

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders

IN THE MATTER OF

DENTSPLY INTERNATIONAL, INC.

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-3407. Complaint, Jan. 6, 1993--Decision, Jan. 6, 1993

This consent order requires, among other things, a Pennsylvania-based manufacturer of professional dental-care products to divest, within nine months of the order, all assets related to the manufacturing and marketing of its U.S. Valiant silver alloy product line to a Commission-approved purchaser. If the divestiture is not completed in the designated time-frame, the respondent is required to agree to a Commission-appointed trustee to divest its interest in the assets related to its Valiant Alloy products. In addition, the order requires a Hold Separate Agreement during any period in which the respondent possesses an ownership interest in the U.S. Valiant assets, and, for a 10-year period, requires the respondent to obtain Commission approval prior to acquiring any silver alloy manufacturer or distributor.

Appearances

For the Commission: *Casey Triggs* and *Steven A. Newborn*.

For the respondent: *J. Patrick Clark*, in-house counsel, York, PA. and *Judy Whalley*, *Howrey & Simon*, Washington, D.C.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Dentsply International, Inc., a corporation subject to the jurisdiction of the Federal Trade Commission, has agreed to acquire certain Professional Dental Care assets of Johnson & Johnson, 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 Commis-

sion 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. *Dentsply International, Inc.* (“Dentsply”) means Dentsply International, Inc., a corporation organized, existing, and doing business under and by the 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 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. *Johnson & Johnson* (“J&J”) means Johnson & Johnson, a corporation organized, existing, and doing business under and by virtue of the laws of New Jersey, 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 predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures.

3. “*Premium silver alloy business*” means the business of formulating, manufacturing, marketing and selling silver amalgam alloy products, perceived to be of high quality and consistency, used by dentists in the treatment of dental caries.

II. THE RESPONDENT

4. Respondent Dentsply is a corporation organized and existing under the laws of the State of Delaware, with its headquarters at 570 West College Avenue, York, Pennsylvania.

5. For purposes of this proceeding, Dentsply 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

6. J&J is a corporation organized and existing under the laws of the State of New Jersey, with its headquarters at One Johnson & Johnson Plaza, New Brunswick, New Jersey.

7. J&J 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.

IV. THE ACQUISITION

8. On or about April 27, 1992, Dentsply and J&J agreed to enter into an agreement whereby Dentsply will acquire certain professional dental assets of the Professional Dental Care Products division of J&J for a price of approximately \$62 million (“Acquisition”).

V. THE RELEVANT MARKET

9. For purposes of this complaint, the relevant line of commerce in which to analyze the Acquisition is the premium silver alloy business.

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

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

12. Entry into the relevant market is difficult.

13. Dentsply and J&J are actual competitors in the relevant market.

VI. 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, 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 Dentsply and J&J will be eliminated;

b. The likelihood of collusion in the relevant market would be increased.

15. All of the above increase the likelihood that firms in the relevant market will increase prices and restrict output both in the near future and in the long term.

VII. VIOLATIONS CHARGED

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

17. 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 the proposed acquisition by respondent of certain assets and businesses of Johnson & Johnson (“J&J”), and the respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition presented 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 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 Dentsply International, Inc. (“Dentsply”) is a corporation organized and existing under the laws of Delaware with its offices and principal place of business at 570 West College Avenue, York, Pennsylvania.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

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

A. “*Dentsply*” means Dentsply International, Inc., a corporation organized, existing, and doing business under and by the 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 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. “*J&J*” means Johnson & Johnson, a corporation organized, existing, and doing business under and by virtue of the laws of New Jersey, 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 predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnership and joint ventures.

C. “*Commission*” means the Federal Trade Commission.

D. “*Acquisition*” means the acquisition of certain assets of J&J’s Professional Dental Care Products division by Dentsply.

E. “*Acquirer*” means the party or parties to whom Dentsply divests the assets herein ordered to be divested.

F. “*Silver alloy*” means a metal-based alloy product which, when combined with mercury, forms an amalgam that is used to fill dental caries.

G. “*Valiant Products*” means Dentsply’s silver alloy products marketed in the United States under the names “Valiant,” “Valiant Ph.D,” “Valiant Snap-Set,” and “Valiant Extended Time.”

H. “*Valiant Business*” means Dentsply's business of manufacturing, marketing, and selling Valiant Products in the United States.

I. “*Valiant Assets*” means all assets constituting or otherwise related to the Valiant Business, including but not limited to:

1. All books, records, manuals, reports, dockets, lists, advertising and promotional materials and other documents relating to the Valiant Products;

2. Valiant product line Profit and Loss Statements relating to each of the Valiant Products;

3. All United States trademarks together with all trademark registrations and applications therefor relating to Valiant Products;

4. All lists of stock keeping units (“SKUs”); *i.e.*, all forms, package sizes and other units in which Valiant Products are sold and which are used in records of sales and inventories;

5. All Bills of Materials for each of the Valiant Products, consisting of full manufacturing standards and procedures, quality control specifications, specifications for raw materials and components, including all lists of authorized sources for materials and components;

6. All artwork and mechanical drawings currently in use relating to each of the Valiant Products;

7. All fixed assets listed on Schedule I hereto;

8. All lists of all customers, including but not limited to, distributors, dentists, and dental schools, who have bought Valiant Products, including all files of names, addresses, and telephone numbers of the individual customer contacts, and the unit and dollar amounts of sales, by product, to each customer;

9. All marketing information relating to Valiant Products, including but not limited to Dentsply's consumer and trade promotional, marketing and business programs;

10. All inventories of finished goods, packaging and unique raw materials relating to Valiant Products;

11. All names of manufacturers under contract with Dentsply to produce Valiant Products and all contracts with outside suppliers for formulations unique to the Valiant Products;

12. All product testing and laboratory research data relating to Valiant Products, including but not limited to toxicity research data, all regulatory registrations and correspondence;

13. All consumer correspondence and documents related to the Valiant Business;

14. All price lists for Valiant Products;

15. All information relating to costs of production for each of the Valiant Products, including but not limited to raw material costs, packaging costs, and advertising and promotional costs;

16. All sales data relating to Valiant Products;

17. A sublicense to make, use and sell certain technology in the U.S. related to the design for a sealed, mercury-tight dental mixing capsule under claims of certain patents owned by Ernest Muhlbauer K.G. and granted to Dentsply under a License Agreement dated November 26, 1979, as amended;

18. A sublicense to use and sell certain technology in the United States related to the formulation of the dental alloy used in the Valiant Products under claims of certain patents owned by Special Metals Corporation and granted to Dentsply under a License Agreement dated October 8, 1980, as amended; and

19. All patents and patent applications owned by Dentsply related to the Valiant Business and the formulas, processes, technology, know-how, trade secrets, manufacturing information, specifications, plans, drawings and data and other tangible embodiments of know-how used in the Valiant Business, including (without limitation) the technology and know-how required to manufacture commercially acceptable products.

J. “*Worldwide Valiant Products*” means Dentsply’s silver alloy products marketed anywhere in the world under the names “Valiant,” “Valiant Ph.D,” “Valiant Snap-Set,” and “Valiant Extended Time.”

K. “*Worldwide Valiant Business*” means Dentsply’s business of manufacturing, marketing, and selling Worldwide Valiant Products.

L. “*Worldwide Valiant Assets*” means all assets constituting or otherwise related to the Worldwide Valiant Business, including but not limited to:

1. All books, records, manuals, reports, dockets, lists, advertising and promotional materials and other documents relating to the Worldwide Valiant Products;
2. Valiant product line Profit and Loss Statements relating to each of the Worldwide Valiant Products;
3. All trademarks together with all trademark registrations and applications therefor relating to Worldwide Valiant Products;
4. All lists of stock keeping units (“SKUs”); *i.e.*, all forms, package sizes and other units in which Worldwide Valiant Products are sold and which are used in records of sales and inventories;
5. All Bills of Materials for each of the Worldwide Valiant Products, consisting of full manufacturing standards and procedures, quality control specifications, specifications for raw materials and components, including all lists of authorized sources for materials and components;
6. All artwork and mechanical drawings currently in use relating to each of the Worldwide Valiant Products;
7. All fixed assets listed on Schedule I hereto;
8. All lists of all customers, including but not limited to, distributors, dentists, and dental schools, who have bought Worldwide Valiant Products, including all files of names, addresses, and telephone numbers of the individual customer contacts, and the unit and dollar amounts of sales, by product, to each customer;
9. All marketing information relating to Worldwide Valiant Products, including but not limited to Dentsply’s consumer and trade promotional, marketing and business programs;
10. All inventories of finished goods, packaging and unique raw materials relating to Worldwide Valiant Products;
11. All names of manufacturers under contract with Dentsply to produce Worldwide Valiant Products and all contracts with outside suppliers for formulations unique to Worldwide Valiant Products;

12. All product testing and laboratory research data relating to Worldwide Valiant Products, including but not limited to toxicity research data, all regulatory registrations and correspondence;

13. All consumer correspondence and documents related to the Worldwide Valiant Business;

14. All price lists for Worldwide Valiant Products;

15. All information relating to costs of production for each of the Worldwide Valiant Products, including but not limited to raw material costs, packaging costs, and advertising and promotional costs;

16. All sales data relating to Worldwide Valiant Products;

17. A sublicense to make, use and sell certain technology in certain designated countries of the world related to the design for a sealed, mercury-tight dental mixing capsule under claims of certain patents owned by Ernest Muhlbauer K.G. and granted to Dentsply under a License Agreement dated November 26, 1979;

18. A sublicense to use and sell certain technology in the United States related to the formulation of the dental alloy used in the Worldwide Valiant Products under claims of certain patents owned by Special Metals Corporation and granted to Dentsply under a License Agreement dated October 8, 1980, as amended; and

19. All patents and patent applications owned by Dentsply related to the Worldwide Valiant Business and the formulas, processes, technology, know-how, trade secrets, manufacturing information, specifications, plans, drawings and data and other tangible embodiments of know-how used in the Worldwide Valiant Business, including (without limitation) the technology and know-how required to manufacture commercially acceptable products.

M. "*Dispersalloy Products*" means J&J's silver alloy products, marketed in the United States under the names "Dispersalloy" and "Unison."

N. "*Dispersalloy Business*" means the business of manufacturing, marketing, and selling Dispersalloy Products.

II.

It is ordered, That:

A. Dentsply shall divest, absolutely and in good faith, within nine (9) months of the date this order becomes final, the Valiant Assets.

B. Dentsply shall divest the Valiant Assets 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 Valiant Assets is to ensure the continuation of such 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. Dentsply shall make available to the acquirer such Dentsply personnel, assistance and training as the acquirer might reasonably need to transfer technology and know-how and shall continue providing such personnel, assistance and training at no additional cost for a period of time sufficient to satisfy the acquirer's management that its personnel are appropriately trained in the technology and know-how. However, Dentsply shall not be required to continue providing such personnel, assistance and training for more than six (6) months after the Valiant Assets are divested pursuant to this order.

D. Dentsply will provide reasonable cooperation and assistance to the acquirer in obtaining approvals for the transfer of all registrations relating to the Valiant Business or the Worldwide Valiant Business.

E. Dentsply shall comply with all terms of the Hold Separate Agreement, attached hereto and made a part hereof. Said agreement shall continue in effect until such time as Dentsply has divested the Valiant Assets or until such time as the Hold Separate Agreement provides.

F. Dentsply shall take such action as is necessary and reasonable to maintain the viability and marketability of the Worldwide Valiant

Assets and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any of the Worldwide Valiant Assets except in the ordinary course of business and except for ordinary wear and tear that does not affect the viability and marketability of the Worldwide Valiant Assets.

III.

It is further ordered, That:

A. If Dentsply has not divested, absolutely and in good faith and with the Commission's approval, the Valiant Assets within nine (9) months of the date this order becomes final, Dentsply shall consent to the appointment by the Commission of a trustee to divest the Valiant Assets 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. *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. If the trustee has not divested the Valiant Assets within the subsequent nine (9) months, the trustee shall divest the Worldwide Valiant Assets within twelve (12) months thereafter. In the event the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, Dentsply 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(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Dentsply 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, Dentsply 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 Dentsply, 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 Valiant Assets, or, as the case may be, to divest the Worldwide Valiant Assets.

3. The trustee shall have nine (9) months to divest the Valiant Assets from the date of appointment, and if the Valiant Assets have not been divested, the trustee shall have twelve (12) months thereafter to accomplish the divestiture of the Worldwide Valiant Assets. 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 twelve (12) month divestiture period for the Worldwide Valiant Assets may be extended by the Commission; *provided, however*, the Commission may only extend the twelve (12) month divestiture period two (2) times.

4. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Valiant and Worldwide Valiant Assets, or any other relevant information, as the trustee may reasonably request. Dentsply shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Dentsply shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Dentsply shall extend the time for divestiture under paragraph III.B.3. in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to Dentsply's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in paragraph II.B., the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each prospective acquirer for the divestiture of either the Valiant Assets or the Worldwide Valiant Assets. Either 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 Dentsply from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of Dentsply, 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 Dentsply, 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 Dentsply 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 Valiant Assets or the Worldwide Valiant Assets.

7. Dentsply 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 thirty (30) 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, Dentsply 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 either the Valiant Assets or the Worldwide Valiant Assets.

12. The trustee shall report in writing to Dentsply 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 Dentsply has fully complied with the provisions of paragraphs II. and III. of this order, Dentsply 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. Dentsply 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. Dentsply 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, Dentsply shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise, any equity or other interest in, or the whole or any part of the stock or share capital of, any person or business that is engaged in any way in the manufacture, sale, shipment or distribution of silver alloy 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 manufacture, sale, shipment or distribution of silver alloy. One year from the date this order becomes final and annually thereafter for nine years on the anniversary date of this order, Dentsply 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 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 Dentsply, Dentsply 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 Dentsply relating to any matters contained in this consent order; and

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

VII.

It is further ordered, That Dentsply 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, and any other change that may affect compliance obligations arising out of the order.

SCHEDULE I

VALIANT MANUFACTURING/PACKAGING EQUIPMENT

Magnathermic Melter
Atomizer
Ovens (2)
Ohio grinder
America centrifuge
Ball mill
Sweco sieve
Vortex particle classifier
Pfaudler treating vessel Drum tumbler
ATM centrifuge
2 cu. ft. Paterson Kelly Blender
Box siever
Stokes tablet machine
Stacker/packager
Aidlin plugger
Synthron Capper
Fasson labler
DMG Sure Cap filling machine
Old design Sure Cap filling machine
Sure-Cap Mold

HOLD SEPARATE AGREEMENT

This Hold Separate Agreement (the "Agreement") is by and among Dentsply International, Inc. (Dentsply), a corporation organized, existing, and doing business under and by virtue of the

laws of Delaware, with its office and principal place of business at 510 West College Avenue, York, Pennsylvania; 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 April 21, 1992, Dentsply entered into an agreement with Johnson & Johnson ("J&J") to acquire certain assets of its Professional Dental Care division, (hereinafter "Acquisition"); and

Whereas, J&J, with its principal office and place of business located at One Johnson & Johnson Plaza, New Brunswick, New Jersey, produces and markets, among other things, silver alloy 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 Dentsply's Valiant Business during the period prior to the final acceptance of the consent order by the Commission's (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 Valiant Assets or the Worldwide Valiant Assets as described in paragraph I of the consent

order and the Commission's right to have the Valiant Business continued as a viable competitor; and

Whereas, the purpose of the agreement and the consent order is to:

1. Preserve the viability of the Valiant Business pending the divestiture of the Valiant Assets or the Worldwide Valiant Assets, as defined in paragraphs I.I. and I.L. of the consent order, as a viable and ongoing enterprise,
2. Remedy any anticompetitive effects of the acquisition, and
3. Preserve the Valiant Business as an ongoing, viable silver alloy business until divestiture is achieved; and

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

Whereas, Dentsply 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 Dentsply 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 Valiant Assets or the Worldwide Valiant Assets pursuant to the consent order, as follows:

1. Dentsply agrees to execute and be bound by the attached consent order.

2. Dentsply agrees that from the date this agreement is accepted until the earliest of the dates listed in subparagraphs 2.a - 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;

b. The day after the divestiture required by the consent order has been completed.

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

a. Dentsply will appoint two individuals, one each from among Dentsply's current employees working in the marketing and sales areas of the L.D. Caulk division of Dentsply to manage and maintain the Valiant Business. These individuals ("the management team") shall manage the Valiant Business independently of the management of Dentsply's other businesses, except that these individuals may provide information to and receive information from Dentsply's production and financial personnel, and Dentsply's marketing and sales forces to the extent necessary to effectively operate the Valiant Business and arrange for the Valiant Products to be marketed and sold. The management team shall not thereafter, until the Valiant Assets are divested pursuant to the consent order, be in any way involved in the marketing or selling of any Dispersalloy Product.

b. The management team, in its capacity as such, shall report directly and exclusively to an independent auditor/manager, to be appointed by Dentsply with the consent of the Commission. The independent auditor/manager shall have exclusive control over the operations of the Valiant Business, with responsibility for the

management of the Valiant Business and for maintaining the independence of that business.

c. Dentsply 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 the Valiant Business; *provided, however*, that Dentsply may exercise only such direction and control over the management team and the Valiant Assets as is necessary to assure compliance with this agreement and with the order.

d. Dentsply shall maintain the viability and marketability of the Valiant Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability. Dentsply shall ensure the uninterrupted supply of Valiant Products and shall not impede production nor allow inventories to fall below reasonable levels.

e. Except for the management team, Dentsply shall not permit any other Dentsply employee, officer, or director to be involved in the management of the Valiant Assets. Nothing in this paragraph shall preclude Dentsply's sales, marketing, manufacturing, financial, accounting, or distribution personnel from providing services to the management team in the ordinary course of business 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, Dentsply shall not receive or have access to, or the use of, any material confidential information about the Valiant 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 the Dispersalloy Business or the activities of Dentsply in managing the Dispersalloy Business not in the public domain. Any such information that is obtained pursuant to this subparagraph shall be used only for the purpose set forth in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not

written request with reasonable notice to Dentsply made to its principal office in the United States, Dentsply shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Dentsply 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 Dentsply relating to compliance with this agreement;

b. Upon five (5) days notice to Dentsply, and without restraint or interference from it, to interview officers or employees of Dentsply, 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).

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

APPENDIX A

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Dentsply International Inc. ("Dentsply") has entered into a consent order and Hold Separate Agreement with the Federal Trade Commission relating to the divestiture of certain Dentsply silver alloy assets and products, including its Valiant, Valiant Ph.D, Valiant Snap-Set and Valiant Extended Time products. 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 Dentsply. All competitive information relating to all Valiant 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,

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Statement

discussing, exchanging, circulating or otherwise furnishing any such information to or with any other person whose employment involves any Dentsply competing alloy product, including Dispersalloy, except to the extent such information is required in connection with the manufacture or sale of Valiant products. All such persons responsible for the management of Dentsply's competing silver alloy 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 Valiant products.

Any violation of the consent order 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.

STATEMENT OF COMMISSIONER MARY L. AZCUENAGA,
CONCURRING IN PART AND DISSENTING IN PART

I concur in the decision to accept the consent order insofar as it provides a remedy for the anticompetitive effects of the acquisition in the alloy amalgam market. I dissent from the decision not to seek relief in the pit and fissure sealant market.

It is not possible to distinguish the merger's competitive effect in the sealant market from that in the amalgam market on the basis of market structure as both are highly concentrated markets, and both become much more concentrated as a result of the merger. In fact, concentration is higher in the sealant market, and Dentsply International's postmerger market share will be significantly higher in the sealant market than in the amalgam market. Conditions of entry are similar in both markets, and there are no countervailing efficiencies in either market. Overall, I cannot find a reason, either in principle or in the evidence, to seek relief in one market but not the other.

A compromise in which the Commission obtains relief in the amalgam market in exchange for which it forgoes relief in the smaller sealant market is not a bargain that the Commission should strike.

The compromise may benefit amalgam consumers only at the expense of sealant consumers. The acquisition may substantially lessen competition in two product markets, and the Commission should seek relief in both markets.

STATEMENT OF COMMISSIONER DEBORAH K. OWEN

I have voted in favor of the consent agreement in this case because I have reason to believe that the effect of the proposed acquisition might be substantially to lessen competition in the market for premium silver alloy in the United States. Because I do not believe that the acquisition in the premium sealant market would have the same effect, I believe that the Commission has correctly decided not to challenge that part of the acquisition.

This case, in my judgment, presents the Commission with the difficult scenario of two markets in transition: one experiencing increasing impact from non-premium brands, and the second, growth due to increased demand. As a result, while concentration is high, it is particularly important for us to examine the potential adverse competitive effects of the merger to see whether stories of anticompetitive effects in both markets appear viable.

In the silver alloy market, after a review of the information available, I have concluded that anticompetitive effects may follow from the proposed merger because non-premium brands have not yet achieved sufficient competitive significance. This was, however, a close call, in my judgment. By contrast, the changing nature of the sealant market, in my view, makes the sustainability of anticompetitive activity by premium brands more unlikely, despite the high concentration in that market. Accordingly, I do not believe that Commission action is warranted, based on the information available.

This merger presented complex and difficult issues on which reasonable people could clearly disagree. However, on balance, I believe that the result achieved by the proposed consent is entirely appropriate.

IN THE MATTER OF

UNITED STATES GOLF ASSOCIATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
TEXTILE FIBER PRODUCTS IDENTIFICATION ACT AND
THE FEDERAL TRADE COMMISSION ACT

Docket C-3408. Complaint, Jan. 6, 1993--Decision, Jan. 6, 1993

This consent order requires, among other things, a New Jersey-based non-profit corporation to clearly state in all future advertisements and product descriptions in mail order catalogs, and in all mail order promotional material, whether its clothing and other textile-fiber merchandise are manufactured or processed in the United States, or imported, or both. In addition, the respondent is required to use proper generic fiber names, consistent with the Textile Fiber Products Identification Act, and not to mention or imply fiber content of a fiber not present in the product.

Appearances

For the Commission: *Robert Easton and Ronald D. Lewis.*

For the respondent: *Simeon M. Kriesberg, Mayer, Brown & Clatt, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that United States Golf Association, a non-profit corporation, hereinafter referred to as respondent, has violated the provisions of the Federal Trade Commission Act and of the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby alleges:

PARAGRAPH 1. Respondent United States Golf Association, is a non-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and