

IN THE MATTER OF

HAROLD A. HONICKMAN, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 7
OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket 9233. Consent Order, July 25, 1991--Modifying Order, March 2, 1993*

This order reopens the proceeding and modifies the 1991 consent order (114 FTC 427) by allowing the respondents and the Brooklyn Beverage Acquisition Corp. to acquire non-carbonated soft drink assets without prior Commission approval. The Commission concluded that modifying the order was warranted to eliminate unintended coverage.

ORDER REOPENING AND MODIFYING ORDER

On November 16, 1992, the Federal Trade Commission ("Commission") issued an Order to Show Cause why the proceeding in Docket No. 9233 should not be reopened to modify paragraph II of the order. By letter dated December 4, 1992, the respondents responded to the November 16, 1992, Order to Show Cause, stating, among other things, that they do not object to the proposed modification. The respondents reiterated their lack of objection to the proposed modification in a letter dated February 16, 1993.

Complaint counsel responded to the November 16 order by filing a Motion Requesting Federal Trade Commission to Issue Order Reopening and Modifying Order Issued July 25, 1991 on December 23, 1992. Complaint counsel recommends that the Commission reopen and modify paragraph II of the order. A letter dated December 11, 1992, from Brooks Beverage Management, Inc. ("Brooks"), attached to complaint counsel's motion, urges "the Commission to view beverage products such as Hawaiian Punch and Perrier the same as CSDs for purposes of industry competitive analysis." Brooks states, however, that it is "not in a position to recommend to the Commission what its position on the Honickman consent order should be."

As the Commission indicated in its Order to Show Cause, Mr. Honickman and the staff apparently reached an incorrect conclusion about order coverage during the negotiations leading to issuance of the order in FTC Docket No. 9233, and communicated that incorrect conclusion to the Commission. In particular, although the record does not show how the Commission itself interpreted the relevant language when it accepted the consent agreement, the record does show that both the Commission staff who considered the question and respondent believed that the order would not apply to non-CSD acquisitions. As the Commission stated in its Order to Show Cause, considerations of fairness and the public interest warrant modifying the order to eliminate the unintended coverage resulting from that miscommunication. Therefore, the Commission does not need to address the competitive significance of non-carbonated beverage products in determining to reopen and modify paragraph II of the order.

Accordingly, *it is ordered*, That this matter be and it hereby is reopened and that paragraph II of the order in this matter be modified, as of the date this order becomes final, to read as follows:

It is further ordered, That for a period of ten (10) years after the date this order becomes final, respondents shall not, without the prior approval of the Commission acquire directly or indirectly all or any part of the stock of, share capital of, equity interest in, assets of or rights related to any Bottling Operation in any county in the New York Metropolitan Area where at the time of such acquisition any Existing Honickman Bottling Operation distributes CSDs directly using company-owned or equity distributors to supermarkets; *provided, however*, that such prior approval shall not be required if respondents satisfy the conditions set forth in paragraph III of this order; and *provided further* that nothing contained in the foregoing provisions shall prohibit respondents from (i) acquiring stock or share capital for investment purposes only that does not exceed five (5) percent of the outstanding stock or share capital of any Bottling Operation, (ii) acquiring rights to equity territories ("equity distributor routes") for any territory in which Honickman

holds the right to bottle or distribute CSDs distributed through such equity distributor rights, (iii) acquiring production or distribution equipment, or (iv) acquiring business supplies or raw materials in the ordinary course of business.

Provided, further, however, that paragraph II of this order shall not apply to the acquisition of the right to distribute or sell solely any product that is not a CSD.

Commissioner Azcuenaga and Commissioner Starek recused.

Complaint

116 F.T.C.

IN THE MATTER OF

NATIONAL ASSOCIATION OF SOCIAL WORKERS

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3416. Complaint, March 3, 1993--Decision, March 3, 1993*

This consent order prohibits, among other things, a Washington, D.C.-based, professional association from restraining competition among social workers by restricting or banning truthful, non-deceptive advertising or solicitation by its members, and from restricting social workers from paying a fee to any patient referral service.

Appearances

For the Commission: *Robert J. Schroeder.*

For the respondent: *Patricia P. Bailey, Squire, Sanders & Dempsey, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the National Association of Social Workers, a corporation, hereinafter sometimes referred to as respondent, has violated and is violating said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges in that respect as follows:

PARAGRAPH. 1. Respondent National Association of Social Workers is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 750 First Street, N.E., Suite 700, Washington, D.C.