

Modifying Order

124 F.T.C.

IN THE MATTER OF

CLASS RINGS, INC., 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 C-3701. Consent Order, Dec. 20, 1996--Modifying Order, July 21, 1997*

This order reopens a 1996 consent order -- that prohibited the respondents from having any interest in or assets of Gold Lance, Inc. -- and this order modifies the consent order by setting aside a provision prohibiting the respondents, for one year, from employing or seeking to employ any person who is or was employed during 1996 by Gold Lance, Inc. or Town & Country Corporation.

ORDER REOPENING AND MODIFYING ORDER

On May 29, 1997, respondents Commemorative Brands, Inc., formerly known as Class Rings, Inc. ("Class Rings"), and Castle Harlan Partners II, L.P. (collectively "CBI") filed a Petition of Commemorative Brands, Inc. and Castle Harlan Partners II, L.P. to Reopen and Modify Order ("Petition"), 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. In its Petition, CBI requests that the Commission reopen the order in Docket No. C-3701 ("order") to set aside paragraph V, which prohibits CBI, for a period of one year, from employing or seeking to employ any person who is or was employed at any time during 1996 by Gold Lance, Inc. ("Gold Lance") or by Town & Country Corporation ("Town & Country") in any position relating to the design, manufacture, or sale of class rings (the "Employment Restriction").

For the reasons discussed below, the Commission has determined that CBI has demonstrated changed conditions of fact sufficient to require the reopening and modification of the order.¹

In its Petition,² CBI requests that the Commission modify the order to set aside the Employment Restriction contained in paragraph V of the order.³ The restrictions in paragraph V expire by their own

¹ Because the Commission has determined to grant CBI's Petition based on change of fact, we do not reach a determination with respect to CBI's assertion that the provision should be set aside under the separate public interest standard.

² In support of its Petition, CBI provided the affidavit of Jeffrey H. Brennan, President and Chief Executive Officer of Commemorative Brands, Inc. ("Brennan Affidavit").

³ Paragraph V provides that Castle Harlan and Class Rings: shall not, for a period of one (1) year from the date this order becomes final, employ or seek to employ any person who is or was employed at any time during calendar year 1996 by Gold Lance or by Town & Country in any position relating to the design, manufacture, or sale of Class Rings.

terms on January 9, 1998, one year from the date on which the order became final.⁴

CBI bases its Petition on changed conditions of fact and public interest considerations.⁵ The changes of fact alleged by CBI include the fact that Gold Lance is no longer a stand-alone competitor, but is now a part of the industry's market leader, Jostens, Inc. ("Jostens"). Since the order became final, Jostens, the largest producer of class rings in the country, purchased Gold Lance from Town & Country. CBI contends that, as a result of the acquisition, the Employment Restriction no longer operates to achieve the purpose for which it was designed but has the unintended effect of precluding CBI from competing against Jostens for Gold Lance employees.⁶

In addition to change of fact, CBI argues that it is in the public interest to grant its Petition because the Employment Restriction now has the unintended effect of preventing Gold Lance employees, many of whom will soon be out of work due to the Jostens' acquisition, from obtaining employment with CBI, which desires to offer jobs to qualified individuals. The Petition asserts that such a result is inconsistent with the purpose of the order and is unduly harmful to these employees.⁷

STANDARD FOR REOPENING AND MODIFYING FINAL ORDERS

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition.⁸

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so

⁴ Order ¶ V.

⁵ CBI does not assert that any change of law requires reopening the order.

⁶ Petition ¶¶ 5-12. Brennan Affidavit ¶¶ 4-6.

⁷ Petition ¶¶ 13-15.

⁸ S. Rep. No. 96-500, 96th Cong., 1st Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); *Louisiana-Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4 (unpublished) ("Hart Letter"). See also *United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) ("A decision to reopen does not necessarily entail a decision to modify the order. Reopening may occur even where the petition itself does not plead facts requiring modification.").

requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification.⁹ In such a case, the respondent must demonstrate as a threshold matter some affirmative need to modify the order.¹⁰ For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order."¹¹ Once such a showing of need is made, the Commission will balance the reasons favoring the requested modification against any reasons not to make the modification.¹² The Commission also will consider whether the particular modification sought is appropriate to remedy the identified harm.¹³

The language of Section 5(b) plainly anticipates that the burden is on the petitioner to make a "satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes clear that the petitioner has the burden of showing, other than by conclusory statements, why an order should be modified. The Commission "may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order."¹⁴ If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. The petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission orders.¹⁵

⁹ Hart Letter at 5; 16 CFR 2.51.

¹⁰ Damon Corp., Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 29, 1983), 1979-83 Transfer Binder, FTC Complaints and Orders, (CCH) ¶ 22,007, p. 22,585 ("Damon Letter"), at 2.

¹¹ Damon Corp., Docket No. C-2916, 101 FTC 689, 692 (1983).

¹² Damon Letter at 2.

¹³ Damon Letter at 4.

¹⁴ S. Rep. No. 96-500, 96th Cong., 1st Sess. 9-10 (1979); see also Rule 2.51(b) (requiring affidavits in support of petitions to reopen and modify).

¹⁵ See *Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

CBI HAS DEMONSTRATED CHANGED CONDITIONS OF FACT THAT
REQUIRE THE REOPENING AND MODIFICATION OF THE ORDER

CBI's Petition demonstrates that Jostens's acquisition of Gold Lance eliminates the need for the Employment Restriction contained in paragraph V of the order. The complaint in this matter charged that on May 20, 1996, Class Rings, an entity controlled by Castle Harlan, agreed to purchase all of the class ring assets from two companies, Town & Country and CJC Holdings, Inc. and CJC North America, Inc. ("CJC").¹⁶ At the time of the proposed merger, CJC was manufacturing class rings. Town & Country, another leading producer of commemorative jewelry, manufactured class rings through its class ring divisions Gold Lance and L.G. Balfour Company, Inc. ("Balfour").¹⁷ Under the consent order, Castle Harlan, in effect, was prohibited from acquiring the Gold Lance business but permitted to acquire the Balfour business as well as the CJC business from Town & Country.¹⁸ Paragraph V of the order, the subject of the Petition, was included in the order to ensure that Town & Country, through its subsidiary Gold Lance, remained a viable independent competitor in the manufacture and sale of class rings.¹⁹

On April 21, 1997, Jostens, the largest producer of class rings in the United States, announced that it had purchased Gold Lance from Town & Country. Such a change, which was not foreseen at the time the Commission issued the order, results in the Employment Restriction having the unintended effect of precluding CBI from competing against the market leader Jostens for a significant number of skilled and experienced workers in this industry.

Gold Lance is no longer in need of the protection afforded by the Employment Restriction. Therefore, the acquisition of Gold Lance by Jostens constitutes a change of fact that eliminates the need for the Employment Restriction and requires the reopening and modification of the order to set aside paragraph V.

Accordingly, *It is ordered*, That this matter be, and it hereby is, reopened and that the Commission's order be, and it hereby is, modified to set aside paragraph V as of the effective date of this order.

¹⁶ The complaint alleged that the proposed merger would violate 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. Complaint ¶¶ 24-25.

¹⁷ Complaint ¶¶ 1-8.

¹⁸ Order ¶ II.

¹⁹ Order ¶ II.

Complaint

124 F.T.C.

IN THE MATTER OF

SOFTSEARCH HOLDINGS, INC., ET AL.

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-3759. Complaint, July 28, 1997--Decision, July 28, 1997

This consent order requires, among other things, Dwight's Energydata, a subsidiary of Softsearch, to license a set of complete well history and production data to a Commission-approved buyer, which then will be an independent competitor. In addition, the Commission has appointed a trustee to find a licensee and to complete the required divestiture.

Appearances

For the Commission: *George Cary, Frank Lipson, Phillip Broyles and William Baer.*

For the respondents: *Sandy Pfunder, Gibson, Dunn & Crutcher, Washington, D.C. and Neil Inus, Vincent & Elkins, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that Dwight's Energydata, Inc. ("Dwight's"), a wholly-owned subsidiary of respondent SoftSearch Holdings, Inc., a corporation subject to the jurisdiction of the Federal Trade Commission, has entered into an agreement to merge with Petroleum Information Corporation ("PI"), a wholly-owned subsidiary of respondent GeoQuest International Holdings, Inc., a corporation subject to the jurisdiction of the 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"), 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:

THE RESPONDENTS

PARAGRAPH 1. Respondent SoftSearch Holdings, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and