

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.

18, and Section 5 of the Federal Trade Commission Act, as amended, 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. RESPONDENT

1. Respondent Cooper is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business at 1001 Fannin, Suite 4000, Houston, Texas.

2. Cooper is a significant manufacturer of low voltage industrial fuses.

3. Cooper 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 affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

II. THE ACQUISITION

4. Cooper has agreed to acquire from BTR plc substantially all of the voting securities of The Fusegear Group for approximately \$32 million.

5. BTR plc is a United Kingdom entity involved in, among other things, transportation and related industries. The Fusegear Group of BTR plc has three operating companies: Hawker Fusegear Limited, Brush Fuse Inc., and Connectron Inc. Brush Fuses Inc., a United States entity and part of the Fusegear Group, manufactures low voltage industrial fuses for the United States low voltage industrial fuse market and is headquartered in Glendale Heights, IL, with a contract manufacturing production facility in Nogales, Mexico. Brush Fuse Inc. had 1992 sales of approximately \$11 million. Hawker Fusegear Limited, located in the United Kingdom with 1992 sales of approximately \$23 million, produces a variety of fuses for

the UK and EEC market, and semiconductor fuses for export into the United States.

III. THE RELEVANT MARKET

6. The relevant line of commerce within which to analyze the effects of Cooper's proposed acquisition of Brush Fuses Inc. is the low voltage industrial fuse market, which consists of designing, manufacturing, marketing, and selling low voltage industrial fuses. Low voltage industrial fuses are expendable devices used to open an electric circuit when the current becomes excessive. Low voltage industrial fuses are used in industrial settings to protect equipment, electrical systems, and people from damage that could result from sustained current overloads.

7. The relevant section of the country or geographic area within which to analyze the effects of the proposed acquisition is the United States.

IV. MARKET STRUCTURE

8. The United States low voltage industrial fuse market is already highly concentrated, whether measured by the Herfindahl-Hirschmann Index or four-firm concentration ratios and Cooper is the leading producer of low voltage industrial fuses in the United States with approximately 50% of sales in 1993. Cooper and Brush Fuses Inc. constitute two of the three full-line low voltage industrial fuse suppliers in the United States.

V. ENTRY CONDITIONS

9. Entry into the United States low voltage industrial fuse market is difficult, time consuming and unlikely because of patents, proprietary technology, the time needed to design products and obtain Underwriter Laboratories, Inc. certification.

Additionally, firms that are not full-line suppliers of industrial fuses face substantial distribution barriers because distributors will not support manufacturers that do not carry a full-line of low voltage industrial fuses. Non full-line suppliers are further competitively disadvantaged to the extent that they must acquire fuses from full-line suppliers to complete their low voltage industrial fuse product lines.

VI. EFFECTS OF THE ACQUISITION

10. The effects of the proposed acquisition, if consummated, may be substantially to lessen competition or to tend to create a monopoly in the relevant market in the following ways, among others:

(a) It will eliminate actual, direct and substantial competition between Cooper and Brush Fuses, Inc., and increase Cooper's ability unilaterally to exercise market power;

(b) It will substantially increase the already high concentration in the relevant market;

(c) It will raise barriers and impediments to entry into the relevant market; and

(d) It will eliminate BTR's Brush low voltage industrial fuse product line as a substantial independent competitive force in the relevant market.

VII. VIOLATIONS CHARGED

11. The acquisition agreement described in paragraph four of this complaint constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

12. The proposed acquisition of The Fusegear Group from BTR by Cooper, 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 Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of respondent's proposed acquisition of the Fusegear Group of BTR plc, and the respondent having been furnished thereafter with a copy of this 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 violation of the Clayton Act and the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, and admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The 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 the 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 comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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. Cooper Industries is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business at 1001 Fannin, Suite 4000, Houston, Texas.
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.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Cooper*" or "*respondent*" means Cooper Industries, Inc., its directors, officers, employees, agents and representatives, its predecessors, successors, assigns, divisions, subsidiaries, affiliates, companies, groups, partnerships and joint ventures that Cooper Industries, Inc. controls, directly or indirectly, and their directors, officers, employees, agents and representatives, and their respective successors and assigns.

B. "*BTR*" means BTR plc, its directors, officers, employees, agents and representatives, its predecessors, successors, assigns, divisions, subsidiaries, affiliates, companies, groups, partnerships and joint ventures that BTR plc controls, directly or indirectly, and their directors, officers, employees, agents and representatives, and their respective successors and assigns.

C. "*Brush*" means Brush Fuses Inc., its directors, officers, employees, agents and representatives, its predecessors, successors, assigns, subsidiaries, divisions, and any other corporations partnerships, joint ventures, companies and affiliates that Brush Fuses Inc. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

D. "*Fusegear Group of BTR*" means Brush Fuses Inc., Connec-tron Inc., and Hawker Fusegear Limited.

E. "*Acquisition*" means the acquisition by Cooper from BTR of the voting securities of the Fusegear Group of BTR .

F. "*Low Voltage Industrial Fuses*" means U.L. listed and recognized protective devices that protect circuits of 600 volts or less, that open by the melting of a current sensitive element during specified overcurrent conditions, manufactured by or for Brush during the past three (3) years and which consist of the following fuses: RK5 time

delay, RK1 time delay, L fast acting, L time delay, RK1 fast acting, J fast acting, K5 fast acting, H non delay, T fast acting, cc fast acting, midget time delay, midget fast acting, cable limiters, lift truck fuses and welder limiters. Low Voltage Industrial Fuses do not include fuses that are used to protect semiconductors from excess current.

G. "*Relevant Product*" means U.L. listed and recognized protective devices that protect circuits of 600 volts or less, that open by the melting of a current sensitive element during specified overcurrent conditions, and which consist of the following fuses: RK5 time delay, RK1 time delay, L time delay, L fast acting, RK1 fast acting, J fast acting, k5 fast acting, H non delay, T fast acting, cc fast acting, midget time delay, midget fast acting, cable limiters, lift truck fuses and welder limiters. The term "Relevant Product" does not include fuses that are used to protect semiconductors from excess current.

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

I. "*U.L.*" means Underwriters Laboratories, Inc.

J. "*Brush Assets*" means:

1. All Brush tooling, dies, and molds used prior to the Acquisition to manufacture Low Voltage Industrial Fuses;

2. All Brush machinery and equipment used prior to the Acquisition to manufacture Low Voltage Industrial Fuses;

3. Existing lists of customers (including, but not limited to, distributors and original equipment manufacturers) that purchased Low Voltage Industrial Fuses from Brush. To the extent possible, such lists should include customers' names, contact persons, addresses, and telephone numbers; and

4. All current Brush promotional materials and selling aids for Low Voltage Industrial Fuses, except that Cooper may delete from such materials any name, trademark or other identification pertaining to any company in the Fusegear Group of BTR plc including but not limited to BTR, Hawker Siddeley, Hawker Fusegear Limited, Hawker, Connectron, Brush Fuses, Inc., Brush or other words similar thereto.

K. "*Brush's Low Voltage Industrial Fuse Technology and Know-how*" means all information technology and documentation owned or controlled by Brush, and in existence prior to the Acquisition, used in the design and manufacture of Low Voltage Industrial Fuses sold by Brush in the United States within the last three (3) years, including, but not limited to:

1. All drawings and blueprints used in the manufacture of Low Voltage Industrial Fuses (whether in hard copy or computer readable formats) and any other information and documentation necessary to manufacture tooling and equipment used to manufacture Low Voltage Industrial Fuses (including all blueprints and drawings for Low Voltage Industrial Fuses, tooling, and equipment);

2. All U.L. documentation relating to all Low Voltage Industrial Fuses, including, but not limited to, (a) all documentation relating to U.L. applications, test procedures and instructions used to obtain and maintain U.L. recognition, listing, approval, or classification for each Low Voltage Industrial Fuse, and (b) all documentation relating to the design, production, assembly methods, processes and systems used for all Low Voltage Industrial Fuses that have received U.L. recognition, listing, approval, or classification;

3. Brush's right to access from U.L. and to use any and all information in the custody of U.L. related to the recognition, listing, approval, or classification of Low Voltage Industrial Fuses;

4. All bills of materials, routings for assembly, production and product documentation and descriptions, specifications, patents, trade secrets, and all documentation and information relating to the design, production, assembly methods, processes and systems used to manufacture Low Voltage Industrial Fuses;

5. All other information and documentation relating to the design and manufacture of Low Voltage Industrial Fuses.

L. "*License*" means a perpetual license, without any obligation to pay royalties, at no minimum price, of the right to obtain and use Brush's Low Voltage Industrial Fuses Technology and Know-how to manufacture any and all types of Low Voltage Industrial Fuses

that have been manufactured by or for Brush and sold in the United States within the last three years. Nothing in this definition shall preclude Cooper from seeking payment for the license, consistent with its absolute obligation to grant a license pursuant to paragraph III of the order.

II.

It is further ordered, That within twelve (12) months after the date on which this order becomes final, Cooper shall divest, absolutely and in good faith, the Brush Assets to the licensee to whom the License is granted pursuant to paragraph III of this order and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint and to assist the licensee to manufacture, distribute and sell a full line of the Relevant Product. Cooper may incorporate tooling, machinery and equipment contained in the Brush Assets into its manufacturing operations, provided, however, that if Cooper elects to incorporate any such tooling, equipment and machinery into its manufacturing operations, Cooper shall divest comparable tooling, machinery and equipment in order to discharge its obligations under this paragraph. In the event that the licensee approved under paragraph III chooses not to acquire the Brush Assets, or acquire any part thereof, Cooper shall not be required to divest such assets. Nothing in this order shall require Cooper to provide the licensee with any right to use or display in any fashion any name, tradename or trademark, of any company within the Fusegear Group of BTR plc including BTR, Hawker Siddeley, Hawker Fusegear Ltd., Hawker, Connectron, Brush Fuses, Inc. or Brush or any word similar thereto.

III.

It is further ordered, That:

A. Within twelve (12) months after the date on which this order becomes final, respondent shall grant a License. Respondent shall grant the License only to a licensee that receives the prior approval of the Commission and only pursuant to a licensing agreement that receives the prior approval of the Commission. The purpose of the License is to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint and to enable the Licensee to manufacture, distribute and sell a full line of the Relevant Product.

B. For a period not to exceed twelve (12) months from the date on which the licensee is approved by the Commission, Cooper shall make available to the licensee, at no cost to the licensee, qualified Brush or Cooper personnel (including, but not limited to, former Brush personnel employed by or under contract to Cooper), assistance, cooperation, and technical support as the licensee reasonably needs, in order (1) to obtain U.L. recognitions, listings, approvals, or classifications (including all necessary transfers of U.L. recognitions, listings, approvals, and classifications) for Low Voltage Industrial Fuses and (2) to manufacture the licensed Low Voltage Industrial Fuses.

IV.

It is further ordered, That, pending divestiture of the Brush Assets and pending granting the License, Cooper shall take such action as is necessary to maintain the Brush Assets in good repair and to preserve Brush's Low Voltage Industrial Fuse Technology and Know-how and shall not cause or permit any destruction, removal, wasting, deterioration or impairment of those assets, except for ordinary wear and tear in the ordinary course of business.

V.

It is further ordered, That, for purposes of protecting interim competition pending the introduction of Low Voltage Industrial Fuses manufactured by the licensee under the License pursuant to

paragraph III of this order, including the licensee's receipt of all the necessary U.L. recognitions, listings, approvals, and classifications required to manufacture and sell Low Voltage Industrial Fuses, respondent shall, for a period of twelve (12) months after the License is granted pursuant to paragraph III of this order, offer the licensed Low Voltage Industrial Fuses to the licensee at Brush's most favorable distributor price available at the time of the Acquisition, including all Brush program pricing and benefits available at the time of the Acquisition. *Provided, however*, that respondent shall not be obligated to supply the licensee in excess of one hundred fifty percent (150%) of Brush's sales of said product in 1992. In the event that Cooper closes Brush's Nogales, Mexico manufacturing facility and Brush fuses are no longer available, Cooper shall provide the licensee with comparable Cooper Relevant Product. If the licensee, exercising reasonable efforts, fails to secure the necessary U.L. recognitions, listings, approvals, or classifications in order to manufacture and sell the licensed Low Voltage Industrial Fuses within twelve (12) months after the date on which the licensee is approved by the Commission, the requirements of this paragraph shall be extended for up to an additional six (6) months pending the licensee's receipt of such listings, approvals, recognitions and classifications.

VI.

A. If Cooper has not fully complied, absolutely and in good faith, with paragraphs II and III and of this order within the time period provided in such paragraphs, Cooper shall consent to the appointment by the Commission of a trustee to grant the License and divest the Brush Assets. 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, Cooper 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 available relief, including a court-appointed trustee, for any failure by Cooper to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph VI.A. of this order, Cooper shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Cooper, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in divestitures and licensing. If Cooper has not opposed, in writing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Cooper of the identity of any proposed trustee, Cooper shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to grant the License and divest the Brush Assets, and to make any further arrangements that may be reasonably necessary to maintain the pertinent assets in good repair and to preserve the Brush Low Voltage Industrial Fuse Technology and Know-how.

3. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph VI.B.(8) to grant the License and accomplish the divestiture. If, however, at the end of the twelve-month period, the trustee has submitted a plan of licensing and divestiture or believes that the granting of the License and the divestiture can be accomplished within a reasonable time, the licensing and divestiture periods may be extended by the Commission or, in the case of a court-appointed trustee, by the court.

4. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Brush Assets, or to any other relevant information, as the trustee may reasonably request. Cooper shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any

reasonable request of the trustee. Cooper shall take no action to interfere with or impede the trustee's granting of the License or accomplishment of the divestiture. Any delays in the granting of the License or divestiture caused by Cooper shall extend the time for licensing and divestiture under paragraph VI.B (3) in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

5. Subject to Cooper's absolute and unconditional obligation to divest at no minimum price, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available for the License and divestiture. The License shall be granted and the divestiture made in the manner and to the licensee as set out in paragraphs II and III of this order.

6. The trustee shall serve, without bond or other security, at the cost and expense of Cooper, 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 Cooper, 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 License and 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 Cooper and the trustee's power shall be terminated. The trustee's compensation shall be based in significant part on a commission arrangement contingent on the trustee granting the License and divesting the Brush Assets.

7. Cooper 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, losses, damages, claims, or expenses result from

misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

8. Within ten (10) 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, Cooper shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the License and 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 VI.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 grant the License and accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Brush Assets.

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

VII.

It is further ordered, That:

A. Within thirty (30) days after the date on which this order becomes final, Cooper shall send a copy of this order to all current Brush customers who have purchased \$1000.00 or more of Low Voltage Industrial Fuses directly from Brush within the last twelve (12) months.

B. Within sixty (60) days after the date on which this order becomes final and every sixty (60) days thereafter until Cooper has fully complied with the provisions of paragraphs II, III, IV, V, and VI and the above customer notification requirements of this order, Cooper 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. Cooper shall include in its compliance reports, among other things that are required from time to time, a full description of all substantive contacts or negotiations for the License and divestiture of the Brush Assets, including the identities of all parties contacted. Cooper 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 the License and divestiture.

VIII.

It is further ordered, That for a period of ten (10) years from the date this order becomes final, Cooper shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, which manufactures (either directly or indirectly), and sells the Relevant Product (other than sales to subsidiaries or divisions of the concern) in or into the United States, with sales of three and a half (3.5) million dollars or more of such products in each of the three (3) years preceding the acquisition; or

B. Acquire any assets used for, or previously used for (and still suitable for use for) the manufacture and sale in or into the United States of the Relevant Product from any concern, corporate or non-corporate, with sales of three and a half (3.5) million dollars or more of such products in each of the three (3) years preceding the acquisition, except in the ordinary course of business.

On the anniversary of the date on which this order becomes final, and on every anniversary thereafter for the following nine (9) years, Cooper shall file with the Commission a verified written report of its compliance with this paragraph VIII of the order.

IX.

It is further ordered, That for a period of ten (10) years from the date this order becomes final, Cooper shall not, without providing advance written notification to the Federal Trade Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, which manufactures (either directly or indirectly) and sells (other than sales to subsidiaries or divisions of the concern) Relevant Product, in or into the United States, with sales of less than three and a half (3.5) million dollars of such products in any of the three (3) years preceding the acquisition; or

B. Acquire any assets used for, or previously used for (and still suitable for use for) the manufacture and sale in or into the United States of Relevant Product from any concern, corporate or non-corporate, with sales of less than three and a half (3.5) million dollars of such products in any of the three (3) years preceding the acquisition, except in the ordinary course of business.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended. Cooper shall provide to the Federal Trade Commission, at least thirty (30) days prior to acquiring any such interest (hereinafter referred to as the "first waiting period"), both the Notification and supplemental information either in Cooper's possession or reasonably available to Cooper. Such supplemental information shall include a copy of the proposed acquisition agreement; the names of the principal representatives of Cooper and of the firm Cooper desires to acquire who negotiated the acquisition. If, within the first waiting period, representatives of the Federal Trade Commission make a written request for additional information and documents, Cooper shall not consummate the acquisition until twenty (20) days after submitting such additional

information and documents. Early termination of the waiting periods in this paragraph may be requested and where appropriate granted in the same manner as is applicable under the requirements and provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1916 (15 U.S.C. 18A). On the anniversary of the date on which this order becomes final, and on every anniversary thereafter for the following nine (9) years, Cooper shall file with the Commission a verified written report of its compliance with this paragraph IX of the order.

X.

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 Cooper, Cooper 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 Cooper relating to any matters contained in this order; and

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

XI.

It is further ordered, That Cooper shall notify the Commission at least thirty (30) days prior to any change in Cooper such as dissolution, assignment, or sale resulting in the emergence of a successor, the creation or dissolution of domestic subsidiaries, or any other change that may affect compliance obligations arising out of this order.

Commissioner Azcuenaga dissenting.

DISSENTING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

The Commission today accepts a consent order to remedy the alleged anticompetitive effects of the proposed acquisition by Cooper Industries, Inc., of the industrial fuse business of Brush Fuses, Inc. I agree that there is reason to believe that the acquisition would be unlawful. I do not agree that the proposed remedy is likely to be effective.

The consent order allows Cooper up to twelve months in which to license the technology and know-how to make Brush industrial fuses.¹ A twelve-month interval may be acceptable when the divestiture assets are a going business, but what is involved here is a transfer of parts of a business, to ease start-up costs in an industry in which entry allegedly is difficult, time consuming and unlikely. During the one-year interval permitted under the order (and Cooper presumably has incentives to delay licensing under the order as long as possible), Cooper may shut down the acquired company's production facility, and it may offer its own line of "Brush" brand fuses (as Cooper has announced it will do).² In the interim, a substantial independent competitor is eliminated from the market, at least in the short run. As a result, Cooper and other incumbent suppliers have the opportunity to build market share at Brush's expense, and the attractiveness of the license for potential licensees presumably will be reduced.

The failure to require Cooper to license the Brush name further detracts from both the attractiveness and the remedial value of the license. Both the express omission in the order of the usual obligation to license the brand name and the fact that the Brush name was "a hotly contested issue during negotiations"³ between Cooper and the owner of the name suggest value to Cooper of

¹ The order also requires Cooper to divest, at the licensee's option, machinery used by Brush in the manufacture of low voltage industrial fuses, but these are discrete assets. This is not a divestiture of a going business.

² Electrical Wholesaling Magazine (August 1993).

³ Letter from Sean F.X. Boland, Esq., to M. Howard Morse, Esq., at 7 (Aug. 23, 1993) (on the public record in Cooper Industries, Inc., File No. 931-0086).

retaining the name that does not augur well for the competitive prospects of a future licensee. Although the competitive overlap in the industrial fuse market is only a part of a larger transaction, I see no reason to accept a consent agreement that appears unlikely to provide a meaningful remedy when there is no practical impediment to seeking a preliminary injunction.

I dissent.

Complaint

116 F.T.C.

IN THE MATTER OF

GRACEWOOD FRUIT COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3470. Complaint, Oct. 26, 1993--Decision, Oct. 26, 1993

This consent order requires, among other things, a Florida corporation to have competent and reliable scientific evidence to substantiate future claims that eating normal quantities of grapefruit provides a variety of health benefits, such as reducing serum cholesterol and the risk of stroke, heart attack, and several types of cancer. Also, the respondent is prohibited from misrepresenting any test or study in connection with the marketing of any food.

Appearances

For the Commission: *Anne Maher* and *Lee Peeler*.

For the respondent: *Pro se*.

COMPLAINT

The Federal Trade Commission, having reason to believe that Gracewood Fruit Company ("Gracewood" or "respondent"), a corporation, has violated 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 Gracewood is a Florida corporation with its principal office or place of business at 1626 90th Avenue, Vero Beach, Florida.

PAR. 2. Respondent has advertised, offered for sale, sold, and distributed grapefruit and other products to consumers. These products are "foods" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.