

Modifying Order

98 F.T.C.

IN THE MATTER OF
RSR CORPORATION

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 7
OF THE CLAYTON ACT

Docket 8959. Order, Dec. 2, 1976—Modifying Order, Nov. 13, 1981

This order reopens the proceeding and modifies the Commission's order issued on December 2, 1976 (42 F.R. 4; 88 F.T.C. 800), so as to relieve respondent of the obligation of divesting the lead recycling plants specified in the original order, since no purchaser(s) could be found. Among other things, the modified order requires respondent to timely divest or auction at no minimum price all the assets and properties (with certain specified exceptions) constituting the lead recycling plants in Dallas, Texas and Seattle, Washington; and offer to license all of its patented sulphur removal and battery recycling process to a qualified purchaser(s).

ORDER MODIFYING ORDER TO DIVEST AND TO CEASE AND DESIST

On April 17, 1981, respondent RSR Corporation filed a "Petition for Relief From Divestiture Order," seeking to be relieved of its obligation to divest Quemetco, Inc. on the ground that it has been unable to find an acquirer for Quemetco's lead recycling plants at any price. Based upon respondent's petition, supplemental information submitted by respondent, and other information available to it, the Commission has determined that it is in the public interest to reopen and modify the order in this case. The Commission also has considered a draft agreement between its staff and respondent concerning modification of the order and has determined that the agreed-to modification is in the public interest.

Accordingly,

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

It is further ordered, That Paragraphs I, II and VII of the Final Order to divest and to cease and desist issued by the Commission on December 2, 1976 be, and they hereby are, modified to read as follows:

I.

It is ordered, That Respondent, RSR Corporation (hereinafter "RSR"), a corporation, and its officers, directors, agents, representatives, employees, subsidiaries, affiliates, successors and assigns, shall divest all assets, title, properties, interest, rights and privileges, of whatever nature, tangible and intangible, including without limitation all buildings, machinery, equipment, customer lists, and other

property of whatever description that comprise the lead recycling plants owned by RSR subsidiaries in Dallas, Texas and Seattle, Washington, except as listed in Appendix A hereto. The plants may be divested either as a unit or separately. In the event that divestiture is not accomplished by other means, RSR must auction the plants, at no minimum price, to an acquirer or acquirers who represent that the plants will be used as lead recycling plants. The divestiture required by this Paragraph shall be absolute, shall be accomplished no later than one (1) year from the date when this modified order shall become final, and shall be subject to the prior approval of the Federal Trade Commission.

II.

It is further ordered, That such divestiture shall be accomplished absolutely and in good faith to an acquirer or acquirers approved in advance by the Federal Trade Commission so as to transfer the plants as operable and viable plants engaged in the production of recycled bulk lead, lead alloys and lead products. RSR shall grant to the acquirer or acquirers of the plants ordered to be divested under this order, at the option of such acquirer or acquirers, a non-exclusive license, subject to a reasonable royalty not to exceed 2%, to all of RSR's patented sulphur removal and battery recycling processes; *provided, however,* that in the event the acquirer of either of the plants to be divested is a battery manufacturer RSR shall only be required to grant such patent licenses to such an acquirer for use at the acquired plant; and *further provided* that RSR is not required to grant such licenses to an acquirer that is a primary lead producer.

VII.

It is further ordered, That within thirty (30) days from the effective date of this modified order and every sixty (60) days thereafter until it has fully complied with Paragraph I of this modified order, RSR shall submit a verified report in writing to the Federal Trade Commission setting forth in detail the manner and form in which it intends to comply, is complying or has complied therewith. All such reports shall include, in addition to such other information and documentation as may hereafter be requested, (a) a specification of the steps taken by RSR to make public its desire to divest the Dallas, Texas and Seattle, Washington plants, (b) a list of all persons or organizations to whom notice of divestiture has been given, (c) a summary of all discussions and negotiations together with the identity and address of all interested persons or organizations, and

(d) copies of all reports, internal memoranda, offers, counter-offers, communications and correspondence concerning said divestiture.

APPENDIX A

ASSETS NOT REQUIRED TO BE DIVESTED

1. All assets and liabilities related to Bestolife Corporation.
2. Undeveloped land near the 26 acres of the Dallas, Texas plant property.
3. Inventory, including obligations by RSR or its subsidiaries to return such inventory under tolling contracts, and also including raw materials, work in process and finished goods.
4. Accounts receivable.
5. Accounts payable.
6. Cash.
7. Books and records, other than books and records relating to production.

IN THE MATTER OF

THE GILLETTE COMPANY

Docket 9152. Interlocutory Order, Dec. 1, 1981

Granting complaint counsel's motion for review of ALJ's order.

ORDER UPON APPLICATION FOR INTERLOCUTORY REVIEW

This matter is before the Commission on Complaint Counsel's Application For Review Of The Order Granting Discovery Of Commission Records, filed August 17, 1981,¹ ("Complaint Counsel's Application") and Respondent's Answer In Opposition To Complaint Counsel's Application For Interlocutory Appeal, filed August 27, 1981 ("Respondent's Answer").

I. Appropriateness of Interlocutory Review

As the Commission has frequently stated, we generally disfavor interlocutory appeals, particularly those seeking Commission review of an ALJ's discovery rulings. *See, e.g., Bristol-Myers Co.*, 90 F.T.C. 273 (1977). The Commission believes that routine review of such rulings would substantially delay adjudicative proceedings. Moreover, resolution of discovery issues, as a general matter, should be left to the discretion of the ALJ. Section 3.23 of the Commission's Rules of Practice ("Section 3.23") reflects both of these policy decisions; however, it also recognizes that special circumstances may require narrow exceptions to this rule.

Section 3.23(a)(1) provides for discretionary Commission review of an ALJ's order which "requires the disclosure of records of the Commission . . . if such appeal is based solely on a claim of privilege." In this case the requirements of the Rule are technically fulfilled as the ALJ's Order requires disclosure of Commission records and Complaint Counsel's Application is based solely on claims of privilege. The Commission has determined that this matter is appropriately before it on review, not only because the requirements of the Rule are met, but also because the issues raised by Complaint Counsel's Application recur in our proceedings with some frequency.

Respondent requested that, in the event that the Commission entertained this appeal, it be permitted to file a brief and present

¹ The order entitled, Order Ruling on Respondent's Motion For Subpoena *Duces Tecum* Directed To The Federal Trade Commission ("ALJ Order"), was issued on August 11, 1981, by Administrative Law Judge Milcs J. Brown.