

IN THE MATTER OF
NATIONAL TEA COMPANY

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF THE
CLAYTON AND THE FEDERAL TRADE COMMISSION ACTS

Docket 9126. Order, July 23, 1980—Set Aside Order, Sept. 23, 1988

The Federal Trade Commission has set aside a 1980 order with National Tea Co. (96 F.T.C. 42) so that the company is no longer required to get the Commission's approval before acquiring grocery stores in certain geographic areas. Since the company exited the Minneapolis/St. Paul area in 1983, the Commission determined that public interest considerations warranted setting the order aside.

ORDER REOPENING AND SETTING ASIDE
ORDER ISSUED ON JULY 23, 1980

On May 27, 1988, National Tea Company ("National") filed a "Petition To Reopen And Set Aside Consent Order" ("Petition"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice, 16 CFR 2.51 (1986). The Petition asked the Commission to reopen the proceeding in Docket No. 9126 and set aside the consent order issued by the Commission on July 23, 1980 ("the order"). National's Petition was placed on the public record for thirty days, pursuant to Section 2.51 of the Commission's Rules. No comments were received.

The complaint in this case was issued under Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and alleged anticompetitive effects arising from National's acquisition of Applebaums' Food Markets, Inc., in February 1979. 96 FTC 42 (1980). According to the complaint, the relevant line of commerce in which to assess the acquisition was sales by retail grocery stores; the relevant geographic market was the Metropolitan Minneapolis/St. Paul, Minnesota area ("Twin Cities"). The order, which was issued by the Commission on July 23, 1980, prohibits National, for a ten year period ending on July 28, 1990, from acquiring without the prior approval of the Commission, five or more retail grocery stores in seven designated states, or within 500 miles of any National warehouse, or 300 miles of any National retail grocery store. 96 FTC at 49.

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be altered, modified or set aside, in whole or in part, if the respondent makes a satisfactory showing that changed conditions of law or fact require the order to be modified or set aside. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. *Louisiana Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4.

Section 5(b) also provides that the Commission may modify an order when the Commission determines that the public interest so requires. Therefore, the Commission has invited respondents to show in petitions to reopen how the public interest warrants the requested modification. 16 CFR 2.51. In such a case, the respondent must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 24, 1984), at 2 ("Damon Letter"). For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order." *Damon Corp.*, 101 FTC 689, 692 (1983). Once such a showing of need is made, the Commission will balance the reasons favoring the modification requested against any reasons not to make the modification. Damon Letter at 2.

After reviewing National's Petition, the Commission has concluded that it is in the public interest to reopen the proceeding and set aside the order in Docket No. 9126. Although National remains in the retail grocery store business, it has been out of the Twin Cities market for five years. National has shown that the prior approval requirements of the order impose substantial compliance costs on National and put it at a disadvantage with respect to its competitors who are not under similar restraints. These costs were foreseeable at the time National agreed to the order and would not provide a sufficient basis to justify termination of the order if it were serving a procompetitive purpose. However, in light of National's exit from the Twin Cities market, any need for the order in the Twin Cities market that was the focus of the Commission's complaint is outweighed by the costs of the prior approval provision.

The Commission has also concluded that it is in the public interest to

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set aside the prior approval requirements of the order with respect to any other geographic areas designated in the order. The allegations of the complaint relate primarily to the Twin Cities market and with the setting aside of the primary relief, the ancillary relief should also be set aside.

Accordingly, *it is ordered*, that this matter be, and it hereby is reopened and that the Commission's order issued on July 23, 1980, shall be set aside as of the effective date of this order.

IN THE MATTER OF
BATESVILLE CASKET COMPANY, INC.

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

Docket C-3240. Complaint, Oct. 4, 1988—Decision, Oct. 4, 1988

This consent order prohibits, among other things, a Batesville, Ind. casket company from making future misrepresentations and unsubstantiated claims concerning casket durability and also prohibits false claims that the Commission or any other government agency endorses its products, warranty, or programs.

Appearances

For the Commission: *Rachel Miller.*

For the respondent: *Calvin J. Collier, Hughes, Hubbard & Reed,*
Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Batesville Casket Company, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Batesville Casket Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana. Its office and principal place of business is located at Highway 46 East, Batesville, Indiana.

PAR. 2. Respondent is now, and for some time past has been, engaged in the manufacture, marketing, sale and distribution of funeral caskets.

PAR. 3. In the course and conduct of its business, respondent causes and has caused its caskets to be sold and distributed in the various states of the United States and the District of Columbia. Respondent therefore maintains and has maintained a substantial course of