

IN THE MATTER OF

GIANT FOOD, INC.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6459. Modified Consent Order, April 13, 1964--Set Aside Order, Sept. 7, 1995*

This order reopens a 1964 consent order--which prohibited Giant from inducing its suppliers to offer, or to receive from its suppliers, compensation for promotional services or facilities on terms that Giant knew were not proportionally equal to the terms those suppliers offered other retailers--and sets aside the consent order pursuant to the Commission's 1994 Sunset Policy Statement, under which the Commission presumed that the public interest requires terminating competition orders that are more than 20 years old.

ORDER REOPENING PROCEEDING
AND SETTING ASIDE ORDER

On June 5, 1995, Giant Food, Inc. ("Giant Food") filed its Request To Reopen and Vacate Order ("Petition") in this matter. Respondent requests that the Commission set aside the 1964 order, pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), Rule 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, and the Statement of Policy With Respect to Duration of Competition Orders and Statement of Intention to Solicit Public Comment With Respect to Duration of Consumer Protection Orders, issued on July 22, 1994, and published at 59 Fed. Reg. 45,286-92 (Sept. 1, 1994) ("Sunset Policy Statement"). In the Petition, respondent affirmatively states that it has complied with the terms of the order. The Petition was placed on the public record for thirty days, and no comments were received.

The Commission in its Sunset Policy Statement said, in relevant part, that "effective immediately, the Commission will presume, in the context of petitions to reopen and modify existing orders, that the public interest requires setting aside orders in effect for more than twenty years."¹ The Commission's cease and desist order in Docket No. 6459, issued on June 1, 1961, affirmed as modified by the United States Court of Appeals for the District of Columbia Circuit on June

¹ Sunset Policy Statement, 59 Fed. Reg. at 45,289.

14, 1962, and modified by the Commission in accordance with the direction of the court on April 13, 1964, has been in effect for over thirty-one years. Consistent with the Commission's Sunset Policy Statement, the presumption is that the order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order in Docket No. 6459.

Accordingly, *It is ordered*, That this matter be, and it hereby is, reopened;

It is further ordered, That the Commission's order in Docket No. 6459 be, and it hereby is, set aside, as of the effective date of this order.

IN THE MATTER OF

THE SCOTTS COMPANY

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-3613. Complaint, Sept. 8, 1995--Decision, Sept. 8, 1995

This consent order requires, among other things, Scotts, an Ohio-based corporation, to divest its Peters Consumer Water Soluble Fertilizer Business and related assets to Alljack & Company or another Commission-approved buyer by no later than December 31, 1995. If the divestiture is not completed on time, the consent order permits the Commission to appoint a trustee to complete the transaction. In addition, the Commission substituted a 10-year prior-notice provision for the 10-year prior-approval provision contained in the proposed consent agreement as it was published for public comment.

Appearances

For the Commission: *Howard Morse, Robert Cook and William Baer.*

For the respondent: *Jack Schafer, Covington & Burling,*
Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that the Scotts Company ("Scotts") has entered into an agreement and plan of merger with Stern's Miracle-Gro Products, Inc. ("Miracle-Gro"), whereby Scotts will acquire all of the outstanding voting securities of Miracle-Gro in exchange for voting securities of Scotts, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, 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, 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: