

FEDERAL TRADE COMMISSION DECISIONS

Initial Decision

94 F.T.C.

IN THE MATTER OF
RHINECHEM 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 9116. Complaint, Aug. 23, 1978 — Dismissal Order, July 12, 1979*

This order dismisses the August 23, 1978 complaint issued against Allegheny Ludlum Industries, Inc. and its subsidiary, Chemetron Corporation, a producer of organic pigments, for alleged violations of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The complaint was dismissed on grounds that changed circumstances which have occurred since issuance of the complaint have provided the Commission with adequate assurances that the challenged matter will not reoccur, and additional relief will not be necessary.

Appearances

For the Commission: *Glenn M. Fellman* and *Michael P. Waxman*.

For the respondents: *Thomas L. VanKirk, Buchanan, Ingersoll, Roderwald, Kyle & Buerger*, Pittsburgh, Pa. and *A.F. Maulsby, Cravath, Swaine & Moore*, New York City.

INITIAL DECISION BY ERNEST G. BARNES, ADMINISTRATIVE LAW
JUDGE

MAY 30, 1979

PRELIMINARY STATEMENT

The complaint in this matter was issued by the Commission on August 23, 1978, alleging that the Commission had reason to believe that the above-named respondents had entered into a merger agreement which, 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, as amended, 15 U.S.C. 45, and that a proceeding in respect thereof would be in the public interest. Rhinechem Corporation filed its answer to the complaint on October 2, 1978, and Allegheny Ludlum Industries, Inc. and Chemetron Corporation filed their answer to the complaint on September 29, 1978.

On October 20, 1978, Judge Joel M. Flaum, presiding in the United States District Court for the Northern District of Illinois, enjoined consummation of the acquisition "during the pendency of the adminis-

* Complaint previously reported at 98 F.T.C. 883.

trative proceedings and any subsequent judicial review." Following the issuance of the injunction, the parties to the merger agreement announced the proposed sale would not be pursued. On November 20, 1978, Allegheny Ludlum Industries, Inc. announced that it would sell the Chemetron Pigments Division ("CPD") to BASF Wyandotte Corporation ("BASF"). This sale of the Chemetron Pigments Division to BASF was consummated on March 23, 1979. Thereafter, on April 5, 1979, the Commission issued a complaint challenging the sale of CPD to BASF under Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act (*In the Matter of BASF Wyandotte Corporation*, Dkt. 9125). Allegheny Ludlum Industries, Inc. was not named as a party respondent in the BASF complaint.

At the prehearing conference held on December 19, 1978, it was stated by complaint counsel that Rhinechem Corporation was desirous of negotiating a consent order and would not be present at the prehearing conference. Such a consent agreement was negotiated and the Commission withdrew this matter from adjudication with respect to respondent Rhinechem Corporation on January 15, 1979.

Allegheny Ludlum Industries, Inc. and Chemetron Corporation subsequently filed a motion to dismiss the complaint as to them on the grounds that the proposed acquisition by Rhinechem Corporation had been abandoned and that there was no public interest in allowing this proceeding to continue. The Commission denied this motion (Order Denying Respondents' Motion For Dismissal of Complaint, February 12, 1979) [93 F.T.C. 233]. [2]

Counsel supporting the complaint, by motion filed pursuant to Section 3.22(a) of the Rules of Practice, have requested dismissal of the complaint for lack of public interest. Complaint counsel state that since the assets of CPD are no longer under the influence or control of Allegheny Ludlum Industries, Inc. and the Commission is presently challenging the sale of those assets to BASF, it is extremely unlikely that the respondents in this matter could return to the challenged acquisition after the complaint herein is dismissed and the injunction dissolved. Complaint counsel further state that the changed circumstances which have occurred have given the Commission the assurances it needs to conclude that the matter will not reappear in a disadvantageous context and that no additional relief is necessary. Counsel supporting the complaint, therefore, move that an order dismissing the instant complaint for lack of public interest be entered.

Section 3.22(e) of the Rules of Practice requires that when a motion to dismiss a complaint is granted with the result that the proceeding before the administrative law judge is terminated, an initial decision in accordance with the provisions of Section 3.51 shall be filed.

Having carefully reviewed the record of this proceeding, the administrative law judge makes the following findings of fact and conclusions and issues the order set out at the end hereof.

FINDINGS OF FACT

1. This matter has been withdrawn from adjudication as to respondent Rhinechem Corporation ("Rhinechem") (Order Withdrawing Matter From Adjudication With Respect To Rhinechem Corporation, January 15, 1979).

2. Allegheny Ludlum Industries, Inc. ("Allegheny") is a corporation organized under the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 2700 Two Oliver Plaza, Pittsburgh, Pennsylvania (Answer, Par. 9).

3. Chemetron Corporation ("Chemetron") is a corporation organized under the laws of the State of Delaware, with its principal place of business located at 111 E. Wacker Drive, Chicago, Illinois (Answer, Par. 8). Chemetron is a wholly-owned subsidiary of Allegheny (Answer, Par. 9). [3]

4. Chemetron and Allegheny, at all times relevant herein, have been engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, 15 U.S.C. 12, and each is a corporation whose business is in or affects commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, 15 U.S.C. 44. (Answer, Pars. 9, 10, 14).

5. On or about June 12, 1978, Rhinechem entered into an agreement in principle which provided, *inter alia*, for the acquisition by Rhinechem of the assets of Chemetron's Pigment Division (Answer, Par. 15). On August 25, 1978 Rhinechem entered into a written agreement providing that the sale be consummated on August 30, 1978, or such other date as fixed by them. The Commission, on August 25, 1978 issued its complaint alleging that the merger, if consummated, would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act (complaint). The Commission also brought suit to preliminarily enjoin the proposed purchase under Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b). The United States District Court for the Northern District of Illinois, on October 10, 1978, issued an injunction prohibiting consummation of the purchase agreement during the pendency of the administrative proceeding and any subsequent review thereof (*Federal Trade Commission v. Rhinechem Corporation, et al.*, CCH Trade Cases 1978-2 ¶ 62,350).

6. On October 23, 1978 the purchase agreement between Rhinechem and Allegheny and Chemetron was terminated by mutual

agreement of the parties (Motion For Dismissal Of Complaint, filed by Allegheny Ludlum Industries, Inc. and Chemetron Corporation, December 20, 1978, with attached affidavit of Clayton A. Sweeney, Vice President, Allegheny Ludlum Industries, Inc.).

7. On or about November 18, 1978, BASF Wyandotte Corporation ("BASF") and Allegheny and Chemetron entered into a definitive agreement which provided for the acquisition by BASF of the assets of Chemetron's Pigment Division. On or about March 23, 1979 BASF acquired the assets of Chemetron's Pigment Division (*In the Matter of BASF Wyandotte Corporation*, complaint, Dkt. 9125, April 5, 1979).

CONCLUSIONS

Since the assets of Chemetron's Pigment Division are no longer under the control of Allegheny and Chemetron, but have been purchased by BASF in a transaction now being challenged by the Commission in another proceeding, it is [4] extremely unlikely that the respondents herein can return to the acquisition which was challenged in this instant proceeding. The changed circumstances which have occurred since issuance of the complaint herein have provided the Commission with adequate assurances that the matter which was challenged in the complaint will not reoccur and no additional relief is necessary. Accordingly, further pursuance of this complaint is not in the public interest.

ORDER

It is ordered, That the complaint in this matter be, and it hereby is, *dismissed* as to respondents Allegheny Ludlum Industries, Inc. and Chemetron Corporation.

FINAL ORDER

The administrative law judge filed an Initial Decision in this matter on May 30, 1979, dismissing the complaint against respondents Allegheny Ludlum Industries, Inc. and Chemetron Corporation on the ground that changed circumstances which have occurred since issuance of the complaint have provided the Commission with adequate assurances that the matter which was challenged in the complaint will not reoccur and no additional relief is necessary. No appeal from the Initial Decision was filed.

The Commission having now determined that the matter should not be placed on its own docket for review, and that the Initial Decision should become effective as provided in Section 3.51(a) of the Commission's Rules of Practice, [2]

Final Order

94 F.T.C.

It is ordered, That the Initial Decision and order contained therein shall become effective on July 12, 1979.

Modifying Order

IN THE MATTER OF
NORRIS INDUSTRIES, INC.MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2946. Decision, Dec. 27, 1978 — Modifying Order, July 12, 1979*

This order modifies the cease and desist order issued on December 27, 1978, 44 FR 6380, 92 F.T.C. 989, by revising Paragraph "2." of Part II of the original order to require affirmative disclosures and include definitions of "clear and conspicuous" for purposes of print, radio, and television advertising.

ORDER MODIFYING ORDER TO CEASE AND DESIST

The Commission on April 25, 1979, issued its Order to Show Cause why this proceeding should not be reopened and its order of December 27, 1978, modified.

Respondents filed an Answer on May 31, 1979, setting forth objections to the Order to Show Cause, and proposing certain amendments. Commission staff interposed no objections and recommended that the respondent's amendments be incorporated into the order,

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the Order to Show Cause and the Respondent's Answer, without necessity of further action by the Commission, as follows:

ORDER

PART I

It is ordered, That Norris Industries, Inc., [hereinafter referred to as the respondent], its successors and assigns, either jointly or individually, and its officers, representatives, and agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, distribution or sale of dishwashers in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any dishwasher manufactured or sold by respondent can sterilize or destroy all microorganisms on utensils placed in the dishwasher.
2. Representing directly, or by implication, that the stainless steel parts in any dishwasher manufactured or sold by respondent are rustproof or will not rust under normal household conditions.