

IN THE MATTER OF

GOULD INC.

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

Docket 9136. Complaint, May 9, 1980—Decision, April 1, 1981

This consent order requires, among other things, a Rolling Meadow, Ill. manufacturer and seller of various electrical products to cease having on its board any director who simultaneously serves as a director of a competing company, if the revenues of either corporation derived from the competing "product or service market" exceed the lesser of ten million dollars or one percent of the corporation's total sales; or any individual who fails to provide the statement required under the terms of the order. The order further requires that the company institute an annual monitoring program for the next five years, designed to detect unlawful interlocks.

Appearances

For the Commission: *Dennis F. Johnson* and *David M. Malone*.

For the respondent: *John Reilly, John Milliken* and *David Ford, Winston & Strawn*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has 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, 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. Respondent 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. 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. 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, 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. 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 Washing-

ton, Pennsylvania. Narco has capital, surplus and undivided profits aggregating more than one million dollars.

PAR. 12. 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 Commission having heretofore issued its complaint charging Gould Inc. ("Gould") 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 Gould having been served with a copy of that complaint, together with a notice of contemplated relief; and

Gould and its attorney having thereafter executed an agreement containing a consent order, an admission by Gould of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Gould 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Gould Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 10 Gould Center, Rolling Meadows, Illinois.

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

ORDER

I

The following definitions shall apply in this order:

Subsidiary of a corporation means any company of which 50 percent or more of the issued and outstanding voting stock is owned or controlled, directly or indirectly, by such corporation.

Parent of a corporation means any company which owns or controls, directly or indirectly, 50 percent or more of the issued and outstanding voting stock of such corporation.

Sister of a corporation means any subsidiary of a parent of that corporation.

Product or service market means any line of commerce in which Gould's (including its subsidiaries and divisions) annual revenues exceed the lesser of:

- (1) Five million dollars; or
- (2) One-half of one percent of Gould's total annual revenues.

II

It is ordered, That respondent Gould Inc. ("Gould"), its successors and assigns, shall forthwith cease and desist from having, and in the future shall not have, on its board of directors any person who either:

(a) Serves at the same time as a director of any other corporation if Gould and such other corporation 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:

- (1) Ten million dollars; or
- (2) One percent of the total sales of that corporation; or

(b) Fails to submit to Gould any statement required to be obtained by Gould under Paragraph III of this order.

III

It is further ordered, That within thirty (30) days of the effective date of this order, and prior to each election of directors or prior to the solicitation of proxies for such election, whichever is earlier, Gould shall obtain a written statement from each member of its board of directors (except directors whose terms expire at the next election and who are not standing for re-election) and from each nominee for a directorship (who is not then a director) showing:

(a) the name and home mailing address of such director or nominee; and

(b) the name and principal office mailing address of, and a listing of each product or service produced, offered or sold by, each corporation which the director or nominee then serves as a director, or has been nominated to serve as a director at the time of the statement.

The requirements of this Paragraph shall not apply to elections of directors occurring after five years from the effective date of this order, nor shall directors or nominees be required to list products or services of subsidiaries, sisters, or parents of Gould.

Nothing in this Paragraph shall be construed to relieve Gould of its obligation under Paragraph II(a) of this order due to any error or omission contained in any written statement received pursuant to this Paragraph.

If competition arises in any product or service market between Gould and any other corporation with which Gould shares a common director, by virtue of action taken by such other corporation subsequent to a submission of information by such director pursuant

to this paragraph, then Gould shall not be liable under Paragraph II until the date for the next submission of information.

IV

It is further ordered, That within forty-five (45) days of the effective date of this order and annually for a period of ten (10) years thereafter, Gould shall file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order. Copies of the statements obtained pursuant to Paragraph III of this order shall be submitted to the Commission as part of the reports of compliance required by this Paragraph during the first five (5) years. Nothing in this Paragraph shall relieve Gould of its obligation to comply with Paragraphs II and V or this order once it is no longer required to submit reports of compliance to the Commission.

V

It is further ordered, That Gould shall notify the Commission not more than thirty (30) days after any change in the corporation, 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 obligations arising out of this order.

IN THE MATTER OF

ENERGY EFFICIENT SYSTEMS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3062. Complaint, April 9, 1981—Decision, April 9, 1981*

This consent order requires, among other things, a Middletown, Conn. corporation and two corporate officers engaged in the advertising, sale and distribution of an electric space heater known as the "Boekamp Quartz Heater" to cease misrepresenting the efficiency, energy savings, performance characteristics and durability of the product. The order further prohibits respondents from making any energy-related advertising claim without reliable substantiation, and bars them from using the term "energy saver," or similar terms in product names. Additionally, respondents are required to send a copy of a prescribed letter to all individuals or business entities engaged in the sale of the Boekamp Quartz Heater advising them of the terms of the order and requesting the return of all advertisements and promotional materials which contain prohibited claims or which fail to include required disclosures.

Appearances

For the Commission: *Joan Gerrity, John B. Gatlin and Douglas M. Husid.*

For the respondent: *Michael Steres, Feldman & Steres, San Diego, Calif., and John T. Coyne and William Barton, Carr, Jordan, Coyne & Savits, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Energy Policy and Conservation Act, as amended, and by virtue of the authority vested in it by those Acts, the Federal Trade Commission, having reason to believe that Energy Efficient Systems, Inc., a corporation, and John P. White and Elaine B. Owen, individually and as officers of the corporation, hereinafter sometimes referred to collectively as respondents, have violated the provisions of the Acts, 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 Energy Efficient Systems, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut with its principal office