

Complaint

IN THE MATTER OF
W.R. GRACE & CO.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC.
7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT

Docket C-3002. Complaint, Jan. 14, 1980—Decision, Jan. 14, 1980

This consent order requires, among other things, a New York City operator of three home improvement store chains to divest the San Jose home improvement stores within one year from the effective date of the order. Should the firm reacquire any or all of the stores as a result of the enforcement of a form of security interest, it is required to divest the reacquired assets within six months of the reacquisition.

Appearances

For the Commission: *Allee A. Ramadhan* and *Gary D. Kennedy*.

For the respondent: *James T. Halverson, Sherman & Sterling*, New York City.

COMPLAINT

The Federal Trade Commission, having reason to believe that W.R. Grace & Co. ("Grace"), a corporation subject to the jurisdiction of the Commission, has acquired the stock of Daylin, Inc. ("Daylin"), a corporation, in violation of 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, 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. Definitions

1. For the purpose of this complaint the following definitions shall apply:

(a) "Home Improvement Store" means a retail establishment primarily engaged in selling hardware and tools, wood and non-wood building materials, plumbing and electrical equipment, paint and decorating materials, and lawn and garden tools and supplies in some significant respect to do-it-yourself customers for the building, maintenance, remodeling or decorating of gardens, homes, and apartments.

(b) "San Jose Area" means the San Jose, California Standard Metropolitan Statistical Area, as those terms are defined (and that area designated) by the U.S. Bureau of the Census.

II. W.R. Grace & Co.

2. Grace is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut with its principal offices at Grace Plaza, 1114 Avenue of the Americas, New York, New York.

3. Grace is an international chemical company with interests in: (a) natural resources, (b) industrial specialty chemicals, and (c) consumer operations.

4. As part of Grace's consumer operations, Grace operates three chains of home improvement stores: Channel Companies, Inc., a subsidiary operating such stores in New Jersey, New York, Connecticut, Delaware, and Pennsylvania; Handy City, a division operating such stores in the Southeastern United States; and Orchard Supply Building Co., a division operating such stores in the San Jose Area.

5. In the year ending December 31, 1977, Grace had total assets of \$1,374,600,000 and sales and operating revenues of \$3,976,233,000, which generated a net income of \$140,480,000. In that year, Grace home improvement stores had estimated sales of \$164,500,000. In the year ending December 31, 1978, Grace home improvement stores had estimated sales of \$200,000,000.

III. Daylin, Inc.

6. Prior to March 21, 1979, Daylin was a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its principal offices at 10960 Wilshire Boulevard, Los Angeles, California. On March 21, 1979, Grace acquired Daylin, and it is presently being operated as a subsidiary of Grace.

7. At the time of its acquisition, Daylin had interests in three areas: (a) health services and products, (b) apparel specialty shops, and (c) home improvement stores (operated by its Handy Dan subsidiary under the name "Handy Dan" or under the name "Angels.")

8. The Handy Dan subsidiary operated home improvement stores in the San Jose Area.

9. In the fiscal year ending September 3, 1978, Daylin had total assets of \$190,261,000 and net sales and operating revenues of \$333,400,000, which generated a net income of \$9,552,000. In that year, Daylin home improvement stores had estimated sales of \$190,000,000.

IV. Jurisdiction

10. At all times relevant herein, Grace and Daylin have been engaged in the ownership or operation of home improvement stores in or affecting commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and the businesses of Grace and Daylin are in or affect commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

V. Tender Offer Notice

11. On January 4, 1979, Grace announced its intention to make a tender offer to purchase the outstanding common stock of Daylin at a total price of \$129,067,620. The acquisition was consummated on March 21, 1979.

VI. Trade and Commerce

12. The relevant line of commerce is retail store sales in the home improvement store business.

13. Prior to March 21, 1979, Grace and Daylin were actual competitors within certain local trade areas surrounding each Grace or Daylin home improvement store located within the San Jose Area.

VII. Effects

14. The effects of the acquisition of Daylin by Grace may be substantially to lessen competition or tend to create a monopoly in violation of 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, in the following ways, among others:

- (a) actual competition between Grace and Daylin in the home improvement store business in the San Jose Area will be eliminated;
- (b) actual competition between competitors generally in the home improvement store business in the San Jose Area may be lessened;
- (c) concentration in the home improvement store business in the San Jose Area may be increased and the possibilities for eventual deconcentration may be diminished; and
- (d) mergers or acquisitions between other home improvement stores may be fostered, thus causing a further substantial lessening of competition in the home improvement store business.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of

the acquisition of Daylin, Inc., a corporation, by respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of 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

The respondent, its attorney, 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 aforesaid draft complaint, 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 considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent W.R. Grace & Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut with its principal offices at Grace Plaza, 1114 Avenue of the Americas, New York, New York.

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

ORDER

For the purposes of this Order the following definitions shall apply:

1. "Grace" means W.R. Grace & Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut with its principal offices at Grace Plaza, 1114 Avenue of the Americas, New York, New York.

2. "Daylin" means Daylin, Inc., a corporation that prior to the time of its acquisition was organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its principal offices at 10960 Wilshire Boulevard, Los Angeles, California.

3. "San Jose home improvement stores" mean the following home improvement stores that were owned by Daylin and acquired by Grace:

- (a) 1975 Story Road
San Jose, California
- (b) 865 Blossom Hill Road
San Jose, California
- (c) 761 E. El Camino Real
Sunnyvale, California
- (d) 1750 S. Bascom
Campbell, California

4. "Person" means any individual, corporation (including subsidiaries thereof), partnership, joint venture, trust, unincorporated association, or other business or legal entity.

5. "Home improvement store" means a retail establishment primarily engaged in selling hardware and tools, wood and non-wood building materials, plumbing and electrical equipment, paint and decorating materials, and lawn and garden tools and supplies in some significant respect to do-it-yourself customers for the building, maintenance, remodeling or decorating of gardens, homes, and apartments.

6. "Eligible person" means any person approved by the Commission.

I

It is ordered and directed that within one (1) year of the effective date of this consent order, Grace shall divest itself of all assets, title, interests, rights, and privileges, of whatever nature, tangible and intangible, including without limitation all buildings, equipment, inventory, and other property of whatever description of the San Jose home improvement stores subject to the terms and provisions of this consent order. Divestiture may be accomplished by offering the San Jose home improvement stores either separately or jointly.

II

It is further ordered, That divestiture shall be made only to an eligible person and shall be in a manner which preserves the assets and business of the San Jose home improvement stores as going concerns and fully effective competitors.

Decision and Order

III

It is further ordered, That pending divestiture required by this consent order, Grace shall not cause or permit any deterioration of the assets or business specified in Paragraph I of this consent order in a manner that impairs the marketability of any such assets or business; *provided, however*, that upon application to the Commission demonstrating good cause for ceasing to operate one or more of the San Jose home improvement stores, and upon approval by the Commission, Grace may cease to operate said home improvement store or stores.

IV

It is further ordered, That the divestiture ordered and directed by this consent order shall be made in good faith and shall be absolute and unqualified; *provided, however*, that an acquirer may give and Grace may accept and enforce any bona fide lien, mortgage, deed of trust or other form of security on all or any portion of any one or more of the San Jose home improvement stores. If a security interest is accepted, in no event should such security interest be interpreted to mean that Grace has a right to participate in the operation or management of such stores. In the event that Grace as a result of the enforcement of any bona fide lien, mortgage, deed of trust or other form of security interest reacquires possession of any one or all of the San Jose home improvement stores, then Grace shall divest the reacquired assets in accordance with the terms of this consent order within six (6) months of the reacquisition.

V

It is further ordered, That Grace shall within ninety (90) days from the effective date of this consent order and every ninety (90) days thereafter until divestiture is completed submit in writing to the Commission a report setting forth in detail the manner and form in which proposed respondent intends to comply, is complying, and has complied with the terms of this order and such additional information relating thereto as may from time to time reasonably be required.

VI

It is further ordered, That Grace 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 with the obligations arising out of this consent order.

Complaint

95 F.T.C.

IN THE MATTER OF
MARKET DEVELOPMENT CORPORATION, ET AL.

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

Docket 9067. Complaint, December 19, 1975—Final Order, January 15, 1980

This order dismisses the complaint against Juanita Anderson, and requires a Chicago, Ill. mail order house and two corporate officers, among other things, to cease making false or misleading representations to obtain sales or prospects, and misrepresenting the nature of their business and goods, and the value and costs of merchandise and services. The order also bars the firm from failing to deliver goods or services within a reasonable time; and from misrepresenting that it is conducting a contest, or that recipients of its mailings are winners. If a warrantee is offered for a product or service, the terms, conditions and limitations of the warrantee must be clearly disclosed and obligations under the warrantee promptly fulfilled. The firm is additionally required to respond to written customer inquiries within seven working days and maintain specified records for three years.

Appearances

For the Commission: *Aaron H. Bulloff and Robert P. Weaver.*

For the respondents: *Lawrence C. Rubin, James S. Barber, Arvey, Hodes, Costello & Berman, Chicago, Ill.; Stein, Mitchell & Mezines, Washington, D.C. for Columbia Research Corporation and Raymond Anderson; Arnold Morelli, Bauer, Morelli & Heyd, Cincinnati, Ohio for Juanita Anderson and Joseph Anderson.*

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 Market Development Corporation, a corporation, and Raymond Anderson, Juanita Anderson, and Joseph Anderson, individually and as officers and/or directors and/or employees of said corporation, and Columbia Research Corporation, a corporation, and Raymond Anderson, [2]individually and as an officer and/or director of said corporation, hereinafter referred to as respondents, have 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 Market Development Corporation is a corporation organized, existing, and doing business under and by