

Complaint

99 F.T.C.

IN THE MATTER OF

GIFFORD-HILL-AMERICAN, INC.

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-3085. Complaint, Feb. 23, 1982—Decision, Feb. 23, 1982*

This consent order requires a Grand Prairie, Texas producer and seller of concrete pressure pipe and fittings, among other things, to timely divest the entire "Kansas City Plant" to a Commission-approved buyer, capable of maintaining the plant as a competitive entity. Additionally, for a five year period, the company is required to offer the acquirer of the divested plant the opportunity to purchase essential products and services which are not generally available. The order also prohibits the company from acquiring any concern engaged in the production of concrete pressure pipe without prior Commission approval for a period of ten years.

Appearances

For the Commission: *Jerry A. Philpott, Claudia R. Higgins, Martha H. Oppenheim and Franklin M. Lee.*

For the respondent: *Bertram Kantor, Wachtell, Lipton, Rosen & Katz, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Gifford-Hill-American, Inc. ("GHA"), a corporation subject to the jurisdiction of the Commission, has acquired the assets of the Lock Joint Products Division ("Lock Joint") of Interpace Corporation ("Interpace"), a corporation subject to the jurisdiction of the Commission, 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 this complaint, pursuant to Section 11 of the Clayton Act, as amended, 15 U.S.C. 21, and Section 5(b) of the Federal Trade Commission Act, as amended, 15 U.S.C. 45(b), stating its charges as follows:

I. Definitions

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

- a. *Pressure pipe* means pipe designed to carry water under pressure.
- b. *Large diameter pressure pipe* means pressure pipe of over 54 inches in diameter.
- c. *Concrete pressure pipe* means pressure pipe that comports with American Water Works Association standards C300-74, C301-79, C302-74 and/or C303-78.
- c. *South central region* means the states of Texas, New Mexico, Oklahoma, Arkansas, and Louisiana.

II. GHA

- 2. GHA is a corporation organized and existing under the laws of the State of Texas with its principal office at 1003 Meyers Road, Grand Prairie, Texas.
- 3. GHA is one of the leading manufacturers in the production and sale of concrete pressure pipe and fittings in the United States.
- 4. In 1980, GHA had total sales of \$61,700,000 and total assets of \$34,100,000.
- 5. GHA has four production facilities, all located in the State of Texas. These plants serve a marketing area including much of the south central region.

III. Interpace

- 6. Interpace is a corporation organized and existing under the laws of the State of Delaware, with its principal office at 260 Cherry Hill Road, Parsippany, New Jersey.
- 7. Interpace's concrete pipe manufacturing division, Lock Joint, produces and sells concrete pressure pipe and fittings.
- 8. In 1980, Lock Joint had net sales of approximately \$96,800,000 and total assets of \$53,400,000.
- 9. Lock Joint has plants located in Florida, Illinois, Kansas, Maryland, Ohio, New Jersey, South Carolina, and Puerto Rico.

IV. Jurisdiction

- 10. At all times relevant herein GHA and Interpace have been engaged in the production and sale of concrete pressure pipe in interstate commerce and GHA and Interpace are engaged in commerce as "commerce" is defined in the Clayton Act, as amended, 15 U.S.C. 12, *et seq.*, 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. 41, *et seq.*

V. The Acquisition

11. On or about February 27, 1981, GHA and Interpace entered into an agreement in principle which provides, *inter alia*, for the acquisition by GHA of the non-Puerto Rican assets of Lock Joint. The acquisition was consummated on or about July 2, 1981.

VI. Trade and Commerce

12. The relevant lines of commerce are the manufacture and sale of pressure pipe, large diameter pressure pipe and concrete pressure pipe.

13. The relevant section of the country is the south central region.

VII. Actual Competition

14. Prior to the acquisition, GHA and Lock Joint were and had been for many years actual competitors in the manufacture and sale of pressure pipe, including large diameter pressure pipe and concrete pressure pipe, within the relevant section of the country.

VIII. Effects

15. The effects of the acquisition may be substantially to lessen competition or to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and the acquisition constitutes an unfair method of competition and unfair act or practice within the meaning of 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 GHA and Lock Joint in the relevant markets may be eliminated;

(b) actual competition among competitors generally in the relevant markets may be lessened;

(c) concentration in the relevant markets may be increased and the possibilities for eventual deconcentration may be diminished;

(d) mergers or acquisitions between other pressure pipe producers in the relevant markets may be fostered, thus causing a further substantial lessening of competition or tendency toward monopoly in such markets; and

(e) barriers to entry into the relevant markets may be increased.

IX. Violations Charged

16. By reason of the foregoing, the acquisition by GHA of the assets of Lock Joint constitutes a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition of the Lock Joint Products Division of Interpace Corporation (hereinafter referred to as "Lock Joint") by Gifford-Hill-American (hereinafter referred to as "GHA"), and GHA 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 GHA with violations of the Federal Trade Commission Act and the Clayton Act; and

GHA, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by GHA 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 GHA 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 GHA 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. GHA is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas with its offices and principal place of business located at 1003 Myers Road, in the city of Grand Prairie, State of Texas.
2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of GHA, and the proceeding is in the public interest.

ORDER

For purposes of this order,

(a) *respondent* means Gifford-Hill-American, Inc., its subsidiaries, affiliates other than Ameron, Inc., and Gifford-Hill & Co., Inc., divisions, successors, and assigns;

(b) *Kansas City Plant* means the concrete pressure pipe facility located in Kansas City, Kansas, acquired by respondent from Interpace Corporation; and

(c) *Lock Joint Division* means the concrete pressure pipe production assets acquired by respondent from Interpace Corporation

I

It is ordered, That, within fifteen (15) months from the date on which this order becomes final and subject to the prior approval of the Federal Trade Commission, respondent shall divest absolutely and in good faith the entire Kansas City Plant as a viable business concern to a third party that represents that it intends to use the assets in the manufacture, distribution or sale of concrete pressure pipe in the United States. Pending divestiture, respondent shall neither make nor permit any deterioration of the Kansas City plant, except for normal wear and tear, that may impair its operating abilities, competitive viability or market value.

II

It is further ordered, That, at the option of the acquirer of the assets of the Kansas City Plant, respondent (including its newly acquired Lock Joint Division) shall for a period of five years from the date of the divestiture required by Paragraph I offer to sell to the acquirer at a commercially reasonable price all joint rings, prestressing wire, molds, and engineering and technical services that are not generally available and are essential to the manufacture of the concrete pressure pipe and related products to be produced by the Kansas City Plant. The price respondent shall charge the acquirer for any such joint ring, prestressing wire, mold or service shall be no less favorable than the price at which respondent makes comparable sales of that variety of product or service to any other concrete pressure pipe manufacturer. If respondent has no such sales to any

other concrete pressure pipe manufacturer, then the price shall be the prevailing market price for comparable sales of that variety of product or service.

III

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, respondent shall not acquire, without the prior approval of the Federal Trade Commission, directly or indirectly, any stock interest in or assets of any concrete pressure pipe manufacturer in the United States.

IV

It is further ordered, That, within (60) days after the date this order becomes final, and every sixty (60) days thereafter until respondent has fully complied with the provisions of Paragraph I of this order, respondent shall submit to the Federal Trade Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying with, or has complied with that provision. All compliance reports shall include, among other things that are required from time to time, a full description of contacts or negotiations with any party for the sale of properties specified in Paragraph I of this order, and the identity of all such parties. Respondent shall furnish to the Commission copies of all written communications to and from such parties, and all internal memoranda, reports, and recommendations concerning divestiture.

On the date of divestiture and on every anniversary date of the divestiture thereafter for the following five (5) years, respondent shall submit to the Commission a verified written report setting forth the manner and form in which it is complying or has complied with Paragraph II of this order.

On the first anniversary of the date this order becomes final and on every anniversary date thereafter for the following nine (9) years, respondent shall submit to the Commission a verified written report setting forth the manner and form in which it has complied or is complying with Paragraph III of this order.

V

It is further ordered, That respondent 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, or any other proposed change

in the corporation, which may affect compliance obligations arising out of this order.

IN THE MATTER OF
GROLIER, INCORPORATED, ET AL.

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

Docket 8879. Complaint, March 9, 1972 —Final Order, March 9, 1982*

The FTC is reissuing its Final Order in Docket No. 8879, In the Matter of Grolier, Inc. On March 13, 1978, the Commission issued its Order to Cease and Desist (91 F.T.C. 315); modified December 10, 1981 (98 F.T.C. 882). The reissued order, effective March 9, 1982, among other things, requires a New York City publisher and seller of encyclopedias and other educational materials and services, and its subsidiaries, to cease misrepresenting, failing to make relevant disclosures, or using any other unfair or deceptive methods to recruit door-to-door sales personnel, sell merchandise and services, and collect debts.

FINAL ORDER

This matter having been heard by the Commission upon remand by the United States Court of Appeals for the Ninth Circuit, and the Commission having denied a motion to disqualify Judge von Brand after allowing Grolier discovery on the matter in an Order issued August 13, 1981, and the Commission, having made certain modifications to the original cease and desist order issued on March 13, 1978, in an Order issued December 10, 1981, now reissues its Final Order, with said modifications, as follows:

It is ordered, That the following Order to Cease and Desist be, and it hereby is, entered:

ORDER

I

It is ordered, That respondents Grolier, Incorporated, Americana Corporation, Grolier Interstate, Inc., Grolier New Era Corp., Madison Enterprises, Inc., R. H. Hinkley Company, The Grolier Society, Inc., Spencer International Press, Inc. and The Richards Company, Inc., corporations and their successors, assigns, officers, agents, representatives and employees, directly or indirectly, through any corporation, subsidiary, division or other device, in connection with the recruitment, training, or orientation of any person to sell, rent, lease, or distribute any textbook, encyclopedia, reference or educational material, training course or teaching machine, or any other

* Complaint, Initial Decision, Opinion of the Commission and Final Order previously published at 91 F.T.C. 315.