

Set Aside Order

120 F.T.C.

IN THE MATTER OF

WEST POINT-PEPPERELL, INC.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3244. Consent Order, Dec. 14, 1988--Set Aside Order, Oct. 4, 1995*

This order reopens a 1988 consent order--which required West Point to divest certain towel and sheet manufacturing facilities and prohibited West Point, for 10 years, from making certain acquisitions in the sheet and towel industries without prior Commission approval--and sets aside the consent order pursuant to the Commission's Prior Approval Policy Statement, under which the Commission presumes that the public interest requires setting aside the prior approval requirements in outstanding merger orders and making them consistent with the policy.

ORDER SETTING ASIDE ORDER

On June 28, 1995, WestPoint Stevens, Inc. ("WestPoint"), the successor to West Point-Pepperell, Inc., filed its Petition To Reopen and Vacate or Modify Consent Order ("Petition") in this matter. WestPoint asks that the Commission reopen and modify the 1988 consent order in this matter pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51, and consistent with the Statement of Federal Trade Commission Policy Concerning Prior Approval and Prior Notice Provisions, issued June 21, 1995 ("Prior Approval Policy Statement").¹ WestPoint in its Petition requests that the Commission reopen and set aside the order in Docket No. C-3244 or, in the alternative, reopen and modify the order by deleting the requirement in paragraph IX that WestPoint seek prior Commission approval for certain acquisition. The Petition was on the public record for thirty days; no comments were received.

The Commission, in its Prior Approval Policy Statement, "concluded that a general policy of requiring prior approval is no longer needed," citing the availability of the premerger notification and waiting period requirements of Section 7A of the Clayton Act,

¹ 60 Fed. Reg. 39,745-47 (August 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241, at 20,991 (June 21, 1995).

commonly referred to as the Hart-Scott-Rodino ("HSR") Act, 15 U.S.C. 18a, to protect the public interest in effective merger law enforcement. Prior Approval Policy Statement at 2. The Commission announced that it will "henceforth rely on the HSR process as its principal means of learning about and reviewing mergers by companies as to which the Commission had previously found a reason to believe that the companies had engaged or attempted to engage in an illegal merger." As a general matter, "Commission orders in such cases will not include prior approval or prior notification requirements." *Id.*

Narrow prior approval or prior notification provisions may be necessary to protect the public interest in some circumstances. The Commission said in its Prior Approval Policy Statement that "a narrow prior approval provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for the provision, attempt the same or approximately the same merger." The Commission also said that "a narrow prior notification provision may be used where there is a credible risk notification provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for an order, engage in an otherwise unreportable anticompetitive merger." *Id.* at 3.

The Commission in its Prior Approval Policy Statement announced its intention "to initiate a process for reviewing the retention or modification of these existing requirements" and invited respondents subject to such requirements "to submit a request to reopen the order." *Id.* at 4. The Commission determined that, "when a petition is filed to reopen and modify an order pursuant to . . . [the Prior Approval Policy Statement], the Commission will apply a rebuttable presumption that the public interest requires reopening of the order and modification of the prior approval requirement consistent with the policy announced" in the Statement. *Id.*

The presumption is that setting aside the prior approval requirement in paragraph IX of the order in Docket No. C-3244 is in the public interest. Nothing to overcome the presumption has been presented, and nothing in the record, including the original complaint and order, suggests that exceptions described in the Prior Approval

Policy Statement are warranted. The Commission has determined to reopen the proceeding in Docket No. C-3244 and set aside the order.²

Accordingly, *It is hereby ordered*, That this matter be, and it hereby is, reopened, and that the Commission's order issued on December 14, 1988, be, and it hereby is, set aside as of the effective date of this order.

² WestPoint completed the divestiture required by the order in 1991, and the only remaining obligation under the order is the prior approval requirement in paragraph IX and the attendant reporting obligations.

IN THE MATTER OF

LIVE-LEE PRODUCTIONS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3620. Complaint, Oct. 10, 1995--Decision, Oct. 10, 1995*

This consent order prohibits, among other things, a California-based corporation and its officer from making any claim that a food, dietary supplement or drug has any effect on the user's health, or on the structure or function of the body, and from making any claim of performance, benefit, efficacy or safety of any smoking cessation product, service or program unless they have competent and reliable scientific evidence to support the claims.

Appearances

For the Commission: *Lisa B. Kopchik.*

For the respondents: *Timothy Kevene, Thorpe & Thorpe*, Los Angeles, CA.

COMPLAINT

The Federal Trade Commission, having reason to believe that Live-Lee Productions, Inc., a corporation, and Ruta Lee, individually and as an officer and director of said corporation, hereinafter sometimes referred to as respondents, have violated the 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 Live-Lee Productions, Inc. ("Live-Lee") is a Texas corporation, with its offices and principal place of business at 2761 Laurel Canyon Blvd., Los Angeles, California. Live-Lee is engaged in the business of providing the services of Ruta Lee in connection with the marketing, advertising, sale and distribution of consumer products.

Respondent Ruta Lee ("Lee") is an officer, director, and sole shareholder of Live-Lee, and her address is 2436 Shirley Avenue, Fort Worth, Texas. Lee has served as the on-air host of "Spotlight on Ruta Lee" ("Spotlight"), an advertisement promoting the sale of