

IN THE MATTER OF
DIETHELM HOLDING (U.S.A.) LTD.

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 9244. Complaint, Nov. 28, 1990—Decision, Aug. 19, 1991*

This consent order requires, among other things, a New York based producer of telescopes, for a period of ten years, to seek prior Commission approval for certain mergers or acquisitions.

Appearances

For the Commission: *Claudia R. Higgins* and *Steven A. Newborn*.

For the respondent: *Bernhardt K. Wruble, Verner, Liipfert, Bernhard, McPherson & Hand*, Washington, D.C.

DECISION AND ORDER

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

Respondent Diethelm, 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The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and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 there-

*Complaint previously published at 114 FTC 503.

upon 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Diethelm is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business located at 17 Gina Drive, in the City of Centerport, in the State of New York.

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 purposes of this order, the following definitions shall apply:

“*Diethelm USA*” means Diethelm Holding (U.S.A.) Ltd., 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.

“*Celestron*” means Celestron International, a subsidiary of Diethelm USA, 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.

“*SCTs*” means mid-sized Schmidt-Cassegrain telescopes with apertures of eight (8) to eleven (11) inches used for astronomical viewing.

II.

It is ordered, That for a period commencing on the date this order becomes final and continuing for ten (10) years, Diethelm USA shall not acquire, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock, share capital, equity interest, or assets that have at any time been used in the manufacture or sale of SCTs, other than purchases of manufactured product in the ordinary course of business,

of any company engaged in the manufacture or sale of SCTs in the United States, *provided*, this paragraph shall not require Diethelm USA to obtain prior approval of the Commission to purchase a foreign company that established its SCT manufacturing pursuant to contract with Diethelm USA and who, pursuant to such contract, may sell SCTs in the United States only to or through Diethelm USA or under the Celestron tradename.

III.

It is further ordered, That Diethelm USA shall require, as a condition precedent to the closing of any sale or other disposition of all or a substantial part of the stock of Celestron, or a substantial part of the assets of Celestron to any party that is engaged in or to the best of Diethelm USA's knowledge upon reasonable inquiry, is planning to, considering or contemplating engaging in the manufacture of SCTs in the United States or elsewhere for sale in the United States, that the acquiring party file with the Commission, prior to the closing of such sale or other disposition, a written agreement to be bound by the provisions of this order.

IV.

It is further ordered, That Diethelm USA shall within sixty (60) days after this order becomes final and one year from the date this order becomes final and annually for nine (9) years thereafter, file with the Commission a verified written report setting forth in detail the manner and form in which it has complied and intends to comply with this order.

V.

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 Diethelm USA made to its principal office, Diethelm USA 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 Diethelm USA relating to any matters contained in this order; and

(B) Upon five days notice to Diethelm USA and without restraint or interference from Diethelm USA, to interview officers or employees of Diethelm USA, who may have counsel present, regarding such matters.

VI.

It is further ordered, That Diethelm USA shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation or partnership, the creation, dissolution or sale of subsidiaries (except subsidiaries not engaged in any manner, directly or indirectly, in the manufacture or sale of SCTs), including, but not limited to, sale of the stock or assets of Celestron or any other change that may affect compliance obligations arising out of this order.

IN THE MATTER OF

JEROME RUSSELL COSMETICS, U.S.A., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3341. Complaint, Aug. 21, 1991—Decision, Aug. 21, 1991*

This consent order prohibits, among other things, a California-based cosmetic company and its owner from representing that any product containing a Class I ozone-depleting substance will not damage the ozone layer, and from making unsubstantiated claims that any product containing an ozone-depleting substance offers environmental benefits.

Appearances

For the Commission: *Michael Dershowitz.*

For the respondents: *Robert E. Reimer*, Los Angeles, CA.

COMPLAINT

The Federal Trade Commission, having reason to believe that Jerome Russell Cosmetics, U.S.A., a corporation, and David Jerome Marcus, individually and as an officer of said corporation hereinafter sometimes referred to as respondents, have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Jerome Russell Cosmetics, U.S.A., Inc. is a California corporation, with its office and principal place of business located at 19515 Business Center Drive, Northridge, California.

Respondent David Jerome Marcus is an officer of the corporate respondent named herein. He formulates, directs, and controls the acts and practices of the corporate respondent as hereinafter set forth. His address is the same as that of the corporation.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents have advertised, offered for sale, sold and distributed certain products containing the chemical 1,1,1 - Trichloroethane to the public, including but not limited to the following: