corporation or other legal or business entity.

(F) "Fox Pizza Assets" means all assets currently utilized by Fox to manufacture, sell and distribute frozen prepared pizza and any and all additions, replacements or other equipment added or installed in or to the acquired buildings in Joplin, Missouri, including but not limited to warehouses, fixtures and any vehicles, leases, contracts or agreements which are used in the manufacture, distribution and sale of Fox brand frozen prepared pizza.

(G) "Buyer" means any one or more persons who may acquire the stock or assets of New Company pursuant to final ordered divestiture.

III

Defendant Pillsbury is ordered and directed to do as follows:

(A) Not later than November 19, 1976, Pillsbury shall cause a new corporation to be established in the United States (hereinafter referred to as "New Company") to carry on the frozen prepared pizza business of Fox as hereinafter set forth.

(1) Transfer to New Company or cause New Company to hire personnel to enable New Company, with the services and investment to be furnished under subparagraphs (2), (3) and (4) to operate as a fully operative, viable, going business. Such personnel may include persons employed by Fox or by Pillsbury.

Pillsbury will use its best efforts to cause personnel employed by New Company to continue with New Company after final ordered divestiture, but shall not be obligated to require any person to accept employment with New Company or the Buyer if he shall be unwilling to do so. If requested by the Buyer, Pillsbury shall cause management personnel services to be furnished, for a period of up to twelve months after final ordered divestiture to New Company at its variable costs, determined in accordance with generally accepted accounting principles. For two (2) years after final ordered divestiture, if any, Pillsbury is enjoined and restrained from employing or offering to employ any of such transferred personnel in the manufacture or distribution of frozen prepared pizza, except with the prior consent of the Commission which consent shall not be unreasonably withheld, or of this Court if the Commission unreasonably fails to consent.

(2) Cause New Company to retain legal counsel not otherwise associated with Pillsbury. Pillsbury shall cause an independent firm of Certified Public Accountants to annually provide a certified financial audit of New Company, a copy of which will be sent to the staff of the Commission. Nothing in this paragraph shall preclude New Company from obtaining, at its option, any other independent consulting services.

(3) Furnish at its variable costs, determined in accordance with generally accepted accounting principles, to New Company pursuant to contracts, leases or other agreements with New Company until the date of divestiture of New Company, and, if requested by the Buyer, continuing for twelve months after divestiture of New Company, such market research, marketing and distribution consulting services, and such supplementary accounting, billing, data processing and other administrative services (including computer time) as New Company may reasonably request. Any of such services may be provided by Pillsbury, and in each case such services shall be furnished without

Pillsbury knowingly retaining any information, after divestiture of New Company, which has resulted from the furnishing of such services to New Company.

(4) In order to enable New Company to meet the requirements of this order, and to enable New Company to be a fully operative, viable, going business:

(a) Transfer to New Company all frozen pizza manufacturing and distribution assets acquired from Fox and in addition, will invest in New Company not less than \$1,000,000 to be used for the acquisition of manufacturing equipment and to improve the facilities, within 12 months of the entry of this order;

(b) Cause not less than one out of every three cases (and not less than 700,000 cases per year) of frozen prepared pizza manufactured on the one current production line, together with improvements thereto, to be of New Company's brand;

(c) Cause New Company to reinvest all earnings and to pay no dividends without the consent of the Commission which consent shall not be unreasonably withheld;

(d) Cause New Company not to be insolvent during the pendency of this order, solvency to be measured by total assets in excess of total liabilities (but excluding from liabilities all capital stock, retained earnings, and any debt of New Company in respect of loans or guarantees from Pillsbury);

(e) Enter into an agreement with New Company pursuant to which New Company will produce for Pillsbury such frozen prepared pizza as Pillsbury may from time to time order at prices not less than variable cost of manufacture as determined in accordance with generally accepted accounting principles, plus five percent thereof;

(f) Maintain the Fox frozen prepared pizza business as a viable separate and independent company and make no changes in its frozen prepared pizza operations likely to hinder a future divestiture.

(g) Use its best efforts to maintain the Fox or New Company brands in the marketplace and to maintain or improve the quality of Fox or New Company labeled frozen prepared pizza;

(h) Refrain from obtaining or using the customer lists, trade secrets, formulas, knowhow, or manufacturing processes of Fox or New Company;

(i) Cause to be sent to all of the brokers selling frozen prepared pizza under the Fox brand and/or Totino brand a letter which will be agreed upon between Pillsbury and Commission staff advising that the Fox brand of frozen prepared pizza will continue to be

manufactured and sold and that the Fox brand of frozen prepared pizza will continue to be marketed and distributed independent of and in competition with the Totino brand of frozen prepared pizza;

(j) Refrain from attempting to influence or interfere with the independent judgment of Fox or New Company on any matter so as adversely to affect its competitive position; and

(k) Pending a final order of divestiture, refrain from making any changes, other than in the ordinary course of business, or permit any deterioration in New Company which may impair its capacity for the manufacture, distribution or sale of frozen prepared pizza.

IV

(A) For the purpose of determining or securing compliance with this order and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Commission shall, upon written request, and on reasonable notice to Pillsbury or New Company at its principal office be permitted:

(1) Access, during office hours of Pillsbury and New Company to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Pillsbury relating to any matters contained in this order; and

(2) Subject to the reasonable convenience of Pillsbury and without restraint or interference from it, to interview officers or employees of Pillsbury, who may have counsel present, regarding any such matters.

(B) For the purpose of determining or securing compliance with this order, Pillsbury, upon the written request of the Commission's staff, shall submit such reports in writing to the staff with respect to matters contained in this order as may, from time to time, be requested.

No information obtained by the means provided in this order shall be divulged by any representative of the Commission to any person other than a duly authorized representative of the Commission except in the course of court or administrative proceedings to which the Commission and Pillsbury or New Company are parties, or as otherwise required by law.

V

This order shall continue in full force and effect until the complaint issued by the Commission on November 11, 1976, against Pillsbury and Fox is dismissed by the Commission or set aside by the Court on review, or until the order of the Commission made thereon has become final. All parties agree to the expedition of the administrative proceeding in this matter, without the waiver of any legal rights.

Order

88 F.T.C.

VI

This injunction is granted pursuant to 15 U.S.C. §53(b) without the necessity of the Commission furnishing bond.

The Temporary Restraining Order issued by Judge Leighton on November 12, 1976, in this proceeding is hereby dissolved.

It is further ordered, That jurisdiction is hereby retained for the purpose of enabling any party to this proceeding to apply to this Court upon notice to all other parties at any time for such further orders and directions as may be necessary and appropriate for the construction or carrying out of this order, for the modification of any provision thereof, and for the enforcement of compliance of any term or condition thereof and the punishment of any violations thereof.

Entered this 15th day of November 1976.

IN THE MATTER OF

MAYDAY COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2866. Complaint, Nov. 12, 1976 — Decision, Nov. 12, 1976*

Consent order requiring a Seattle, Wash., correspondence school, and its advertising agency, among other things to cease misrepresenting the salary ranges and employment opportunities available to its graduates; misrepresenting endorsements or recommendations of government agencies; misrepresenting the purpose, benefit or significance of placement tests given by respondents; and failing to disclose pertinent terms and conditions regarding sales contracts. Further, respondents are to provide disclosures as to cancellation procedures and rights to refunds, and to provide a ten-day cooling-off period during which prospective students may cancel their contracts with full refunds.

Appearances

For the Commission: *Sharon S. Armstrong.*

For the respondents: *John R. Tomlinson*, Seattle, Wash. and *C. M. McCune*, Seattle, Wash.

COMPLAINT

The Federal Trade Commission, having reason to believe that Mayday Company, Inc., a corporation, G. Ward Keller, individually and as an officer of said corporation, Richard M. Jackson, an individual, and Ricks-Ehrig, Inc., a corporation, hereinafter sometimes referred to as respondents, have violated and, with the exception of Ricks-Ehrig, Inc., are now violating Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and believing that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint:

PARAGRAPH 1. Respondent Mayday Company, Inc. (hereinafter Mayday) is a Washington corporation with its principal office and place of business located at 1511 Queen Anne Ave. North, Seattle, Washington.

Respondent G. Ward Keller is an individual and an officer of Mayday. He formulates, directs, and controls the policies, acts and practices of Mayday, including those hereinafter set forth. His address is the same as that of Mayday.

Respondent Richard M. Jackson is an individual and a former officer of Mayday. Together with respondent Keller, he formulated, directed and controlled the policies, acts and practices of Mayday, including the