

IN THE MATTER OF
BIC PEN CORPORATION, ET AL.

DISMISSAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF
THE CLAYTON ACT

Docket 9095. Complaint, Feb. 9, 1977 — Final Order, Mar. 1, 1977

Order dismissing a complaint issued against a Milford, Conn., manufacturer and seller of disposable butane lighters, pantyhose, and disposable shavers and a New York City manufacturer and seller of cigarettes, beer, and razors and blades, alleging violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The complaint was dismissed as moot upon the termination of the proposed acquisition of American Safety Razor Division of Philip Morris, Inc. by BIC Pen Corporation.

Appearances

For the Commission: *Roger J. Leifer.*

For the respondents: *Neal Pollio, Phillip, Nizer, Benjamin, Krim & Ballan*, New York City; *Donald Fried, Arnold & Porter*, New York City and *Abe Krash, Arnold & Porter*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that the BIC Pen Corporation, a corporation subject to the jurisdiction of the Commission, has entered into an agreement to acquire the assets and business of the American Safety Razor Division of Philip Morris Incorporated, a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and which acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

I. BIC PEN CORPORATION

1. Respondent, BIC Pen Corporation, (hereinafter "BIC") is a New York corporation with its principal office and place of business located at Wiley St., Milford, Connecticut.

2. BIC is a publicly held corporation listed on the American Stock Exchange. BIC is a subsidiary of Societe BIC, S.A., a publicly held

French corporation. Societe BIC holds voting trust certificates which represent 57 percent of the outstanding common shares of BIC. Marcel Bich, a trustee of the voting trust is the only individual who may vote the shares of the trust.

3. BIC is a manufacturer and seller of writing instruments, disposable butane lighters, pantyhose and disposable shavers. In 1976 BIC was the largest seller of writing instruments, and a leading seller of disposable butane lighters in the United States with sales of over \$100 million.

4. At all times relevant herein, BIC has sold or shipped products in interstate commerce and was a corporation engaged in commerce as "commerce" is defined in the Clayton Act, as amended, and was a corporation whose business was in or affected commerce within the meaning of the Federal Trade Commission Act, as amended.

II. PHILIP MORRIS INCORPORATED

5. Respondent, Philip Morris Incorporated (hereinafter "Philip Morris") is a Virginia corporation with its principal office and place of business located at 100 Park Avenue, New York, New York.

6. In 1976, Philip Morris had sales of approximately \$4.3 billion, operating income of \$600 million, and assets of \$3.5 billion.

7. Philip Morris is a diversified company engaged in the manufacture and sale of cigarettes, beer, razors and blades. It is the 74th largest industrial company in the United States. It states that it is the second largest of the six major cigarette manufacturers in the United States, and is the second largest publicly-held cigarette company in the world. Philip Morris' subsidiary, Miller Brewing Company, is the third largest United States brewer.

8. The American Safety Razor Division (hereinafter "ASR") of Philip Morris is the third largest domestic manufacturer of razors and blades and the largest private label razor blade manufacturer in the United States.

9. In 1976, ASR's sales were \$42.3 million and its income before taxes was \$1.5 million. Its sales of razors and blades domestically were \$29.5 million.

10. ASR manufactures the "Personna" "Gem" and "Flicker" lines of razors and blades, and manufactures industrial and surgical blades.

11. At all times relevant herein, Philip Morris has sold or shipped products in interstate commerce and was a corporation engaged in commerce as "commerce" is defined in the Clayton Act, as amended, and was a corporation whose business was in or affected commerce

within the meaning of the Federal Trade Commission Act, as amended.

III. THE PROPOSED ACQUISITION

12. On December 30, 1976 BIC and Philip Morris entered into an agreement for BIC to purchase the business and substantially all the assets of the ASR Division for approximately \$20 million.

IV. TRADE AND COMMERCE

13. The relevant geographic market is the United States as a whole.

14. The relevant product market is the production and sale of razors and razor blades used in "wet-shaving."

15. In 1975, approximately 1.8 billion razor blades were sold in the United States at retail. The retail price of razors and razor blades sales was approximately \$385 million and the value of factory shipments was \$250 million.

16. Concentration in the production and sale of razors and blades is extremely high with the top four firms accounting for approximately 98.5 percent of total U.S. retail and wholesale sales in 1976.

17. Barriers to entry into the production and sale of razors and blades are substantial.

V. ACTUAL COMPETITION

18. In 1976 ASR was the third largest producer and seller of razors and razor blades in the United States with approximately 11 percent of wholesale shipments.

19. In July, 1976, BIC began to sell its disposable razor (the "BIC Shaver") in the North Central Region of the United States. In this limited geographic area and time period, BIC sold over 32 million BIC Shavers with factory value of \$3.2 million. This amount accounted for approximately 2.4 percent of industry wholesale sales in the United States in the second half of 1976. In 1977, BIC commenced selling the BIC Shaver nationwide.

20. BIC and ASR are direct and substantial competitors in the production and sale of razors and blades in the United States. The acquisition of ASR by BIC will eliminate substantial actual competition.

VI. POTENTIAL COMPETITION

21. BIC is a significant potential competitor in the production and sale of razors and blades by reason of, among others, its being an

aggressive competitor in other products and markets, and its stated intent, aggressive actions, size, financial resources, and marketing, manufacturing and technical capabilities.

22. The BIC Shaver, which was introduced in Greece in late 1974, has captured approximately 40 percent of the razor blade market there. More recent introductions of the BIC Shaver have captured 15 to 20 percent of the market in Italy and Austria, and 10 to 15 percent of the market in France and Belgium.

23. Acquisition of ASR by BIC will preclude ASR from expanding into the disposable razor field which would make ASR a stronger competitor in the market.

24. BIC is the most likely competitor on a significant scale in the production and sale of razors and blades and is the only reasonably foreseeable company which can develop into an actual competitive force capable of offering significant competition to the four major domestic razor blade companies.

25. Manufacturers of razors and razor blades have perceived BIC to be a likely future significant competitive force on the fringe of the market and have modified their behavior in a pro-competitive manner in anticipation of BIC's entry.

VII. EFFECTS OF THE ACQUISITION

26. The effects of the acquisition of ASR by BIC may be substantially to lessen competition in the production and sale of razor blades throughout the United States in violation of Section 7 of the Clayton Act, as amended, and the effects of the acquisition may be unreasonably to restrain trade and to hinder competition unduly in the production and sale of razors and razor blades thereby constituting an unfair method of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended, in the following ways among others:

(a) Actual competition between BIC and ASR in the production and sale of razors and blades will be eliminated.

(b) The substantial likelihood of reduced future concentration in the razors and blades market through the continued strength of ASR as a significant competitor in that market will be diminished or eliminated.

(c) Significant potential competition between BIC and producers of razors and blades, including ASR, will be eliminated.

VIII. VIOLATIONS CHARGED

27. The agreement for the acquisition of ASR by BIC constitutes a

violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and the acquisition by BIC of ASR, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18) and constitute a violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45).

INITIAL DECISION BY JOSEPH P. DUFRESNE, ADMINISTRATIVE
LAW JUDGE

FEBRUARY 25, 1977

[1] A "Joint Motion To Dismiss Complaint," which was filed on February 25, 1977, recites in paragraph 6 that respondents have terminated the acquisition agreement which is the subject of the complaint in this proceeding.

They have so informed the United States District Court for the Southern District of New York where a temporary restraining order and preliminary injunction were being sought in order to hold separate the assets to be acquired and have requested the Court to dismiss that matter.

[2] In view of the foregoing, the Commission's proceeding has become moot. Accordingly, and pursuant to Commission Rules 3.22(e), 3.42(c) and 3.51,

It is ordered, That the complaint in this matter be, and it is hereby, dismissed.

FINAL ORDER

On February 25, 1977, the parties filed a joint motion with the administrative law judge requesting that he issue an Order and Initial Decision dismissing the complaint on grounds of mootness, the proposed acquisition which is the subject of the complaint having been abandoned. The same day, the ALJ issued his Initial Decision and Order dismissing the complaint as moot.

The parties have now filed a joint motion requesting that the Commission expeditiously enter a Final Decision in this matter dismissing the complaint. Upon consideration of the latter motion,

It is ordered, That the complaint in this matter be, and it hereby is, dismissed.

IN THE MATTER OF
THE AMERICAN COLLEGE OF RADIOLOGY

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

Docket C-2871. Complaint, Mar. 1, 1977 — Decision, Mar. 1, 1977

Consent order requiring a Chicago, Ill., medical association, among other things, to cease developing, publishing and circulating relative value scales which tend to establish prices or otherwise influence fees for medical and surgical procedures and services. Additionally, respondent is required to withdraw relative value scales already published and to send copies of the complaint and order to all recipients of this data requesting the return of all copies of the material.

Appearances

For the Commission: *Lawrence E. Gray* and *Judith A. Moreland*.
For the respondent: *James M. Nicholson, Nicholson & Carter*,
Washington, D.C. and *Paul G. Gebhard, Vedder, Price, Kaufman & Kammholz*, Chicago, Ill.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The American College of Radiology has violated the provisions of Section 5 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 as follows:

PARAGRAPH 1. Respondent, The American College of Radiology ("ACR"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 20 North Wacker Drive, Chicago, Ill.

PAR. 2. ACR has approximately 12,000 members and fellows who are elected from the ranks of those physicians who have been certified in radiology or one of its Board-recognized branches by the American Board of Radiology or the Royal College of Physicians and Surgeons of Canada, those physicists who have been certified in physics by the American Board of Radiology or the Royal College of Physicians and Surgeons of Canada, and those physicians engaged in nuclear medicine who have been certified as specialists in that practice by the appropriate specialty board which is a member of