

Modifying Order

104 F.T.C.

IN THE MATTER OF
GENSTAR LIMITED

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

Docket No. C-3049. Consent Order, Nov. 10, 1980—Modifying Order, July 12, 1984

This order reopens the proceeding and modifies the Commission's Order issued on Nov. 10, 1980 (96 F.T.C. 795) to permit respondent to both ship cement from its Tilbury Island Plant in British Columbia to California, Oregon, Washington and Nevada, and acquire cement distribution terminals in those four states without prior Commission approval.

ORDER MODIFYING DECISION AND ORDER

Genstar Limited has requested that the Commission modify its Order in Docket No. C-3049 (1) to relieve Genstar of its obligation under Paragraph II of the Order to obtain, until January 31, 1990, Commission approval to ship cement it produces outside the United States to cement facilities it owns in the four-state area of Washington, Oregon, Nevada, and California ("four-state area"), and (2) to relieve Genstar of its obligation under Paragraph VII(B) to obtain, until January 31, 1985, Commission approval before acquiring active cement terminals in the four-state area. After duly considering Genstar's petition, the Commission has determined that Genstar has demonstrated changed circumstances of fact that warrant reopening of the Order, and that the Order should be modified in the manner that Genstar requests.

Before 1980, when Genstar acquired the Flintkote Company, Genstar had no cement plants in the relevant market and did not sell directly to end-users; Genstar, however, supplied cement to cement producers in the market. Genstar's proposed acquisition of Flintkote, the third largest competitor in the area, presented several alleged anticompetitive possibilities.

The Commission and Genstar agreed to a cease and desist Order against Genstar that allowed the proposed acquisition to take place, but that contained provisions designed to eliminate the possible anticompetitive effects of the acquisition. Paragraphs II and III, in conjunction with the cement terminal moratorium provision contained in Paragraph VII(B), were designed to avoid the possibility that Genstar would dominate the market through the combination of its status as a major supplier and its ownership of Flintkote. Paragraph II restricts Genstar's ability to import cement into the relevant area for

its own use, and Paragraph III requires Genstar until December 31, 1984, to make available to producers in the market excess cement produced by the Canadian plant from which Genstar supplies cement to the relevant area. The provision in Paragraph VII(B) that restricts Genstar's ability to acquire active cement terminals in the relevant market was an adjunct to Paragraphs II and III.

When the Commission accepted the consent Order, it recognized that the Order's import restrictions would limit Genstar's ability to compete to its fullest in the relevant market; however, the provisions were believed to be necessary during the period of short supply that then prevailed, to eliminate the opportunity for Genstar to effect an anticompetitive supply squeeze. Due to increased capacity in the relevant market, such an event no longer is a realistic possibility. Consequently, there no longer is any reason to restrict Genstar from competing fully in the market. This changed circumstance of fact and the public interest therefore require modification of the Order. Accordingly,

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

It is ordered, That the Order be, and it hereby is, modified by (1) deleting Paragraph II of the Order, and (2) substituting for Paragraph VII(B) of the Order the following:

VII.

It is further ordered, That prior to January 31, 1985 Genstar shall cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, the whole or any part of:

* * * * *

B. any Product manufacturing plant located in any Cement Market Area.

Commissioner Calvani dissented.

FEDERAL TRADE COMMISSION DECISIONS

Set Aside Order

104 F.T.C.

IN THE MATTER OF
BROWN SHOE COMPANY, INC.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT

Docket 7606. Modified Order, August 3, 1966—Order to Set Aside, July 16, 1984

This order grants petition of Brown Group, Inc. (formerly Brown Shoe Company, Inc. and hereafter "Brown") to reopen the proceeding in Docket No. 7606 and set aside the 1966 order entered against Brown which prohibited the company from entering into agreements that would prevent retailers from deciding to purchase a competitor's line of shoes or the amount of competitor's shoes to stock. Upon considering Brown's petition, the public comments and other relevant information, the Commission found that granting respondent's request would be in the public interest. The Commission noted that given the present characteristics of the shoe industry and Brown's lack of market power to exclude competitors, the 1966 order now serves no procompetitive purpose and may impede respondent's efforts to achieve efficient distribution of its products through law practices available to its competitors. Accordingly, the proceeding in Docket No. 7606 is reopened and the Commission's order of August 3, 1966, 70 F.T.C. 491, is set aside.

ORDER REOPENING AND SETTING ASIDE ORDER ISSUED AUGUST 3, 1966

By a petition filed on March 19, 1984, respondent Brown Group, Inc. (formerly Brown Shoe Company, Inc. and hereafter "Brown") requests that the Commission reopen the proceeding in Docket No. 7606 and set aside the order against Brown. Upon consideration of Brown's petition, the public comments, and other relevant information, the Commission now finds that the public interest warrants reopening the proceeding and setting aside the order.

The record describes an industry in which any attempt by Brown to impose exclusive dealing on retailers today would have no significant anticompetitive effects. Imports have dramatically penetrated the market, representing about 60 percent of present domestic consumption. Some 300 manufacturers account for U.S. production, with 25 providing about half of domestic output. There is no evidence that within this fragmented market structure any single competitor, whether a domestic manufacturer or supplier of imports, has significant market power to exclude other competitors. To the contrary, significant entry continues to occur, demonstrating a lack of natural or artificial barriers to entry.

Given the present characteristics of the shoe industry and that Brown does not have market power by which it may exclude competitors, the order now serves no procompetitive purpose and may impede