

IN THE MATTER OF
HERCULES INCORPORATED

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

Docket C-1794. Consent Order, Sept. 23, 1970—Modifying Order, Nov. 8, 1982

This order reopens the proceeding and modifies the Commission's order issued on Sept. 23, 1970 (77 F.T.C. 1242); *modified* April 8, 1982 (99 F.T.C. 404), by deleting Paragraphs II, V and VII from the order. The deletion of these Paragraphs allows the company to acquire stocks, share capital or assets of Columbian Rope Company without prior Commission approval, and repeals provisions requiring the company to notify the Commission of any change in the corporate respondent or furnish compliance reports upon request.

ORDER REOPENING PROCEEDING AND MODIFYING ORDER

By petition filed June 24, 1982, respondent Hercules Incorporated ("Hercules") requests, pursuant to Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), that Paragraph II of the Commission's order issued in this matter on September 23, 1970, be modified so that Hercules no longer requires the Commission's prior approval to acquire, directly or indirectly, the whole or any part of the stock, share capital or assets of Columbian Rope Company. Hercules also sought to delete the other order provisions binding Hercules, Paragraph VII, which requires notice of changes in corporate organization and Paragraph V, which requires compliance reports when requested by the Commission.

Pursuant to Section 2.51 of the Commission's Rules of Practice and Procedure, the petition was placed on the public record for thirty days. No comments were received.

The Commission has determined that order provisions requiring prior Commission approval of future acquisitions generally should not have terms exceeding ten years. In most cases, the Commission believes that such prior approval provisions will have served their remedial and deterrent purposes after ten years and that the findings upon which such provisions are based should not be presumed to continue to exist for a longer period of time. The Commission has reviewed respondent's petition as well as supplemental information and has concluded that the order has served its law enforcement and remedial goals.

Therefore, upon consideration of the petition and its supporting materials the Commission, in the exercise of its discretion, finds that elimination of Paragraphs II, V, and VII is in the public interest.

Modifying Order

100 F.T.C.

Accordingly, *it is ordered*, that the proceeding be, and it hereby is, reopened for the purpose of modifying the order entered therein;

It is further ordered, That the Paragraphs II, V, and VII shall terminate upon service of this order.

IN THE MATTER OF

DAIRYMEN, INC., ET AL.

Docket 9143. Interlocutory Order, Nov. 10, 1982

ORDER GRANTING RESPONDENT MUNFORD, INC.'S MOTION TO
DISMISS

On July 31, 1980, the Commission issued a complaint against Dairymen, Inc., and Munford, Inc. The complaint alleged that Dairymen's acquisition in 1978 of Munford's wholly owned subsidiary, Farmbest Foods, Inc., may have substantially lessened competition or tended to create a monopoly in the processing and sale of fluid milk in relevant sections of the country, in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. On August 23, 1982, respondent Munford moved for an order dismissing the complaint as to it. In support of its motion, Munford offered a stipulation entered into by it and complaint counsel agreeing, *inter alia*, that Munford "is no longer needed for purposes of fashioning effective relief, if any, in this matter, or for any other purpose, as the course of discovery to date has demonstrated that Munford is not a suitable candidate for imposition of the remedy of rescission or for the re-purchase of the stock of Farmbest Foods, Inc." After hearing argument from Munford's counsel in support of the motion and argument in opposition thereto by counsel for respondent Dairymen, the ALJ on August 24 certified the motion to the Commission without any recommendation as to its disposition.¹ Respondent Dairymen filed an opposition to the motion with the Commission on September 3.

Dairymen argues that the motion should be denied because: (1) "Munford, as the seller of Farmbest, was so closely connected to the acquisition herein complained of that it has become a necessary and indispensable party" (Opposition at p. 7); (2) "neither Munford nor complaint counsel have proffered any evidence or justification to support the conclusory statement that Munford is not a suitable candidate for the remedy of rescission" (Opposition at p. 6); and (3)

¹ At the August 24 hearing, the ALJ did not take a position on the merits of Munford's motion, explaining that it was beyond his authority to grant it. He concluded that he would "sign the stipulation, sign the order and let the Commission decide * * * ." (Transcript of August 24, 1982, hearing, p. 228.) However, he then issued an order prepared by Munford purporting to "grant" the motion and certify it for Commission action. In light of the limited discussion of the motion at the hearing, the lack of briefing before the ALJ, and the absence of any analysis of the issues in his order, we do not take the order to constitute a recommendation.