

## IN THE MATTER OF

## MANNESMANN, A. G.

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-3378. Complaint, Mar. 24, 1992--Decision, Mar. 24, 1992*

This consent order requires, among other things, a German company to divest the Buschman Co. within 12 months to a Commission approved buyer, and to hold separate the assets in the interim. If the divestiture is not completed within 12 months, the Commission will appoint a trustee to complete the divestiture. In addition, respondent is required for 10 years to obtain Commission approval prior to acquiring any business that manufactures and sells in the United States certain conveyor systems.

*Appearances*

For the Commission: *Robert W. Doyle, Jr., Ann Malester and Michael R. Moiseyev.*

For the respondent: *Tom Smith, Jones, Day, Reavis & Pogue, Washington, D.C. Ira Sachs, Sried Frank, Larry Sands and Eric Queen, Sried, Frank, Harris, Schrivert & Jacobson, New York, N.Y.*

## COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Mannesmann, A.G. ("Mannesmann"), which for purposes of this proceeding, is a corporation subject to the jurisdiction of the Commission through the activities of its wholly-owned subsidiary Mannesmann Capital Corporation ("MCC"), proposes to acquire substantially all of the assets of Rapistan Corp. ("Rapistan") from Rapistan, a wholly-owned subsidiary of Lear Siegler Holdings Corp. ("LSH"), 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"), as amended, 15 U.S.C. 45, and it appearing to the Commission that proceeding in respect thereof

would be in the public interest, hereby issues its complaint pursuant to Section 11 of the Clayton Act, as amended, 15 U.S.C. 21 and Section 5(b) of the Federal Trade Commission Act, as amended, 15 U.S.C. 45(b), stating its charges as follows:

#### I. THE RESPONDENT

1. Respondent Mannesmann is a corporation organized and existing under the laws of the Federal Republic of Germany, with its offices and principal place of business at Mannesmannufer, 2, Postfach 55 01, 4000 Dusseldorf, 1, F.R. Germany. Mannesmann's wholly-owned subsidiary, MCC, with its office and principal place of business at 450 Park Avenue, 24th Flr., New York, N.Y. does business in the United States.

2. The Buschman Company ("Buschman"), a wholly-owned subsidiary of MCC, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its offices and principal place of business at 10045 International Boulevard, Cincinnati, Ohio.

3. For purposes of this proceeding, Mannesmann and Buschman are, and at all times relevant herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose businesses are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

#### II. THE ACQUIRED COMPANY

4. LSH is a corporation organized and existing under the laws of Delaware, with its office and principal place of business at Suite 105, 220 South Orange Avenue, Livingston, New Jersey.

5. LSH 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.

6. Rapistan, the assets of which are to be acquired by Mannesmann, is a corporation whose voting securities are indirectly wholly-owned by LSH.

7. Rapistan 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 ACQUISITION

8. On or about June 28, 1991, MCC, a wholly-owned subsidiary of Mannesmann, and Demag Acquisition Corporation, a wholly-owned subsidiary of MCC, agreed to acquire all, or substantially all, of the assets of Rapistan from LSH. The parties wish to consummate the transaction in November 1991, or as soon thereafter as possible.

### IV. THE RELEVANT MARKET

9. For purposes of this complaint, the relevant line of commerce in which to analyze Mannesmann's acquisition of all, or substantially all, of the assets of Rapistan, a wholly-owned subsidiary of LSH, is the manufacture and sale of high speed, light-to-medium duty unit handling roller and belt conveyor systems for distribution end uses. A "high speed, light-to-medium duty unit handling roller and belt conveyor system" transports, conveys, diverts, scans and sorts cartons, each of which generally weighs no more than 75 pounds, at a rate of speed of no less than 80 cartons per minute.

10. For purposes of this complaint, the relevant geographic market is the United States.

11. The relevant market set forth in paragraphs 9 and 10 is highly concentrated, whether measured by Herfindahl-Hirschmann Indices or two-firm and four-firm concentration ratios.

12. Entry into the relevant market is difficult.

13. Mannesmann, through Buschman, and LSH, through Rapistan, are actual competitors in the relevant market.

## V. EFFECTS OF THE ACQUISITION

14. 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, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the following ways, among other:

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

## VI. VIOLATIONS CHARGED

15. The acquisition agreement described in paragraph eight constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

16. The acquisition described in paragraph eight, 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 violations 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 charge 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 prescribed 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 is a corporation organized, existing, and doing business under and by virtue of the laws of the Federal Republic of Germany, with its office and principal place of business at Mannesmannufer 2, Postfach 55 01, 4000 Dusseldorf, 1, F.R. Germany. Mannesmann's wholly-owned subsidiary, Mannesmann Capital Corporation ("MCC"), is a corporation organized, existing, and doing business under and by virtue of the laws of New York, with its office and principal place of business at 450 Park Avenue, 24th Flr., New York, New York. MCC does business in the United States.

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. "*Mannesmann*" means Mannesmann, A. G., its predecessors, successors and assigns, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates that Mannesmann A. G.

controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, that Mannesmann A. G. controls, directly or indirectly, and their respective successors and assigns.

B. "*Acquisition*" means the acquisition by MCC, a wholly-owned subsidiary of Mannesmann, and Demag Acquisition Corporation, a wholly-owned subsidiary of MCC, of substantially all of the assets of Rapistan Corp., a wholly-owned subsidiary of Lear Siegler Holdings Corp.

C. "*The Buschman assets*" means all of the share capital and all, or substantially all, of the assets of The Buschman Company, a wholly-owned subsidiary of MCC.

D. "*Conveyor systems*" means high speed, light-to-medium duty unit handling roller and belt conveyors for distribution end uses that transport, convey, divert, scan and sort cartons, each of which generally weighs no more than 75 pounds, at a rate of speed of no less than 80 cartons per minute.

## II.

*It is ordered, That:*

A. Within twelve (12) months of the date this order becomes final, Mannesmann shall divest, absolutely and in good faith, the Buschman assets.

B. Mannesmann shall divest the Buschman assets only to an acquirer or acquirers that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission which approvals shall not unreasonably be withheld. The purpose of the divestiture of the Buschman assets is to ensure the continuation of the Buschman assets 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. Mannesmann shall comply with all terms of the Hold Separate Agreement ("Hold Separate"), attached hereto and made a part hereof as Appendix I. Said Hold Separate Agreement shall continue to be in effect until such time as the Hold Separate provides.

D. Mannesmann shall take such action as is necessary and reasonable to maintain the viability and marketability of the Buschman assets and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any assets or businesses it may have to divest except in the ordinary course of business and except for ordinary wear and tear.

### III.

*It is further ordered, That:*

A. If Mannesmann has not divested, absolutely and in good faith and with the Commission's prior approval, the Buschman assets as required by paragraph II of this agreement, Mannesmann shall consent to the appointment by the Commission of a trustee to divest the Buschman assets. 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, Mannesmann 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 Mannesmann 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, Mannesmann shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Mannesmann, 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 Buschman assets.

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 or by the court (in the case of a court-appointed trustee). *Provided, however,* the Commission may only extend the trustee's divestiture period one time for such reasonable time as the trustee may request, not to exceed one (1) additional year.

4. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Buschman assets, or any other relevant information as the trustee may reasonably request. Mannesmann shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Mannesmann shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Mannesmann 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 Mannesmann'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 prospective acquirer of the Buschman assets. 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 prospective acquirer or acquirers, and if the Commission approves more than one such proposed acquirer, the trustee shall divest to the acquirer selected by Mannesmann from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of Mannesmann, 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 Mannesmann, 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 or, 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 Mannesmann 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 Buschman assets.

7. Mannesmann shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trusteeship, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith by the trustee.

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

11. The trustee shall have no obligation or authority to operate or maintain the Buschman assets.

12. The trustee shall report in writing to Mannesmann and to the Commission every thirty (30) 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 Mannesmann has fully complied with the provisions of paragraphs II and III of this order, Mannesmann 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. Mannesmann shall include in its compliance reports, among other things that are required from time to time, a full description of substantive contacts or negotiations for the divestiture, including the identity of all parties contacted. Mannesmann 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 period commencing on the date this order becomes final, and continuing for ten (10) years, Mannesmann 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, assets of, or the whole or any part of the stock or share capital of, any person or business that is engaged in the manufacture and sale in the United States of conveyor systems. One year from the date this order becomes final and annually thereafter for nine years on the anniversary date of this order, Mannesmann shall file with the Secretary of the Federal Trade Commission a verified written report of its compliance with this paragraph.

## VI.

*It is further ordered,* That, if, in the absence of an acquisition agreement with an entity that neither owns nor operates nor has any interest in assets located in the United States, engaged in the manufacture or sale of conveyor systems (hereinafter "acquired entity"), Mannesmann announces its intention to acquire or com-

mences an acquisition of, any interest in the acquired entity and, before Mannesmann obtains sufficient control of the acquired entity to prevent an acquisition by the acquired entity, such acquired entity acquires any of the outstanding stock or share capital of, or any other interest in assets used for the manufacture and sale of conveyor systems (hereinafter "third entity"), or said acquired entity acquires any assets used in the manufacture and sale of conveyor systems, if approval of such acquisition would be required pursuant to paragraph V, Mannesmann may, in lieu of obtaining prior approval of such acquisition under paragraph V in this order, comply with each of the requirements of this paragraph VI of this agreement. In order to make such an acquisition without obtaining the Commission's prior approval pursuant to paragraph V, Mannesmann shall:

(A) Notify the Commission as soon as practicable, and in any event, within three (3) days of Mannesmann's learning of the acquisition by the acquired entity of any interest in a third entity, as described in paragraph VI of this order. Such notification shall follow the format for filings set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended. Such notification shall be in addition to any reporting, waiting period, and other requirements applicable to the transaction under Section 7A of the Clayton Act, 15 U.S.C. 18a and the Commission's Premerger Reporting Rules promulgated thereunder, 16 CFR Parts 801, 802, 803.

(B) In the case where the acquired entity acquired assets used in the manufacture and sale of conveyor systems, Mannesmann shall comply with all terms of the Hold Separate, attached to this order and made a part hereof. Said Hold Separate shall take effect as soon as Mannesmann has sufficient control over the acquired entity to satisfy the terms of the Hold Separate and shall continue in effect until such time as Mannesmann has divested all the conveyor systems assets acquired by the acquired entity or until such other time as the Hold Separate provides. In the case where the acquired entity acquired stock or share capital of the third entity, as soon as Mannesmann has sufficient control over the acquired entity to do so, Mannesmann shall place all stock and share capital of the third entity in a non-voting trust until said stock or share capital is divested.

(C) Within three (3) months of the date when Mannesmann has sufficient control over the acquired entity to divest assets, stock or share capital of the acquired entity, Mannesmann shall:

1. In the case where the acquired entity acquired stock or share capital of the third entity, divest, absolutely and in good faith, the stock or share capital of the third entity; or

2. In the case where the acquired entity acquired assets used in the manufacture and sale of conveyor systems, divest, absolutely and in good faith, all the conveyor systems assets of the acquired entity and also divest such additional ancillary assets and effect such arrangements that are necessary to assure the viability and competitiveness of the conveyor systems assets of the acquired entity.

(D) Mannesmann shall divest the stock or share capital of the third entity or the conveyor systems assets of the acquired entity only to an acquiring entity or entities that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. In the case where the acquired entity acquired assets used in the manufacture and sale of conveyor systems, Mannesmann shall demonstrate the viability and competitiveness of the conveyor systems assets of the acquired entity in its application for approval of a proposed divestiture. The purpose of the divestiture is to ensure the continuation of the assets as ongoing, viable businesses engaged in the manufacture and sale of conveyor systems, and to remedy any lessening of competition resulting from the acquisition.

(E) In the case where the acquired entity acquired assets used in the manufacture and sale of conveyor systems, Mannesmann shall take such action as is necessary to maintain the viability, competitiveness and marketability of the conveyor systems assets of the acquired entity and shall not cause or permit the destruction, removal or impairment of any assets or businesses it may have to divest except in the ordinary course of business and except for ordinary wear and tear.

(F) If Mannesmann has not divested, absolutely and in good faith and with the Commission's prior approval, the stock or share capital of the third entity or the conveyor systems assets of the acquired entity within three (3) months of the date when Mannesmann has

sufficient control over the acquired entity to divest assets, stock or share capital of the acquired entity, Mannesmann shall consent to the appointment by the Commission of a trustee to divest:

1. The stock or share capital of the third entity; or
2. The conveyor systems assets of the acquired entity and to divest such additional ancillary assets of the acquired entity and effect such arrangements that may be necessary to assure the viability and competitiveness of the conveyor systems assets of the acquired entity.

(G) In the event the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, as amended, 15 U.S.C. 45(l), or any other statute enforced by the Commission, Mannesmann 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 Mannesmann to comply with this order.

(H) If a trustee is appointed by the Commission or a court pursuant to paragraph VI.(F) of this order, Mannesmann shall consent to the terms and conditions regarding the trustee's powers, authorities, duties and responsibilities set out in paragraph III. B. of this order. *Provided, however*, that each reference to "the Buschman assets" in paragraph III. B. of this order shall, for the purposes of this paragraph VI, mean either the "stock or share capital of the third entity" or the "conveyor systems assets of the acquired entity."

## VII.

*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 Mannesmann made to MCC, Mannesmann shall permit any duly authorized representatives of the 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 Mannesmann relating to any matters contained in this consent order; and

B. Upon five (5) days notice to Mannesmann, and without restraint or interference from Mannesmann, to interview officers or employees of Mannesmann, who may have counsel present, regarding such matters.

### VIII.

*It is further ordered*, That Mannesmann shall notify the Commission at least thirty (30) days prior to any change that may affect compliance obligations arising out of the consent order, including but not limited 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, and any other change.

### APPENDIX I

#### HOLD SEPARATE AGREEMENT

This Hold Separate Agreement ("Hold Separate") is by and among Mannesmann, A. G. ("Mannesmann" as defined in paragraph I of the proposed order), a corporation organized, existing and doing business under and by virtue of the laws of the Federal Republic of Germany, with its office and principal place of business at Mannesmann, 2, Postfach 55 01, 4000 Dusseldorf, 1, F.R. Germany; Mannesmann's wholly-owned subsidiary, Mannesmann Capital Corporation ("MCC"), with its offices and principal place of business at 450 Park Avenue, 24th Flr., New York, N.Y., which does business in the United States; and the Federal Trade Commission ("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 June 28, 1991, MCC, a wholly-owned subsidiary of Mannesmann, and Demag Acquisition Corporation, a wholly-owned subsidiary of MCC, entered into an agreement of purchase and sale with Lear Siegler Holdings Corp. ("LSH") to acquire substantially all of the assets of Rapistan Corp. ("Rapistan"), LSH's wholly-owned indirect subsidiary ("acquisition"); and

*Whereas*, Rapistan, with its principal office and place of business located at 507 Plymouth Avenue, N.E., Grand Rapids, Michigan, manufactures and sells, among other things, conveyor systems, as defined in paragraph I of the proposed order; and

*Whereas*, The Buschman Company ("Buschman"), with its principal office and place of business located at 10045 International Boulevard, Cincinnati, Ohio, manufactures and sells, among other things, conveyor systems, as defined in paragraph I of the proposed order, and is a wholly-owned subsidiary of MCC; 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 ("agreement"), 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 Mannesmann's conveyor systems, as defined in paragraph I of the proposed order, which it operates through Buschman, during the period prior to the final acceptance and issuance of the order by the Commission (after the 60-day public comment 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 Buschman assets, as defined in paragraph I of the proposed order, and the Commission's right to have Buschman continued as a viable competitor; and

*Whereas*, the purpose of the Hold Separate and the agreement is to:

1. Preserve Buschman as a viable, ongoing, independent manufacturer and supplier of conveyor systems, as defined in the order, pending divestiture of the Buschman assets as defined in paragraph I of the proposed order,
2. Remedy any anticompetitive effects of the Acquisition,
3. Preserve the Buschman assets as viable, ongoing assets engaged in the same business in which they are presently employed pending divestiture; and

*Whereas*, Mannesmann's entering into this Hold Separate shall in no way be construed as an admission by Mannesmann that the acquisition is illegal; and

*Whereas*, Mannesmann understands that no act or transaction contemplated by this Hold Separate shall be deemed immune or exempt from the provisions of the antitrust laws or 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, at the time it accepts the agreement for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the consent agreement, it will not seek further relief from Mannesmann with respect to the acquisition, except that the Commission may exercise any and all rights to enforce this Hold Separate and the agreement 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 Buschman pursuant to the agreement, as follows:

1. Mannesmann agrees to execute and be bound by the attached agreement.
2. Mannesmann agrees that from the date this Hold Separate is accepted until the earlier of the dates listed below in subparagraphs 2(a) through 2(c), it will comply with the provisions of this Hold Separate:

a. Three (3) business days after the Commission withdraws its acceptance of the consent agreement pursuant to the provisions of Section 2.34 of the Commission's Rules;

b. 120 days after publication in the Federal Register of the proposed order, unless by that date the Commission has issued its order in disposition of this proceeding; or

c. The day after the divestiture obligations required by the proposed order have been satisfied.

3. Mannesmann currently operates Buschman as an indirect, wholly-owned subsidiary, and as a direct wholly-owned subsidiary of MCC. Buschman management reports to The Buschman Company Board of Directors ("Buschman Board"). The Buschman Board is a five member body which consists of the following individuals: Michael D. Green, John Slater, Klaus Kirchesch, Dr. Helmut Noack, and Wolfgang Vogl. Dr. Helmut Noack and Wolfgang Vogl are current Mannesmann Demag A. G. officers having direct operational responsibility for Mannesmann's worldwide belt and roller conveyor business, and they will have responsibility for the operation of the Rapistan assets once the acquisition has been completed. Therefore, in order to ensure the complete independence and viability of Buschman and to assure that no competitive information is exchanged between Buschman and any of the other conveyor operations of Mannesmann, Mannesmann will hold Buschman's assets and businesses separate and apart on the following terms and conditions:

a. Buschman, as it is presently constituted, shall be held separate and apart and shall be operated independently of Mannesmann (meaning here and hereinafter, Mannesmann excluding Buschman); *provided however*, that Mannesmann may exercise only such direction and control over Buschman as is necessary to assure compliance with this Hold Separate, agreement, and order.

b. Mannesmann shall not exercise direction or control over, or influence directly or indirectly, Buschman or any of its operations or businesses; *provided, however*, that Mannesmann may exercise only such direction and control over Buschman as is necessary to assure compliance with this Hold Separate, agreement, and order.

c. Mannesmann shall take such action as is necessary and reasonable to maintain the viability and marketability of the Buschman assets and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any assets or businesses it may have to divest except in the ordinary course of business and except for ordinary wear and tear.

d. Within five (5) days of the date this Hold Separate is accepted by the Commission, Mannesmann shall remove Dr. Helmut Noack and Wolfgang Vogl from the Buschman Board and appoint Johann Lottner, Director of the accounting department for Mannesmann Demag, and John P. Dunn, a partner with Jones, Day, Reavis & Pogue, neither of whom have any present responsibilities for the management of any of Mannesmann's conveyor systems business in any part of the world. Each Buschman Board member, who is also a director, officer, employee, agent, or representative of Mannesmann, shall enter into a confidentiality agreement with Mannesmann agreeing to be bound by the terms and conditions of Appendix A, appended hereto.

e. The Buschman Board shall have exclusive authority for managing Buschman.

f. The individuals on the Buschman Board shall not be involved in any way in the marketing, selling, manufacturing, or management of Rapistan, or any other business of Mannesmann involved in the marketing, selling, manufacturing, or management of conveyor assets. Each of these individuals, the management of Buschman, and Mannesmann's directors, officers, or employees responsible for the operation or management of Rapistan and all other Mannesmann conveyor assets will receive the notification attached as Appendix A hereto.

g. If necessary to assure compliance with the terms of this Hold Separate, the agreement, and the order, Mannesmann may, but is not required to, assign an individual to Buschman for the purpose of overseeing such compliance ("on-site person"). The on-site person shall have access to all officers and employees of Buschman and such records of Buschman as he deems necessary and reasonable to assure compliance. Such individual shall enter into a confidentiality agreement with Mannesmann agreeing to be bound by the terms and conditions of Appendix A, appended hereto.

h. 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, Mannesmann shall not receive or have access to, or the use of, any material confidential information about Buschman or the activities of the Buschman Board in managing the business that is not in the public domain. Nor shall the Buschman Board, any individual member of the Buschman Board, or the on-site person receive or have access to, or the use of, any material confidential information about Mannesmann's conveyor assets or related businesses or activities not in the public domain. MCC may receive on a regular basis from Buschman aggregate financial information necessary and essential to allow MCC to prepare United States consolidated financial reports, tax returns, and personnel reports. Such information, when consolidated with data from other United States operations of Mannesmann by MCC, may be made available to Mannesmann. "Material confidential information," as used herein, means competitively sensitive or proprietary information, not independently known to Mannesmann from sources other than the Buschman Board and includes, but is not limited to, customer lists, price lists, bidding lists, marketing methods, marketing plans, sales plans, long range planning documents, patents, technologies, processes, or other trade secrets.

i. Except as required by subparagraph (d) above, Mannesmann shall not remove or replace any member of the Buschman Board, or the on-site person except as provided below:

(i) Mannesmann may remove and replace anyone for cause, death, disability, or resignation from service with Mannesmann;

(ii) Mannesmann may remove any member of the Buschman Board if a conflict of interest develops in that member's role as a potential purchaser of the Buschman Assets and that role as a manager of Buschman;

(iii) Subject to the requirements of paragraph 3 of the Hold Separate, Mannesmann may replace any member of the Buschman Board or officer of Buschman after providing the Commission with sixty (60) days advance written notice; and

(iv) Mannesmann may remove any individual who interferes in any way with Mannesmann's ability to comply with the terms of this Hold Separate, the agreement, or the order.

*Provided, however,* that each individual newly appointed to the Buschman Board, pursuant to this subparagraph, must conform to all terms and condition of this Hold Separate.

j. All earnings and profits of Buschman shall be retained separately in Buschman pending divestiture. Mannesmann shall provide Buschman with sufficient working capital to operate at the current rate of operation.

k. Should the Commission seek in any proceeding to compel Mannesmann to divest itself of the Buschman assets as defined in the proposed order, Mannesmann 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. Mannesmann also waives all rights to contest the validity of this Hold Separate.

4. To the extent that this Hold Separate or agreement requires Mannesmann to take, or prohibits Mannesmann from taking, certain actions which otherwise may be required or prohibited by contract, Mannesmann shall abide by the terms of the Hold Separate or order and shall not assert as a defense such contract requirements in a civil penalty action or any other action brought by the Commission to enforce the terms of this Hold Separate or order.

5. For the purpose of determining or securing compliance with this Hold Separate, subject to any legally recognized privilege, and upon written request with reasonable notice to Mannesmann made to MCC, its principal office in the United States, Mannesmann shall permit any duly authorized representative or representatives of the Commission:

(a) Access during the office hours of Mannesmann 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 Mannesmann relating to compliance with this Hold Separate;

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

6. This Hold Separate shall not be binding until approved by the Commission.

## APPENDIX A

### NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Mannesmann, A. G., ("Mannesmann") has entered into a Consent Agreement and Hold Separate Agreement with the Federal Trade Commission relating to the divestiture of its subsidiary, The Buschman Company ("Buschman"). Until after the Commission's order becomes final and Buschman is divested, it must be managed and maintained as a separate, ongoing business, independent of all other competing product lines of Mannesmann. All competitive information relating to Buschman must be retained and maintained by the persons responsible for the management of Buschman (including the Buschman Board of Directors) 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 competing Mannesmann business, including the operations of Rapistan Corp. Similarly, all such persons responsible for the management of Mannesmann's competing businesses shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing competitive information about such businesses to or with any person responsible for Buschman.

Any violation of the Consent Agreement or the Hold Separate 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  
TECH SPRAY, INC., ET AL.

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

*Docket C-3377. Complaint, Mar. 25, 1992--Decision, Mar. 25, 1992*

This consent order prohibits, among other things, a Texas corporation and its owner from making false and unsubstantiated environmental claims in the marketing of any product. In addition, the order requires respondents to maintain, for three years, all materials relied upon to substantiate any representations, and for a copy of the order to be distributed to each operating division.

*Appearances*

For the Commission: *Michael Dershowitz and Mary Koelbel Engle.*

For the respondents: *Robert D. Forrester, Gibson, Ochsner & Adkins, Amarillo, TX.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Tech Spray, Inc., a corporation, and Richard Russell, individually and as officer of said corporation ("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 Tech Spray, Inc. ("Tech Spray") is a Texas corporation with its office and principal place of business at 88 North Hughes Street, Amarillo, Texas.

Respondent Richard Russell is an officer of Tech Spray. He formulates, directs, and controls the acts and practices of Tech Spray. His business address is the same as that of Tech Spray.