

IN THE MATTER OF

MCCORMICK & COMPANY, 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-3468. Complaint, Oct. 25, 1993--Decision, Oct. 25, 1993*

This consent order requires, among other things, the largest spice and seasonings company in the U.S. to divest enough specially-bred seeds to produce a total of 100 million pounds of low-water onions and at least 5,000 pounds of additional onion seeds for future planting, and to provide the Commission-approved purchaser certain technical assistance upon request for one year.

Appearances

For the Commission: *Claudia R. Higgins, Ann B. Malester and Steven Newborn.*

For the respondent: *Lewis A. Noonber, Piper & Marbury, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, McCormick & Company, Inc., a corporation subject to the jurisdiction of the Federal Trade Commission, acquired certain assets of Haas Foods, Inc., a wholly-owned subsidiary of John I. Haas, Inc., a corporation subject to the jurisdiction of the Federal Trade Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. DEFINITIONS

1. For the purposes of this complaint the following definitions apply:

(a) "*McCormick*" means McCormick & Company, Inc., a corporation organized, existing, and doing business under and by the virtue of the laws of Maryland, its predecessors, subsidiaries, divisions, groups and affiliates controlled by McCormick and their respective directors, officers, employees, agents and representatives acting on behalf of McCormick, and their successors and assigns.

(b) "*Gilroy*" means Gilroy Foods, Inc., a subsidiary of McCormick.

(c) "*Haas Foods*" means Haas Foods, Inc., a subsidiary of John I. Haas, a corporation organized, existing, and doing business under and by virtue of the laws of Delaware.

(d) "*Dehydrated onion business*" means the business of producing and selling dehydrated onion products.

II. THE RESPONDENT

2. McCormick is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Maryland, with its principal offices located at 18 Loveton Circle, Sparks, Maryland.

3. McCormick 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 affects commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

III. THE ACQUIRED COMPANY

4. Haas Foods is a corporation organized and existing under the laws of the state of Delaware, with its principal offices located at 1910 Englewood Avenue, Yakima, Washington.

5. Haas Foods 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 affects commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

IV. THE ACQUISITION

6. On or about March 19, 1993, through its subsidiary, Gilroy Foods, Inc., McCormick acquired the assets comprising the Haas Foods dehydrated onion business. The total purchase price was \$13,831,250.

V. THE RELEVANT MARKET

7. The relevant line of commerce in which to analyze McCormick's acquisition is the dehydrated onion business.

8. The relevant section of the country is the United States.

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

10. Entry into the relevant market is difficult.

11. McCormick and Haas were actual competitors in the relevant market.

VI. EFFECTS OF THE ACQUISITION

12. The effect of the acquisition has been to substantially lessen competition 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 McCormick and Haas has been eliminated; and

(b) The likelihood of collusion in the relevant market has increased.

13. 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

17. The acquisition described in paragraph six, constitutes 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 acquisition by McCormick & Company, Inc., ("respondent") of certain assets of Haas Foods, Inc., ("Haas Foods") a wholly-owned subsidiary of John I. Haas, Inc., and 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, and having duly considered the comment filed thereafter by an interested person pursuant to Section 2.34 of its Rules, 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 McCormick & Company, Inc. ("McCormick") is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Maryland, with its principal offices located at 18 Loveton Circle, Sparks, Maryland.

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. "*McCormick*" means McCormick & Company, Inc., a corporation organized, existing, and doing business under and by the virtue of the laws of Maryland, its predecessors, subsidiaries, divisions, groups and affiliates controlled by McCormick and their respective directors, officers, employees, agents and representatives acting on behalf of McCormick, and their successors and assigns.

B. "*Gilroy*" means Gilroy Foods, Inc., a subsidiary of McCormick.

C. "*Haas Foods*" means Haas Foods, Inc., a subsidiary of John I. Haas, a corporation organized, existing, and doing business under and by virtue of the laws of Delaware.

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

E. "*Acquisition*" means the acquisition by Gilroy of certain assets of Haas Foods relating to the production of dehydrated onions,

which assets are the subject of an asset purchase agreement dated March 19, 1993.

F. "*Acquirer*" means the person to whom McCormick divests the assets herein ordered to be divested.

G. "*Crop Year*" means the year in which a crop is harvested.

H. "*Onions Suitable For Dehydration*" means any variety of onions that has been used by McCormick or Haas Foods for production of dehydrated onion products in crop years 1990 to 1993 and that has an average soluble solids content of no less than the average soluble solids content achieved by McCormick's entire production crop for the crop years of 1990 through 1992, exclusive of the crop acquired through the Acquisition.

I. "*Seed Bank*" means :

1. A quantity of onion seeds of one or more varieties of Onions Suitable For Dehydration in volumes sufficient to yield at least fifty (50) million pounds of Onions Suitable For Dehydration during crop year 1994 (or, if a trustee is appointed under the terms of paragraph III, during the crop year in which divestiture occurs), plus a quantity of onion seed (or, in the case of hybrid varieties, the genetic stock) of one or more varieties of Onions Suitable For Dehydration sufficient to yield at least five thousand pounds of additional onion seed for planting in a future crop year, said onion seed and/or genetic stock to be made available by McCormick during 1993 (or if a trustee is appointed under the terms of paragraph III, during the crop year in which divestiture occurs); and

2. A quantity of onion seeds of one or more varieties of Onions Suitable For Dehydration sufficient to yield at least fifty (50) million pounds of Onions Suitable for Dehydration during crop year 1995 (or if a trustee is appointed under the terms of paragraph III, during the year in which divestiture occurs), said onion seed to be made available by McCormick during 1994 (or if a trustee is appointed under the terms of paragraph III, during the year in which divestiture occurs).

To the extent that hybrid onion seeds are included in the Seed Bank, the genetic stock for such hybrid seeds shall also be included in the Seed Bank. The specific varieties of seeds to be contained in the Seed Bank may vary based on the growing areas to be used by the acquirer.

II.

It is ordered, That:

A. McCormick shall contract to divest, absolutely and in good faith, by auction or otherwise, within four (4) months of the date this order becomes final, a Seed Bank. Delivery of that part of the Seed Bank specified in paragraph I.I.1, shall be made within four (4) months of the date this order becomes final. Delivery of that part of the Seed Bank specified in paragraph I.I.2 may be made up to twelve months following the initial delivery, so long as such later delivery is made at least thirty days prior to the planting date identified by the acquirer.

B. McCormick shall divest the Seed Bank only to a person that receives the prior approval of the Commission and only in a manner that is consistent with the purposes of this order and that receives the prior approval of the Commission. The purposes of the divestiture of the Seed Bank are: (1) to provide the means for establishing an ongoing, viable enterprise to replace the competitive entity eliminated by the acquisition, as alleged in the Commission's Complaint; and (2) to remedy the lessening of competition resulting from the acquisition, as alleged in the Commission's complaint.

C. Upon reasonable advance notice, McCormick shall make employees available to provide technical assistance and advice with respect to the dehydrated onion business to the technical personnel of the acquirer on an "as needed" basis during normal business hours; *provided, however*, that McCormick shall be obligated by this order to provide, at the request of the acquirer, such assistance and advice for no more than one (1) year after delivery of that part of the Seed Bank specified in paragraph I.I.1 and for no more than sixteen

hours per month during the first two months after that delivery and for no more than six hours per month during later months. McCormick may require reimbursement from the acquirer for all its out-of-pocket expenses incurred in providing such assistance and advice to the acquirer. McCormick shall have no obligation to provide the technical assistance and advice required by this paragraph at its facilities located in Gilroy, California. The purpose of providing the technical assistance and advice is to provide the means for establishing an ongoing, viable enterprise to replace the competitive entity eliminated by the acquisition.

III.

It is further ordered, That:

A. If McCormick has not divested the Seed Bank, absolutely and in good faith and with the Commission's prior approval within the four-month period provided for in paragraph II, McCormick shall consent to the appointment of a trustee by the Commission to divest the Seed Bank. 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, for any violation of this order, McCormick shall consent to the appointment of one or more trustees 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 McCormick 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, McCormick 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 McCormick which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If McCormick has not opposed, in writing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission of the identity of any proposed trustee, McCormick shall be deemed to have consented to the selection of the proposed trustee.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to divest the Seed Bank.

3. The trustee shall have twelve (12) months from the date of appointment to divest the Seed Bank. 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 Seed Bank may be extended; *provided, however*, the Commission may only extend the twelve (12) month divestiture period for up to an additional twelve (12) months.

4. The trustee shall have full and complete access to the personnel, books, records, facilities and technical information related to the Seed Bank, or any other relevant information, as the trustee may reasonably request. McCormick shall cooperate with any reasonable request of the trustee. McCormick shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Seed Bank. Any delays in divestiture caused by McCormick 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 McCormick's absolute and unconditional obligation to divest at no minimum price and the purposes 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 the Seed Bank. The divestiture shall be made in the manner set out in paragraph II; *provided, however*, if the trustee receives bona fide offers from more

than one acquirer, and if the Commission determines to approve more than one such acquirer, the trustee shall divest to the acquirer selected by McCormick from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of McCormick, 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 McCormick, a seed broker 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 divestiture 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 McCormick 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 Seed Bank.

7. McCormick 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, McCormick shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

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

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

11. The trustee shall have no obligation or authority to operate or maintain the Seed Bank.

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

IV.

It is further ordered, That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until McCormick has fully complied with the provisions of paragraphs II and III of this order, McCormick 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. McCormick 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 of the Seed Bank, including the identity of all parties contacted or that have contacted McCormick. McCormick 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 of the Seed Bank.

V.

It is further ordered, That, for a ten (10) year period beginning on the date this order becomes final, McCormick shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

(a) Any equity or other ownership interest in, or the whole or any part of the stock or share capital of, any person or business that has been engaged in any way in the production of more than 2.5 million pounds of dehydrated onion products for sale in the United States during the twelve (12) months prior to the acquisition; or,

(b) Any assets that were used within the previous twelve (12) months in the production of dehydrated onion products for sale in the United States by a person who produced more than 2.5 million pounds of dehydrated onion product during a twelve (12) month period for sale in the United States;

provided, however, that nothing in this order shall prohibit McCormick from acquiring: (1) seeds, onions or dehydrated onion products necessary, in the ordinary course of business, to fulfill its obligations to its customers; (2) dehydrators of other than the belt type being used by onion dehydrators in the United States; or (3) additional equity or other ownership interest in Deshidratadora, S.A. de C.V., a corporation organized and existing under the laws of the United Mexican States, Alimentos Deshidratados Del Bajio, S.A. de C.V., a company organized and existing under the laws of the United Mexican States, or Giza National Dehydration Company, a corporation organized and existing under the laws of the Arab Republic of Egypt. One year from the date this order becomes final and annually thereafter for nine years on the anniversary date of this order, McCormick 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 McCormick, McCormick 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 McCormick relating to any matters contained in this consent order; and

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

VII.

It is further ordered, That McCormick 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.

IN THE MATTER OF

COOPER INDUSTRIES, 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-3469. Complaint, Oct. 26, 1993--Decision, Oct. 26, 1993*

This consent order requires, among other things, a Texas-based producer of low-voltage industrial fuses, within 12 months, to license certain technology to manufacture the fuses and to divest the necessary tooling, equipment, and machinery to the Commission-approved licensee. The consent order prohibits the respondent from acquiring, without prior Commission approval, any interest in any firm with more than \$3.5 million in annual U.S. sales of the fuses, and requires the company to notify the Commission and wait a specified period before acquiring any firm selling less than that amount of fuses.

Appearances

For the Commission: *Howard Morse and Wallace W. Easterling.*

For the respondent: *Sean Boland, Collier, Shannon, Rill & Scott, 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 (Commission), having reason to believe that respondent Cooper Industries, Inc. (Cooper), a corporation, through its wholly-owned indirect subsidiary, Cooper (U.K.) Limited, has agreed to acquire voting securities of The Fusegear Group of BTR plc including Brush Fuses Inc. and Hawker Fusegear Limited, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C.