

IN THE MATTER OF

PPG INDUSTRIES, INC., 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 9204. Complaint, Jan. 29, 1986—Decision, Apr. 5, 1989

This consent order requires, among other things, a Pittsburgh, Pa. manufacturer and seller to obtain prior Commission approval before acquiring any interest in a company that makes aircraft transparencies, if that company has more than \$750,000 in sales in the U.S., and to provide the FTC prior notice before making other acquisitions.

Appearances

For the Commission: *Steven A. Newborn.*

For the respondents: *Joseph A. DeFrancis, Carla Hills, Scott G. Knudson, Irwin Goldbloom and Peter L. Winik, Latham, Watkins & Hills, Washington, D.C.; David J. Hickton, David J. Armstrong, and Dorothy A. Davis, Dickie, McCamey & Chilcote, Pittsburgh, Pa. and Bertum Kantor, Wachtell, Lipton, Rosen & Katz, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the respondents, PPG Industries, Inc. ("PPG") and Swedlow, Inc. ("Swedlow"), corporations subject to the jurisdiction of the Commission, have entered into agreements that violate Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45); that through those agreements PPG has agreed to acquire Swedlow; that such acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended; and it appearing that a proceeding in respect thereof would be in the public interest, the Commission 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. PPG INDUSTRIES, INC.

1. PPG Industries, Inc. ("PPG") is a corporation organized and doing business under the laws of Pennsylvania, with its principal office at One PPG Place, Pittsburgh, Pennsylvania.

2. For the year ending December 31, 1984, PPG's total net sales were \$4.242 billion, and its net income was \$527 million.

3. PPG is primarily engaged in three business segments: glass products for the transportation and construction markets; protective and decorative coatings and resins for automobiles, appliances and industrial equipment; and chemicals.

4. PPG is engaged in the manufacture and sale of products, including aircraft transparencies, throughout the United States and the free world and is engaged in or affects commerce within the meaning of the Clayton Act, as amended, and the Federal Trade Commission Act, as amended.

II. SWEDLOW, INC.

5. Swedlow is a corporation organized and doing business under the laws of California, with its principal office at 12122 Western Avenue, Garden Grove, California.

6. In its 1985 fiscal year, which ended March 31, 1985, Swedlow had net sales of \$46.3 million, and its net earnings were \$1.9 million.

7. Swedlow is engaged primarily in the manufacture and sale of aircraft transparencies, acrylic sheet, fiber-reinforced and transparent abrasion-resistant products, and ballistic resistant materials.

8. Swedlow is engaged in the manufacture and sale of products, including aircraft transparencies, throughout the United States and the free world and is engaged in or affects commerce within the meaning of the Clayton Act, as amended, and the Federal Trade Commission Act, as amended.

III. THE AGREEMENTS BETWEEN PPG AND SWEDLOW

9. On or about August 21, 1985, PPG and Swedlow entered into an Agreement and Plan of Merger ("Merger Agreement") pursuant to which Swedlow will be merged into the BV Acquisition Corporation, a wholly-owned subsidiary of PPG created specifically for this transaction. Each outstanding share of common stock, \$1.00 par value, of

Swedlow, other than shares held by PPG or its subsidiaries and shares held by stockholders who properly exercise any available dissenters' rights, will be converted into the right to receive \$32.60 in cash, payable to the holder thereof, without any interest thereon, upon surrender of the certificate representing such share. In addition, pursuant to the Merger Agreement, outstanding employee stock options to purchase 58,750 shares of common stock will be cancelled in consideration of the payment by PPG of the difference between \$32.60 per share and the exercise price per share covered by such options.

10. On or about August 21, 1985, PPG also entered into a Stock Purchase Agreement with David A. Swedlow, Jack Gold as trustee of the Jack and Ann Gold Residuary Trust, and Jack Gold as trustee for the benefit of Patricia M. West (the "stockholders"). Pursuant to the Stock Purchase Agreement, PPG has agreed to purchase from the stockholders, and the stockholders have agreed to sell to PPG, an aggregate of 609,259 shares, representing approximately 49% of the currently outstanding shares for a price of \$32.60 per share. In addition, the stockholders have granted to PPG under the Stock Purchase Agreement proxies on such shares to vote on the Merger Agreement and other matters.

IV. DEFINITIONS

11. *Aircraft transparencies* are components of fixed-wing and rotary-wing aircraft that provide a surface capable of being seen through and that are incorporated into the airframe. Aircraft transparencies are manufactured primarily from glass, acrylic, polycarbonate or some combination of two or more of these materials. Unless otherwise indicated by the context in which it is used, the term "aircraft transparencies" means all such transparencies made of any of these materials or combinations.

12. "*Abrasion resistant coating products*" refers to any and all coating products applied or added to plastic materials to increase their durability, strength, and resistance to abrasion or chemical attack.

13. "*High performance aircraft transparencies*" refers to all transparencies except those aircraft cabin windows and as-cast acrylic products that require relatively little technology to produce.

V. NATURE OF TRADE AND COMMERCE

14. The relevant geographic markets are the United States as a whole and the free world.

15. The relevant product markets are:

- (a) All aircraft transparencies;
- (b) All high performance aircraft transparencies;
- (c) All acrylic aircraft transparencies;
- (d) All stretched acrylic aircraft transparencies;
- (e) All composite aircraft transparencies;
- (f) All glass/plastic laminated aircraft transparencies; and
- (g) All acrylic/polycarbonate laminated aircraft transparencies.

VI. MARKET STRUCTURE

16. Each of the relevant markets is highly concentrated whether measured by the Herfindahl-Hirschmann Index ("HHI") or by four-firm and eight-firm concentration ratios.

VII. BARRIERS TO ENTRY

17. The barriers to entry into the manufacture and sale of the relevant products are significant.

VIII. ACTUAL AND POTENTIAL COMPETITION

18. PPG and Swedlow are actual and potential competitors in the manufacture and sale of the relevant products.

IX. EFFECTS

19. The effect of the aforesaid acquisition, if consummated, may be substantially to lessen competition 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) It will eliminate actual and potential competition between PPG and Swedlow and between Swedlow and others in the relevant markets;
- (b) It will significantly increase the already high levels of concentration in the relevant markets;
- (c) It will create a firm whose share of the relevant markets is so high as to lead to dominant firm status; and

(d) It will enhance the possibility of collusion or interdependent coordination among the remaining firms in the relevant markets.

X. VIOLATIONS CHARGED

20. The proposed acquisition of Swedlow by PPG would, if consummated, violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

21. The Merger Agreement and the Stock Purchase Agreement set forth in Paragraphs 9 and 10 constitute a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

22. The proposed acquisition of Swedlow by PPG would, if consummated, violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent, PPG Industries, Inc., with violation of Section 7 of the Clayton Act, as amended and Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent PPG Industries, Inc. is a corporation organized,

existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at One PPG Place, in the City of Pittsburgh, State of Pennsylvania.

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.

For the purposes of this order, the following definitions shall apply:

“PPG” means PPG Industries, Inc. as well as its officers, employees, representatives, agents, parents, divisions, subsidiaries, successors, and assigns, as well as the officers, employees and agents of its parents, divisions and subsidiaries.

II.

It is ordered, That for a period commencing on the date this order becomes final and continuing for ten (10) years from the date this order becomes final, PPG shall not acquire, without the prior approval of the Commission, directly or indirectly, the whole or any part of the stock, share capital, equity interest, or assets, other than purchases of manufactured product in the ordinary course of business, of any company engaged in the manufacture or sale of aircraft transparencies, and which has sold more than \$750,000 of aircraft transparencies in the United States in the twelve months ending on the date of the offer or agreement to acquire the stock, share capital, equity interest, or assets of such company.

III.

It is further ordered, That any successor corporation to PPG shall be bound by this order to the same extent as PPG; further PPG shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or

dissolution of such subsidiaries or any other change that may affect compliance obligations arising out of the order.

IV.

It is further ordered, That for so long as this order is in effect, PPG shall notify the Commission at least sixty (60) days in advance of any proposed acquisition by it of the stock, share capital, equity interest or assets of any company engaged in the manufacture or sale of aircraft transparencies and having direct sales of such aircraft transparencies in the United States for which prior Commission approval is not required; *provided,* however, that this provision shall not require PPG to notify the Commission of any acquisition that must be reported pursuant to the Hart-Scott-Rodino Act, 15 U.S.C. 18a.

V.

It is further ordered, That PPG shall within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Commissioner Machol not participating.

IN THE MATTER OF

COOPER RAND CORPORATION

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

Docket C-3250. Complaint, Apr. 18, 1989—Decision, Apr. 18, 1989

This consent order prohibits, among other things, a New York marketer of consumer products from representing that any lighter-to-lighter charger will restart a discharged battery instantly or as quickly as jumper cables, or from making any other performance claim for the product, unless respondent can substantiate such claims. In addition, the order requires respondent to prominently disclose in each advertisement and in the product instruction insert, either a statement concerning the product's limitations or the specific length of time needed to recharge a battery.

Appearances

For the Commission: *Allen Hile.*

For the respondent: *William R. Hansen, Nims, Howes, Collison & Isner, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 45 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondent Cooper Rand 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 as follows:

PARAGRAPH 1. Cooper Rand Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New York, with its office and principal place of business located at 45 West 25th Street, New York, New York.

PAR. 2. Respondent is now and for sometime in the past has been engaged in the marketing, distribution, advertising, offering for sale, and selling to the public of "Auto Starter" and other lighter-to-lighter