

IN THE MATTER OF

S.C. JOHNSON & SON, 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-3802. Complaint, April 20, 1998--Decision, April 20, 1998

This consent order requires, among other things, S.C. Johnson & Son, Inc., a Wisconsin-based manufacturer and seller of household cleaning products, to divest certain assets relating to stain and soil remover products and glass cleaner products it would gain in the acquisition of DowBrands.

Appearances

For the Commission: *Steven Bernstein, Yolanda Gruendel, Ann Malester and William Baer.*

For the respondent: *Mark Kovner, Kirkland & Ellis, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, S.C. Johnson & Son, Inc. ("S.C. Johnson"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire certain assets of the home care and home food management businesses of DowBrands Inc., DowBrands L.P. and DowBrands Canada Inc. (hereinafter collectively "DowBrands"), entities 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, 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. DEFINITIONS

1. "*Soil and stain remover products*" means products that are designed to pretreat soiled and stained clothing prior to washing in order to aid in the cleaning of the soiled or stained area of the clothing.

2. "*Glass cleaner products*" means products that are designed primarily to clean glass and mirrors, but which may also be used to clean other surfaces.

II. RESPONDENT

3. Respondent S.C. Johnson is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its principal place of business located at 1525 Howe Street, Racine, Wisconsin.

4. Respondent is engaged in, among other things, the manufacture and sale of soil and stain remover products and glass cleaner products.

5. Respondent 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.

III. THE ACQUIRED COMPANY

6. DowBrands Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 9550 Zionsville Road, Indianapolis, Indiana. DowBrands L.P. is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 2030 Dow Center, Midland, Michigan. DowBrands Canada Inc. is a corporation organized, existing and doing business under and by virtue of the laws of Canada, with its office and principal place of business located at 250 6th Avenue S.W., Suite 2200, Calgary, Alberta T2P 3H7.

7. DowBrands is engaged in, among other things, the manufacture and sale of soil and stain remover products and glass cleaner products.

8. DowBrands 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.

IV. THE ACQUISITION

9. On October 27, 1997, S.C. Johnson entered into Asset Purchase Agreements with DowBrands to acquire certain assets of DowBrands' home care and home food management businesses for approximately \$1.125 billion ("Acquisition").

V. THE RELEVANT MARKETS

10. For purposes of this complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are:

- (a) The research, development, manufacture and sale of soil and stain remover products; and
- (b) The research, development, manufacture and sale of glass cleaner products.

11. For purposes of this complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant lines of commerce.

VI. STRUCTURE OF THE MARKETS

12. The market for the research, development, manufacture and sale of soil and stain remover products is highly concentrated as measured by the Herfindahl-Hirschmann Index ("HHI"). The post-merger HHI is 5,646 points, which is an increase of 2,730 points over the premerger HHI level. S.C. Johnson and DowBrands are the two leading suppliers of soil and stain remover products in the United States.

13. S.C. Johnson and DowBrands are actual competitors in the relevant market for the research, development, manufacture and sale of soil and stain remover products in the United States.

14. The market for the research, development, manufacture and sale of glass cleaner products is highly concentrated as measured by the HHI. The post-merger HHI is 4,920 points, which is an increase of 1,180 points over the premerger HHI level. S.C. Johnson and DowBrands are the two leading suppliers of glass cleaner products in the United States.

15. S.C. Johnson and DowBrands are actual competitors in the relevant market for the research, development, manufacture and sale of glass cleaner products in the United States.

VII. BARRIERS TO ENTRY

16. Entry into either the market for the research, development, manufacture and sale of soil and stain remover products or the market for the research, development, manufacture and sale of glass cleaner products is unlikely and would not occur in a timely manner to deter or counteract the adverse competitive effects described in paragraph seventeen because of, among other things, the difficulty of developing a new product, gaining brand name recognition and customer acceptance, and establishing a network of retail distributors.

VIII. EFFECTS OF THE ACQUISITION

17. The effects of the Acquisition, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the relevant markets in 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, in the following ways, among others:

- (a) By eliminating actual, direct, and substantial competition between S.C. Johnson and DowBrands in the relevant markets;
- (b) By increasing the likelihood that S.C. Johnson will unilaterally exercise market power in the relevant markets;
- (c) By increasing the likelihood that customers of soil and stain remover products and glass cleaner products would be forced to pay higher prices;
- (d) By reducing innovation in the relevant markets; and
- (e) By reducing the level of advertising and promotion of soil and stain remover products and glass cleaner products.

IX. VIOLATIONS CHARGED

18. The Acquisition agreement described in paragraph nine constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

19. The Acquisition described in paragraph nine, 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 FTC Act, as amended, 15 U.S.C. 45.

Commissioner Azcuenaga not participating.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by respondent of certain assets of the home care and home food management businesses of DowBrands Inc., DowBrands L.P. and DowBrands Canada Inc. (hereinafter collectively "DowBrands"), and the 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 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 agreement containing consent order and placed such agreement on the public record for a period of sixty (60) days, 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 S.C. Johnson & Son, Inc. ("S.C. Johnson") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its principal place of business located at 1525 Howe Street, Racine, Wisconsin.

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. "*Respondent*" or "*S.C. Johnson*" means S.C. Johnson & Son, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by S.C. Johnson & Son, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "*DowBrands*" means DowBrands Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 9550 Zionsville Road, Indianapolis, Indiana; DowBrands L.P., a limited partnership organized, existing, and doing

business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2030 Dow Center, Midland, Michigan; and DowBrands Canada Inc., a corporation organized, existing, and doing business under and by virtue of the laws of Canada, with its office and principal place of business located at 250 6th Avenue, S.W., Suite 2200, Calgary, Alberta T2P 3H7.

C. "*Reckitt & Colman*" means Reckitt & Colman, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1655 Valley Road, Wayne, New Jersey.

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

E. "*Acquisition*" means the acquisition of DowBrands' Home Care and Home Food Management Businesses by S.C. Johnson pursuant to Asset Purchase Agreements dated as of October 27, 1997.

F. "*Acquirer*" means Reckitt & Colman or the entity to whom S.C. Johnson shall divest the Divested Assets.

G. "*Soil and stain remover products*" means products designed to pretreat soiled and stained clothing prior to washing, which are applied by aerosol spray, trigger spray, or in liquid, solid, gel, or any other form.

H. "*Glass cleaner products*" means products designed primarily to clean glass and mirrors (but which may also be used to clean other surfaces), which are applied by trigger spray or in liquid or any other form. "Glass cleaner products" shall not include products characterized as all-purpose or multi-purpose cleaners, including, but not limited to, "Fantastik."

I. "*Starch products*" means products designed to starch clothing, which are applied by trigger spray or in any other form.

J. "*Laundry detergent products*" means products designed to be added to water in a washing machine to clean laundry, which are applied in liquid, powder or any other form.

K. "*Oven cleaner products*" means products designed to clean ovens, which are applied in aerosol spray or any other form.

L. "*Urbana facility*" means the facility located in Urbana, Ohio, where DowBrands manufactured, among other things, soil and stain remover products and glass cleaner products.

M. "*Divested Assets*" means the assets required to be divested pursuant to paragraphs II or III of this order.

N. "*Divestiture Agreement*" means the agreement for the sale of the Divested Assets to Reckitt & Colman, dated December 22, 1997; Amendment No. 1 to the agreement for the sale of the Divested

Assets to Reckitt & Colman, dated January 12, 1998; and the contract manufacturing agreement dated January 12, 1998 by and between S.C. Johnson and Reckitt & Colman.

O. "*New Divestiture Agreement*" means any agreement other than the Divestiture Agreement for the sale of the Divested Assets between S.C. Johnson and any Acquirer.

P. "*Supply agreement*" means an agreement between S.C. Johnson and the Acquirer to supply the soil and stain remover products, glass cleaner products, and starch products acquired by S.C. Johnson from DowBrands, under the terms and conditions herein specified.

Q. "*Cost*" means direct cash cost of raw materials, packaging and labor.

R. "*Non-public acquirer information*" means any information not in the public domain obtained by respondent directly or indirectly from the Acquirer prior to the effective date, or during the term, of the supply agreement required by paragraph II of this order. Non-public acquirer information shall not include information that subsequently falls within the public domain through no violation of this order by respondent.

II.

It is further ordered, That:

A. Respondent shall divest absolutely and in good faith, either:

1. Pursuant to the Divestiture Agreement the assets described in Part I of Exhibit A of this order to Reckitt & Colman within ten (10) business days after the date the Commission accepts this agreement containing consent order for public comment, provided, however, that respondent shall not be required to divest any assets pursuant to this paragraph II.A.1 that are not conveyed under the Divestiture Agreement, and provided further, however, that if, at the time it determines to make the order final, the Commission notifies respondent that Reckitt & Colman is not an acceptable acquirer, or that the Divestiture Agreement is not an acceptable manner of divestiture, then respondent and Reckitt & Colman shall rescind the Divestiture Agreement, and respondent shall divest the Divested Assets pursuant to paragraph II.A.2 of this order within one hundred twenty (120) days of the date the order becomes final; or

2. The assets described in Part I of Exhibit A of this order and, at the option of the Acquirer, any or all of the assets described in Part II of Exhibit A of this order, to an Acquirer within six (6) months after the date on which respondent signed the agreement containing

consent order in this matter. Respondent shall divest these assets pursuant to paragraph II.A.2 of this order only to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

B. The purpose of the divestiture of the Divested Assets is to ensure the continued use of the Divested Assets in the same businesses in which the Divested Assets are engaged at the time of the Acquisition, and to remedy any lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. Except for a divestiture pursuant to paragraph II.A.1 of this order, respondent shall divest the Divested Assets pursuant to a New Divestiture Agreement that, at the Acquirer's option, shall include the following and respondent shall commit to satisfy the following:

1. Respondent shall supply and deliver to the Acquirer in a timely manner and under reasonable terms and conditions, up to a twelve (12) month supply of DowBrands' soil and stain remover products, glass cleaner products, and starch products specified in the New Divestiture Agreement, at cost, in quantities not to exceed 110 percent of DowBrands' 1998 production forecast.

2. After respondent commences delivery of the soil and stain remover products, glass cleaner products, and starch products to the Acquirer, all U.S. and world wide inventory of the soil and stain remover products, glass cleaner products, and starch products acquired by respondent from DowBrands pursuant to the Acquisition may be sold by respondent only to the Acquirer.

3. Respondent shall agree to indemnify, defend and hold the Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses arising from the manufacture of the soil and stain remover products, glass cleaner products, and starch products supplied to the Acquirer by respondent pursuant to the supply agreement. This obligation shall be contingent upon the Acquirer's giving respondent prompt, adequate notice of such claim, cooperating fully in the defense of such claim, and permitting respondent to assume the sole control of all phases of the defense and/or settlement of such claim, including the selection of counsel. This obligation shall not require respondent to be liable for any negligent act or omission of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the representations and warranties made by respondent to the Acquirer.

4. For a period not to exceed eighteen (18) months from the date respondent begins delivery of DowBrands products pursuant to paragraph II.C.1 of this order, upon reasonable notice and request by the Acquirer, respondent shall make available to the Acquirer all records kept in the normal course of business that relate to the cost of manufacturing or supplying the soil and stain remover products, glass cleaner products, and starch products acquired by respondent from DowBrands.

5. Upon reasonable notice and request by the Acquirer, for a period not to exceed six (6) months from the date the New Divestiture Agreement is signed, upon reasonable notice and request by the Acquirer, respondent shall provide at cost: (a) such assistance, personnel and training as are reasonably necessary to enable the Acquirer to manufacture the soil and stain remover products, glass cleaner products, and starch products in substantially the same manner and quality employed or achieved by DowBrands at the time the agreement containing consent order is signed; and (b) such assistance, personnel and training as are reasonably necessary to enable the Acquirer to obtain any necessary Environmental Protection Agency approvals to manufacture and sell soil and stain remover products, glass cleaner products, and starch products in the United States.

D. Respondent shall not provide, disclose or otherwise make available to any of its employees any non-public acquirer information nor shall respondent use any non-public acquirer information obtained or derived by respondent in its capacity as supplier pursuant to the supply agreement, except for the sole purpose of supplying products pursuant to the supply agreement.

E. Pending divestiture of the Divested Assets, respondent shall take such actions as are necessary to maintain the viability, marketability and competitiveness of the Divested Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divested Assets except for ordinary wear and tear.

III.

It is further ordered, That:

A. If respondent fails to divest absolutely and in good faith the Divested Assets pursuant to paragraph II.A of this order or fails to enter into a supply agreement (if such supply agreement is requested by the Acquirer), the Commission may appoint a trustee to divest the assets described in Part I of Exhibit A of this order and, at the option of the Acquirer, any or all of the assets described in Part II of Exhibit

A of this order, and enter into a supply agreement. In the event that 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, respondent 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 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 respondent 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, respondent 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 respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent 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 accomplish the divestiture described in paragraph III.A of the order.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission, and in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph III.B.3 to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the trustee has submitted a plan for the divestiture required by this order or believes that the divestiture required by this order can be achieved within a reasonable time, then that divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however,

the Commission may extend the period for the divestiture only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Divested Assets or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in any divestiture caused by respondent shall extend the time for that divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in a manner consistent with the terms of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, and at reasonable fees, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are 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 the respondent, 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 accomplishing the divestiture required by paragraph III.A of this order.

8. Respondent 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 trustee's duties, 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.

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 this paragraph.

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 reasonably necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee may divest such additional ancillary assets related to the Divested Assets and effect such ancillary arrangements as are necessary to satisfy the requirements or purposes of this order.

12. The trustee shall have no obligation or authority to operate or maintain the Divested Assets.

13. The trustee shall report in writing to respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture required by this order.

IV.

It is further ordered, That within thirty (30) days after the date this order becomes final, and every thirty (30) days thereafter until respondent has completed the divestiture of the Divested Assets and every ninety (90) days thereafter until respondent has fully complied with the provisions of paragraphs II and III of this order, respondent shall submit to the Commission verified written reports setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with the requirements of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal documents (except privileged documents), and all reports and recommendations, concerning the divestiture.

V.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate

respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

VI.

It is further ordered, That, for the purpose of determining or securing compliance with this order, respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

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

Commissioner Azcuenaga not participating.

EXHIBIT A

Part I

(a) All of DowBrands' rights, title, and interest acquired by respondent from DowBrands pursuant to the Acquisition, in and to:

(1) Soil and stain remover products, including, but not limited to, the brands and trademarks "Spray 'n Wash," "Spray 'n Wash Gel," "Spray 'n Wash for White Laundry," "Spray 'n Wash Stain Stick," and "Thicker More Powerful Spray 'n Wash";

(2) Glass cleaner products, including, but not limited to, the brands and trademarks "Glass Plus" and "New Fresh Scent Glass Plus"; and

(3) Starch products, including, but not limited to, the brand and trademark "Spray 'n Starch."

(b) All of DowBrands' rights, title, and interest, acquired by respondent from DowBrands pursuant to the Acquisition, in the following assets and businesses, relating to the research, development, manufacture, sale, and distribution of soil and stain remover products, glass cleaner products, and starch products

("Exhibit A Part I Products"), including, without limitation, the following:

(1) All customer lists, vendor lists, catalogs, sales and promotion literature, advertising materials, marketing information, product development information, research materials, technical information, management information systems, software, inventions, trade secrets, technology, know-how, specifications, designs, artwork, drawings, processes and quality control data;

(2) Intellectual property rights, patents and patent applications and formulas, copyrights, trademarks, and trade names, but excluding all Universal Product Codes or similar bar codes relating to the Exhibit A Part I Products, provided, however, that respondent may retain for a period not to exceed six (6) months from the date of the Acquisition a non-exclusive royalty free right to the molds used in the production of both Divested Assets and non-divested assets, as well as the patents listed on Exhibit B, and provided further, however, that respondent may retain for perpetuity co-exclusive royalty free rights to use the trademark "We Work Hard So You Don't Have To" in connection with any products owned by respondent;

(3) All rights, title and interest in and to the contracts entered in the ordinary course of business with customers, suppliers, sales representatives, brokers and distributors, agents, inventors, product testing and laboratory research institutions, licensors, licensees, consignors, and consignees, but excluding all accounts and notes receivable of respondent;

(4) All rights under warranties and guarantees, express or implied;

(5) All books, records, files, and supporting documents; and

(6) All Environmental Protection Agency ("EPA"), and all other federal and state regulatory agency, registrations and applications, and all documents related thereto, provided, however, that with respect to EPA pesticide registration number 3696-138, respondent need only provide the Acquirer with the information and data on the specific alternative formulation relating to the Divested Assets that is transferred.

Part II

(a) All of DowBrands' rights, title, and interest acquired by respondent from DowBrands pursuant to the Acquisition, in and to the Urbana Facility, including, but not limited to, all machinery,

fixtures, equipment, vehicles, furniture, tools and all other tangible personal property.

(b) All of DowBrands' rights, title, and interest acquired by respondent from DowBrands pursuant to the Acquisition, in and to:

(1) Laundry detergent products, including, but not limited to, the brands and trademarks, "Yes," "Ultra Yes," and "Ultra Vivid Color Care"; and

(2) Oven cleaner products, including, but not limited to, the brand and trademark, "Heavy Duty Oven Cleaner."

(c) All of DowBrands' rights, title, and interest, acquired by respondent from DowBrands pursuant to the Acquisition, in the following assets and businesses, relating to the research, development, manufacture, sale, and distribution of laundry detergent products and oven cleaner products ("Exhibit A Part II Products"), including, without limitation, the following:

(1) All customer lists, vendor lists, catalogs, sales and promotion literature, advertising materials, marketing information, product development information, research materials, technical information, management information systems, software, inventions, trade secrets, technology, know-how, specifications, designs, artwork, drawings, processes and quality control data;

(2) Intellectual property rights, patents and patent applications and formulas, copyrights, trademarks, and trade names, but excluding all Universal Product Codes or similar bar codes relating to the Exhibit A Part II Products, provided, however, that respondent may retain for a period not to exceed six (6) months from the date of the Acquisition a non-exclusive royalty free right to the molds used in the production of both Divested Assets and non-divested assets, as well as the patents listed on Exhibit B, and provided further, however, that respondent may retain for perpetuity co-exclusive royalty free rights to use the trademark "We Work Hard So You Don't Have To" in connection with any products owned by respondent;

(3) All rights, title and interest in and to the contracts entered in the ordinary course of business with customers, suppliers, sales representatives, brokers and distributors, agents, inventors, product testing and laboratory research institutions, licensors, licensees, consignors, and consignees, but excluding all accounts and notes receivable of respondent;

(4) All rights under warranties and guarantees, express or implied;

(5) All books, records, files, and supporting documents; and

(6) All EPA, and all other federal and state regulatory agency, registrations and applications, and all documents related thereto, provided, however, that with respect to EPA pesticide registration number 3696-138, respondent need only provide the Acquirer with the information and data on the specific alternative formulation relating to the Divested Assets that is transferred.

EXHIBIT B

Country/ Case No.	Patent No.	Issue Date	Inventors	Title
United States 41251	352,546	11/15/94	S.A. Silvenis, J.A. Zurcher, J.L. Ghighi	SPRAYER SHROUD
MX 41251	7944	8/30/95	S.A. Silvenis, J.A. Zurcher, J.L. Ghighi	SPRAYER SHROUD
CA 41251	77464	11/2/95	S.A. Silvenis, J.A. Zurcher, J.L. Ghigh	SPRAYER SHROUD
United States 41386	358,990 (design)	6/6/95	D.C. Wilson, K.M. Stockwell, W.J. Britt	UPPER PORTION OF A BOTTLE
CA 41386	79419	11/15/96	D.C. Wilson, K.M. Stockwell, W.J. Britt	UPPER PORTION OF A BOTTLE
MX 41386	7877	7/25/95	D.C. Wilson, K.M. Stockwell, W.J. Britt	UPPER PORTION OF A BOTTLE

IN THE MATTER OF

SHELL OIL COMPANY, ET AL.

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FEDERAL TRADE COMMISSION ACT

Docket C-3803. Complaint, April 21, 1998--Decision, April 21, 1998

This consent order requires, among other things, the two petroleum corporations to divest, to Commission-approved buyers, a package of assets, including a refinery, a terminal and certain retail gasoline stations.

Appearances

For the Commission: *Richard Liebeskind, Frank Lipson, Arthur Nolan, Phillip Broyles and William Baer.*

For the respondents: *Steven Newborn, Rogers & Wells, Washington, D.C. and Marc Schildkraut and Tim Boyle, Howrey & Simon, 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 ("Commission"), having reason to believe that respondent Shell Oil Co. ("Shell"), a corporation, and respondent Texaco Inc. ("Texaco"), a corporation, both subject to the jurisdiction of the Commission, have entered into an agreement or agreements (or may enter into an agreement or agreements), with themselves and with others, 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, as amended, 15 U.S.C. 45, to form a limited liability corporation ("LLC") or LLCs and to transfer to said LLCs the corporations, businesses, and assets that constitute the principal part of the petroleum refining and marketing businesses of Shell, Texaco, and their affiliates in the United States, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

SHELL OIL COMPANY

1. Respondent Shell Oil Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of