

IN THE MATTER OF
RECKITT & COLMAN PLC

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

Docket C-3306. Complaint, Sept. 26, 1990—Decision, Sept. 26, 1990

This consent order allows, among other things, a London, England corporation to acquire the Boyle-Midway Division of American Home Products Corp., but requires respondent to divest its own rug-cleaning products business to a Commission-approved acquirer, within eight months, and to comply with all terms of the Hold Separate Agreement. In addition, for ten years, respondent is required to obtain prior Commission approval before acquiring any interest in any company that manufactures or sells rug cleaning products in the U.S.

Appearances

For the Commission: *Robert W. Doyle, Jr.* and *Steven A. Newborn.*

For the respondent: *Allen T. Maulsby, Cravath, Swaine & Moore,*
New York, N.Y.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Reckitt & Colman plc, a corporation subject to the jurisdiction of the Federal Trade Commission, proposes to acquire the Boyle-Midway Division of American Home Products Corporation, a corporation subject to the jurisdiction of the Federal Trade 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 ("FTC Act"), 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. DEFINITIONS

For the purposes of this complaint the following definitions apply:

1. *Reckitt & Colman plc* ("R&C") means Reckitt & Colman plc, a corporation organized, existing, and doing business under and by

virtue of the laws of England, its directors, officers, employees, agents and representatives, its domestic and foreign parents, predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, employees, agents and representatives of its domestic and foreign parents, predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships, and joint ventures. The words "subsidiary", "affiliate" and "joint venture" refer to any firm in which there is partial (10 percent or more) or total ownership or control between corporations.

2. *American Home Products Corporation* ("AHP") means American Home Products Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, its directors, officers, employees, agents and representatives, its domestic and foreign parents, predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, employees, agents and representatives of its domestic and foreign parents, predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures.

3. "*Boyle*" means the Boyle-Midway Division of AHP, which includes four corporations, directly or indirectly, wholly-owned by AHP, with their principal offices at 685 Third Avenue, New York, New York: Boyle-Midway, Inc., and Boyle-Midway Household Products, Inc., both of which are organized and doing business under the laws of Delaware; Boyle-Midway Puerto Rico, Inc., organized and doing business under the laws of Puerto Rico; and Boyle-Midway Subsidiary Corporation, which is organized and doing business under the laws of Nevada.

4. "*Rug cleaning products business*" means the business of formulating, manufacturing, marketing, and selling home rug cleaning products, either in liquid form or applied by aerosol or pump spray, and sold primarily in grocery and general merchandise stores.

II. THE RESPONDENT

5. Respondent R&C is a corporation organized and existing under the laws of England, with its offices and principal place of business at One Burlington Lane, London, England W4 2RW. R&C does business in the United States through its wholly owned subsidiary, Reckitt & Colman Inc., a corporation with its offices and principal place of business at 1655 Valley Road, Wayne, New Jersey.

6. For purposes of this proceeding, R&C is, and at all times relevant

herein has been, 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 FTC Act, as amended, 15 U.S.C. 44.

III. THE ACQUIRED COMPANY

7. AHP is a corporation organized and existing under the laws of the State of Delaware, with its headquarters at 685 Third Avenue, New York, New York.

8. AHP is, and at all times relevant herein has been 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 FTC Act, as amended, 15 U.S.C. 44.

9. Boyle, to be acquired by Reckitt, consists of four corporations, all of whose voting securities are held directly or indirectly by AHP: Boyle-Midway, Inc., Boyle-Midway Household Products, Inc., both of which are Delaware corporations, and Boyle-Midway Subsidiary Corporation, a Nevada corporation, all with headquarters at 685 Third Avenue, New York, New York; and Boyle-Midway Puerto Rico, Inc., a Puerto Rico corporation, with its address at G.P.O. Box 70115, San Juan, Puerto Rico.

10. Boyle is, and at all times relevant herein has been engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and all four entities constituting Boyle as defined in paragraph 5 are corporations whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

IV. THE ACQUISITION

11. On or about March 9, 1990, R&C and AHP agreed in principle to enter into an agreement whereby R&C will acquire all of the voting securities of Boyle from AHP for a price of approximately \$1.25 billion, to be paid in cash. The parties wish to consummate the transaction in late June, 1990, or as soon thereafter as possible.

V. THE RELEVANT MARKET

12. For purposes of this complaint, the relevant line of commerce in which to analyze R&C's acquisition of Boyle from AHP is the rug cleaning products business.

13. For purposes of this complaint, the relevant section of the country is the United States.

14. The relevant market set forth in paragraphs 8 and 9 is highly concentrated, whether measured by Herfindahl-Hirschmann Indices ("HHI") or two-firm and four-firm concentration ratios.

15. Entry into the relevant market is difficult.

16. R&C and AHP are actual competitors in the relevant market.

VI. EFFECTS OF THE ACQUISITION

17. The effect of the acquisition may be substantially to lessen competition and to tend to create a monopoly in the relevant market in violation of 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, in the following ways, among others:

- a. Actual competition between R&C and AHP will be eliminated;
- b. R&C may acquire a dominant market position in the relevant market; and
- c. The likelihood of collusion in the relevant market would be increased.

VII. VIOLATIONS CHARGED

18. The acquisition agreement described in paragraph 7 does constitute a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

19. The acquisition described in paragraph 7, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an 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 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

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of 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 Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that a 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 described 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 Reckitt & Colman plc ("R&C") is a corporation organized and existing under the laws of England, with its offices and principal place of business at One Burlington Lane, London 4W 2RW, England. R&C does business in the United States through its wholly-owned subsidiary Reckitt & Colman Inc., with its office and principal place of business at 1655 Valley Road, Wayne, New Jersey.

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.

As used in this order, the following definitions shall apply:

A. "*R&C*" means Reckitt & Colman plc, a corporation organized, existing, and doing business under and by virtue of the laws of England, its directors, officers, employees, agents and representatives, its domestic and foreign parents, predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, employees, agents and representatives of its domestic and foreign parents, predecessors, successors,

assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures. The words "subsidiary", "affiliate" and "joint venture" refer to any firm in which there is partial (10 percent or more) or total ownership or control between corporations.

B. "*AHP*" means American Home Products Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, its directors, officers, employees, agents and representatives, its domestic and foreign parents, predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, employees, agents and representatives of its domestic and foreign parents, predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures.

C. "*Boyle*" means the Boyle-Midway Division, which includes four corporations, all directly or indirectly, wholly-owned by AHP: Boyle-Midway, Inc. and Boyle-Midway Household Products, Inc., both of which are Delaware corporations, and Boyle-Midway Subsidiary Corporation, a Nevada corporation, all with their principal offices at 685 Third Avenue, New York, N.Y.; and Boyle-Midway Puerto Rico, Inc., a Puerto Rico corporation, with its address at G.P.O. Box 70115, San Juan, Puerto Rico.

D. "*Commission*" means the Federal Trade Commission.

E. "*Acquisition*" means the acquisition by R&C of Boyle from AHP.

F. "*Acquirer*" means the party or parties to whom R&C divests the assets herein ordered to be divested.

G. "*R&C's rug cleaning products*" means R&C's rug cleaning products, Spray 'n Vac, Apply 'n Vac and Spray 'n Brush, which are applied by aerosol or pump spray or in liquid form and which are sold primarily in grocery and general merchandise stores.

H. "*R&C's rug cleaning products business*" means the business of manufacturing, marketing, and selling R&C's rug cleaning products.

I. "*R&C's Assets to be Divested*" means the following assets constituting or otherwise related to R&C's rug cleaning products business:

- 1) The R&C product line Profit and Loss Statements for 1987, 1988, 1989, and 1990 relating to each of R&C's rug cleaning products;

- 2) All trademarks (including without limitation, Glamorene, Spray 'n Vac, Apply 'n Vac and Spray 'n Brush) relating to R&C's rug

cleaning products, except that R&C may require the Acquirer to grant to R&C a license, for a reasonable royalty, for a period of not longer than three (3) years, to sell household products other than rug cleaning products under the Glamorene trademark;

3) A list of stock keeping units ("SKUs"), *i.e.*, all forms, package sizes and other units in which each R&C rug cleaning product is sold and which are used in records of sales and inventories;

4) A Bill of Materials for each R&C rug cleaning product, consisting of full manufacturing standards and procedures, quality control specifications, specifications for raw materials and components, including lists of authorized sources for materials and components;

5) All artwork and mechanical drawings currently in use relating to the R&C rug cleaning products;

6) All dedicated molds and equipment currently in use for R&C's rug cleaning products;

7) A list of all customers who have bought R&C's rug cleaning products from 1989 to the present, including the most recent file of names, addresses, and telephone numbers of the individual customer contacts, and the unit and dollar amounts of sales, by product, to each customer;

8) All currently available marketing information in the possession of R&C relating to R&C's rug cleaning products and the rug cleaning business generally, including but not limited to R&C's consumer and trade promotional programs for 1987, 1988, 1989, and 1990, and any existing plans for 1991, *provided, however* that marketing information relating to Woolite obtained by R&C after the acquisition shall not be provided to the Acquirer;

9) All inventories of finished goods, packaging, and unique raw materials relating to R&C's rug cleaning products;

10) All names of manufacturers under contract with R&C to produce R&C's rug cleaning products from 1988 to the present;

11) All product testing and laboratory research data from January 1, 1987 until the Assets to be Divested are divested pursuant to this order relating to R&C's rug cleaning products, including but not limited to toxicity research data, all regulatory registrations and correspondence;

12) All consumer correspondence and related documents from January 1, 1987 until the Assets to be Divested are divested pursuant to this order relating to R&C rug cleaning products business;

13) All price lists for R&C's rug cleaning products from January 1, 1987 to the present;

14) All information from January 1, 1987 until the Assets to be Divested are divested pursuant to this order relating to costs of production for each of R&C's rug cleaning products, including but not limited to raw material costs, packaging costs, and advertising and promotional costs;

15) All sales data relating to R&C's rug cleaning products, from 1987 until the Assets to be Divested are divested pursuant to this order;

16) All assignable agreements relating to Good Housekeeping Approvals for R&C's rug cleaning products.

J. "*Woolite's rug cleaning products*" means Woolite's home rug cleaning products, Woolite Deep Cleaning Carpet Cleaner, Woolite Self Cleaning Carpet Cleaner, Woolite Spot & Stain Remover and Woolite Upholstery Cleaner, which are applied by aerosol or pump spray or in liquid form and which are sold primarily in grocery and general merchandise stores.

K. "*Woolite's rug cleaning products business*" means the business of manufacturing, marketing, and selling Woolite's rug cleaning products.

L. "*Woolite's Assets to be Divested*" means the following assets constituting or otherwise related to Woolite's rug cleaning products business:

1) The Woolite product line Profit and Loss Statements for 1987, 1988, 1989, and 1990 relating to each of R&C's rug cleaning products;

2) A royalty-free license to use the Woolite trademarks for all Woolite rug cleaning products;

3) A list of stock keeping units ("SKUs"), *i.e.*, all forms, package sizes and other units in which each Woolite rug cleaning product is sold and which are used in records of sales and inventories;

4) A Bill of Materials for each Woolite rug cleaning product, consisting of full manufacturing standards and procedures, quality control specifications, specifications for raw materials and components, including lists of authorized sources for materials and components;

5) All artwork and mechanical drawings currently in use relating to the Woolite rug cleaning products;

6) All dedicated molds and equipment currently in use for Woolite's rug cleaning products;

7) A list of all customers who have bought Woolite's rug cleaning

products from 1989 to the present, including the most recent file of names, addresses, and telephone numbers of the individual customer contacts, and the unit and dollar amounts of sales, by product, to each customer;

8) All currently available marketing information in the possession of R&C relating to Woolite's rug cleaning products and the rug cleaning business generally, including but not limited to Woolite consumer and trade promotional programs for 1987, 1988, 1989, and 1990, and any existing plans for 1991;

9) All inventories of finished goods, packaging, and unique raw materials relating to Woolite rug cleaning products;

10) All names of manufacturers under contract with Woolite to produce Woolite's rug cleaning products from 1988 to the present;

11) All product testing and laboratory research data from January 1, 1987 until the Woolite Assets to be Divested are divested pursuant to this order relating to Woolite's rug cleaning products, including but not limited to toxicity research data, all regulatory registrations and correspondence;

12) All consumer correspondence and related documents from January 1, 1987 until the Woolite Assets to be Divested are divested pursuant to this order relating to Woolite rug cleaning products business;

13) All price lists for Woolite's rug cleaning products from January 1, 1987 to the present;

14) All information from January 1, 1987 until the Woolite Assets to be Divested are divested pursuant to this order relating to costs of production for each of Woolite's rug cleaning products, including but not limited to raw material costs, packaging costs, and advertising and promotional costs;

15) All sales data relating to Woolite's rug cleaning products, from 1987 until the Woolite Assets to be Divested are divested pursuant to this order;

16) All assignable agreements relating to Good Housekeeping Approvals for Woolite's rug cleaning products.

II.

It is ordered, That:

A. R&C shall divest, absolutely and in good faith, within eight (8)

months of the date this order becomes final, the R&C Assets to be Divested.

B. R&C shall divest the R&C Assets to be Divested only to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the R&C Assets to be Divested is to ensure the continuation of the R&C Assets to be Divested as an ongoing, viable enterprise and to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's complaint.

C. R&C shall comply with all terms of the Hold Separate Agreement, attached hereto and made a part hereof as Appendix I. Said agreement shall continue in effect until such time as R&C has divested the R&C Assets to be Divested or until such time as R&C has divested the Woolite Assets to be Divested or until such other time as the Hold Separate Agreement provides.

D. R&C shall take such action as may be necessary to maintain the viability and marketability of the R&C and Woolite Assets to be Divested and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any of the R&C and Woolite Assets to be Divested except in the ordinary course of business and except for ordinary wear and tear that does not affect the viability and marketability of the Assets to be Divested.

III.

It is further ordered, That:

A. If R&C has not divested, absolutely and in good faith and with the Commission's approval, the R&C Assets to be Divested within eight (8) months of the date this order becomes final, and if an application for Commission approval of such divestiture is not pending before the Commission, R&C shall divest the Woolite Assets to be Divested within six (6) months thereafter only to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. If R&C has not divested the Woolite Assets to be Divested within that subsequent six (6) month period, R&C shall consent to the appointment by the Commission of a trustee to divest the Woolite Assets to be Divested. *Provided, however,* that if the Commission has not approved or disapproved a proposed divestiture within 120 days of the date the

application for such divestiture has been put on the public record, the running of the divestiture period shall be tolled until the Commission approves or disapproves the divestiture. In the event the Commission or the Attorney General brings an action pursuant to Section 5 (l) of the Federal Trade Commission Act, 15 U.S.C. 45 (l), or any other statute enforced by the Commission, R&C shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5 (l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by R&C to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A of this order, R&C shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of R&C, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to divest the Woolite Assets to be Divested.

3. The trustee shall have twelve (12) months from the date of appointment to accomplish the divestiture. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may only extend the divestiture period two (2) times.

4. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Woolite Assets to be Divested, or any other relevant information, as the trustee may reasonably request. R&C shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. R&C shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by R&C shall extend the time for divestiture under this paragraph in an amount equal to

the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to R&C's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in paragraph II.B of this order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each Acquirer for the divestiture of the Woolite Assets to be Divested. The divestiture shall be made in the manner set out in paragraph II, *provided, however*, if the trustee receives bona fide offers from more than one Acquirer, and if the Commission determines to approve more than one such Acquirer, the trustee shall divest to the Acquirer selected by R&C from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of R&C, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of R&C, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of R&C and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Woolite Assets to be Divested.

7. R&C shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this order.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, R&C shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A of this order.

10. The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Woolite Assets to be Divested.

12. The trustee shall report in writing to R&C and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV.

It is further ordered, That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until R&C has fully complied with the provisions of paragraphs II and III of this order and with the Hold Separate Agreement, R&C shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with those provisions. R&C shall include in its compliance reports, among other things that are required from time to time, a full description of the contacts or negotiations with respect to divestiture, including the identity of all parties contacted. R&C also shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

V.

It is further ordered, That:

For a ten (10) year period commencing on the date this order becomes final, R&C shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise, any interest in, or the whole or any part of the stock or share capital of, any person or business that is engaged in the rug cleaning products business in the United States, or, except in the ordinary course of business, any assets used or previously used in (and still suitable for use in), the rug cleaning products business. One year from the date this order becomes final and annually for nine years thereafter, R&C shall file with the Federal Trade Commission a verified written report of its compliance with this paragraph.

VI.

It is further ordered, That for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to R&C made to the principal office of R&C's United States subsidiary, Reckitt & Colman Inc., R&C shall permit any duly authorized representatives of the Federal Trade Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of R&C relating to any matters contained in this order; and

B. Upon five days notice to R&C, made to Reckitt & Colman Inc., and without restraint or interference from R&C, to interview officers or employees of R&C, who may have counsel present, regarding such matters.

VII.

It is further ordered, That R&C shall notify the Commission at least thirty (30) days prior to any change in the corporation such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change that may affect compliance obligations arising out of the order.

HOLD SEPARATE AGREEMENT

This Hold Separate Agreement (the "Agreement") is by and among Reckitt & Colman plc ("R&C"), a corporation organized, existing, and doing business under and by virtue of the laws of England, with its office and principal place of business at One Burlington Lane, London 4W 2RW, England, which does business in the United States through its wholly-owned subsidiary Reckitt & Colman Inc., with its offices and principal place of business at 1655 Road, Wayne, New Jersey; and the Federal Trade Commission ("the Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

PREMISES

Whereas, on March 9, 1990, R&C entered into an agreement in principle with American Home Products Corporation ("AHP") to acquire all the voting securities of the Boyle-Midway Division of AHP, consisting of four directly or indirectly, wholly-owned subsidiaries of AHP (hereinafter "acquisition"); and

Whereas, Boyle-Midway, with its principal office and place of business located at 685 Third Avenue, New York, New York, produces and markets, among other things, rug cleaning products; and

Whereas, the Commission is now investigating the acquisition to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of R&C's rug cleaning products business during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Assets to be Divested as described in paragraph I of the Consent Order and the Commission's right to have R&C's rug cleaning products business continued as a viable competitor; and

Whereas, the purpose of the Agreement and the Consent Order is to:

1. Preserve the viability of R&C's rug cleaning products business pending the divestiture of the Assets to be Divested, as defined in paragraph I.I of the Consent Order, as a viable and ongoing enterprise,
2. Remedy any anticompetitive effects of the acquisition, and
3. Preserve R&C's rug cleaning products business as an ongoing, viable rug cleaning products business until divestiture is achieved; and

Whereas, R&C's entering into this Agreement shall in no way be construed as an admission by R&C that the acquisition is illegal; and

Whereas, R&C understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws of the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon the understanding that the Commission has not yet determined whether the acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from R&C with respect to the acquisition, except that the Commission may exercise any and all rights to enforce this Hold Separate Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Assets to be Divested pursuant to the Consent Order, as follows:

1. R&C agrees to execute and be bound by the attached Consent Order.

2. R&C agrees that from the date this Agreement is accepted until the earlier of the dates listed in subparagraphs 2.a and 2.b, it will comply with the provisions of paragraph 3 of this Agreement:

- a. Three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

- b. The day after the divestiture required by the Consent Order has been completed.

3. Because complete isolation of R&C's rug cleaning products business from R&C's marketing and sales operations could cause irreparable harm to that business and make it difficult or impossible to divest the Assets to be Divested as an ongoing, viable rug cleaning products business, R&C will manage and maintain the Assets to be Divested, as they are presently constituted, on the following terms and conditions:

- a. R&C shall appoint four individuals, one each from among R&C's current employees working in R&C's marketing, sales, materials management, and finance operations to manage and maintain R&C's rug cleaning products business. These individuals ("the management team") shall manage R&C's rug cleaning products business indepen-

dently of the management of R&C's other businesses, except that these individuals will arrange for the rug cleaning products (Spray 'n Vac, Apply 'n Vac, and Spray 'n Brush) to be marketed and sold by R&C's marketing and sales forces. The management team shall not thereafter until the Assets to be Divested are divested pursuant to the Consent Order be in any way involved in the marketing, selling or materials management of any competing Woolite product.

b. The management team, in its capacity as such, shall report directly and exclusively to an independent auditor/manager, to be appointed by R&C. The independent auditor/manager shall have exclusive control over the operations of R&C's rug cleaning products business, with responsibility for the management of R&C's rug cleaning products business and for maintaining the independence of that business.

c. R&C shall not exercise direction or control over, or influence directly or indirectly the independent auditor/manager or the management team or any of its operations relating to the operations of R&C's rug cleaning products business or the Assets to be Divested; *provided, however*, that R&C may exercise only such direction and control over the management team and the Assets to be Divested as is necessary to assure compliance with this Agreement.

d. R&C shall maintain the viability and marketability of the Assets to be Divested and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability.

e. Except for the management team, R&C shall not permit any other R&C employee, officer, or director to be involved in the management of the Assets to be Divested, except to the extent the services of R&C's sales, marketing, and materials management personnel are necessary as set forth in subparagraph 3.a.

f. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the acquisition, defending investigations or litigation, or negotiating agreements to divest assets, R&C shall not receive or have access to, or the use of, any material confidential information about R&C's rug cleaning products business or the activities of the management team in managing that business not in the public domain nor shall the management team receive or have access to, or the use of, any material confidential information about any competitive Woolite product or the activities of R&C in managing the Woolite business not

in the public domain. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set forth in this subparagraph. ("*Material confidential information*," as used herein, means competitively sensitive or proprietary information not independently known to R&C from sources other than the management team, and includes but is not limited to customer lists, price lists, marketing methods (except to the extent marketing and sales plans need to be divulged to the R&C marketing and sales force in the ordinary course of business), patents, technologies, processes, or other trade secrets.)

g. R&C shall not change the composition of the management team and the independent auditor/manager shall have the power to remove employees only for cause.

h. All material transactions, out of the ordinary course of business and not precluded by subparagraphs 3.a–3.g hereof, shall be subject to a majority vote of the management team. In case of a tie, the independent auditor/manager shall cast the deciding vote.

i. R&C shall establish written procedures to be approved by the independent auditor/manager, covering the management, maintenance, and independence of R&C's rug cleaning products business and the conduct of the management team in accordance with this Agreement. R&C shall also circulate to its employees and appropriately display a notice of this Hold Separate Agreement and Consent Order in the form attached hereto as Appendix A.

j. All earnings and profits of R&C's rug cleaning products business shall be available for use in that business until divestiture. In computing earnings and profits for R&C's rug cleaning products business until divestiture, R&C shall deduct from revenues generated by R&C's rug cleaning products business all direct product costs and indirect overheads allocated to that business. R&C shall make available for use in its rug cleaning products business until divestiture an amount not lower than an annualized \$1.7 million for advertising and consumer and trade promotion of the rug cleaning products, and shall pay all direct product costs and indirect overheads for its rug cleaning products business. R&C's rug cleaning products business shall not be charged with the compensation and expenses of the independent auditor/manager.

k. Should the Federal Trade Commission seek in any proceeding to compel R&C to divest itself of the R&C Assets to be Divested or the Woolite Assets to be Divested, as defined in the Consent Order, R&C

shall not raise any objection based on the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the acquisition. R&C also waives all rights to contest the validity of this Agreement.

4. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to R&C made to its principal office in the United States, R&C shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of R&C and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of R&C relating to compliance with this Agreement;

b. Upon five (5) days notice to R&C, and without restraint or interference from it, to interview officers or employees of R&C, who may have counsel present, regarding any such matters.

c. Information obtained by the Commission pursuant to this provision shall be given confidential treatment pursuant to Sections 6(f) and 21(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f) and 56(f).

5. This agreement shall not be binding until approved by the Commission.

APPENDIX A

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Reckitt & Colman ("R&C") has entered into a Consent Order and Hold Separate Agreement with the Federal Trade Commission relating to the divestiture of certain R&C rug cleaning assets and products, including Spray 'n Vac, Apply 'n Vac and Spray 'n Brush. Until such assets and products are divested, they must be managed and maintained as a separate, ongoing business, independent of all other competing product lines of R&C. All competition information relating to these three product lines must be retained and maintained by the persons responsible for the management of these products on a confidential basis and such persons shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing any such

information to or with any other person whose employment involves any R&C competing rug cleaning product, including Woolite. Similarly, all such persons responsible for the management of Woolite rug cleaning products, shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing any competition information about those products to or with any person responsible for Spray 'n Vac, Apply 'n Vac and Spray 'n Brush.

Any violation of the Consent Order or the Asset Management and Maintenance Agreement, incorporated by reference as part of the Consent Order, subjects the violator to civil penalties and other relief as provided by law.

IN THE MATTER OF
TWIN STAR PRODUCTIONS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-3307. Complaint, Oct. 2, 1990—Decision, Oct. 2, 1990**

This consent order prohibits, among other things, an infomercial marketing corporation and six individuals, all based in Scottsdale, Arizona, from making specified representations regarding the efficacy of certain purported weight loss, baldness and impotence products; from making unsubstantiated efficacy claims concerning weight loss, baldness and impotence for any products or services; from using endorsements, unless the respondents have good reason to believe that the endorsements reflect the honest opinion or belief of the endorser; from disseminating four different infomercials, including a 30-minute advertisement for a book; and from misrepresenting that their commercials are independent programs and not paid advertising. In addition, the consent order requires the corporation and five of the six individuals to pay a total of \$1.5 million in consumer redress.

Appearances

For the Commission: *Tracy S. Thorleifson, Charles A. Harwood and Patricia A. Hensley.*

For the respondents: *Robert Fleishman, Steptoe & Johnson, Washington, D.C. and Sheldon Lustigman, New York, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Twin Star Productions, Inc., a corporation, and Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have 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:

*Prior to leaving the commission, former Commissioner Calvani registered a vote in the affirmative for issuing the complaint and the order in this matter.