

IN THE MATTER OF

BATUS INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF
THE CLAYTON ACT

Docket C-3099. Complaint, Dec. 6, 1982—Decision, Dec. 6, 1982

This consent order requires, among other things, that a Louisville, Kentucky management and holding company timely divest 200,000 square feet of its retail floor space, and reduce the volume of its retail sales by \$20 million of 1981 sales. Further, the company is barred from making certain acquisitions in prescribed areas without prior Commission approval.

Appearances

For the Commission: *Daniel P. Ducore.*

For the respondent: *Ronald S. Rolfe, Cravath, Swaine & Moore,*
New York City.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent, subject to the jurisdiction of the Commission, has acquired the stock or assets of Marshall Field & Company, 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 its complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

I. Definitions

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

a. *Respondent* means BATUS Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with headquarters address at 2000 Citizens Plaza, Louisville, Kentucky, as well as its officers, directors, employees, agents, parents, divisions, subsidiaries, affiliates, successors, assigns, and the officers, directors, employees or agents of BATUS' parents, divisions, subsidiaries, affiliates, successors or assigns.

b. *Marshall Field* means Marshall Field & Company, a corpora-

Complaint

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tion organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with principal offices at 25 East Washington St., Chicago, Illinois, as well as its officers, directors, employees, agents, its parents, divisions, subsidiaries, affiliates, successors and assigns, and the officers, directors, employees or agents of its parents, divisions, subsidiaries, affiliates, successors or assigns.

c. *SMSA* means a Standard Metropolitan Statistical Area as defined by the Office of Management and Budget, Statistical Policy Division, 1975 Edition, as amended.

d. *Department stores*, as used herein, corresponds with Bureau of Census Standard Industrial Classification No. 531, 1977 Census of Retail Trade. It refers to retail stores normally employing 25 or more people and engaged in selling some items of each of the following groups of merchandise:

- (i) Furniture, home furnishings, appliances, and radio and TV sets; and
- (ii) A general line of apparel for the family; and
- (iii) Household linens and dry goods.

e. *Discount department store* means a department store distinguished from other types of department stores by certain characteristics of location, physical structure, services provided, products offered for sale, general pricing and merchandise strategies, or other factors.

f. *Traditional department store* means a department store of any type other than a discount department store.

g. *GMAF stores*, as used herein, refers to all retail establishments included in the following Bureau of Census Major Industry Groups and Standard Industrial Classifications as used in the 1977 Census of Retail Trade:

<u>Census Number</u>	<u>Descriptions</u>
Classification No. 531	Department stores
Major Industry Group No. 56	Other stores primarily engaged in the sale of apparel
Classification No. 533	Limited price variety stores
Classification No. 539	Miscellaneous general merchandise stores

<u>Census Number</u>	<u>Descriptions</u>
Major Industry Group No. 57	Furniture, home furnishings and equipment stores.

II. Respondent

2. BATUS is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with headquarters address at 2000 Citizens Plaza, Louisville, Kentucky.

3. Respondent was formed in January 1980 as both the holding and management company for the United States major business interests of its parent, B.A.T. Industries, p.l.c., of London, England.

4. Respondent is responsible for a substantial group of companies in the tobacco, retail and paper industries, including: Brown & Williamson Tobacco Corporation, Saks & Company, Gimbel Brothers, Inc., The Kohl Corporation, Thimbles Specialty Stores, Inc., and Appleton Papers, Inc.

5. In fiscal year 1980, respondent had sales of \$4,161 million and operating income of \$432 million.

6. In fiscal year 1981, respondent received retail revenues in the Milwaukee, Wisconsin SMSA in excess of \$217,500,000 including approximately \$130,400,000 from its eight Gimbels traditional department stores and \$87,100,000 from its 14 Kohl's Department Stores.

7. In 1981 respondent was the largest department store retailer in the Milwaukee, Wisconsin SMSA.

8. In 1981 respondent, through its Gimbels stores, was the largest traditional department store retailer in the Milwaukee, Wisconsin SMSA.

9. In 1981 respondent was the largest retailer of certain merchandise categories in the Milwaukee, Wisconsin SMSA.

10. At all times relevant herein, respondent has been and is now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. Marshall Field

11. Marshall Field is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with principal offices at 25 East Washington Street, Chicago, Illinois.

12. Through various retail divisions, Marshall Field operates

department stores and GMAF stores in various sections of the United States, including: the Chicago division (Marshall Field stores), Breuners, Frederick & Nelson, The Crescent, and J.B. Ivey & Company.

13. In fiscal year 1980, Marshall Field had net sales of approximately \$1,013 million and net income of approximately \$21 million.

14. In fiscal year 1981, Marshall Field received retail revenues in excess of \$27 million from its one traditional department store in the Milwaukee, Wisconsin SMSA.

15. In 1981 Marshall Field was the eighth largest department store retailer in the Milwaukee, Wisconsin SMSA.

16. In 1981 Marshall Field was the fifth largest traditional department store retailer in the Milwaukee, Wisconsin SMSA.

17. In 1981 Marshall Field ranked among the top ten retailers of certain merchandise categories in the Milwaukee, Wisconsin SMSA.

18. At all times relevant herein, Marshall Field has been and is now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

IV. The Acquisition

19. Respondent, a wholly owned subsidiary of respondent and Marshall Field entered into a Stock Purchase Agreement dated as of March 15, 1982, providing for the issuance and sale by Marshall Field to BATUS' subsidiary of 2,000,000 shares of Marshall Field common stock, at \$25.50 per share (the "Stock Purchase Agreement").

20. On or about March 17, 1982, a direct wholly owned subsidiary of respondent commenced a tender offer for a majority of the shares of Marshall Field, with the intention of acquiring the balance of the Marshall Field stock pursuant to a merger between Marshall Field and an indirect wholly-owned subsidiary of respondent (the acquisition of Marshall Field shares pursuant to such tender offer and merger or any other business combination with Marshall Field, together with the purchase of Marshall Field shares pursuant to the Stock Purchase Agreement, is hereinafter called the "Acquisition"). Under the terms of the acquisition as amended, the offering price was \$30 per Common share. The acquisition was substantially completed on or about April 20, 1982. The total acquisition price,

including the shares to be acquired by merger, was approximately \$365 million.

V. Trade and Commerce

21. One relevant line of commerce in which to evaluate the effects of respondent's acquisition of Marshall Field is retail sales by department stores.

22. Within the department store line of commerce, a relevant line of commerce in which to evaluate the effects of respondent's acquisition of Marshall Field is retail sales by traditional department stores.

23. Other relevant lines of commerce in which to evaluate the effects of respondent's acquisition of Marshall Field are retail sales of certain merchandise, including, but not limited to:

- a. men's apparel;
- b. women's apparel;
- c. children's apparel.

24. The relevant section of the country is the Milwaukee, Wisconsin SMSA.

25. The department store market in the Milwaukee, Wisconsin SMSA is concentrated.

26. The traditional department store and certain apparel markets in the Milwaukee, Wisconsin SMSA are highly concentrated. Since 1977 only six firms have maintained a traditional department store presence in Milwaukee, with the top four firms accounting for over 75 percent of sales. In those years as well, four firms have controlled in excess of 65 percent of retail sales in certain apparel markets.

27. Barriers to entry into department store retailing in the Milwaukee, Wisconsin SMSA are substantial.

28. Prior to the acquisition here in question, respondent and Marshall Field were and had been actual competitors of each other in department store and traditional department store retailing and in the retail sale of other merchandise, and had been actual competitors of others engaged in similar retail activities in the Milwaukee, Wisconsin SMSA.

VI. Effects

29. The effect of respondent's acquisition of Marshall Field may be substantially to lessen competition or 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 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 Marshall Field and respondent in department store and traditional department store retailing and the retail sale of other merchandise in the Milwaukee, Wisconsin SMSA has been eliminated;
- b. actual competition between competitors generally in department store and traditional department store retailing and in the retail sale of other merchandise in the Milwaukee, Wisconsin SMSA may be lessened;
- c. concentration in department store and traditional department store retailing and in the retail sale of other merchandise in the Milwaukee, Wisconsin SMSA has been increased; and
- d. the likelihood of eventual deconcentration may be lessened.

VII. Violation Charged

30. The acquisition by respondent of the stock and assets of Marshall Field constitutes a 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.

DECISION AND ORDER

The Federal Trade Commission having initiated and investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent 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 respondent with violation of the Federal Trade Commission Act and the Clayton Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all signing of said agreement is for settlement purposes only and does not constitute an admission by respondent 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 the respondent has violated the said Act, 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. Respondent BATUS, 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 2000 Citizens Plaza, in the City of Louisville, State of Kentucky.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That for purposes of this order the following definitions shall apply:

1. *BATUS* means BATUS Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with headquarters address at 2000 Citizens Plaza, Louisville, Kentucky, as well as its officers, directors, employees, agents, parents, divisions, subsidiaries, affiliates, successors, assigns, and the officers, directors, employees or agents of BATUS' parents, divisions, subsidiaries, affiliates, successors or assigns.
2. *Marshall Field* means Marshall Field & Company, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with principle offices at 25 East Washington St., Chicago, Illinois, as well as its officers, directors, employees, agents, its parents, divisions, subsidiaries, affiliates, successors and assigns, and the officers, directors, employees or agents of its parents, divisions, subsidiaries, affiliates, successors or assigns.
3. *SMSA* means a Standard Metropolitan Statistical Area as defined by the Office of Management and Budget, Statistical Policy Division, 1975 Edition, as amended.
4. *Department stores*, as used herein, corresponds with Bureau of the Census Standard Industrial Classification No. 531, 1977 Census of Retail Trade. It refers to retail stores normally employing 25 or

more people and engaged in selling some items of each of the following groups of merchandise:

- (a) Furniture, home furnishings, appliances, and radio and TV sets; and
- (b) A general line of apparel for the family; and
- (c) Household linens and dry goods.

5. *GMAF stores*, as used herein, refers to all retail establishments included in the following Bureau of Census Major Industry Group and Standard Industrial Classifications as used in the 1977 Census of Retail Trade:

<u>Census Number</u>	<u>Descriptions</u>
Classification No. 531	Department stores
Major Industry Group No. 56	Other stores primarily engaged in the sale of apparel
Classification No. 533	Limited price variety stores
Classification No. 539	Miscellaneous general merchandise stores
Major Industry Group No. 57	Furniture, home furnishings and equipment stores.

II.

It is further ordered, That BATUS shall, within two (2) years from the date upon which this order becomes final, divest absolutely and in good faith such of its department stores in the Milwaukee, Wisconsin SMSA as will reduce the floor space of its department stores in that SMSA by an amount not less than 200,000 square feet and reduce its annual sales volume in that SMSA in an amount not less than \$20 million as measured by fiscal 1981 sales.

A. Divestiture of any store under the terms of this order shall be made only to an acquiror approved in advance by the Federal Trade Commission.

B. Such divestiture shall include all leases, stock space and inventories but not the trade name or other proprietary names associated with the store.

C. Should BATUS divest the Marshall Field department store in Mayfair Mall it shall within two (2) years from the date of such divestiture open or begin construction of another Marshall Field retail establishment consisting of not less than 120,000 square feet of floor space in the Milwaukee SMSA. BATUS shall complete construction within three years from the time construction is begun. BATUS shall ensure that the store is a viable competitive retail

establishment for not less than five (5) years from the date of its opening.

III.

It is further ordered, That:

A. For a period of ten (10) years from the date upon which this order becomes final, BATUS shall not, directly or indirectly, through acquisition of stock, share capital, equity or any other interest in any equity, corporate or noncorporate, acquire any department store or GMAF store located within the Milwaukee, Wisconsin SMSA without the prior approval of the Federal Trade Commission; nor shall BATUS acquire any assets of any entity, corporate or noncorporate, operating any department store or GMAF store located within the Milwaukee, Wisconsin SMSA without the prior approval of the Federal Trade Commission.

B. For a period of two (2) years from the date upon which this order becomes final, BATUS shall not, directly or indirectly, through acquisition of stock, share capital, equity or any other interest in any equity, corporate or noncorporate, acquire any department store or GMAF store located in any SMSA in which BATUS then operates a department store or GMAF store without the prior approval of the Federal Trade Commission; nor shall BATUS acquire any assets of any entity, corporate or noncorporate, operating any department store or GMAF store located in any SMSA in which BATUS then operates a department store or GMAF store without the prior approval of the Federal Trade Commission.

C. For a period of three (3) years, beginning two (2) years from the date upon which this order becomes final, BATUS shall not, directly or indirectly, through acquisition of stock, share capital, equity or any other interest in any equity, corporate or noncorporate, acquire any department store or GMAF store located in any SMSA in which BATUS then operates a department store or GMAF store without the prior approval of the Federal Trade Commission; nor shall BATUS acquire any assets of any entity, corporate or noncorporate, operating any department store or GMAF store located in any SMSA in which BATUS then operates a department store or GMAF store without the prior approval of the Federal Trade Commission. Provided that this provision (III. C.) shall not be deemed to require prior approval of the Federal Trade Commission of acquisitions (1) of store sites, leases or inventories if the store property has not been operated as a department store or GMAF store for a period of ninety (90) consecutive days immediately prior to its

acquisition, or (2) of stock, share capital, equity or any other interest in any equity, corporate or noncorporate, or assets for a purchase price or other consideration less than \$15 million.

IV.

It is further ordered, That BATUS shall submit within sixty (60) days after the date upon which this order becomes final, and every ninety (90) days thereafter, until such time that divestiture as required by paragraph II of this order has been accomplished, a report setting forth in detail the manner and form in which BATUS intends to comply, is complying, and has complied with the terms of this order and such additional information relating thereto as may from time to time be required. All such reports shall include a summary of contacts or negotiations with anyone for the specified assets, the identity of all such persons, and copies of all written communications to and from such persons.

V.

It is furthered ordered, That for a period of ten (10) years from the date upon which this order becomes final, BATUS shall notify the Federal Trade Commission at least thirty (30) days prior to any change in BATUS which may affect compliance with the obligations arising out of this consent order, 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.

VI.

It is further ordered, That each year, for a period of ten (10) years from the date upon which divestiture as required by paragraph II of this order is accomplished, BATUS shall submit a report setting forth in detail the manner and form in which BATUS intends to comply, is complying or has complied with paragraph III of this order.

IN THE MATTER OF

CANADA CEMENT LAFARGE LTD., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF
THE CLAYTON ACT

Docket C-3100. Complaint, Dec. 21, 1982—Decision, Dec. 21, 1982

This consent order requires a Montreal, Canada producer of cement, among other things, to fully divest itself of a Chattanooga, Tenn. cement manufacturing plant and specified terminals associated with it within eighteen (18) months of the date the order becomes final to a Commission-approved purchaser. For five years, the respondent must offer to sell to the purchaser of the plant and terminals, twenty thousand tons of cement annually. Further, respondent must offer technical assistance for operation of the plant and terminals. Respondent is required to offer specific tonnages of clinker and cement to independent buyers on an annual basis for five years. Should respondent fail to divest itself of the Tennessee plant within the specified time period, it must then sell an Alabama plant and associated terminals within a twelve (12) month period.

Appearances

For the Commission: *Jerry A. Philpott, Jeffrey Behm, Martha Oppenheim, Allen Hickey and Franklin M. Lee.*

For the respondents: *R. Bruce MacWhorter and Edward H. Tuck, Shearman & Sterling, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Canada Cement Lafarge Ltd. ("Canada Cement Lafarge"), a corporation subject to the jurisdiction of the Commission, intends to acquire all of the outstanding common stock of General Portland Inc. ("General Portland"), 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: