

IN THE MATTER OF
WILLIAM C. MUSHAM

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 8 OF
THE CLAYTON ACT

Docket C-3038. Complaint, Aug. 21, 1980—Decision, Aug. 21, 1980

This consent order prohibits, among other things, an individual whose principal place of business is located at Gould, Inc. in Rolling Meadows, Ill. from serving simultaneously as a director of two or more competing companies, any one of which has capital, surplus, and undivided profits aggregating more than one million dollars; and revenues that exceed the lesser of ten million dollars or one percent of the corporation's total revenues.

Appearances

For the Commission: *Dennis F. Johnson and Thomas J. Keary.*

For the respondent: *Edward M. Posner, Drinker, Biddle & Reath,*
Philadelphia, Pa.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have violated the provisions of Section 8 of the Clayton Act, 15 U.S.C. 19, and Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), and that a proceeding by it in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

COUNT I

PARAGRAPH 1. Gould Inc. ("Gould") is a corporation organized under the laws of the State of Delaware, with its principal place of business located at 10 Gould Center, Rolling Meadows, Illinois. Gould has capital, surplus and undivided profits aggregating more than one million dollars.

PAR. 2. Respondent Midland-Ross Corporation ("Midland-Ross") is a corporation organized under the laws of the State of Ohio, with its principal place of business located at 20600 Chagrin Boulevard, Cleveland, Ohio. Midland-Ross has capital, surplus and undivided profits aggregating more than one million dollars.

PAR. 3. Respondent Claude M. Blair is an individual, with his

principal place of business located at National City Corporation, Post Office Box 5756, Cleveland, Ohio.

PAR. 4. Gould conducts its business, as described herein, in various States of the United States and is thereby engaged in activity in or affecting commerce within the meaning of Section Four of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, and Section 1 of the Clayton Act, 15 U.S.C. 12.

PAR. 5. Midland-Ross conducts its business, as described herein, in various States of the United States and is thereby engaged in activity in or affecting commerce within the meaning of Section Four of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, and Section 1 of the Clayton Act, 15 U.S.C. 12.

PAR. 6. Claude M. Blair was, until his resignation from Gould's board of directors on or about July 24, 1979, a member of the boards of directors of both Gould and Midland-Ross. He has been a director of Midland-Ross since 1974, and was a director of Gould from 1969 until his resignation.

PAR. 7. During all or part of the period that Claude M. Blair concurrently served as a director of Gould and Midland-Ross, the business of Gould and Midland-Ross included the manufacture and sale of various electrical products, including electrical busways and electrical conduit fittings.

PAR. 8. By the nature of their business as hereinabove described and the locations of their operations, Gould and Midland-Ross have been competitors, during all or part of the time period that Claude M. Blair concurrently served as a director of Gould and Midland-Ross, so that the elimination of competition by agreement between them would constitute a violation of the antitrust laws.

PAR. 9. The simultaneous membership of Claude M. Blair on the boards of directors of Gould and Midland-Ross constitutes a violation of Section 8 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act.

COUNT II

PAR. 10. Paragraphs One and Four are incorporated herein.

PAR. 11. Respondent Narco Scientific, Inc. ("Narco") is a corporation organized under the laws of the State of Delaware, with its principal place of business located at Fort Washington Industrial Park, Fort Washington, Pennsylvania. Narco has capital, surplus and undivided profits aggregating more than one million dollars.

PAR. 12. Respondent William C. Musham is an individual, with his

principal place of business located at Gould Inc., 10 Gould Center, Rolling Meadows, Illinois.

PAR. 13. Narco conducts its business, as described herein, in various States of the United States and is thereby engaged in activity in or affecting commerce within the meaning of Section Four of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, and Section 1 of the Clayton Act, 15 U.S.C. 12.

PAR. 14. William C. Musham was, until his resignation from Narco's board of directors during January 1980, a member of the boards of directors of both Gould and Narco. He has been a director of Gould since 1976, and was a director of Narco from 1977 until his resignation.

PAR. 15. During all or part of the period that William C. Musham concurrently served as a director of Gould and Narco, the business of Gould and Narco included the manufacture and sale of electronic medical devices.

PAR. 16. By the nature of their business as hereinabove described and the locations of their operations, Gould and Narco have been competitors, during all or part of the time period that William C. Musham concurrently served as a director of Gould and Narco, so that the elimination of competition by agreement between them would constitute a violation of the antitrust laws.

PAR. 17. The simultaneous membership of William C. Musham on the boards of directors of Gould and Narco 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 initiated an investigation of interlocking personnel relationships between Gould Inc. and other corporations, and William C. Musham, having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge William C. Musham with violation of Section 8 of the Clayton Act (15 U.S.C. 19) and Section 5 of the Federal Trade Commission Act (15 U.S.C. 45); and

William C. Musham, his attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by William C. Musham of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and

does not constitute an admission by William C. Musham 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 William C. Musham has violated the said Acts, and that 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. William C. Musham is an individual with his office and principal place of business located at Gould Inc., 10 Gould Center, Rolling Meadows, Illinois.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of William C. Musham, and the proceeding is in the public interest.

ORDER

I

It is ordered, That the following definition shall apply herein:

"Product or service market" means any line of commerce in which a corporation's annual revenues exceed the lesser of:

- (a) Five million dollars; or
- (b) One-half of one percent of the total annual revenues of that corporation.

II

It is further ordered, That William C. Musham shall not be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than one million dollars, engaged in whole or in part in commerce, if such corporations are, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws, providing that the revenues of either corporation derived from the product or service market(s) in which they are competitors exceed the lesser of:

- (a) Ten million dollars; or
- (b) One percent of the total revenues of that corporation.

If, after his election, competition arises in any product or service market between corporations upon which William C. Musham serves as a director such as would cause him to violate the terms of this paragraph, then William C. Musham shall not be liable under this paragraph until the date of the first annual meeting of shareholders following the time such competition arose.

III

It is further ordered, That William C. Musham shall:

- (a) within sixty (60) days after the date of service of this order, file with the Commission a written report setting forth in detail the manner and form in which he has complied with this order; and
- (b) file with the Commission such other reports of compliance as may be requested by the Commission.

IV

It is further ordered, That the obligations imposed upon William C. Musham under the terms of this order shall continue for a period of five years following the date of service of this order.

Modifying Order

96 F.T.C.

IN THE MATTER OF
SCHERING-PLOUGH CORPORATION

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC.
2 OF THE CLAYTON ACT AND THE FEDERAL TRADE COMMISSION
ACT

Docket C-2986. Decision, Aug. 10, 1979—Modifying Order, Aug. 22, 1980

This order reopens the proceeding and modifies the order issued on August 10, 1979, 44 FR 554712, 94 F.T.C. 307, by adding to Paragraph I of that order language that would permit the company, its subsidiaries, affiliates, divisions, successors and assigns to continue to market Solvex athlete's foot products, under license from the acquirer of the assets to be divested, until no later than December 31, 1980.

ORDER MODIFYING DECISION AND ORDER ISSUED AUGUST 10, 1979

The Federal Trade Commission having received respondent's request contained in its divestiture application dated June 23, 1980, to reopen this matter and to modify the consent order issued by the Commission on August 10, 1979, to allow respondent's subsidiary, Scholl, Inc., to continue to market Solvex athlete's foot products, under license from the acquirer of the divested assets, until December 31, 1980, and having placed such request on the public record for a period of thirty (30) days, and no comments thereon having been received, and having considered such request and determined that reopening and modification of the order is warranted:

It is ordered, That the proceeding be, and it hereby is, reopened.

It is further ordered, That Paragraph I of the order be, and it hereby is, modified to read as follows:

I

It is ordered, That, subject to the prior approval of the Federal Trade Commission, respondent Schering-Plough, through its officers, directors, agents, representatives, employees, subsidiaries, affiliates, divisions, successors and assigns, shall, within one (1) year from either the date Schering-Plough acquires Scholl or service of this Order, whichever comes later, divest the assets, tangible and intangible, acquired, improved or added by respondent as a result of its acquisition of Scholl and utilized by Scholl primarily for the manufacture, distribution or sale in the United States of Solvex athlete's foot products. Such assets shall include all raw material